

# **Cabinet Office Order on Transactions Prescribed in Article 161-2 of the Financial Instruments and Exchange Act and Security Deposits for the Transactions**

(Ministry of Finance Order No. 75 of August 27, 1953)

Pursuant to the provisions of Article 49 of the Securities and Exchange Act, the Ministerial Order on Transactions Prescribed in Article 49 of the Securities and Exchange Act and Security Deposits for the Transactions is established as follows.

## **(Definitions)**

- Article 1 (1) The term "margin transaction" as used in this Cabinet Office Order means purchase and sale or other transactions of securities performed by a financial instruments business operator (meaning a financial instruments business operator prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (Act No. 25 of 1948; hereinafter referred to as the "Act"); the same applies hereinafter) by granting credit to a customer (including financial instruments business operator when the financial instruments business operator is a customer; the same applies hereinafter).
- (2) The term "when-issued transaction" as used in this Cabinet Office Order means purchase and sale or other transactions of unissued securities performed by a financial instruments business operator for a customer which involve the transfer of the securities or the certificates by the day after a certain number of days have elapsed from the issue date of the securities (if a certificate which can be obtained in exchange of the securities has been prepared, the first day on which the certificate is prepared; the same applies hereinafter).
- (3) The term "unsettled account" as used in this Cabinet Office Order means debt related to credit granted by a financial instruments business operator to a customer for a margin transaction.
- (4) The term "cross trade" as used in this Cabinet Office Order means a trade performed before the completion of transfer of securities purchased in a when-issued transaction in which the same issue of securities as the aforementioned securities are sold in equal volume, or a trade performed before the completion of transfer of securities sold in a when-issued transaction in which the same issue of securities as the aforementioned securities are purchased in equal volume.

(Rate to Be Multiplied by Market Value of Securities)

Article 2 (1) The transactions prescribed in Article 161-2, paragraph (1) of the Act and the rate to be multiplied by the market value of securities related to the transactions pursuant to the provisions of that paragraph are the transactions and the rates listed in the following items:

- (i) margin transaction: 30 percent (if the securities related to the margin transaction are securities for a leveraged index, etc. (meaning a quotation on the financial instruments market (meaning the financial instruments market as defined in Article 2, paragraph (14) of the Act) or any other indicator, for which the daily fluctuation rate is calculated as the rate that is obtained by multiplying the daily fluctuation rate for another indicator by a certain number), the rate obtained by multiplying 30 percent by that certain number (if the certain number is less than zero, the number that remains after deducting the certain number from zero) (or 30 percent if the rate thus obtained is less than 30 percent); the same applies in Article 7, paragraph (1), item (ii), paragraph (2), item (i), sub-item (b), and item (ii), sub-item (b), and paragraph (3), item (ii)); and
  - (ii) when-issued transaction: 30 percent.
- (2) The provisions for the rate to be multiplied by the market value of securities related to a margin transaction set forth in item (i) of the preceding paragraph do not apply to the margin transaction when the margin transaction is due to the exercise of the option for a transaction set forth in Article 2, paragraph (21), item (iii) of the Act related to share certificates and is settled by a reversing trade of the same issue of the share certificates in equal volume (limited to cases in which the transfer date is the same as the day of the margin transaction).
- (3) The provisions for the rate to be multiplied by the market value of securities pertaining to a when-issued transaction set forth in paragraph (1), item (ii) do not apply to the when-issued transaction in cases the when-issued transaction is due to a cross trade or brokerage for clearing of securities, etc.

(Amount of Security Deposit)

Article 3 The amount of money to be deposited by a customer and received by a financial instruments business operator for the transactions set forth in the items of paragraph (1) of the preceding Article pursuant to the provisions of Article 161-2, paragraph (1) of the Act (hereinafter referred to as "security deposit") is to be not less than the amount calculated by multiplying the agreed price of the securities related to the transactions by the rate set forth in those items (hereinafter referred to as "normal minimum amount"); provided, however, that in cases that fall under any of the following items, the security deposit for margin transactions is to be an amount of not less than the amount

set forth in each of those items:

- (i) at the time of receiving a security deposit, if the financial instruments business operator has no security deposit to be received (meaning the security deposit actually received; the same applies hereinafter) related to the customer's margin transaction and when the normal minimum amount of the margin transaction for which the security deposit is to be received falls short of 300 thousand yen: 300 thousand yen;
- (ii) at the time of receiving a security deposit, if the financial instruments business operator has a security deposit to be received for the customer' margin transaction and when the sum of the normal minimum amount of the margin transaction for which the security deposit is required to be received and the total amount of the security deposit received falls short of 300 thousand yen: the amount obtained by adding the amount equal to the difference between the sum and 300 thousand yen to the normal minimum amount related to the margin transaction for which the security deposit is required to be received.

#### (Payment of Security Deposit)

Article 4 When a financial instruments business operator has performed a margin transaction or when-issued transaction for its customer, the financial instruments business operator must receive a security deposit for the transaction from the customer within three days after the day of the performance (when there are any non-business days, the number of days calculated by adding the number of the non-business days).

#### (Calculation of Security Deposit When Receiving Deposit)

Article 5 The amount of money to be received by a financial instruments business operator as a security deposit from a customer pursuant to the provisions of the preceding Article is to be calculated by deducting the amount of credit granted when the credit is granted for a margin transaction other than credit granted to the customer in the amount equal to the agreed price of the securities related to the margin transaction, and by deducting the amount of credit granted when the credit is granted to the customer for a when-issued transaction.

#### (Securities in Lieu of Security Deposits)

Article 6 (1) The substitute price when all or part of the security deposit required to be received by a financial instruments business operator is substituted by securities pursuant to the provisions of Article 161-2, paragraph (2) of the Act (referred to as "substitute price" in Article 8, paragraph (2)) is to be not more than the market value (meaning the market value specified in the

following items in the market set forth in the respective items; the same applies in Article 8, paragraphs (2) and (3)) on the day before the date of receipt of the security deposit multiplied by 80 percent for share certificates, and the rate specified by obtaining the authorization by the Commissioner of the Financial Services Agency for other securities (the rate specified in the following items in the market set forth in the respective items):

- (i) a financial instruments exchange market (meaning the financial instruments exchange market as defined in Article 2, paragraph (17) of the Act), the market value and rate determined by a financial instruments exchange (meaning the financial instruments exchange as defined in paragraph (16) of that Article) by obtaining the authorization by the Commissioner of the Financial Services Agency based on the provisions of Article 149, paragraph (1) of the Act;
  - (ii) an over-the-counter securities market (meaning the over-the-counter securities market prescribed in Article 67, paragraph (2) of the Act): the market value and rate determined by an authorized financial instruments business association (meaning the authorized financial instruments business association as defined in Article 2, paragraph (13) of the Act; the same applies in item (iv)) registered pursuant to the provisions of Article 67-11, paragraph (1) of the Act by obtaining the authorization by the Commissioner of the Financial Services Agency based on the provisions of Article 67-12 of the Act;
  - (iii) a proprietary trading system (meaning the proprietary trading system prescribed in Article 26-2-2, paragraph (7) of the Order for Enforcement of the Financial Instruments and Exchange Act (Cabinet Order No. 321 of 1965): the market value and rate determined by a financial instruments business operator that received the authorization referred to in Article 30, paragraph (1) of the Act, by obtaining the authorization by the Commissioner of Financial Services Agency or other competent official (meaning the Commissioner of Financial Services Agency or other competent official as defined in Article 1, paragraph (4), item (iv) of the Cabinet Office Order on Financial Instruments Business (Cabinet Office Order No. 52 of 2007) based on the provisions of Article 30, paragraph (1) or Article 31, paragraph (6) of the Act; and
  - (iv) a foreign financial instruments exchange (meaning the foreign financial instruments exchange as defined in Article 2, paragraph (8), item (iii), sub-item (b) of the Act): the market value and rate specified by the rules of the authorized financial instruments firms association (limited to those designated by the Commissioner of the Financial Services Agency).
- (2) When all or part of the security deposit to be received is substituted by corporate bonds, etc. as defined in Article 2, paragraph (1) of the Act on Book-

Entry Transfer of Corporate Bonds and Shares (Act No. 75 of 2001) pursuant to the provisions of Article 161-2, paragraph (2) of the Act that is handled by a book-entry transfer institution as defined in Article 2, paragraph (2) of that Act (hereinafter referred to as "book-entry transfer corporate bonds, etc." in this paragraph), and if a financial instruments business operator has a statement or record of the book-entry transfer corporate bonds, etc. made in the holdings column for the financial instruments business operator's account (meaning holdings column prescribed in that Act), the financial instruments business operator must distinguish the column from the column for their own transactions.

(Withdrawal of Security Deposits)

Article 7 (1) A financial instruments business operator may have money or securities received as a security deposit from a customer for margin transaction withdrawn to the extent corresponding to the amount calculated by deducting the amount set forth in item (ii) from the amount set forth in item (i):

- (i) the total amount of the security deposit received related to the customer's margin transaction (limited to those for which security deposit related to the margin transaction has been received; hereinafter the same applies in item (i), sub-item (a) and item (ii), sub-item (a) of the following paragraph and paragraph (3), item (i));
- (ii) the amount calculated by multiplying the amount of the agreed price of all securities related to the margin transaction referred to in the preceding item (excluding those for which a reversing trade has been performed and those for which delivery of money or securities required for settlement by a method other than reversing trade has been received; hereinafter the same applies in item (i), sub-item (b) and item (ii), sub-item (b) of the following paragraph, paragraph (3), item (ii) and paragraph (4)) by 30 percent (when the amount falls short of 300 thousand yen (except when the amount is zero), 300 thousand yen).

(2) Beyond what is prescribed in the provisions of the preceding paragraph, a financial instruments business operator may have money or securities received as a security deposit from a customer for margin transaction withdrawn only in the following cases:

- (i) when part of the unsettled account is to be settled (limited to cases in which security deposit is to be withdrawn to the extent corresponding to the amount calculated by deducting the amount set forth in sub-item (b) from the amount set forth in sub-item (a)):
  - (a) the total amount of the security deposit received related to the customer's margin transaction;

- (b) the amount calculated by multiplying the agreed price of all securities related to the margin transaction referred to in sub-item (a) (excluding those related to the unsettled account to be settled) by 30 percent (when the amount falls short of 300 thousand yen, 300 thousand yen);
  - (ii) when part of the unsettled account is to be settled (excluding settlement by a reversing trade), and the settlement is to be made on the condition of depositing as a security deposit related to margin transaction, all securities purchased or money corresponding to the amount of sale price of securities sold by margin transaction related to the unsettled account subject to the settlement (limited to cases in which the amount set forth in sub-item (a) is equal to or more than the amount set forth in sub-item (b) after making the deposit):
    - (a) the total amount of the security deposit received related to the customer's margin transaction;
    - (b) the amount calculated by multiplying the agreed price of all securities related to the margin transaction referred to in sub-item (a) by 30 percent (when the amount falls short of 300 thousand yen, 300 thousand yen).
  - (iii) when all unsettled accounts are to be settled; or
  - (iv) when all or part of the money or securities is to be replaced.
- (3) When a financial instruments business operator has performed a new margin transaction for their customer, the financial instruments business operator may have money or securities received as a security deposit from the customer for margin transaction appropriated for the amount of money to be received as a security deposit for the new margin transaction pursuant to the provisions of Article 4 to the extent corresponding to the amount calculated by deducting the sum of the amounts set forth in items (ii) and (iii) from the amount set forth in item (i):
- (i) the total amount of the security deposit received related to the customer's margin transaction;
  - (ii) the amount calculated by multiplying the agreed price of all securities related to the margin transaction referred to in the preceding item by 30 percent;
  - (iii) when the sum of the amount of money to be deposited and the amount set forth in the preceding item falls short of 300 thousand yen: the amount equal to the difference between the sum and 300 thousand yen.
- (4) The agreed price referred to in paragraph (1), item (ii), paragraph (2), item (i), sub-item (b) and item (ii), sub-item (b), item (ii) of the preceding paragraph and paragraph (3) of the following Article is the price calculated by deducting the price of the rights when all securities related to margin transaction include ex-right securities and the unsettled account is settled by deducting the price of the rights from the sale price or purchase price of the securities (the agreed

price referred to in paragraph (1), item (ii), paragraph (2), item (i), sub-item (b) and item (ii), sub-item (b) and item (ii) of the preceding paragraph (excluding cases in which the customer subscribes to the securities due to the expiry of rights and has not received delivery of money corresponding to the price of the rights) and the agreed price referred to in paragraph (3) of the following Article includes cases in which the customer agrees to perform the settlement with a financial instruments business operator).

- (5) A financial instruments business operator may have money or securities received as a security deposit from a customer for when-issued transaction withdrawn to the extent corresponding to the amount calculated by deducting the amount set forth in item (ii) from the amount set forth in item (i):
- (i) the total amount of the security deposit received related to the customer's when-issued transaction (limited to those for which security deposit has been received for the when-issued transaction; hereinafter the same applies in item (i), sub-item (a) and item (ii), sub-item (a) of the following paragraph and paragraph (7), item (i));
  - (ii) the amount calculated by multiplying the amount of the agreed price of all securities related to the when-issued transaction referred to in the preceding item (excluding those related to a cross trade and trade that opposes the cross trade, and those for which transfer has been completed; hereinafter the same applies in item (i), sub-item (b) and item (ii), sub-item (b) of the following paragraph, paragraph (7), item (ii)) by 30 percent.
- (6) Beyond what is prescribed in the provisions of the preceding paragraph, a financial instruments business operator may have money or securities received as a security deposit from a customer for when-issued transaction withdrawn only in the following cases:
- (i) when part of the securities related to when-issued transaction is to be transferred (limited to cases in which security deposit is to be withdrawn to the extent corresponding to the amount calculated by deducting the amount set forth in sub-item (b) from the amount set forth in sub-item (a)):
    - (a) the total amount of the security deposit received related to the customer's when-issued transaction;
    - (b) the amount calculated by multiplying the agreed price of all securities related to the when-issued transaction referred to in sub-item (a) (excluding those related to the when-issued transaction to be transferred) by 30 percent.
  - (ii) when part of the securities related to when-issued transaction is to be transferred, and the transfer is made on the condition of depositing as a security deposit for when-issued transaction, all securities purchased or money corresponding to the amount of sale price of securities sold by when-issued transaction subject to the transfer (limited to cases in which the

amount set forth in item sub-item (a) is equal to or more than the amount set forth in sub-item (b) after making the deposit):

- (a) the total amount of the security deposit received related to the customer's when-issued transaction;
  - (b) the amount calculated by multiplying the agreed price of all securities related to the when-issued transaction referred to in sub-item (a);
  - (iii) when all securities related to the when-issued transaction are to be transferred; or
  - (iv) when all or part of the money or securities is to be replaced.
- (7) When a financial instruments business operator has performed a new when-issued transaction for its customer, the financial instruments business operator may have money or securities received as a security deposit from the customer for when-issued transaction appropriated for the amount of money to be received as a security deposit for the new when-issued transaction pursuant to the provisions of Article 4 to the extent corresponding to the amount calculated by deducting the amount set forth in item (ii) from the amount set forth in item (i):
- (i) the total amount of the security deposit received related to the customer's when-issued transaction;
  - (ii) the amount calculated by multiplying the agreed price of all securities related to the when-issued transaction referred to in the preceding item by 30 percent.

#### (Calculation of Total Amount of Security Deposit Received)

- Article 8 (1) The total amount of the security deposit received prescribed in Article 3, item (ii), and paragraph (1), item (i), paragraph (2), item (i), sub-item (a) and item (ii), sub-item (a) and paragraph (3), item (i) of the preceding Article is calculated by deducting the following amounts related to margin transaction, and the total amount of the security deposit received prescribed in paragraph (5), item (i), paragraph (6), item (i), sub-item (a) and item (ii), sub-item (a) and paragraph (7), item (i) of that Article is calculated by deducting the following amounts related to when-issued transaction; provided, however, for the total amount of security deposit received prescribed in paragraph (2), item (i), sub-item (a) or paragraph (6), item (i), sub-item (a) of that Article, the amount set forth in item (i) for the margin transaction related to the unsettled account to be settled or the amount set forth in item (ii) for the when-issued transaction to be transferred is not to be deducted:
- (i) the amount corresponding to the sum of the amount of paper loss calculated by deducting the profit based on fluctuations in the market price of securities related to the customer's margin transaction from the loss, the amount of loss due to reversing trade and the commission fees, interest on borrowings,



- the borrowing fee for borrowed securities, and other fees that should be borne by the customer for the customer's margin transaction (in the case of making the customer pay the amount to be borne by the customer due to the expiry of rights of the securities sold by margin transaction, the amount to be borne is excluded in calculating the total amount of the security deposit received prescribed in paragraph (1), item (i) of the preceding Article);
- (ii) the amount corresponding to the sum of the amount of paper loss calculated by deducting the profit based on fluctuations in the market price of securities related to the customer's when-issued transaction and the profit from cross trade from the loss based on fluctuations in the market price of securities related to the customer's when-issued transaction and the loss from cross trade, the commission fees, and other fees that should be borne by the customer for the customer's when-issued transaction;
  - (iii) the amount corresponding to the amount of credit granted when credit is granted for the customer's margin transaction other than credit granted to the customer in the amount equal to the agreed price of the securities related to the margin transaction, or the amount equal to the amount of credit granted when credit is granted to the customer for the customer's when-issued transaction; or
  - (iv) when the customer's debt owed to the financial instruments business operator remains after the customer's unsettled account is settled or after the transfer of securities related to the when-issued transaction is completed (including the debt that causes a new debt/credit relationship with the financial instruments business operator as borrowings or other debts).
- (2) In calculating the total amount of the security deposit received prescribed in the preceding paragraph, notwithstanding the provisions of Article 6, the substitute price when all or part of the security deposit related to the customer's margin transaction or when-issued transaction is substituted by securities is to be equal to the market value of the securities on the day before the calculation date multiplied by the rate prescribed in that Article.
- (3) The profit or loss based on fluctuations in the market price of securities related to the customer's margin transaction or when-issued transaction referred to in paragraph (1) is the gain or loss arising from the difference between the agreed price of the securities and the value appraised at the market value of the securities on the day before the calculation date (when the market value of the day before the date does not exist, the market value on the nearest date).
- (4) If a profit has arisen due to a reversing trade, when money corresponding to the profit is to be received as a security deposit from a customer related to margin transaction at the time of settling the unsettled account due to the reversing trade, the total amount of security deposit received prescribed in

Article 3, item (ii) and paragraph (1), item (i), paragraph (2), item (i), sub-item (a), item (ii), sub-item (a) and paragraph (3), item (i) of the preceding Article may be calculated by adding the amount corresponding to the amount of profit.

- (5) When the total amount of security deposit received prescribed in paragraph (3), item (i) of the preceding Article is calculated by adding the amount corresponding to the amount of profit referred to in the preceding paragraph pursuant to the provisions of that paragraph, money corresponding to the profit amount is deemed to be money received as a security deposit from a customer related to margin transaction, and the provisions of that paragraph apply.

(Limit of Withdrawal of Calculated Amount of Profit)

Article 9 (1) If an amount to be calculated as benefit has arisen based on fluctuations in the market price of securities related to the customer's margin transaction or when-issued transaction, a financial instruments business operator may not deliver money or securities corresponding to the amount to be calculated as benefit to the customer or appropriate the money or securities to the amount of money required to be received as a security deposit pursuant to the provisions of Article 4.

- (2) If a customer has performed a cross trade, a financial instruments business operator may not deliver money or securities corresponding to the amount to be calculated as benefit by performing the cross trade to the customer before completing the cross trade or the transfer in the cross trade, or appropriate the money or securities to the amount of money to be received as a security deposit pursuant to the provisions of Article 4.

(Transactions That Do Not Clearly Indicate That Margin Transaction is To Be Performed)

Article 10 (1) For transactions which do not clearly indicate that the customer is to perform a margin transaction at the same time as placing an order for the purchase and sale of securities, a financial instruments business operator must not perform a transaction that settles the securities related to the sale or purchase by the transactions by the customer with an opposing sale or purchase of the securities.

- (2) The provisions of the preceding paragraph do not apply to the case prescribed in Article 2, paragraph (2).