

Act on Sales, etc. of Financial Instruments

(Act No. 101 of May 31, 2000)

(Purpose)

Article 1 The purpose of this Act is to protect customers by providing for the matters which financial instrument providers, etc. must explain at the time of the sale, etc. of financial instruments, the liability on financial instrument providers, etc. for damages incurred by the relevant customers due to the failure of a financial instrument provider, etc. to explain the relevant matters at the time of the sale, etc. of financial instruments, and the measures to ensure the appropriateness of solicitations in relation to sales, etc. of financial instruments by financial instrument providers, etc., thereby contributing to the sound development of the national economy.

(Definitions)

Article 2 (1) The phrase "sale of financial instruments" as used in this Act means the following acts:

- (i) conclusion of a contract on acceptance of deposits, savings, installment savings, or installments as prescribed in Article 2, paragraph (4) of the Banking Act (Act No. 59 of 1981) with a depositor, savings depositor, installment savings depositor or a person that makes the installments prescribed in that paragraph;
- (ii) conclusion of a contract on the acceptance of installments based on a mutual financing contract prescribed in Article 1 of the Mutual Financing Business Act (Act No. 42 of 1931) (hereinafter referred to as "mutual financing installments" in this item) with the person that makes the mutual financing installments;
- (iii) conclusion of a trust contract in relation to a monetary trust (limited to those for which the beneficial interest pertaining to the trust contract are rights listed in Article 2, paragraph (2), item (i) or (ii) of the Financial Instruments and Exchange Act (Act No. 25 of 1948)) with the settlor, which satisfies the requirements specified by Cabinet Order, such as the requirement that the investment method for the trust property has not been specified,;
- (iv) conclusion of an insurance contract in which the person engaging in the insurance business defined in Article 2, paragraph (1) of the Insurance Business Act (Act No. 105 of 1995) is the insurer (hereinafter referred to as an "insurance contract" in this item) or conclusion of a contract related to insurance or mutual aid which is specified by Cabinet Order as being similar

- to an insurance contract with policyholders persons similar thereto;
- (v) acts through which securities (meaning the securities specified in Article 2, paragraph (1) of the Financial Instruments and Exchange Act or the rights deemed to be securities pursuant to paragraph (2) of that Article, and excluding the rights listed in items (i) and (ii) of that paragraph) are acquired (excluding the acts falling under the category of agency or intermediary service and the acts listed in items (viii) and (ix));
 - (vi) acts through which the following are acquired (excluding acts falling under the category of agency or intermediary service):
 - (a) rights listed in Article 2, paragraph (2), item (i) or (ii) of the Financial Instruments and Exchange Act; and
 - (b) monetary claims indicated by negotiable certificates of deposit (excluding monetary claims that are rights indicated on the securities specified in Article 2, paragraph (1) of the Financial Instruments and Exchange Act or rights that are deemed to be securities pursuant to paragraph (2) of that Article);
 - (vii) conclusion of a specified joint real estate venture contract defined in Article 2, paragraph (3) of the Act on Specified Joint Real Estate Ventures (Act No. 77 of 1994) (limited to a contract for which money is the subject of the contribution and for which the division of residual assets or return of contribution when the contract ends is to be made by money, or a contract on the matters specified by Cabinet Order as those similar thereto);
 - (viii) market transactions of derivatives defined in Article 2, paragraph (21) of the Financial Instruments and Exchange Act, foreign market derivative transactions defined in paragraph (23) of that Article, or commissions for the relevant transactions;
 - (ix) over-the-counter derivative transactions defined in Article 2, paragraph (22) of the Financial Instruments and Exchange Act or the commission for the relevant transactions;
 - (x) transactions in which the parties agree to pay or receive money based on the difference between a figure to which the parties have agreed in advance as a figure of the interest rate, the value of currencies, or any other indicators, and the actual figure of the relevant indicator at a fixed time in the future (excluding those falling under transactions set forth in the preceding two items) and which are specified by Cabinet Order, or the commission for the relevant transactions; and
 - (xi) acts specified by Cabinet Order as being similar to those set forth in the preceding items.
- (2) The phrase "sale, etc. of financial instruments" as used in this Act means the sale of financial instruments, or an agency or intermediary service therefor (including one conducted on behalf of a customer).

- (3) The term "financial instruments provider, etc." as used in this Act means a person carrying out sales, etc. of financial instruments on a regular basis.
- (4) The term "customer" as used in this Act means the counterparty to the sale of financial instruments.

(Accountability of a Financial Instruments Provider, etc.)

Article 3 (1) If a financial instruments provider, etc. intends to carry out sales, etc. of financial instruments on a regular basis, the relevant financial instruments provider, etc. must explain the following matters (hereinafter referred to as "important matters") to customers at or before the time that the sale of financial instruments is carried out:

- (i) if the relevant sale of financial instruments involves the risk of incurring a loss of principal, due to fluctuations in the interest rate, the value of currencies, quotations on a financial instruments market (meaning a financial instruments market defined in Article 2, paragraph (14) of the Financial Instruments and Exchange Act; hereinafter the same applies in this Article), or any other indicators as the direct cause thereof, the following matters must be explained:
 - (a) the fact that there is a risk of incurring a loss of principal;
 - (b) the relevant indicator; and
 - (c) the important portions of the structure of transactions pertaining to the relevant sale of financial instruments which generate the risk of incurring a loss of principal with fluctuations in the indicator set forth in sub-item (b) as the direct cause thereof;
- (ii) if the relevant sale of financial instruments involves the risk of incurring a loss exceeding the initial principal with fluctuations in the interest rate, the value of currencies, quotations on a financial instruments market, or any other indicators as the direct cause thereof, the following matters must be explained:
 - (a) the fact that there is a risk of incurring a loss exceeding the initial principal;
 - (b) the relevant indicator; and
 - (c) important portions of the structure of transactions pertaining to the relevant sale of financial instruments which generate the risk of incurring a loss exceeding the initial principal with fluctuations in the indicator set forth in sub-item (b) as the direct cause thereof;
- (iii) if the relevant sale of financial instruments involves the risk of incurring a loss of principal directly caused by changes in the status of the business or property of the person carrying out that sale of financial instruments or any other persons, the following matters must be explained:
 - (a) the fact that there is a risk of incurring a loss of principal;

- (b) the relevant person; and
- (c) important portions of the structure of transactions pertaining to the relevant sale of financial instruments which generate the risk of incurring a loss of principal directly caused by changes in the status of the business or property of the person set forth in sub-item (b);
- (iv) if the relevant sale of financial instruments involves the risk of incurring a loss exceeding the initial principal directly caused by changes in the status of the business or property of the person carrying out that sale of financial instruments or any other persons, the following matters must be explained:
 - (a) the fact that there is a risk of incurring a loss exceeding the initial principal;
 - (b) the relevant person; and
 - (c) important portions of the structure of transactions pertaining to the relevant sale of financial instruments which generate the risk of incurring a loss exceeding the initial principal directly caused by changes in the status of the business or property of the persons set forth in sub-item (b);
- (v) beyond what is provided for in items (i) and (iii), if the relevant sale of financial instruments involves the risk of incurring a loss of principal directly caused by grounds specified by Cabinet Order as important factors that have an impact on the customers' judgment, the following matters must be explained:
 - (a) the fact that there is a risk of incurring a loss of principal;
 - (b) the relevant grounds; and
 - (c) important portions of the structure of transactions pertaining to the relevant sale of financial instruments which generate the risk of incurring a loss of principal, with the grounds set forth in sub-item (b) as the direct cause thereof;
- (vi) beyond what is provided for in items (ii) and (iv), if the relevant sale of financial instruments involves the risk of incurring a loss exceeding the initial principal, caused by the grounds specified by Cabinet Order as important factors that have an impact on the Customers' judgment, the following matters must be explained:
 - (a) the fact that there is a risk of incurring a loss exceeding the initial principal;
 - (b) the relevant grounds; and
 - (c) important portions of the structure of transactions pertaining to the relevant sale of financial instruments which generate the risk of incurring a loss exceeding the initial principal, with the grounds set forth in sub-item (b) as the direct cause thereof; and
- (vii) if the period during which the rights subject to the relevant sale of financial instruments may be exercised or the period during which the

contract pertaining to that sale of financial instruments may be cancelled is limited, a statement to that effect must be provided.

- (2) The explanation prescribed in the preceding paragraph must be provided in a manner and to the extent necessary for the customer to understand it, in light of the knowledge, experience and status of property of the customer, and the purpose for the conclusion of the contract pertaining to the relevant sale of financial instruments.
- (3) The phrase "risk of incurring a loss of principal" as used in paragraph (1), items (i), (iii) and (v) means a risk that the total amount of money to be paid by a customer as a result of the relevant sale of financial instruments (if there is any property other than money or any right specified by Cabinet Order which is to be transferred by the relevant customer as a result of the relevant sales of financial instruments (hereinafter referred to as a "monetary equivalent" in this paragraph and Article 6, paragraph (2)), the amount is obtained by adding the total market value of the relevant monetary equivalent (if there is no market value, the estimated disposal value) to the relevant total amount of money to be paid) would exceed the total amount of money to be received by the relevant customer (if there is any person that receives any money, any property other than money, or any right, as designated by the relevant customer, as a result of the relevant sale of financial instruments, it includes the relevant person; hereinafter referred to as the "customer, etc." in this paragraph) as a result of the relevant sale of financial instruments (if there is any property other than money or any right to be acquired by the relevant customer, etc. as a result of the relevant sale of financial instruments, the amount is obtained by adding the total amount of the market value of the relevant property (if there is no market value, the estimated disposal value) other than money or right to the relevant total amount of money to be received).
- (4) The phrase "risk of incurring a loss exceeding the initial principal" as used in paragraph (1), items (ii), (iv), and (vi) means the following:
 - (i) a risk that the amount of the relevant loss would exceed the customer margin or any other security deposit to be paid by the customer as a result of the relevant sale of financial instruments (limited to acts listed in paragraph (1), items (viii) through (x) of the preceding Article and the acts listed in item (xi) of that paragraph that are specified by Cabinet Order; hereinafter the same applies in this paragraph) when the relevant sale of financial instruments involves a risk of incurring a loss due to fluctuations in the interest rate, the value of currencies, quotations on a financial instruments market, or any other indicator;
 - (ii) a risk that the amount of the relevant loss would exceed the customer margin or any other security deposits to be paid by the customer as a result of the relevant sale of financial instruments when the relevant sale of

- financial instruments involves a risk of incurring a loss due to changes in the status of the business or property of the person carrying out the relevant sale of financial instruments or any other persons;
- (iii) a risk that the amount of the relevant loss would exceed the customer margin or any other security deposits to be paid by the customer as a result of the relevant sale of financial instruments when the relevant sale of financial instruments involves a risk of incurring a loss due to the grounds under paragraph (1), item (vi); and
 - (iv) risks specified by Cabinet Order as being equivalent to those listed in the preceding three items.
- (5) The phrase "structure of transactions pertaining to the sales of financial instruments" as used in item (i), (c), item (ii), (c), item (iii), (c), item (iv), (c), item (v), (c) and item (vi), (c) of paragraph (1) means the following:
- (i) for acts listed in paragraph (1), items (i) through (iv) and item (vii) of the preceding Article, the details of the contract provided for in these provisions;
 - (ii) for acts listed in paragraph (1), item (v) of the preceding Article, the details of the rights indicated on the securities listed in Article 2, paragraph (1) of the Financial Instruments and Exchange Act or rights that are deemed to be securities pursuant to the provisions of paragraph (2) of that Article (excluding rights listed in items (i) and (ii) of that paragraph) provided for by the relevant provisions and the details of the obligations to be assumed by the customer as a result of the relevant acts;
 - (iii) for acts listed in paragraph (1), item (vi), (a) of the preceding Article, the details of the rights provided for by the relevant provisions and the details of the obligations to be assumed by the customer as a result of the relevant acts;
 - (iv) for acts listed in paragraph (1), item (vi), (b) of the preceding Article, the details of the claims provided for by the relevant provisions and the details of the obligations to be incurred by the customer as a result of the relevant acts;
 - (v) for acts listed in paragraph (1), items (viii) through (x) of the preceding Article, the structure of transactions provided for by those provisions; and
 - (vi) for acts specified by Cabinet Order under paragraph (1), item (xi) of the preceding Article, the matters specified by Cabinet Order.
- (6) If two or more financial instruments providers, etc. must explain the important matters for a single sale of a financial instrument to a customer pursuant to the provisions of paragraph (1), and one of the financial instruments providers, etc. has explained the relevant important matters, notwithstanding the provisions of that paragraph, the other financial instruments provider, etc. is not required to explain the relevant important matters; provided, however, that this does not apply when the relevant other

financial instruments provider, etc. is a person specified by Cabinet Order.

(7) The provisions of paragraph (1) do not apply to the following cases:

- (i) if the customer is a person specified by Cabinet Order as a person having expert knowledge and experience on sales, etc. of financial instruments (the relevant customer is referred to as the "specified customer" in Article 9, paragraph (1)); and
- (ii) if the sale of financial instruments referred to in paragraph (1) is neither commodity-related market transactions of derivatives provided in Article 2, paragraph (8), item (i) of the Financial Instruments and Exchange Act nor commission service of the relevant transactions, and the customer has manifested the intention not to require an explanation for the important matters.

(Prohibition on the Provision of Conclusive Evaluations by Financial Instruments Provider, etc.)

Article 4 If a financial instruments provider, etc. intends to carry out sales, etc. of financial instruments on a regular basis, the relevant financial instruments provider, etc. must not engage in the act of providing a customer with conclusive evaluations on uncertain matters or with information that misleads the customer into believing the certainty of the uncertain matters with regard to the matters related to the relevant sales of financial instruments (hereinafter referred to as the "provision of conclusive evaluations, etc.") at or before the time that the sale of financial instruments is carried out.

(Liability for Damages of a Financial Instruments Provider, etc.)

Article 5 If a financial instruments provider, etc. must explain important matters to the customer pursuant to the provisions of Article 3, and fails to give an explanation on the relevant important matters or provides a conclusive evaluation, etc. in violation of the preceding Article, the relevant financial instruments provider, etc. is liable for the damages suffered by the relevant customer as a result thereof.

(Presumption of the Amount of Loss)

Article 6 (1) If the customer claims compensation for damages pursuant to the provisions of the preceding Article, the amount of loss of principal is presumed to be the amount of loss incurred by the relevant customer due to the failure of the financial instruments provider, etc. to explain important matters or to the provision of conclusive evaluation, etc. by the relevant financial instruments provider, etc.

(2) The term "amount of loss of principal" as used in the preceding paragraph is the amount that remains after deducting the amount obtained by adding the

total of the amount of money received and the amount of money to be received by a customer (if there is a person that has come to acquire any money, any property other than money or any right, as designated by the relevant customer, as a result of the relevant sale of financial instruments, it includes the relevant person; hereinafter referred to as the "customer, etc." in this paragraph) as a result of the sale of financial instruments (if there is any property other than money or any right which has been acquired or any property other than money or any right to be acquired by the relevant customer, etc. as a result of the relevant sale of financial instruments, the amount obtained by adding, to the total of the amount of money acquired and to be acquired, the total amount of the market value of the property other than money or right (if there is no market value, the estimated disposal value)) to the total disposal value of the property other than money or rights which has been acquired by the relevant customer, etc. as a result of the relevant sale of financial instruments and which the relevant customer, etc. has sold or otherwise disposed of, from the total of the amount of money paid and the amount to be paid by the customer as a result of the sale of financial instruments (if there is a monetary equivalent which has been transferred or a monetary equivalent which is to be transferred by the relevant customer as a result of the relevant sales of financial instruments, the amount obtained by adding, to the relevant total of the amount of money paid and to be paid, the total amount of the market value of these monetary equivalents (if there is no market value, the estimated disposal value)).

(Application of the Civil Code)

Article 7 Beyond what is provided for in this Act, the liability for damages of the financial instruments provider, etc. due to the failure to explain important matters or due to the provision of conclusive evaluation, etc. is governed by the Civil Code (Act No. 89 of 1896).

(Ensuring Appropriateness of Solicitation)

Article 8 When making a solicitation in relation to sales, etc. of financial instruments that are conducted on a regular basis, a financial instruments provider, etc. must endeavor to ensure the appropriateness thereof.

(Establishment of Solicitation Policy,)

Article 9 (1) If a financial instruments provider, etc. intends to make a solicitation in relation to sales, etc. of financial instruments that are conducted on a regular basis, the relevant financial instruments provider, etc. must, in advance, establish a policy for the relevant solicitation (hereinafter referred to as the "solicitation policy"); provided, however, that this does not apply to cases

where the financial instruments provider, etc. is a national government, local government, or any other person specified by Cabinet Order as one for which it is found to be unlikely that the solicitations will lack the propriety or a financial instruments provider, etc. that has only the specified customers as its customers.

- (2) The following matters are to be provided for by the solicitation policy:
 - (i) matters to be taken into consideration in light of the knowledge, experience and status of property of the person subject to the solicitation, and the purpose for the conclusion of the contract pertaining to the relevant sales of financial instruments;
 - (ii) matters to be taken into consideration for the person subject to the solicitation with regard to the method and time of solicitation; and
 - (iii) beyond what is provided for in the preceding two items, matters for ensuring the appropriateness of the solicitation.
- (3) If a financial instruments provider, etc. establishes a solicitation policy pursuant to the provisions of paragraph (1), the relevant provider must promptly, pursuant to a method specified by Cabinet Order, make the policy public. The same applies when the relevant provider changes it.

(Civil Fine)

Article 10 A financial instruments provider, etc. that fails to establish a solicitation policy in violation of paragraph (1) of the preceding Article or that fails to make it public in violation of paragraph (3) of the same Article, is punished by a civil fine of not more than 500 thousand yen.