

# **Cabinet Office Ordinance on Administrative Monetary Penalty under the Provisions of Chapter VI-2 of the Financial Instruments and Exchange Act**

(Cabinet Office Ordinance No. 17 of March 4, 2005)

Pursuant to the provisions of Article 185-9 and Article 185-17 of the Securities and Exchange Act (Act No. 25 of 1948), and for the purpose of enforcing said Act, the Cabinet Office Ordinance on Trial Procedures under the Provisions of Chapter VI-2, Section 2 of the Securities and Exchange Act is established as follows.

Chapter I Payment Order (Article 1 – Article 1-23)

Chapter II Trial Procedures

Section 1 General Provisions (Article 1-24 – Article 13)

Section 2 Commencement of Trial Procedures (Article 14 – Article 17)

Section 3 Allegations, etc. in and Preparations for Trials (Article 18 – Article 30)

Section 4 Evidence

Subsection 1 General Provisions (Article 31 – Article 35)

Subsection 2 Hearing of Witness (Article 36– Article 48)

Subsection 3 Hearing of Respondent (Article 49)

Subsection 4 Examination of Documentary Evidence and Articles of Evidence (Article 50 – Article 53)

Subsection 5 Expert Testimony (Article 54 – Article 58)

Subsection 6 On-Site Inspection (Article 59)

Section 5 Decision (Article 60 – Article 61-9)

Section 6 Miscellaneous Provisions (Article 62)

Supplementary Provisions

## **Chapter I Payment Order**

(Audit Certification Fee)

Article 1 The amount specified by Cabinet Office Ordinance prescribed in Article 172-3, paragraph (1) of the Financial Instruments and Exchange Act (Act No. 25 of 1948; hereinafter referred to as the "Act") is the total amount of money or value of other property paid or payable to a certified public accountant (including foreign certified public accountant prescribed in Article 16-2, paragraph (5) of the Certified Public Accountants Act (Act No. 103 of 1948)) or an auditing firm (including foreign auditing firms, etc. prescribed in Article 1-3,

paragraph (7) of the Certified Public Accountants Act) as consideration for the audit certification prescribed in Article 193-2, paragraph (1) of the Act (including certification that may be deemed equivalent to the audit certification prescribed in item (i) or item (ii) of that paragraph) for documents on finance calculation prescribed in that paragraph pertaining to the business year (meaning business year set forth in Article 172-3, paragraph (1) of the Act; hereinafter the same applies in the following Article to Article 1-7 inclusive) by the person who submits said documents.

(In Cases Equivalent to Cases Where There Is No Immediately Preceding Business Year for which Audit Certification is Required)

Article 1-2 (1) The cases specified by Cabinet Office Ordinance prescribed in Article 172-3, paragraph (1) of the Act are cases in which the number of days in the immediately preceding business year prescribed in that paragraph falls short of the number of days in the business year pertaining to the Annual Securities Report set forth in that paragraph, and the Audit Certification Fee (meaning Audit Certification Fee prescribed in that paragraph; the same applies in the following paragraph) for said immediately preceding business year is less than four million yen.

(2) The cases specified by Cabinet Office Ordinance prescribed in Article 172-3, paragraph (2) of the Act are cases in which the number of days in the immediately preceding business year prescribed in that paragraph falls short of the number of days calculated by multiplying by two the number of days in the period pertaining to the quarterly or semiannual securities report prescribed in that paragraph, and the Audit Certification Fee for said immediately preceding business year is less than four million yen.

(Total Amount of Market Value in Calculation of Administrative Monetary Penalty for False Statement, etc. in Annual Securities Report, etc.)

Article 1-3 The total amount of the market value calculated pursuant to the provisions of Cabinet Office Ordinance prescribed in Article 172-4, paragraph (1), item (ii), sub-item (a) of the Act is the amount obtained by multiplying the amount specified in item (i) by the number specified in item (ii):

(i) the amount obtained by dividing the sum total of the amounts set forth in sub-item (a) by the number specified in sub-item (b):

(a) the daily closing price of Index Securities for Calculation (hereinafter referred to as "Index Securities for Calculation" in this Article) prescribed in Article 172-4, paragraph (1), item (ii), sub-item (a) of the Act in the respective periods set forth in 1. to 4. inclusive corresponding to the categories listed in 1. to 4. inclusive (meaning the highest among the closing prices prescribed in Article 67-19 of the Act or Article 130 of the Act,

and when there are different closing prices for multiple classes of Index Securities for Calculation that are different in content pertaining to the same Annual Securities Report, etc. (meaning Annual Securities Report, etc. prescribed in Article 172-4, paragraph (1) of the Act; hereinafter the same applies in this Article) or quarterly securities report, semiannual securities report or Extraordinary Report, etc. (meaning quarterly securities report, semiannual securities report or Extraordinary Report, etc. prescribed in Article 172-4, paragraph (2) of the Act) as of the same day, the total amount obtained by multiplying the number or the number of units of issued classes of Index Securities for Calculation corresponding to each closing price as of said day by said closing price divided by the total number or total number of units of the issued Index Securities for Calculation as of said day (excluding those without a closing price); hereinafter the same applies in this Article):

1. the instance set forth in Article 172-4, paragraph (1) of the Act: The period of the business year prescribed in Article 185-7, paragraph (29), item (i) of the Act pertaining to said Annual Securities Report, etc.;
2. the instance set forth in Article 172-4, paragraph (2) of the Act (limited to when the quarterly securities report or an amendment report thereof prescribed in Article 185-7, paragraph (29), item (ii) of the Act contains any false statement on important matters or lacks a statement on important matters that must be stated therein): Period pertaining to said quarterly securities report;
3. the instance set forth in Article 172-4, paragraph (2) of the Act (limited to when the semiannual securities report or an amendment report thereof prescribed in Article 185-7, paragraph (29), item (iii) of the Act contains any false statement on important matters or lacks a statement on important matters that should be stated therein): Period pertaining to said semiannual securities report;
4. the instance set forth in Article 172-4, paragraph (2) of the Act (including when it is applied mutatis mutandis pursuant to paragraph (3) of that Article) (limited to when the Extraordinary Report or an amendment report thereof prescribed in Article 185-7, paragraph (29), item (iv) of the Act contains any false statement on important matters or lacks a statement on important matters that should be stated therein): Period from the first day of the business year to which the submission date of said Extraordinary Report belongs (in the case prescribed in Article 172-4, paragraph (3) of the Act, meaning the day on which circumstances for the submission of an Extraordinary Report have arisen; hereinafter the same applies in this item) to the submission date of said Extraordinary Report.

- (b) the number of days on which the closing price was publicized in the respective periods set forth in (1) to (4) inclusive of sub-item (a) corresponding to the categories listed in 1. to 4. inclusive thereof.
- (ii) the amount obtained by dividing the sum of the numbers listed in sub-item (a) of the preceding item in the respective periods set forth in 1. to 4. inclusive of sub-item (a) of that item corresponding to the categories listed in 1. to 4. inclusive thereof by the number specified in sub-item (b):
  - (a) the total number or the total number of units of issued Index Securities for Calculation as of the day on which the closing price was publicized (excluding those without a closing price);
  - (b) the number of days on which closing price was publicized.

(Balance Sheet)

Article 1-4 The balance sheet specified by Cabinet Office Ordinance prescribed in Article 33-5-3 of the Order for Enforcement of the Financial Instruments and Exchange Act (Cabinet Order No. 321 of 1965; hereinafter referred to as the "Order") is to be as prescribed in the following items corresponding to the categories set forth respectively in those items:

- (i) the instance prescribed in Article 172-4, paragraph (1) of the Act:  
Consolidated balance sheet for the business year prescribed in item (i), sub-item (a), 1. of the preceding Article contained in the Annual Securities Report (meaning Annual Securities Report prescribed in Article 24, paragraph (1) of the Act (including when it is applied mutatis mutandis pursuant to paragraph (5) of that Article and when these provisions are applied mutatis mutandis pursuant to Article 27 of the Act); hereinafter the same applies in the following item, Article 1-6 and Article 1-7) for said business year (when the Annual Securities Report does not contain a consolidated balance sheet, the balance sheet; hereinafter the same applies in this Article to Article 1-7 inclusive);
- (ii) the instance prescribed in Article 172-4, paragraph (2) of the Act (including when it is applied mutatis mutandis pursuant to paragraph (3) of that Article): Consolidated balance sheet for the business year immediately preceding the business year to which the period set forth in item (i), sub-item (a), 2. to 4. inclusive of the preceding Article belongs contained in the Annual Securities Report for said immediately preceding business year;
- (iii) the instance prescribed in Article 172-11, paragraph (1) of the Act:  
Consolidated balance sheet or documents equivalent thereto (limited to those indicated in Issuer's Information) as at the last day of the business year prescribed in Article 185-7, paragraph (29), item (v) of the Act pertaining to the Issuer's Information Containing Fake Information, etc. (meaning Issuer's Information Containing Fake Information, etc. prescribed in Article 172-11,

paragraph (1); hereinafter the same applies in this item and Article 1-8, (i)) (if said Issuer's Information Containing Fake Information, etc. (in the case of Amended Issuer's Information (meaning Amended Issuer's Information prescribed in Article 27-32, paragraph (3) of the Act; the same applies hereinafter), meaning Issuer's Information (meaning Issuer's Information prescribed in Article 27-32, paragraph (1) of the Act; the same applies hereinafter) on said Amended Issuer's Information) was provided or publicized before the end of said business year, the business year immediately preceding said business year).

(Matters That May Have Material Influence on Investors' Investment Decisions)

Article 1-5 Matters specified by Cabinet Office Ordinance prescribed in Article 172-4, paragraph (3) of the Act are the following matters:

- (i) matters set forth in the items of Article 19, paragraph (2) of the Cabinet Office Ordinance concerning Disclosure of Corporate Affairs, etc. (Ordinance of the Ministry of Finance No. 5 of 1973) (including when it is applied mutatis mutandis pursuant to paragraph (3) of that Article);
- (ii) matters to be stated in the sections set forth in the items of Article 19-2 of the Cabinet Office Ordinance concerning Disclosure of Corporate Affairs, etc. or the description of changes that have arisen in the matters stated in the sections set forth in said items;
- (iii) matters specified in the items of Article 16 of the Cabinet Office Ordinance on Disclosure of Profile, etc. of Issuers of Foreign National Government Bonds, etc. (Ordinance of the Ministry of Finance No. 26 of 1972); and
- (iv) matters specified in the items of Article 29, paragraph (2) of the Cabinet Office Ordinance on Disclosure of Description, etc. of Regulated Securities (Ordinance of the Ministry of Finance No. 22 of 1993) (including when it is applied by replacing the terms pursuant to paragraph (5) of that Article).

(Price Equivalent to Closing Price When Closing Price Does Not Exist)

Article 1-6 The amount specified by Cabinet Office Ordinance prescribed in Article 172-6, paragraph (1), item (i) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:

- (i) when Share Certificates, etc. (meaning Share Certificates, etc. prescribed in Article 172-5 of the Act; hereinafter the same applies in this Article) or Listed Share Certificates, etc. (meaning Listed Share Certificates, etc. prescribed in Article 172-5 of the Act; hereinafter the same applies in this Article) are Listed Securities, etc. (meaning Securities listed on a Financial Instruments Exchange (meaning Financial Instruments Exchange prescribed in Article 2, paragraph (16) of the Act; the same applies hereinafter), Over-

- the-Counter Traded Securities (meaning Over-the-Counter Traded Securities prescribed in paragraph (8), item (x), (c) of that Article; the same applies hereinafter) or Tradable Securities (meaning Tradable Securities prescribed in Article 67-18, item (iv) of the Act; the same applies hereinafter); hereinafter the same applies in this Chapter): The latest price publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association (meaning Authorized Financial Instruments Firms Association prescribed in Article 2, paragraph (13) of the Act; the same applies hereinafter) before the day on which the Public Notice for Commencing Tender Offer prescribed in Article 172-6, paragraph (1), item (i) of the Act was given;
- (ii) when Share Certificates, etc. or Listed Share Certificates, etc. are Securities other than Listed Securities, etc. (hereinafter referred to as "Unlisted Securities" in this Chapter): The amount obtained by dividing the amount specified in sub-item (a) by the number specified in sub-item (b):
- (a) the amount obtained by deducting the total amount of liabilities from the total amount of assets accounted for in the consolidated balance sheet for the business year immediately preceding the business year in which the day on which the Public Notice for Commencing Tender Offer prescribed in Article 172-6, paragraph (1), item (i) of the Act was given belongs that is stated in the Annual Securities Report for Share Certificates, etc. or Listed Share Certificates, etc. for said immediately preceding business year;
- (b) total number or total number of units of issued Share Certificates, etc. or Listed Share Certificates, etc. as at the day before the day on which the Public Notice for Commencing Tender Offer prescribed in Article 172-6, paragraph (1), item (i) of the Act was given.

(Securities, etc. Equivalent to Share Certificates)

- Article 1-7 (1) Securities specified by Cabinet Office Ordinance prescribed in Article 172-7, item (i) of the Act and Article 172-8, item (i) of the Act are the following Securities:
- (i) securities or certificates that have the nature of share certificates which have been issued by a foreign person; and
- (ii) investment securities, etc. prescribed in Article 1-4, item (i) of the Order.
- (2) The number specified by Cabinet Office Ordinance prescribed in Article 172-7, item (i) of the Act and Article 172-8, item (i) of the Act is the total number of Issued Investment Equity.
- (3) The amount calculated pursuant to the provisions of Cabinet Office Ordinance prescribed in Article 172-7, item (i) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:
- (i) when the share certificates issued by the Issuer or the Securities specified

- in the items of paragraph (1) are Listed Securities, etc.: The amount obtained by multiplying the amount specified in sub-item (a) by the number specified in sub-item (b):
- (a) the latest price publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association subsequent to the day following the time limit for the Report of Possession of Large Volume or Change Report to be submitted as prescribed in Article 172-7 of the Act (hereinafter referred to as "Reference Date" in this paragraph);
  - (b) the total number of issued shares or Issued Investment Equity of the Issuer as at the day following the Reference Date.
- (ii) when the share certificates issued by the Issuer or the Securities specified in the items of paragraph (1) are Unlisted Securities, etc.: The amount obtained by deducting the total amount of liabilities from the total amount of assets accounted for in the consolidated balance sheet for the business year immediately preceding the business year in which the Reference Date belongs that is stated in the Annual Securities Report for Share Certificates, etc. (meaning Share Certificates, etc. prescribed in Article 172-7, item (i) of the Act; hereinafter the same applies in this Article) issued by said Issuer for said immediately preceding business year.
- (4) The amount calculated pursuant to the provisions of Cabinet Office Ordinance prescribed in Article 172-8, item (i) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:
- (i) when the share certificates issued by the Issuer or the Securities specified in the items of paragraph (1) are Listed Securities, etc.: The amount obtained by multiplying the amount specified in sub-item (a) by the number specified in sub-item (b):
    - (a) the latest price publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association subsequent to the day following the day on which the Report of Possession of Large Volume or Change Report, etc. prescribed in Article 172-8 of the Act was submitted (hereinafter referred to as "Reference Date" in this paragraph);
    - (b) the total number of issued shares or Issued Investment Equity of the Issuer as at the day following the Reference Date.
  - (ii) when the share certificates issued by the Issuer or the Securities specified in the items of paragraph (1) are Unlisted Securities, etc.: The amount obtained by deducting the total amount of liabilities from the total amount of assets accounted for in the consolidated balance sheet for the business year immediately preceding the business year in which the Reference Date belongs that is stated in the Annual Securities Report for Share Certificates, etc. issued by said Issuer for said immediately preceding business year.

(Total Amount of Market Value in Calculation of Administrative Monetary Penalty for Fake Information, etc. Contained in Issuer's Information, etc.)

Article 1-8 The total amount of the market value calculated pursuant to the provisions of Cabinet Office Ordinance prescribed in Article 172-11, paragraph (1), item (i), sub-item (b), 1. of the Act is the amount obtained by multiplying the amount specified in item (i) by the number specified in item (ii):

(i) the amount obtained by dividing the sum total of the amount set forth in sub-item (a) by the number specified in sub-item (b):

(a) the daily closing price of Index Securities for Calculation (hereinafter referred to as "Index Securities for Calculation" in this Article) prescribed in Article 172-11, paragraph (1), item (i), sub-item (b), 1. of the Act in the business year prescribed in Article 185-7, paragraph (29), item (v) of the Act (if the Issuer's Information Containing Fake Information, etc. was provided or publicized before the end of said business year, the period from the first day of said business year to the day on which said Issuer's Information Containing Fake Information, etc. was provided or publicized) pertaining to the Issuer's Information Containing Fake Information, etc. (meaning the highest among the closing prices prescribed in Article 67-19 of the Act or Article 130 of the Act, and when there are different closing prices for multiple classes of Index Securities for Calculation that are different in content pertaining to the same Issuer's Information, etc. as of the same day, the amount obtained by multiplying the number or the number of units of issued classes of Index Securities for Calculation corresponding to each closing price as of said day by said closing price divided by the total number or total number of units of the issued Index Securities for Calculation as of said day (excluding those without a closing price); hereinafter the same applies in this Article);

(b) the number of days on which closing price was publicized.

(ii) the amount obtained by dividing the sum total of the number set forth in sub-item (a) by the number specified in sub-item (b):

(a) The total number or the total number of units of issued Index Securities for Calculation as of the day on which the closing price was publicized in the period set forth in the preceding item (excluding those without a closing price);

(b) The number of days on which closing price was publicized.

(Price Equivalent to the Lowest Price in Calculation of Administrative Monetary Penalty for Dissemination of Unfounded Rumors or Trading by Fraudulent Means When the Lowest Price Does Not Exist)

Article 1-9 (1) The price specified by Cabinet Office Ordinance prescribed in Article 173, paragraph (1), item (i), sub-item (b) of the Act is the price specified



in the following items for the categories of cases set forth respectively in those items:

- (i) when the Purchase, etc. of Securities (meaning Purchase, etc. of Securities prescribed in Article 173, paragraph (3) of the Act; hereinafter the same applies in this Article and the following Article) is the purchase of Listed Securities, etc. or Market Derivatives Transaction (meaning Market Derivatives Transaction prescribed in Article 2, paragraph (21) of the Act; the same applies hereinafter): The lowest price among indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
  - (ii) when the Purchase, etc. of Securities is the purchase of Unlisted Securities, Over-the-Counter Derivatives Transaction (meaning Over-the-Counter Derivatives Transactions prescribed in Article 2, paragraph (22) of the Act; the same applies hereinafter) or Foreign Market Derivatives Transactions (meaning Foreign Market Derivatives Transactions prescribed in paragraph (23) of that Article; the same applies hereinafter): Price calculated by a reasonable method based on the lowest price (meaning the lowest price prescribed in Article 67-19 of the Act or Article 130 of the Act, and when there is no such price, the lowest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association; hereinafter the same applies in this Chapter) of Securities, etc. listed on a Financial Instruments Exchange (meaning Securities, etc. prescribed in Article 158 of the Act; the same applies in this Article and the following Article), Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation (meaning Act of Violation prescribed in Article 173, paragraph (1) of the Act; hereinafter the same applies in this Article and the following Article).
- (2) The amount specified by Cabinet Office Ordinance prescribed in Article 173, paragraph (1), item (i), sub-item (b) of the Act is the lowest price as at the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation); provided, however, that when there is no such lowest price, it is the price calculated by a reasonable method based on the lowest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation on the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation).
- (3) The price specified by Cabinet Office Ordinance prescribed in Article 173,

- paragraph (1), item (ii), sub-item (a) of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:
- (i) when Sales, etc. of Securities (meaning Sales, etc. of Securities prescribed in Article 173, paragraph (2) of the Act; hereinafter the same applies in this Article and the following Article) are sales of Listed Securities, etc. or Market Derivatives Transaction: The highest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
  - (ii) when Sales, etc. of Securities are sales of Unlisted Securities, Over-the-Counter Derivatives Transaction or Foreign Market Derivatives Transactions: Price calculated by a reasonable method based on the highest price (meaning the highest price prescribed in Article 67-19 of the Act or Article 130 of the Act, and when there is no such price, the highest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association; hereinafter the same applies in this Chapter) of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation.
- (4) The amount specified by Cabinet Office Ordinance prescribed in Article 173, paragraph (1), item (ii), sub-item (a) and item (iii), sub-item (a) of the Act is the highest price as at the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation); provided, however, that when there is no such highest price, it is the price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation on the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation).
- (5) The price specified by Cabinet Office Ordinance prescribed in Article 173, paragraph (1), item (iii), sub-item (a) of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:
- (i) when the Securities pertaining to the Act of Violation are Listed Securities, etc.: The highest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
  - (ii) when the Securities pertaining to the Act of Violation are Unlisted Securities: Price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-

the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation.

(Amount of Fees, etc. in Calculation of Administrative Monetary Penalty for Dissemination of Unfounded Rumors or Trading by Fraudulent Means)

Article 1-10 (1) The amount specified by Cabinet Office Ordinance prescribed in Article 173, paragraph (1), item (iv) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:

(i) if a Violator (meaning Violator prescribed in Article 173, paragraph (1) of the Act; hereinafter the same applies in this Article and the following Article) has conducted Sales, etc. of Securities or Purchase, etc. of Securities referred to in Article 173, paragraph (1), item (iv) of the Act as an investment of Investment Property (meaning Investment Property prescribed in Article 35, paragraph (1), item (xv); the same applies hereinafter): The amount obtained by multiplying the amount specified in sub-item (a) by the amount specified in sub-item (b) divided by the amount set forth in sub-item (c):

(a) the total amount of money or the value of other property paid or payable to the Violator as consideration for the investment of said Investment Property (when said investment is an investment of money or other property contributed from a person who holds the rights indicated in the beneficiary certificates of investment trusts prescribed in Article 2, paragraph (1), item (x) of the Act, excluding money and other property paid or payable to a Financial Instruments Business Operator, etc. (meaning Financial Instruments Business Operator, etc. prescribed in Article 34 of the Act; the same applies hereinafter) who deals in the public offering (meaning dealing in the Public Offering of Securities prescribed in Article 2, paragraph (8), item (ix) of the Act; the same applies hereinafter) or the private placement (meaning dealing in the Private Placement of Securities prescribed in Article 2, paragraph (8), item (ix) of the Act; the same applies hereinafter) of said beneficiary certificates as consideration for dealing in said public offering or private placement; hereinafter referred to as "Investment Fee" in this item) for the month in which the Sales, etc. of Securities or Purchase, etc. of Securities pertaining to the Act of Violation (hereinafter referred to as "Transaction Subject to Calculation" in this Article) was performed (if the period serving as the basis of calculation of the Investment Fee (hereinafter referred to as "Investment Fee Calculation Period" in this item) exceeds one month, the amount obtained by dividing said Investment Fee by the number of months in the Investment Fee Calculation Period or other reasonable method (when the Investment Fee

Calculation Period has not yet ended as of the latest date among the last day of the month in which Transaction Subject to Calculation was performed (hereinafter referred to as "Reference Date" in this item), the amount calculated by a reasonable method by presuming that said Investment Fee Calculation Period had ended as of the Reference Date), multiplied by the number of months in which Transaction Subject to Calculation was performed);

(b) the highest among the total amounts of issues of said Investment Property in Transaction Subject to Calculation during the period between the time of the commencement of the Act of Violation and the time when one month has elapsed from the completion thereof;

(c) the total amount of said Investment Property as at the Reference Date.

(ii) in cases other than those set forth in the preceding item: The total amount of money or the value of other property paid or payable to the Violator as consideration for an Act of Financial Instruments Transaction (meaning Act of Financial Instruments Transaction prescribed in Article 34 of the Act, excluding the acts listed in the items of Article 28, paragraph (4) of the Act; hereinafter the same applies in this Chapter) for a Transaction Subject to Calculation (in cases other than those in which said value is calculated with respect to each Transaction Subject to Calculation, the amount calculated by prorating the value in proportion to the ratio of the total amount of the Transaction Subject to Calculation to the total transaction amount pertaining to the Act of Financial Instruments Transaction under the Contract for Financial Instruments Transaction (meaning Contract for Financial Instruments Transaction prescribed in Article 34 of the Act; the same applies hereinafter) for the Transaction Subject to Calculation in the period serving as the basis of calculation of said value or other reasonable method corresponding to the status of transaction pertaining to said Contract for Financial Instruments Transaction).

(2) The number of months referred to in item (i), sub-item (a) of the preceding paragraph is calculated in accordance with the calendar, and if a fraction of less than one month occurs, such fraction is counted as one month.

(Persons, etc. Closely Related to Violator in Calculation of Administrative Monetary Penalty for Dissemination of Unfounded Rumors or Trading by Fraudulent Means)

Article 1-11 (1) The persons specified by Cabinet Office Ordinance prescribed in Article 173, paragraph (5), item (i) of the Act are the following persons:

(i) Parent Company (meaning Parent Company prescribed in Article 8, paragraph (3) of the Ordinance on Terminology, Forms, and Preparation Methods of Financial Statements (Ordinance of the Ministry of Finance No.

- 59 of 1963); the same applies hereinafter) of the Violator;
- (ii) Subsidiary (meaning Subsidiary prescribed in Article 8, paragraph (3) of the Ordinance on Terminology, Forms, and Preparation Methods of Financial Statements); the same applies hereinafter) of the Violator;
  - (iii) Company, etc. (meaning company, etc. prescribed in Article 8, paragraph (3) of the Ordinance on Terminology, Forms, and Preparation Methods of Financial Statements; the same applies hereinafter) whose Parent Company is the same as the Violator; and
  - (iv) Family Company (meaning Family Company prescribed in Article 2, item (x) of the Corporation Tax Act (Act No. 34 of 1965), excluding companies that are clearly found not to be controlled by the Violator) of the Violator (limited to individuals; hereinafter the same applies in this item).
- (2) The persons specified by Cabinet Office Ordinance prescribed in Article 173, paragraph (5), item (ii) of the Act are the following persons:
- (i) relative of the Violator (limited to individuals);
  - (ii) person who has not submitted a notification of marriage but is in a situation similar to a de-facto marriage relationship with the Violator (limited to individuals);
  - (iii) officer, agent, employee or other worker (hereinafter referred to as "Officers, etc." in this Chapter) of the Violator;
  - (iv) person other than those listed in the preceding three paragraphs whose livelihood is supported by money or other assets received from the Violator (limited to individuals); and
  - (v) relative who shares livelihood with the persons listed in the preceding three paragraphs.

(Price, etc. Equivalent to the Lowest Price in Calculation of Administrative Monetary Penalty for Market Manipulation through a Fake Purchase and Sale, etc. When the Lowest Price Does Not Exist)

Article 1-12 (1) The price specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (1), item (i), sub-item (b) of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:

- (i) when the Purchase, etc. of Securities (meaning Purchase, etc. of Securities prescribed in Article 174, paragraph (3) of the Act; hereinafter the same applies in this Article and the following Article) is the purchase of Listed Securities, etc. or Market Derivatives Transaction: The lowest price among indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
- (ii) when the Purchase, etc. of Securities is the purchase of Unlisted Securities or Over-the-Counter Derivatives Transaction: Price calculated by a

reasonable method based on the lowest price of Securities, etc. listed on a Financial Instruments Exchange (meaning Securities, etc. prescribed in Article 174, paragraph (1), item (i) of the Act; hereinafter the same applies in this Article to Article 1-16 inclusive), Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation (meaning Act of Violation prescribed in that paragraph; hereinafter the same applies in this Article and the following Article).

- (2) The amount specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (1), item (i), sub-item (b) of the Act is the lowest price as at the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation); provided, however, that when there is no such lowest price, it is the price calculated by a reasonable method based on the lowest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation on the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation).
- (3) The price specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (1), item (ii), sub-item (a) of the Act is the price specified in the following items for the categories of cases set forth respectively in those items.
  - (i) when Sales, etc. of Securities (meaning Sales, etc. of Securities prescribed in Article 174, paragraph (2) of the Act; hereinafter the same applies in this Article and the following Article) are sales of Listed Securities, etc. or Market Derivatives Transaction: The highest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
  - (ii) when Sales, etc. of Securities are sales of Unlisted Securities or Over-the-Counter Derivatives Transaction: Price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation.
- (4) The amount specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (1), item (ii), sub-item (a) and item (iii), sub-item (a) of the Act is the highest price as at the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation); provided, however, that when there is no such highest price, it is the price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or

Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation on the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation).

- (5) The price specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (1), item (iii), sub-item (a) of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:
- (i) when the Securities pertaining to the Act of Violation are Listed Securities, etc.: The highest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
  - (ii) when the Securities pertaining to the Act of Violation are Unlisted Securities: Price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation.

(Amount of Fees, etc. in Calculation of Administrative Monetary Penalty for Market Manipulation through Fake Purchase and Sale, etc.)

Article 1-13 (1) The amount specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (1), item (iv) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:

- (i) if a Violator (meaning Violator prescribed in Article 174, paragraph (1) of the Act; hereinafter the same applies in this Article and the following Article) has conducted the Act of Violation referred to in item (iv) of that paragraph or Sales, etc. of Securities or Purchase, etc. of Securities as an investment of Investment Property: The amount obtained by multiplying the amount specified in sub-item (a) by the amount specified in sub-item (b) divided by the amount set forth in sub-item (c):
  - (a) the total amount of money or the value of other property paid or payable to the Violator as consideration for the investment of said Investment Property (when said investment is an investment of money or other property contributed from a person who holds the rights indicated in the beneficiary certificates of investment trusts prescribed in Article 2, paragraph (1), item (x) of the Act, excluding money and other property paid or payable to a Financial Instruments Business Operator, etc. who deals in the public offering or the private placement of said beneficiary certificates as consideration for dealing in said public offering or private placement; hereinafter referred to as "Investment Fee" in this item) for the month in which the Act of Violation or the Sales, etc. of Securities or Purchase, etc.

- of Securities pertaining to the Act of Violation (hereinafter referred to as "Transaction Subject to Calculation" in this Article) was performed (if the period serving as the basis of calculation of the Investment Fee (hereinafter referred to as "Investment Fee Calculation Period" in this item) exceeds one month, the amount obtained by dividing said Investment Fee by the number of months in the Investment Fee Calculation Period or other reasonable method (when the Investment Fee Calculation Period has not yet ended as of the latest date among the last day of the month in which Transaction Subject to Calculation was performed (hereinafter referred to as "Reference Date" in this item), the amount calculated by a reasonable method by presuming that said Investment Fee Calculation Period had ended as of the Reference Date), multiplied by the number of months in which Transaction Subject to Calculation was performed);
- (b) the highest among the total amounts of issues of said Investment Property in Transaction Subject to Calculation during the period between the time of the commencement of the Act of Violation and the time when one month has elapsed from the completion thereof;
- (c) the total amount of said Investment Property as at the Reference Date.
- (ii) in cases other than those set forth in the preceding item: The total amount of money or the value of other property paid or payable to the Violator as consideration for an Act of Financial Instruments Transaction for a Transaction Subject to Calculation (in cases other than those in which said value is calculated with respect to each Transaction Subject to Calculation, the amount calculated by prorating the value in proportion to the ratio of the total amount of the Transaction Subject to Calculation to the total transaction amount pertaining to the Act of Financial Instruments Transaction under the Contract for Financial Instruments Transaction for the Transaction Subject to Calculation in the period serving as the basis of calculation of said value or other reasonable method corresponding to the status of transaction pertaining to said Contract for Financial Instruments Transaction).
- (2) The number of months referred to in item (i), sub-item (a) of the preceding paragraph is calculated in accordance with the calendar, and if a fraction of less than one month occurs, such fraction is counted as one month.

(Persons, etc. Closely Related to Violator in Calculation of Administrative Monetary Penalty for Market Manipulation through Fake Purchase and Sale, etc.)

Article 1-14 (1) The persons specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (5), item (i) of the Act are the following persons:

- (i) Parent Company of the Violator;



- (ii) Subsidiary of the Violator;
  - (iii) company, etc. whose Parent Company is the same as the Violator; and
  - (iv) Family Company (meaning Family Company prescribed in Article 2, item (x) of the Corporation Tax Act, excluding companies that are clearly found not to be controlled by the Violator) of the Violator (limited to individuals; hereinafter the same applies in this item).
- (2) The persons specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (5), item (ii) of the Act are the following persons:
- (i) relative of the Violator (limited to individuals);
  - (ii) person who has not submitted a notification of marriage but is in a situation similar to a de-facto marriage relationship with the Violator (limited to individuals);
  - (iii) officer, etc. of the Violator;
  - (iv) person other than those listed in the preceding three items whose livelihood is supported by money or other assets received from the Violator (limited to individuals); and
  - (v) relative who shares livelihood with the persons listed in the preceding three items.

(Price, etc. Equivalent to the Lowest Price in Calculation of Administrative Monetary Penalty for Market Manipulation through Actual Purchase and Sale, etc. When the Lowest Price Does Not Exist)

Article 1-15 (1) The price specified by Cabinet Office Ordinance prescribed in Article 174-2, paragraph (1), item (ii), sub-item (a), 2. of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:

- (i) when the Purchase, etc. of Securities (meaning Purchase, etc. of Securities prescribed in Article 174-2, paragraph (3) of the Act; hereinafter the same applies in this Article and the following Article) is the purchase of Listed Securities, etc. or Market Derivatives Transaction: The lowest price among indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
- (ii) when the Purchase, etc. of Securities is the purchase of Unlisted Securities or Over-the-Counter Derivatives Transaction: Price calculated by a reasonable method based on the lowest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation (meaning Act of Violation prescribed in Article 174-2, paragraph (1) of the Act; hereinafter the same applies in this Article and the following Article).

- (2) The amount specified by Cabinet Office Ordinance prescribed in Article 174-2, paragraph (1), item (ii), sub-item (a), 2. of the Act is the lowest price as at the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation); provided, however, that when there is no such lowest price, it is the price calculated by a reasonable method based on the lowest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation on the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation).
- (3) The price specified by Cabinet Office Ordinance prescribed in Article 174, paragraph (1), item (ii), sub-item (b), 1. of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:
- (i) when Sales, etc. of Securities (meaning Sales, etc. of Securities prescribed in Article 174-2, paragraph (2) of the Act; hereinafter the same applies in this Article and the following Article) are sales of Listed Securities, etc. or Market Derivatives Transaction: The highest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
  - (ii) when Sales, etc. of Securities are sales of Unlisted Securities or Over-the-Counter Derivatives Transaction: Price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation.
- (4) The amount specified by Cabinet Office Ordinance prescribed in Article 174-2, paragraph (1), item (ii), sub-item (b), 1. and (c), 1. of the Act is the highest price as at the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation); provided, however, that when there is no such highest price, it is the price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation on the day of completion of the Act of Violation (limited to those subsequent to the completion of said Act of Violation).
- (5) The price specified by Cabinet Office Ordinance prescribed in Article 174-2, paragraph (1), item (ii), (c), 1. of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:
- (i) when the Securities pertaining to the Act of Violation are Listed Securities,

etc.: The highest price among the indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;

- (ii) when the Securities pertaining to the Act of Violation are Unlisted Securities: Price calculated by a reasonable method based on the highest price of Securities, etc. listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association pertaining to the Act of Violation.

(Amount of Fees, etc. in Calculation of Administrative Monetary Penalty for Market Manipulation through Actual Purchase and Sale, etc.)

Article 1-16 (1) The amount specified by Cabinet Office Ordinance prescribed in Article 174-2, paragraph (1), item (ii), (d) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:

- (i) if a Violator (meaning Violator prescribed in Article 174-2, paragraph (1) of the Act; hereinafter the same applies in this Article and the following Article) has conducted the Act of Violation referred to in item (ii), sub-item (d) of that paragraph or Sales, etc. of Securities or Purchase, etc. of Securities as an investment of Investment Property: The amount obtained by multiplying the amount specified in sub-item (a) by the amount specified in sub-item (b) divided by the amount set forth in sub-item (c):

- (a) the total amount of money or the value of other property paid or payable to the Violator as consideration for the investment of said Investment Property (when said investment is an investment of money or other property contributed from a person who holds the rights indicated in the beneficiary certificates of investment trusts prescribed in Article 2, paragraph (1), item (x) of the Act, excluding money and other property paid or payable to a Financial Instruments Business Operator, etc. who deals in the public offering or the private placement of said beneficiary certificates as consideration for dealing in said public offering or private placement; hereinafter referred to as "Investment Fee" in this item) for the month in which the Act of Violation or the Sales, etc. of Securities or Purchase, etc. of Securities pertaining to the Act of Violation (hereinafter referred to as "Transaction Subject to Calculation" in this Article) was performed (if the period serving as the basis of calculation of the Investment Fee (hereinafter referred to as "Investment Fee Calculation Period" in this item) exceeds one month, the amount obtained by dividing said Investment Fee by the number of months in the Investment Fee Calculation Period or other reasonable method (when the Investment Fee Calculation Period has

- not yet ended as of the latest date among the last day of the month in which Transaction Subject to Calculation was performed (hereinafter referred to as "Reference Date" in this item), the amount calculated by a reasonable method by presuming that said Investment Fee Calculation Period had ended as of the Reference Date), multiplied by the number of months in which Transaction Subject to Calculation was performed);
- (b) the highest among the total amounts of issues of said Investment Property in Transaction Subject to Calculation during the period between the time of the commencement of the Act of Violation and the time when one month has elapsed from the completion thereof;
- (c) the total amount of said Investment Property as at the Reference Date.
- (ii) in cases other than those set forth in the preceding item: The total amount of money or the value of other property paid or payable to the Violator as consideration for an Act of Financial Instruments Transaction for a Transaction Subject to Calculation (in cases other than those in which said value is calculated with respect to each Transaction Subject to Calculation, the amount calculated by prorating the value in proportion to the ratio of the total amount of the Transaction Subject to Calculation to the total transaction amount pertaining to the Act of Financial Instruments Transaction under the Contract for Financial Instruments Transaction for the Transaction Subject to Calculation in the period serving as the basis of calculation of said value or other reasonable method corresponding to the status of transaction pertaining to said Contract for Financial Instruments Transaction).
- (2) The number of months referred to in item (i), sub-item (a) of the preceding paragraph is calculated in accordance with the calendar, and if a fraction of less than one month occurs, such fraction is counted as one month.

(Persons, etc. Closely Related to Violator in Calculation of Administrative Monetary Penalty for Market Manipulation through Actual Purchase and Sale, etc.)

Article 1-17 (1) The persons specified by Cabinet Office Ordinance prescribed in Article 174-2, paragraph (6), item (i) of the Act are the following persons:

- (i) Parent Company of the Violator;
  - (ii) Subsidiary of the Violator;
  - (iii) company, etc. whose Parent Company is the same as the Violator; and
  - (iv) Family Company (meaning Family Company prescribed in Article 2, item (x) of the Corporation Tax Act, excluding companies that are clearly found not to be controlled by the Violator) of the Violator (limited to individuals; hereinafter the same applies in this item).
- (2) The persons specified by Cabinet Office Ordinance prescribed in Article 174-2,

paragraph (6), item (ii) of the Act are the following persons:

- (i) relative of the Violator (limited to individuals);
- (ii) person who has not submitted a notification of marriage but is in a situation similar to a de-facto marriage relationship with the Violator (limited to individuals);
- (iii) officer, etc. of the Violator;
- (iv) person other than those listed in the preceding three items whose livelihood is supported by money or other assets received from the Violator (limited to individuals); and
- (v) relative who shares livelihood with the persons listed in the preceding three items.

(Price after Act of Violation, etc.)

Article 1-18 (1) The amount calculated pursuant to the provisions of Cabinet Office Ordinance prescribed in Article 174-3, paragraph (1), item (ii), sub-item (a), 1. of the Act is the amount obtained by dividing the sum of the closing price (meaning the highest price among the closing prices prescribed in Article 67-19 of the Act or Article 130 of the Act, excluding those before the completion of said Act of Violation; hereinafter the same applies in this paragraph) publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association on each day until one month has elapsed from the time of completion of the Act of Violation (meaning Act of Violation prescribed in Article 174-3, paragraph (1); hereinafter the same applies in this Article and the following Article) by the number of days on which said closing prices were publicized; provided, however, that if there is no such closing price on any of the days until one month has elapsed from the time of completion of the Act of Violation, it is the amount specified in the following items for the categories of cases set forth respectively in those items:

- (i) when Sales, etc. of Securities (meaning Sales, etc. of Securities prescribed in Article 174-3, paragraph (2) of the Act; hereinafter the same applies in this Article and the following Article) or Purchase, etc. of Securities (meaning Purchase, etc. of Securities prescribed in Article 174-3, paragraph (3) of the Act; hereinafter the same applies in this Article and the following Article) is purchase and sale of Listed Securities, etc. or Market Derivatives Transaction, or when Securities pertaining to the Act of Violation are Listed Securities, etc. (limited to cases set forth in Article 174-3, paragraph (1), item (ii), sub-item (c) of the Act): The latest price publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association after one month has elapsed since the completion of the Act of Violation;
- (ii) when Sales, etc. of Securities or Purchase, etc. of Securities is purchase and

sale of Unlisted Securities or Over-the-Counter Derivatives Transaction, or when Securities pertaining to the Act of Violation are Unlisted Securities (limited to cases set forth in Article 174-3, paragraph (1), item (ii), sub-item (c) of the Act): Average amount of price calculated by a reasonable method based on the closing price of Listed Financial Instruments, etc. (meaning Listed Financial Instruments, etc. prescribed in sub-item (a) of that item; hereinafter the same applies in this Article and the following Article) or Over-the-Counter Traded Securities pertaining to the Act of Violation publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association on each day until one month has elapsed from the time of completion of the Act of Violation (if there is no such closing price on any of said days, it is the latest price publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association after one month has elapsed from the time of completion of the Act of Violation).

(2) The amount calculated pursuant to the provisions of Cabinet Office Ordinance prescribed in Article 174-3, paragraph (1), item (ii), sub-item (a), 2. of the Act is the amount obtained by dividing the sum of the closing price (meaning the highest price among the closing prices prescribed in Article 67-19 of the Act or Article 130 of the Act, excluding those before the commencement of said Act of Violation and those after the completion of said Act of Violation; hereinafter the same applies in this paragraph) publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association on each day during the period between the time of the commencement of the Act of Violation and the completion thereof by the number of days on which said closing prices were publicized; provided, however, that if there is no such closing price on any of the days during the period between the time of the commencement of the Act of Violation and the completion thereof, it is the amount specified in the following items for the categories of cases set forth respectively in those items:

- (i) when Sales, etc. of Securities or Purchase, etc. of Securities is purchase and sale of Listed Securities, etc. or Market Derivatives Transaction, or when Securities pertaining to the Act of Violation are Listed Securities, etc. (limited to cases set forth in Article 174-3, paragraph (1), item (ii), sub-item (c) of the Act): The latest price publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association since the Act of Violation;
- (ii) when Sales, etc. of Securities or Purchase, etc. of Securities is purchase and sale of Unlisted Securities or Over-the-Counter Derivatives Transaction, or when Securities pertaining to the Act of Violation are Unlisted Securities (limited to cases set forth in Article 174-3, paragraph (1), item (ii), sub-item

(c) of the Act): Average amount of price calculated by a reasonable method based on the closing price of Listed Financial Instruments, etc. or Over-the-Counter Traded Securities pertaining to the Act of Violation publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association on each day during the period between the time of the commencement of the Act of Violation and the completion thereof (if there is no such closing price on any of said days, it is the latest price publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association since the Act of Violation).

(Amount of Fees, etc. in Calculation of Administrative Monetary Penalty for Stabilizing Transactions, etc.)

Article 1-19 (1) The amount specified by Cabinet Office Ordinance prescribed in Article 174-3, paragraph (1), item (ii), sub-item (d) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:

(i) if a Violator (meaning Violator prescribed in Article 174-3, paragraph (1) of the Act; hereinafter the same applies in this Article and the following Article) has conducted the Act of Violation referred to in item (ii), sub-item (d) of that paragraph or Sales, etc. of Securities or Purchase, etc. of Securities as an investment of Investment Property: The amount obtained by multiplying the amount specified in sub-item (a) by the amount specified in sub-item (b) divided by the amount set forth in sub-item (c):

(a) the total amount of money or the value of other property paid or payable to the Violator as consideration for the investment of said Investment Property (when said investment is an investment of money or other property contributed from a person who holds the rights indicated in the beneficiary certificates of investment trusts prescribed in Article 2, paragraph (1), item (x) of the Act, excluding money and other property paid or payable to a Financial Instruments Business Operator, etc. who deals in the public offering or the private placement of said beneficiary certificates as consideration for dealing in said public offering or private placement; hereinafter referred to as "Investment Fee" in this item) for the month in which the Act of Violation or the Sales, etc. of Securities or Purchase, etc. of Securities involving Listed Financial Instruments, etc. or Over-the-Counter Traded Securities pertaining to the Act of Violation (hereinafter referred to as "Transaction Subject to Calculation" in this Article) was performed (if the period serving as the basis of calculation of the Investment Fee (hereinafter referred to as "Investment Fee Calculation Period" in this item) exceeds one month, the amount obtained by dividing said Investment Fee by the number of months in the Investment Fee

Calculation Period or other reasonable method (when the Investment Fee Calculation Period has not yet ended as of the latest date among the last day of the month in which Transaction Subject to Calculation was performed (hereinafter referred to as "Reference Date" in this item), the amount calculated by a reasonable method by presuming that said Investment Fee Calculation Period had ended as of the Reference Date), multiplied by the number of months in which Transaction Subject to Calculation was performed);

(b) the highest among the total amounts of issues of said Investment Property in Transaction Subject to Calculation during the period between the time of the commencement of the Act of Violation and the time when one month has elapsed from the completion thereof;

(c) the total amount of said Investment Property as at the Reference Date.

(ii) in cases other than those set forth in the preceding item: The total amount of money or the value of other property paid or payable to the Violator as consideration for an Act of Financial Instruments Transaction for a Transaction Subject to Calculation (in cases other than those in which said value is calculated with respect to each Transaction Subject to Calculation, the amount calculated by prorating the value in proportion to the ratio of the total amount of the Transaction Subject to Calculation to the total transaction amount pertaining to the Act of Financial Instruments Transaction under the Contract for Financial Instruments Transaction for the Transaction Subject to Calculation in the period serving as the basis of calculation of said value or other reasonable method corresponding to the status of transaction pertaining to said Contract for Financial Instruments Transaction).

(2) The number of months referred to in item (i), sub-item (a) of the preceding paragraph is calculated in accordance with the calendar, and if a fraction of less than one month occurs, such fraction is counted as one month.

(Persons, etc. Closely Related to Violator in Calculation of Administrative Monetary Penalty for Stabilizing Transactions, etc.)

Article 1-20 (1) The persons specified by Cabinet Office Ordinance prescribed in Article 174-3, paragraph (7), item (i) of the Act are the following persons:

(i) Parent Company of the Violator;

(ii) Subsidiary of the Violator;

(iii) company, etc. whose Parent Company is the same as the Violator; and

(iv) Family Company (meaning Family Company prescribed in Article 2, item (x) of the Corporation Tax Act, excluding companies that are clearly found not to be controlled by the Violator) of the Violator (limited to individuals; hereinafter the same applies in this item).



- (2) The persons specified by Cabinet Office Ordinance prescribed in Article 174-3, paragraph (7), item (ii) of the Act are the following persons:
- (i) relative of the Violator (limited to individuals);
  - (ii) person who has not submitted a notification of marriage but is in a situation similar to a de-facto marriage relationship with the Violator (limited to individuals);
  - (iii) officer, etc. of the Violator;
  - (iv) person other than those listed in the preceding three items whose livelihood is supported by money or other assets received from the Violator (limited to individuals); and
  - (v) relative who shares livelihood with the persons listed in the preceding three items.

(Amount of Fees, etc. in Calculation of Administrative Monetary Penalty for Transactions, etc. with Company Insiders Who Have Come to Know Material Facts)

Article 1-21 (1) The amount specified by Cabinet Office Ordinance prescribed in Article 175, paragraph (1), item (iii) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:

- (i) if a person who has conducted the purchase and sale, etc. prescribed in Article 175, paragraph (1), item (iii) of the Act (hereinafter referred to as "Violator" in this paragraph) has conducted the purchase and sale, etc. as an investment of Investment Property: The amount obtained by multiplying the amount specified in sub-item (a) by the amount specified in sub-item (b) divided by the amount set forth in sub-item (c):
  - (a) the total amount of money or the value of other property paid or payable to the Violator as consideration for the investment of said Investment Property (when said investment is an investment of money or other property contributed from a person who holds the rights indicated in the beneficiary certificates of investment trusts prescribed in Article 2, paragraph (1), item (x) of the Act, excluding money and other property paid or payable to a Financial Instruments Business Operator, etc. who deals in the public offering or the private placement of said beneficiary certificates as consideration for dealing in said public offering or private placement; hereinafter referred to as "Investment Fee" in this item) for the month (excluding the month in which the purchase and sale, etc. prescribed in Article 175, paragraph (1), item (iii) of the Act for the same issues regarding the same Material Fact Pertaining to Business or Other Matters prescribed in Article 166, paragraph (1) of the Act before said Transaction Subject to Calculation was conducted) in which the purchase and sale, etc. (hereinafter referred to as "Transaction Subject to Calculation" in this

- Article) was performed (if the period serving as the basis of calculation of the Investment Fee (hereinafter referred to as "Investment Fee Calculation Period" in this item) exceeds one month, the amount obtained by dividing said Investment Fee by the number of months in the Investment Fee Calculation Period or other reasonable method (when the Investment Fee Calculation Period has not yet ended as of the last day of the month in which Transaction Subject to Calculation was performed (hereinafter referred to as "Reference Date" in this item), the amount calculated by a reasonable method by presuming that said Investment Fee Calculation Period had ended as of the Reference Date));
- (b) the highest among the total amounts of issues of said Investment Property in Transaction Subject to Calculation during the period between the day on which the Transaction Subject to Calculation was performed and the Reference Date;
  - (c) the total amount of said Investment Property as at the Reference Date.
- (ii) in cases other than those set forth in the preceding item: The total amount of money or the value of other property paid or payable to the Violator as consideration for an Act of Financial Instruments Transaction for a Transaction Subject to Calculation (in cases other than those in which said value is calculated with respect to each Transaction Subject to Calculation, the amount calculated by prorating the value in proportion to the ratio of the total amount of the Transaction Subject to Calculation to the total transaction amount pertaining to the Act of Financial Instruments Transaction under the Contract for Financial Instruments Transaction for the Transaction Subject to Calculation in the period serving as the basis of calculation of said value or other reasonable method corresponding to the status of transaction pertaining to said Contract for Financial Instruments Transaction).
- (2) The amount specified by Cabinet Office Ordinance prescribed in Article 175, paragraph (2), item (iii) of the Act is the amount specified in the following items for the categories of cases set forth respectively in those items:
- (i) if the person who has conducted the Purchase, etc. or Sales, etc. prescribed in Article 175, paragraph (2), item (iii) of the Act (hereinafter referred to as "Violator" in this paragraph) has conducted said Purchase, etc. or Sales, etc. as an investment of Investment Property: The amount obtained by multiplying the amount specified in sub-item (a) by the amount specified in sub-item (b) divided by the amount set forth in sub-item (c):
    - (a) The total amount of money or the value of other property paid or payable to the Violator as consideration for the investment of said Investment Property (when said investment is an investment of money or other property contributed from a person who holds the rights indicated in the

beneficiary certificates of investment trusts prescribed in Article 2, paragraph (1), item (x) of the Act, excluding money and other property paid or payable to a Financial Instruments Business Operator, etc. who deals in the public offering or the private placement of said beneficiary certificates as consideration for dealing in said public offering or private placement; hereinafter referred to as "Investment Fee" in this item) for the month (excluding the month in which the Purchase, etc. or Sales, etc. prescribed in Article 175, paragraph (2), item (iii) of the Act for the same issues regarding the same Fact Concerning Launch of a Tender Offer, etc. or Fact Concerning Suspension of Tender Offer, etc. prescribed in Article 167, paragraph (1) of the Act before said Transaction Subject to Calculation was conducted) in which said Purchase, etc. or Sales, etc. (hereinafter referred to as "Transaction Subject to Calculation" in this Article) was performed (if the period serving as the basis of calculation of the Investment Fee (hereinafter referred to as "Investment Fee Calculation Period" in this item) exceeds one month, the amount obtained by dividing said Investment Fee by the number of months in the Investment Fee Calculation Period or other reasonable method (when the Investment Fee Calculation Period has not yet ended as of the last day of the month in which Transaction Subject to Calculation was performed (hereinafter referred to as "Reference Date" in this item), the amount calculated by a reasonable method by presuming that said Investment Fee Calculation Period had ended as of the Reference Date));

(b) the highest among the total amounts of issues of said Investment Property in Transaction Subject to Calculation during the period between the day on which the Transaction Subject to Calculation was performed and the Reference Date;

(c) the total amount of said Investment Property as at the Reference Date.

(ii) in cases other than those set forth in the preceding item: The total amount of money or the value of other property paid or payable to the Violator as consideration for an Act of Financial Instruments Transaction for a Transaction Subject to Calculation (in cases other than those in which said value is calculated with respect to each Transaction Subject to Calculation, the amount calculated by prorating the value in proportion to the ratio of the total amount of the Transaction Subject to Calculation to the total transaction amount pertaining to the Act of Financial Instruments Transaction under the Contract for Financial Instruments Transaction for the Transaction Subject to Calculation in the period serving as the basis of calculation of said value or other reasonable method corresponding to the status of transaction pertaining to said Contract for Financial Instruments Transaction).

- (3) The number of months referred to in paragraph (1), item (i), sub-item (a), and item (i), sub-item (a) of the preceding paragraph is calculated in accordance with the calendar, and if a fraction of less than one month occurs, such fraction is counted as one month.

(Price, etc. Equivalent to the Lowest Price in Calculation of Administrative Monetary Penalty for Transactions, etc. with Company Insiders Who Have Come to Know Material Facts When the Lowest Price Does Not Exist)

Article 1-22 (1) The price specified by Cabinet Office Ordinance prescribed in Article 175, paragraphs (5) and (7) of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:

- (i) when the Sales, etc. of Securities (meaning Sales, etc. of Securities prescribed in Article 175, paragraph (3) of the Act; hereinafter the same applies in this Article) is the sales or other type of transfer for value of Listed Securities, etc. or Market Derivatives Transaction: The lowest price among indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;
- (ii) when the Sales, etc. of Securities is the sales or other type of transfer for value of Unlisted Securities, Over-the-Counter Derivatives Transaction or Foreign Market Derivatives Transactions: Price calculated by a reasonable method based on the lowest price of Specified Securities, etc. (meaning Specified Securities, etc. prescribed in Article 163, paragraph (1) of the Act; hereinafter the same applies in this Article) or Share Certificates, etc. (meaning Share Certificates, etc. prescribed in Article 167, paragraph (1) of the Act; hereinafter the same applies in this Article) which correspond to Listed Securities, etc. publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association.

- (2) The amount specified by Cabinet Office Ordinance prescribed in Article 175, paragraphs (5) and (7) of the Act is the lowest price on the day on which a Material Fact Pertaining to Business or Other Matters prescribed in Article 166, paragraph (1) of the Act was publicized or the day on which a Fact Concerning Launch of a Tender Offer, etc. or a Fact Concerning Suspension of Tender Offer, etc. prescribed in Article 167, paragraph (1) of the Act was publicized (limited to those after said Fact is publicized); provided, however, that when there is no such lowest price, it is the price calculated by a reasonable method based on the lowest price of Specified Securities, etc. or Share Certificates, etc. which correspond to Listed Securities, etc. publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association on the day on which said Fact was publicized (limited to those after said Fact is publicized).

- (3) The price specified by Cabinet Office Ordinance prescribed in Article 175,

paragraphs (6) and paragraph (8) of the Act is the price specified in the following items for the categories of cases set forth respectively in those items:

(i) when the Purchase, etc. of Securities (meaning Purchase, etc. of Securities prescribed in Article 175, paragraph (4) of the Act; hereinafter the same applies in this Article) is the purchase or other type of acceptance of transfer for value of Listed Securities, etc. or Market Derivatives Transaction: The highest price among indicative price quotations publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;

(ii) when the Purchase, etc. of Securities is the purchase or other type of acceptance of transfer for value of Unlisted Securities, Over-the-Counter Derivatives Transaction or Foreign Market Derivatives Transactions: Price calculated by a reasonable method based on the highest price of Specified Securities, etc. or Share Certificates, etc. which correspond to Listed Securities, etc. publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association.

(4) The amount specified by Cabinet Office Ordinance prescribed in Article 175, paragraphs (6) and (8) of the Act is the highest price on the day on which a Material Fact Pertaining to Business or Other Matters prescribed in Article 166, paragraph (1) of the Act was publicized or the day on which a Fact Concerning Launch of a Tender Offer, etc. or a Fact Concerning Suspension of Tender Offer, etc. prescribed in Article 167, paragraph (1) of the Act was publicized (limited to those after said Fact was publicized); provided, however, that when there is no such highest price, it is the price calculated by a reasonable method based on the highest price of Specified Securities, etc. or Share Certificates, etc. which correspond to Listed Securities, etc. publicized by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association on the day on which said Fact was publicized (limited to those after said Fact was publicized).

(Persons, etc. Closely Related to Persons Who Conducted the Purchase and Sale, etc. in Calculation of Administrative Monetary Penalty for Transactions, etc. with Company Insiders Who Have Come to Know Material Facts)

Article 1-23 (1) The persons specified by Cabinet Office Ordinance prescribed in Article 175, paragraph (10), item (i) of the Act are the following persons:

(i) Parent Company of the person who conducted the purchase and sale, etc.;

(ii) Subsidiary of the person who conducted the purchase and sale, etc.;

(iii) company, etc. whose Parent Company is the same as the person who conducted the purchase and sale, etc.; and

(iv) Family Company (meaning a Family Company prescribed in Article 2, item

- (x) of the Corporation Tax Act, excluding companies that are clearly found not to be controlled by the person who conducted the purchase and sale, etc.) of the person who conducted the purchase and sale, etc. (limited to individuals; hereinafter the same applies in this item).
- (2) The persons specified by Cabinet Office Ordinance prescribed in Article 175, paragraph (10), item (ii) are the following persons:
- (i) relative of the person who conducted the purchase and sale, etc. (limited to individuals);
  - (ii) person who has not submitted a notification of marriage but is in a situation similar to a de-facto marriage relationship with the person who conducted the purchase and sale, etc. (limited to individuals);
  - (iii) officer, etc. of the person who conducted the purchase and sale, etc.;
  - (iv) person other than those listed in the preceding three items whose livelihood is supported by money or other assets received from the person who conducted the purchase and sale, etc. (limited to individuals); and
  - (v) relative who shares livelihood with the persons listed in the preceding three items.
- (3) The persons specified by Cabinet Office Ordinance prescribed in Article 175, paragraph (11), item (i) of the Act are the following persons:
- (i) Parent Company of the person who conducted the Purchase, etc. or Sales, etc.;
  - (ii) Subsidiary of the person who conducted the Purchase, etc. or Sales, etc.;
  - (iii) company, etc. whose Parent Company is the same as the person who conducted the Purchase, etc. or Sales, etc.; and
  - (iv) Family Company (meaning Family Company prescribed in Article 2, item (x) of the Corporation Tax Act, excluding companies that are clearly found not to be controlled by the person who conducted the Purchase, etc. or Sales, etc.) of the person who conducted the Purchase, etc. or Sales, etc. (limited to individuals; hereinafter the same applies in this item).
- (4) The persons specified by Cabinet Office Ordinance prescribed in Article 175, paragraph (11), item (ii) of the Act are the following persons:
- (i) relative of the person who conducted the Purchase, etc. or Sales, etc. (limited to individuals);
  - (ii) person who has not submitted a notification of marriage but is in a situation similar to a de-facto marriage relationship with the person who conducted the Purchase, etc. or Sales, etc. (limited to individuals);
  - (iii) officer, etc. of the person who conducted the Purchase, etc. or Sales, etc.;
  - (iv) person other than those listed in the preceding three items whose livelihood is supported by money or other assets received from the person who conducted the Purchase, etc. or Sales, etc. (limited to individuals); and
  - (v) relative who shares livelihood with the persons listed in the preceding three

items.

## **Chapter II Trial Procedures**

### **Section 1 General Provisions**

(Purpose)

Article 1-24 The trial procedures prescribed in Chapter VI-2, Section 2 of the Act are governed by the provisions of this Chapter, beyond the provisions of that Section.

(Matters to Be Stated in Documents Submitted in Trial Procedures)

Article 2 (1) A written answer, brief or any other document to be submitted by the Respondent (meaning Respondent prescribed in Article 179, paragraph (3) of the Act; the same applies hereinafter) or its counsel in trial procedures is to contain the following matters, and the Respondent or its counsel is to affix the respective name and seal thereto:

- (i) the name and address of the Respondent and the name and address of its counsel;
- (ii) indication of the case;
- (iii) indication of any annexed documents; and
- (iv) date.

(2) Notwithstanding the provisions of the preceding paragraph, if the Respondent or its counsel has submitted the document set forth in said paragraph containing a statement of the address, the Respondent or its counsel is not required to state, among the matters specified in item (i) of that paragraph, the address of the Respondent or its counsel in any document set forth in said paragraph to be subsequently submitted in the trial procedures.

(3) The briefs and other documents submitted in the trial procedures by a Designated Official (meaning Designated Official prescribed in Article 181, paragraph (2) of the Act; the same applies hereinafter) are to state the name of the Respondent and the matters listed in paragraph (1), items (ii) to (iv) inclusive, with the name and seal of the Designated Official affixed thereon.

(Submission of Documents by Facsimile)

Article 3 (1) A document submitted in the trial procedures, excluding any of the following, may be submitted by transmitting it by facsimile:

- (i) a written answer prescribed in Article 183, paragraph (2) of the Act; and
- (ii) a document for proving the authority of statutory representation or the powers of a counsel referred to in Article 181, paragraph (1) of the Act, or any other document for proving important matters in the trial procedures.

(2) When a document has been submitted by facsimile, said document is deemed

to have been submitted to the trial examiner at the time when the trial examiner received it.

- (3) The trial examiner may, if the trial examiner finds it to be necessary in the case prescribed in the preceding paragraph, have the submitter submit the document used for the transmission.

(Notice)

Article 4 (1) If an official carrying out clerical work relating to trial procedures prescribed in Article 7, paragraph (2) has given a notice pursuant to the provisions of this Chapter, then such official must clarify in the case record to that effect as well as the method of the notice.

- (2) No notice is required under the provisions of this Chapter (excluding a notice under the provisions of Article 12, paragraph (3), Article 22, paragraph (4) and Article 62, paragraphs (1) and (3)), when the whereabouts of the person who is to receive the notice is unknown or when such person is located in a foreign state. In this case, the official carrying out clerical work relating to trial procedures prescribed in Article 7, paragraph (2) must clarify the reasons therefor in the case record.

(Decision Making by a Panel of Trial Examiners)

Article 5 When the trial procedures are carried out by a panel, the decision of the trial examiners is determined by a majority.

(Execution of Duties)

Article 6 (1) The trial examiner must execute its duties in a fair, prompt and independent manner.

- (2) Pursuant to the provisions of Article 180, paragraph (2) of the Act, a public prosecutor, attorney-at-law or a person qualified to become an attorney-at-law are to be added to the persons eligible to be designated as trial examiners that make up the panel referred to in the main clause of paragraph (1) of that Article or a sole trial examiner referred to in the proviso of that paragraph.

(Official Carrying out Clerical Work Relating to Trial Procedures)

Article 7 (1) The Commissioner of the Financial Services Agency has its official carry out clerical work related to trial procedures.

- (2) The official referred to in the preceding paragraph (hereinafter referred to as an "Official Carrying out Clerical Work Relating to Trial Procedures") receives the order of the Commissioner of the Financial Services Agency or trial examiner and carries out clerical work related to preparing, storing, serving and sending of records and other documents in the trial procedures as well as clerical work relating to the notice under the provisions of this Chapter.



(Capacity, etc. of Minors and Adult Wards to Conduct Acts in Trial Procedures)

Article 8 (1) Minors and adult wards may not conduct acts in trial procedures without a statutory representative; provided, however, that this does not apply when a minor may conduct a juristic act independently.

(2) Authority of statutory representation must be proven in writing.

(Counsel)

Article 9 (1) The powers of the counsel that is an attorney-at-law or a legal professional corporation must be proven in writing.

(2) When the Respondent intends to seek approval set forth in Article 181, paragraph (1) of the Act, the Respondent must submit to the Commissioner of the Financial Services Agency a document stating the name, address and occupation of the person whom Respondent intends to appoint as counsel, the relationship between said person and the Respondent and other matters that would sufficiently show whether said person is appropriate as counsel.

(3) A document clearly indicating the powers of the counsel and the scope thereof must be attached to the document referred to in the preceding paragraph.

(4) If the Commissioner of the Financial Services Agency has received the document under paragraph (2), and made a decision on approval or disapproval under Article 181, paragraph (1) of the Act, the Commissioner must notify the Respondent to that effect.

(5) When the Respondent has dismissed its counsel then the Respondent must notify the trial examiner to that effect in writing without delay.

(Form of Transcripts of Case Records)

Article 10 An Official Carrying out Clerical Work Relating to Trial Procedures who prepared transcripts to be prepared under the provisions of Chapter VI-2, Section 2 of the Act or this Chapter must state, subsequent to its contents, a note to the effect that the transcripts are no different from the original and affix the official's name and seal, and affix a seal to confirm page continuation or take other equivalent measures.

(Computation of Period of Time)

Article 11 (1) Computation of period of time is in accordance with the provisions of the Civil Code (Act No. 89 of 1896) concerning the period of time.

(2) When the last day of the period falls on any day listed in the items of Article 1, paragraph (1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988), the period ends on the following day.

(Notification of Place of Service, etc.)

- Article 11-2 (1) Notification of the place where service is to be received and notification of a designated service recipient must be made in writing.
- (2) Notification set forth in the preceding paragraph must, insofar as possible, be made through statements in a written answer.
- (3) A document notifying the place where service is to be received must contain statements of the fact that the notified place is a workplace or any other matter that clarifies the relationship between the Respondent or its counsel and the notified place.
- (4) The Respondent or its counsel may make a notification of a change in the place notified as the place where service is to be received or in the person notified as the designated service recipient.
- (5) The provisions of paragraph (1) and paragraph (3) apply *mutatis mutandis* to the notification of change prescribed in the preceding paragraph.

(Service)

- Article 12 (1) When a substituted service under the provisions of Article 106, paragraph (2) of the Code of Civil Procedure (Act No. 109 of 1996) applied *mutatis mutandis* pursuant to Article 185-10 of the Act has been made, the Official Carrying out Clerical Work Relating to Trial Procedures must notify the person who received the service to that effect.
- (2) When service by registered mail under the provisions of Article 107, paragraph (1) or paragraph (2) of the Code of Civil Procedure applied *mutatis mutandis* pursuant to Article 185-10 of the Act has been made, the Official Carrying out Clerical Work Relating to Trial Procedures must notify the person who received the service to that effect and the fact that the relevant document is deemed to have been served at the time when the document was sent by registered mail.
- (3) The Commissioner of the Financial Services Agency or the trial examiner may publish, in an official gazette or a newspaper, the fact that service by publication has been made. With regard to service that is to be made in a foreign state, the Commissioner of the Financial Services Agency or the trial examiner may, in lieu of publication in an official gazette or a newspaper, give a notice of the fact that service by publication has been made.

(Terminology)

- Article 13 (1) In the trial procedures, Japanese language is used.
- (2) When a person involved in the trial procedures does not understand Japanese, an interpreter is present.

## **Section 2 Commencement of Trial Procedures**

(Decision on Commencement of Trial Procedures)

Article 14 (1) The decision on commencement of trial procedures under the provisions of Article 178, paragraph (1) of the Act is to be issued by serving a transcript of a document stating the following matters (hereinafter referred to as "Written Decision on Commencement of Trial Procedures"):

- (i) the amount of the administrative monetary penalty to be paid;
  - (ii) the facts pertaining to the administrative monetary penalty listed in the items of Article 178, paragraph (1) of the Act;
  - (iii) application of laws and regulations;
  - (iv) the basis for computation of administrative monetary penalty; and
  - (v) the date and place of the first session of the trial.
- (2) When a Written Decision on Commencement of Trial Procedures is served, a written notice stating the following matters is to be attached thereto:
- (i) a statement that the Respondent or its counsel should appear on the trial date; and
  - (ii) deadline for submission of written answer.

(Change, etc. in Date of First Session of Trial)

Article 15 The trial examiner may change the date or place of the first session of the trial or extend the deadline for the submission of a written answer, upon petition or by the trial examiner's own authority, if the trial examiner has found justifiable grounds to do so.

(Matters to Be Stated in Written Answer)

Article 16 (1) The following matters must be stated in a written answer:

- (i) answer to the amount of the administrative monetary penalty to be paid;
  - (ii) admission or denial of matters specified in Article 14, paragraph (1), item (ii);
  - (iii) allegation concerning matters specified in Article 14, paragraph (1), items (iii) and (iv); and
  - (iv) the Respondent's allegation (excluding those set forth in the preceding item).
- (2) A written answer must contain statements of the postal code and telephone number (including the facsimile number) of the Respondent or its counsel, in addition to the matters prescribed in the items of the preceding paragraph.

(Designation of Trial Examiner)

Article 17 (1) When the Commissioner of the Financial Services Agency has designated trial examiners in charge of the trial case pursuant to the provisions of Article 180, paragraph (2), the Commissioner must notify the Respondent or its counsel of the names of such trial examiners.

- (2) When the Commissioner of the Financial Services Agency has designated a chief trial examiner pursuant to the provisions of Article 180, paragraph (3), the Commissioner must notify the Respondent or its counsel of the name of such chief trial examiner.

### **Section 3 Allegations, etc. in and Preparations for Trials**

#### **(Tribunal)**

Article 18 A trial is held at a tribunal of the Financial Services Agency; provided, however, that the trial examiner may specify an appropriate place for trial as the tribunal when the trial examiner finds it necessary to do so.

#### **(Request for Closed Trial)**

- Article 19 (1) A request for closed trial must be made by clarifying the scope, reason and period of the trial to be closed to the public.
- (2) When the trial examiner intends to hold a closed trial, the trial examiner must make a statement to that effect and the reason for holding a closed trial.

#### **(Designation and Change of Trial Date and Summon to Appear on Trial Date)**

- Article 20 (1) The date of second and subsequent sessions of the trial is specified by the chief trial examiner.
- (2) The trial date referred to in the preceding paragraph may not be changed unless there are unavoidable grounds for such change.
- (3) The summon to appear on the trial date referred to in paragraph (1) is conducted by serving a writ of summons, notifying the date to the person making an appearance on the case and other methods that are found to be reasonable.

#### **(Control over Trial and Maintenance of Order)**

- Article 21 (1) The chief trial examiner presides over a trial.
- (2) The chief trial examiner may permit persons to take the floor or prohibit persons who do not comply with the chief trial examiner's order from taking the floor.
- (3) The chief trial examiner may order necessary matters or take measures to maintain order in the tribunal.

#### **(Authority to Ask for Explanation, etc.)**

- Article 22 (1) The chief trial examiner may ask questions or request necessary acts related to factual or legal matters to clarify relationships in the case to the Designated Official or the Respondent or its counsel on the trial date or on any day other than the trial date.

- (2) A trial examiner other than the chief trial examiner may take the measures prescribed in the preceding paragraph by informing the chief trial examiner.
- (3) The Designated Official or the Respondent or its counsel may request the chief trial examiner to ask necessary questions on the trial date or on any day other than the trial date.
- (4) When the chief trial examiner or a trial examiner other than the chief trial examiner has taken measures under the provisions of paragraph (1) or (2) on matters that may cause material changes in the allegation or proof on any day other than the trial date, said examiner must notify the description of such measures to the opponent.

(Consolidation, etc. of Trial Procedures)

- Article 23 (1) The trial examiner may order the restriction of allegations or offers of evidence in trial procedures or the separation or consolidation of trial procedures, or revoke such orders.
- (2) The trial examiner may order the resumption of trial procedures that had been concluded.

(Timing of Submission of Allegations and Offer of Evidence)

- Article 24 Submission of allegation and offer of evidence must be done at an appropriate time corresponding to the progress of the trial.

(Formal Matters to Be Stated in Trial Records)

- Article 25 (1) The Official Carrying out Clerical Work Relating to Trial Procedures must prepare a record on each trial date. The following matters must be stated in the record:
- (i) indication of the case;
  - (ii) names of the trial examiner and the Official Carrying out Clerical Work Relating to Trial Procedures;
  - (iii) name of the Designated Official;
  - (iv) names of the Respondent, its counsel, and interpreter who appeared at the trial;
  - (v) date, time and place of the trial; and
  - (vi) the fact that the trial was held in public or, if it was not held in public, a statement to that effect and the reason therefor.
- (2) The Official Carrying out Clerical Work Relating to Trial Procedures must affix the official's name and seal to the record set forth in the preceding paragraph and the chief trial examiner must affix a seal of approval thereto.
  - (3) In the cases set forth in the preceding paragraph, if the chief trial examiner has difficulty affixing a seal of approval, a trial examiner other than the chief trial examiner must affix the seal of approval while appending a

supplementary note about the grounds therefor. If any other trial examiners have difficulty affixing a seal of approval, it is sufficient for the Official Carrying out Clerical Work Relating to Trial Procedures to include a statement to that effect in the record.

(Substantial Matters to Be Stated in Trial Records)

Article 26 Trial records must state a summary of the allegations, offer of evidence and examination of evidence, while clarifying, in particular, the following matters:

- (i) statements by a witness, the Respondent and expert witnesses;
- (ii) whether or not witnesses and expert witnesses swore under oath, and reasons for not having witnesses and expert witnesses swear under oath;
- (iii) results of on-site inspection; and
- (iv) matters that were directed by the chief trial examiner to be stated and matters that were allowed to be stated on request by the Designated Official or the Respondent or its counsel.

(Citation of Record)

Article 27 In a trial record, a document, photograph or any other object that is found to be appropriate by the trial examiner may be cited and attached to the case record as part of said trial record.

(Brief)

- Article 28 (1) An allegation in the trial procedures must be prepared in writing.
- (2) A brief must be submitted to the trial examiner while allowing a period required by the opponent to make preparations on matters stated therein.
  - (3) Two copies of the brief referred to in the preceding paragraph must be submitted (or, when there are two or more opponents to whom said document should be sent, the number of copies must be the number of such opponents plus one).
  - (4) Materials cited in the brief must be attached to each copy of the brief as annexed documents.
  - (5) The Official Carrying out Clerical Work Relating to Trial Procedures must send a brief that has been submitted to the trial examiner to the opponent of the person who submitted the brief.

(Period of Submission of Brief, etc.)

- Article 29 (1) The chief trial examiner may specify the period during which a brief may be submitted or evidence may be offered.
- (2) When the period referred to in the preceding paragraph has elapsed, the Designated Official or the Respondent or its counsel may not submit a new

allegation or offer new evidence; provided, however, that this does not apply when it is found to be reasonable by the chief trial examiner.

(Preparatory Proceedings)

Article 30 (1) The trial examiner may, when the trial examiner finds it necessary to arrange issues and evidence, hear the opinion of the Designated Official and the Respondent or its counsel and conduct preparatory proceedings.

(2) The trial examiner may request the Designated Official or the Respondent or its counsel to submit a brief.

(3) The provisions of Article 20 apply mutatis mutandis to the date of preparatory proceedings, and the provisions of Article 21, paragraphs (1) and (2) and Article 22 to Article 27 inclusive apply mutatis mutandis to preparatory proceedings.

(4) The trial examiner may, upon the filing of a petition by the Respondent or its counsel, request the Designated Official to have said Respondent or its counsel inspect or copy all or part of the materials that prove the matters specified in Article 14, paragraph (1), items (ii) and (iv) before the date of the first session of the trial; provided, however, that this does not apply when there is a risk of harming any third party's interest or when there is any other justifiable ground.

**Section 4 Evidence**

**Subsection 1 General Provisions**

(Offer of Evidence)

Article 31 (1) The Designated Official or the Respondent or its counsel may offer evidence.

(2) Evidence must be offered by identifying the facts to be proven and by clearly indicating the relationship between such fact and the evidence.

(3) Evidence may be offered even before the date.

(4) The provisions of Article 28, paragraphs (2), (3) and (5) apply mutatis mutandis to the documents stating the offer of evidence.

(Examination of Evidence by Examiner's Own Authority)

Article 32 The trial examiner may conduct examination of evidence by such examiner's own authority.

(When Examination of Evidence Is Not Required)

Article 33 The trial examiner is not required to examine evidence offered by the Designated Official or the Respondent or its counsel if the examiner finds it unnecessary.

(Examination of Evidence by Authorized Trial Examiner)

Article 34 (1) When the trial examiner examines evidence, the trial examiner may order a member of the panel to examine the evidence.

(2) When a member of the panel is ordered to examine the evidence pursuant to the provisions of the preceding paragraph, the chief trial examiner designates the trial examiner.

(Period of Submission of Documents and Other Articles)

Article 35 Documents and other articles that are planned to be used in the hearing of a witness, an expert witness or the Respondent must be submitted by allowing a reasonable period before the time of the commencement of said hearing of the witness, expert witness or Respondent, except for those that are to be used as evidence for contesting the credibility of statements made by the witness, expert witness or the Respondent; provided, however, that, when it is not possible to submit such documents and other articles, it is sufficient to submit a copy thereof.

## **Subsection 2 Hearing of Witness**

(Request for Hearing of Witness)

Article 36 A request for the hearing of a witness must be made by designating the witness and clarifying the expected time required for the hearing.

(Description of Matters Subject to Hearing)

Article 37 (1) When requesting the hearing of a witness, three copies of a statement of matters for hearing (meaning a document stating the matters for hearing; the same applies hereinafter) must be submitted at the same time (or, when there are two or more opponents to whom said document should be sent, the number of copies must be equal to the number of such opponents plus two); provided, however, that it is sufficient to submit such copies within a period specified by the chief trial examiner, if there are unavoidable grounds therefor.

(2) A statement of matters for hearing must be stated individually and specifically insofar as possible.

(3) The Official Carrying out Clerical Work Relating to Trial Procedures must send a statement of matters for hearing to the opponent of the person who filed the application referred to in paragraph (1).

(Matters to Be Stated, etc. in Writ of Summons)

Article 38 A writ of summons for a witness must contain statements of the following matters and must have attached a statement of matters for hearing:



- (i) indication of the Respondent;
- (ii) date, time and place for appearance; and
- (iii) legal sanction against failure to appear.

(Ensuring Appearance of Witness)

Article 39 When a decision to conduct a hearing of a witness has been made, the Designated Official or the Respondent or its counsel who has requested the hearing must endeavor to have the witness appear on the appearance date.

(Notification of Non-Appearance)

Article 40 A witness must, when circumstances that prevent the witness from appearing on the appearance date have arisen, notify such fact immediately while clarifying the circumstances.

(Oath)

- Article 41 (1) The tribunal must have a witness swear under oath before the hearing.
- (2) The swearing under oath must be conducted solemnly while standing.
  - (3) The chief trial examiner must have the witness read aloud the written oath and have the witness sign and seal it. When the witness is unable to read the written oath aloud, the chief trial examiner must have the Official Carrying out Clerical Work Relating to Trial Procedures read it aloud.
  - (4) The written oath set forth in the preceding paragraph must contain a statement to the effect that the person swears to tell the truth according to the dictates of conscience, without hiding anything or adding anything.
  - (5) The chief trial examiner must, before the swearing under oath, explain the purpose of swearing under oath and notify the punishment against any perjury.

(Order of Hearing)

- Article 42 (1) Hearing of a witness is conducted in the order of: the person who requested the hearing; the opponent; and the chief trial examiner
- (2) The chief trial examiner may, when the examiner finds it appropriate, change the order referred to in the preceding paragraph by asking the opinion of the Designated Official and the Respondent or its counsel.
  - (3) Hearing of a witness by the Designated Official or the Respondent or its counsel is conducted in the following order:
    - (i) hearing by the person who has requested the hearing (direct hearing);
    - (ii) hearing by the opponent (cross-hearing);
    - (iii) further examination by the party who has requested the hearing (redirect hearing).
  - (4) The Designated Official or the Respondent or its counsel may conduct further

hearing with the permission of the chief trial examiner.

- (5) The chief trial examiner may personally conduct hearing of a witness or allow hearing by the Designated Official or the Respondent or its counsel not only under the provisions of paragraph (1) and paragraph (2), but whenever the chief trial examiner finds it to be necessary.
- (6) A trial examiner other than the chief trial examiner may conduct a hearing of a witness, after notifying the chief trial examiner.

(Limitation of Question)

Article 43 (1) The hearing listed in the following items is to be conducted for the matters respectively specified in those items:

- (i) direct hearing - Matters to be proved and any matters related thereto;
  - (ii) cross-hearing - Matters mentioned in the direct hearing and any matters related thereto, and matters concerning credibility of statements made;
  - (iii) redirect hearing - Matters mentioned in the cross-hearing and any matters related thereto.
- (2) The chief trial examiner may, upon petition or by the chief trial examiner's own authority, limit a question asked in any of the hearings listed in the items of the preceding paragraph, if the chief trial examiner finds that said question relates to a matter other than the matters specified in the items of said paragraph and is inappropriate.

Article 44 (1) Questions must be asked individually and specifically insofar as possible.

- (2) The Designated Official and the Respondent and its counsel must not ask the following questions; provided, however, that this does not apply to the questions listed in items (ii) to (v) inclusive when justifiable grounds exist:
- (i) question that insults or confuses the witness;
  - (ii) leading question;
  - (iii) question that overlaps with any previous question;
  - (iv) question unrelated to the issues; or
  - (v) question seeking statement of opinion.
- (3) The chief trial examiner may, upon petition or by the chief trial examiner's own authority, limit a question if the chief trial examiner finds it to be in violation of the provisions of the preceding paragraph.

(Use of Document, etc. in Questions)

Article 45 (1) The Designated Official or the Respondent or its counsel may, with the permission of the chief trial examiner, ask questions of a witness while using a document, drawing, photograph, model, equipment or any other appropriate object (hereinafter referred to as a "document, etc." in this Article).

- (2) In the case set forth in the preceding paragraph, if the document, etc. has not been subject to an examination of evidence, the opponent must be given an opportunity to inspect it before the asking of said questions; provided, however, that this does not apply if the opponent has no objection.
- (3) The chief trial examiner may request the Designated Official or the Respondent or its counsel to submit a copy of a document, etc., if the chief trial examiner finds it necessary for attaching such copy to the record or for any other purpose.

(Prohibition of Statements Made Based on Documents)

Article 46 A witness may not make a statement based on documents; provided, however, that this does not apply when the witness has been permitted by the chief trial examiner.

(Simultaneous Examination)

Article 47 (1) The chief trial examiner may, if the chief trial examiner finds it to be necessary, direct a simultaneous examination of a witness and another witness.

- (2) When having directed a simultaneous examination pursuant to the provisions of the preceding paragraph, the chief trial examiner must have a statement to that effect included in the record.
- (3) When carrying out a simultaneous examination, the chief trial examiner may examine the witnesses first.

(Powers of Authorized Trial Examiner)

Article 48 Where an authorized trial examiner conducts a hearing of a witness, said authorized trial examiner performs the duties of the chief trial examiner.

**Subsection 3 Hearing of Respondent**

Article 49 (1) When conducting a hearing of a witness and the Respondent, hearing of the witness is conducted first; provided, however, that when it is found to be appropriate, hearing of the Respondent may be conducted first after hearing the opinion of the Designated Official and the Respondent or its counsel.

- (2) The chief trial examiner may, if the chief trial examiner finds it to be necessary, direct a simultaneous examination of the Respondent and another Respondent or witness.
- (3) The provisions of the preceding Subsection (excluding Article 41 and Article 47, paragraph (1)) apply mutatis mutandis to the hearing of the Respondent.

#### **Subsection 4 Examination of Documentary Evidence and Articles of Evidence**

(Submission, etc. of Documentary Evidence or Articles of Evidence)

- Article 50 (1) When submitting documentary evidence, two copies of the documentary evidence (or, when there are two or more opponents to whom said document should be sent, the number of copies must be the number of such opponents plus one) must be submitted and, unless it is clear from the statements in the documentary evidence, two copies of the description of evidence clarifying the title of the documentary evidence, the person who prepared the documentary evidence and the facts to be proved (or, when there are two or more opponents to whom said document should be sent, the number of copies must be the number of such opponents plus one) must be submitted by the time of submission; provided, however, that it is sufficient to submit such copies within a period specified by the chief trial examiner, if there are unavoidable grounds therefor.
- (2) When submitting articles of evidence, two copies of the description of evidence clarifying the title of the articles of evidence and the facts to be proved (or, when there are two or more opponents to whom said document should be sent, the number of copies must be the number of such opponents plus one) must be submitted; provided, however, that it is sufficient to submit such copies within a period specified by the chief trial examiner, if there are unavoidable grounds therefor.
- (3) The Official Carrying out Clerical Work Relating to Trial Procedures must send copies of documentary evidence referred to in paragraph (1) and the description of evidence pertaining to said documentary evidence or the description of evidence pertaining to articles of evidence referred to in the preceding paragraph to the opponent to whom said documentary evidence or description should be sent.

(Attaching of Translation, etc.)

- Article 51 (1) When submitting documentary evidence prepared in a foreign language, a translation of the part of the documentary evidence for which examination is sought must be attached thereto. In this case, if the Official Carrying out Clerical Work Relating to Trial Procedures sends the documentary evidence under the provisions of paragraph (3) of the preceding Article, the official must also send such translation at the same time.
- (2) If the opponent wishes to state an opinion on the accuracy of the translation set forth in the preceding paragraph, the opponent must submit a document stating such opinion to the trial examiner.

(Filing Petition for Order to Submit Documents, etc.)

Article 52 (1) A petition for an order to submit documents and other articles (hereinafter referred to as "documents, etc." in this Article) must be filed in writing by clarifying the following matters:

- (i) indication of the documents, etc.;
  - (ii) purpose of the documents, etc.;
  - (iii) holder of the documents, etc.; and
  - (iv) facts to be proven.
- (2) If the opponent wishes to state an opinion on the petition set forth in the preceding paragraph, the opponent must submit a document stating such opinion to the trial examiner.
- (3) The trial examiner orders the holder of the documents, etc. to submit said documents, etc. when the trial examiner finds that there are grounds for filing a petition for order to submit the documents, etc.
- (4) When the trial examiner intends to order a third party to submit documents, etc., the trial examiner must hear the opinion of said third party.

(Method of Submission of Documentary Evidence)

Article 53 (1) In submission of documentary evidence, the original, an authenticated copy or a certified transcript of the documentary evidence must be submitted.

- (2) Notwithstanding the provisions of the preceding paragraph, the trial examiner may order the submission of the original.

### **Subsection 5 Expert Testimony**

(Matters for Expert Testimony)

Article 54 (1) When requesting expert testimony, two copies of a document stating the matters for which expert testimony is sought must be submitted at the same time (or, when there are two or more opponents to whom said document should be sent, the number of copies must be the number of such opponents plus one); provided, however, that it is sufficient to submit such document within a period specified by the chief trial examiner, if there are unavoidable grounds therefor.

- (2) The Official Carrying out Clerical Work Relating to Trial Procedures must send the document referred to in the preceding paragraph to the opponent of the person making the request set forth in said paragraph.
- (3) If the opponent wishes to state an opinion on the document set forth in paragraph (1), the opponent must submit a document stating such opinion to the trial examiner.
- (4) The trial examiner specifies the matters for expert testimony based on the

document set forth in paragraph (1) while also giving consideration to the opinion set forth in the preceding paragraph. In this case, a document stating the matters for expert testimony must be sent to the expert witness.

(Method of Swearing under Oath)

Article 55 (1) A written oath must contain a statement to the effect that the person swears to give expert testimony sincerely according to the dictates of conscience.

(2) It is also possible to have an expert witness swear under oath by the method of submitting a written oath to the trial examiner. In this case, the chief trial examiner explains the purpose of swearing under oath and notify the punishment against any false expert testimony by the method of sending a document stating such matters to the expert witness.

(Method for Making Statements for Expert Witness, etc.)

Article 56 (1) The chief trial examiner may have an expert witness state the expert witness' opinion in writing or orally.

(2) The trial examiner may, in cases of having an expert witness state the expert witness' opinion, make the expert witness state additional opinions upon petition or by the trial examiner's own authority, when it is found necessary for clarifying the contents of such opinion or for confirming the grounds therefor.

(Asking Questions to Expert Witness)

Article 57 (1) The trial examiner may, when the trial examiner makes an expert witness state the expert witness' opinion orally, ask questions to the expert witness after the expert witness has stated such opinion.

(2) Questions referred to in the preceding paragraph are asked in the order of: the chief trial examiner; the person who has requested the expert testimony; and the opponent.

(3) When the chief trial examiner finds it appropriate, the chief trial examiner may change the order referred to in the preceding paragraph by asking the opinion of the Designated Official and the Respondent or its counsel.

(Mutatis Mutandis Application of Provisions Concerning Hearing of Witness)

Article 58 The provisions of Article 38 apply mutatis mutandis to a writ of summons issued to an expert witness, the provisions of Article 40 apply mutatis mutandis to cases where circumstances that prevent an expert witness from appearing on the appearance date have arisen, the provisions of Article 41, paragraph (2), paragraph (3) and paragraph (5) apply mutatis mutandis to cases of having an expert witness swear under oath, and the provisions of Article 42, paragraph (4) to paragraph (6), Article 45, and Article 47 apply

mutatis mutandis to cases of having an expert witness state the expert witness' opinion orally, and the provisions of Article 48 apply mutatis mutandis to cases where an authorized trial examiner has an expert witness state the expert witness' opinion.

### **Subsection 6 On-Site Inspection**

(Method for Requesting On-Site Inspection)

Article 59 An On-Site Inspection must be requested by indicating the subject matter and the place of the On-Site Inspection.

### **Section 5 Decision**

(Conclusion of Trial Procedures)

Article 60 (1) The trial examiner concludes the trial procedures when the Commissioner of the Financial Services Agency finds that sufficient allegations and evidence have been submitted to issue a decision referred to in Article 185-7, paragraphs (1) and (2), paragraph (4) to paragraph (8) inclusive and paragraphs (10) to (16) inclusive of the Act .

(2) When the Respondent fails to appear on the trial date or leaves without making an allegation or offering evidence, the trial examiner may conclude the trial procedures when it is found to be reasonable in consideration of the current status and prosecution of the trial procedures by the Designated Official and the Respondent.

(3) The trial examiner concludes the trial procedures when the Respondent fails to appear on a trial date or leaves without making an allegation or offering evidence on two occasions consecutively; provided, however, that this does not apply when the trial examiner finds it appropriate.

(Matters to Be Stated in Decision)

Article 61 (1) The following matters must be stated in the decision referred to in Article 185-7, paragraphs (1) and (2), paragraphs (4) to (8) inclusive and paragraphs (10) to (15) inclusive of the Act:

(i) main text;

(ii) facts and reasons; and

(iii) the Respondent and its counsel.

(2) The matters specified in item (i) of the preceding paragraph must state the amount of the administrative monetary penalty to be paid and the deadline for the payment thereof.

(3) The matters specified in paragraph (1), item (ii) must state the facts listed in the items of Article 178, paragraph (1) of the Act pertaining to administrative

monetary penalty, the application of laws and regulations and the basis for computation of administrative monetary penalty. In this case, the Written Decision on Commencement of Trial Procedures may be cited.

- (4) The decision referred to in Article 185-7, paragraph (16) of the Act must contain a statement to the effect that the decision falls under any of the following items and the reasons therefor:
- (i) there is no fact listed in any of the items of Article 178, paragraph (1) of the Act; or
  - (ii) the decision falls under Article 185-7, paragraph (3), the proviso to paragraph (5), the proviso to paragraph (7), paragraph (9), the proviso to paragraph (11), the proviso to paragraph (14), or the proviso to paragraph (15) of the Act.

(Prorated Amount When There Is a Prior Decision for Issuer Who Does Not Submit Ongoing Disclosure Documents)

Article 61-2 The prorated amount in proportion to the Amount Calculated for Respective Decisions with regard to the facts pertaining to the respective New Decisions specified by Cabinet Office Ordinance prescribed in Article 185-7, paragraph (5) of the Act is equal to the amount obtained by deducting the amount specified in item (ii) of that paragraph from the amount specified in item (i) of that paragraph, and multiplying by the ratio of the Amount Calculated for Respective Decisions to the sum of the Amounts Calculated for Respective Decisions prescribed in paragraph (4) of that Article.

(Prorated Amount When Two or More Decisions Are to Be Issued for Issuer, etc. Who Submitted Ongoing Disclosure Documents containing False Statement)

Article 61-3 The prorated amount in proportion to the Amount Calculated for Respective Decisions specified by Cabinet Office Ordinance prescribed in Article 185-7, paragraph (6) of the Act is equal to the amount obtained by multiplying the highest amount among the amounts listed in the items of that paragraph by the ratio of the Amount Calculated for Respective Decisions to the sum of the Amounts Calculated for Respective Decisions prescribed in that paragraph.

(Prorated Amount When There Is a Prior Decision for Issuer, etc. Who Submitted Ongoing Disclosure Documents Containing False Statement)

Article 61-4 The prorated amount in proportion to the Amount Calculated for Respective Decisions with regard to the facts pertaining to the respective New Decisions specified by Cabinet Office Ordinance prescribed in Article 185-7, paragraph (7) of the Act is equal to the amount obtained by deducting the amount specified in item (ii) of that paragraph from the amount specified in



item (i) of that paragraph, and multiplying by the ratio of the Amount Calculated for Respective Decisions to the sum of the Amounts Calculated for Respective Decisions prescribed in paragraph (6) of that Article.

(Prorated Amount When Two or More Decisions Are to Be Issued for Issuer, etc. Who Provided or Publicized Issuer's Information Containing Fake Information, etc.)

Article 61-5 The prorated amount in proportion to the Amount Calculated for Respective Decisions specified by Cabinet Office Ordinance prescribed in Article 185-7, paragraph (10) of the Act is equal to the amount obtained by multiplying the highest amount among the Amounts Calculated for Respective Decisions prescribed in that paragraph by the ratio of the Amount Calculated for Respective Decisions to the sum of the Amounts Calculated for Respective Decisions prescribed in that paragraph.

(Prorated Amount When There Is a Prior Decision for Issuer, etc. Who Provided or Publicized Issuer's Information Containing Fake Information, etc.)

Article 61-6 The prorated amount in proportion to the Amount Calculated for Respective Decisions with regard to the facts pertaining to the respective New Decisions specified by Cabinet Office Ordinance prescribed in Article 185-7, paragraph (11) of the Act is equal to the amount obtained by deducting the amount specified in item (ii) of that paragraph from the amount specified in item (i) of that paragraph, and multiplying by the ratio of the Amount Calculated for Respective Decisions to the sum of the Amounts Calculated for Respective Decisions prescribed in paragraph (10) of that Article.

(Report of Facts, etc. Falling under Article 172-2, Paragraph (1) of the Act)

Article 61-7 (1) A person who intends to make a report under the provisions of Article 185-7, paragraph (12) of the Act must submit the report by using the appended form to the Securities and Exchange Surveillance Commission by one of the following methods:

(i) bring the report in person;

(ii) send the report by registered mail or services of correspondence delivery prescribed in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002; referred to as "Correspondence Delivery Act" in the following paragraph) that are provided by a general correspondence delivery operator prescribed in paragraph (6) of said Article or a specified correspondence delivery operator prescribed in paragraph (9) of said Article in which acceptance and delivery are recorded by said general correspondence delivery operator or specified correspondence

- delivery operator or a method equivalent thereto; or
- (iii) transmit the report by using facsimile.
- (2) If the report prescribed in the preceding paragraph has been submitted by the method specified in item (ii) of that paragraph, the report is deemed to have been submitted to the Securities and Exchange Surveillance Commission at the time of dispatch thereof (or, the date and time at which the report was handed over to a business office of Japan Post Holdings Co., Ltd. which conducts services rendered at post office counters prescribed in Article 2 of the Act on Entrustment of Services Rendered at Post Office Counters (Act No. 213 of 1949) (including the business office of a contractor under the provisions of Article 3, paragraph (1) or paragraph (3) of said Act or a subcontractor under the provisions of Article 4 of said Act) when such date and time is proven by receipt of the postal item, or the date and time indicated by the date stamp on the postal item or correspondence mail prescribed in Article 2, paragraph (3) of the Correspondence Delivery Act (hereinafter referred to as "correspondence mail" in this paragraph) when such date and time are clearly legible, or at noon on the day of the date stamp of the postal mail or correspondence mail when only the day, but not the time, of the date stamp is clearly legible).
- (3) If the report prescribed in paragraph (1) has been submitted by the method referred to in item (iii) of that paragraph, the report is deemed to have been submitted to the Securities and Exchange Surveillance Commission at the time when the report was received by the Securities and Exchange Surveillance Commission.
- (4) A person who submitted a report prescribed in paragraph (1) by the method referred to in item (iii) of that paragraph must submit the original of the report to the Securities and Exchange Surveillance Commission without delay.
- (5) The report prescribed in paragraph (1) is to be prepared in Japanese language.

(Prorated Amount When There Is a Final and Binding Court Decision on Imposing a Fine)

Article 61-8 The prorated amount in proportion to the Amount Calculated for Respective Decisions with regard to the facts pertaining to one or more decisions specified by Cabinet Office Ordinance prescribed in Article 185-7, paragraph (14) of the Act is equal to the amount obtained by deducting the amount specified in item (ii) of that paragraph from the amount specified in item (i) of that paragraph , and multiplying by the ratio of the Amount Calculated for Respective Decisions to the sum of the Amounts Calculated for Respective Decisions prescribed in paragraph (6) of that Article.

(Prorated Amount If There Has Been a Final and Binding Court Decision on Imposing a Fine)

Article 61-9 The prorated amount in proportion to the amount of the administrative monetary penalty pertaining to said decision specified by Cabinet Office Ordinance prescribed in Article 185-8, paragraph (6) of the Act is equal to the amount obtained by deducting the amount specified in item (ii) of that paragraph from the amount specified in item (i) of that paragraph, and multiplying by the ratio of the amount of the administrative monetary penalty pertaining to said decision to the sum of the administrative monetary penalties pertaining to the decision under the provisions of Article 185-7, paragraph (1) (limited to if any fact specified in Article 178, paragraph (1), item (iv) or (xi) of the Act has been found), paragraph (6), paragraph (7), paragraph (10), paragraph (11), paragraph (12) (limited to if any fact specified in Article 178, paragraph (1), item (iv) or (xi) of the Act has been found) or paragraph (13) (limited to if any fact specified in Article 178, paragraph (1), item (iv) or (xi) of the Act has been found) of the Act.

## **Section 6 Miscellaneous Provisions**

(Adjustment with Fine, Confiscation, etc. after Decision)

- Article 62 (1) If the Commissioner of the Financial Services Agency has suspended the effect of the decision under Article 185-7, paragraph (1) (limited to if any fact specified in Article 178, paragraph (1), item (iv) or items (xi) to (xvi) inclusive has been found; hereinafter the same applies in this Article), paragraphs (6), (7), (10), (11), (12) (limited to if any fact specified in Article 178, paragraph (1), item (iv) , or item (xi) or (xvi) has been found; hereinafter the same applies in this Article) or (13) (limited to if any fact specified in Article 178, paragraph (1), item (iv) or items (xi) to (xvi) inclusive has been found; hereinafter the same applies in this Article) of the Act pursuant to the provisions of Article 185-8, paragraphs (1) to (3) inclusive, the Commissioner must notify the Respondent or its counsel to that effect.
- (2) The documents pertaining to the disposition of change under the provisions of Article 185-8, paragraph (6) or (7) of the Act must contain a statement of the amount of administrative monetary penalty after the change, the reason for such change and the deadline for payment of the administrative monetary penalty after such change.
- (3) When the Commissioner of the Financial Services Agency has rescinded any decision under Article 185-7, paragraph (1), (6) or (7) or paragraphs (10) to (13) inclusive of the Act, pursuant to the provisions of Article 185-8, paragraph (8) of the Act, the Commissioner must notify the Respondent or its counsel to that effect.
- (4) If the Commissioner of the Financial Services Agency has conducted a disposition of change under the provisions of Article 185-8, paragraph (6) or (7)

of the Act and an amount of administrative monetary penalty exceeding the amount of administrative monetary penalty pertaining to any decision under Article 185-7, paragraph (1), (6) or (7) or paragraphs (10) to (13) inclusive of the Act after said disposition of change has already been paid, the Commissioner must promptly arrange to refund said excess amount to the Respondent. The same applies when there is a disposition of rescission under the provisions of Article 185-8, paragraph (8) of the Act, and an administrative monetary penalty pertaining to any decision under Article 185-7, paragraphs (1), (6) or (7) or paragraphs (10) to (13) inclusive of the Act has already been paid.