

Appendix 2

Outline of the amendment of the Financial Instruments and Exchange Act, etc. in 2008

<Background>

- Provision of good opportunities for investment of household financial assets
- Supply of funds for growth of domestic and foreign companies
- Generation of high added value by the financial services industry

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Need to strengthen the competitiveness of Japan's financial and capital markets

I. Provision of various opportunities for investment and fund-raising

1. Creation of markets for professional investors

- Creation of exchange markets that limit participants to professional investors (specified investors)
 - Exemption of securities for professional investors from current disclosure regulations; establishment of a simple framework for providing information to professional investors (e.g. providing information at least once a year)
 - Restrictions on resale to general investors
 - Allowing delegation of a part of self-regulating businesses of financial instruments exchanges pertaining to markets for professional investors, to persons other than self-regulating juridical persons
- Ensuring effectiveness of regulations in markets for professional investors
 - Establishing the following provisions for cases such as where the provided information was false:
 - Civil damage compensation provisions
 - Administrative money penalty system
 - Criminal penalty provisions
 - Exclusion of securities that are not appropriate in light of investor protection (unlisted securities for professional investors that are not subject to self-regulation by financial instruments exchanges) from the scope of proprietary trading systems (PTSs)

2. Diversification of exchange-traded funds (ETFs)

- Introduction of investment trusts that are transferable to commodities in kind
 - Addition of investment trusts that invest in commodities or related derivatives to the exceptions for money trusts
- Review of application of the regulations concerning investment trusts that invest in commodity futures
 - Exclusion of investment management firms who have obtained approval for the business of managing investment trusts that invest in commodity futures from the regulations concerning commodities investment advisory business
- Review of the scope of businesses of financial instruments exchanges
 - Addition of the business of opening markets related to emission trading to the side business for financial instruments exchanges

II. Provision of diverse and high-quality financial services

1. Revamp of the firewall regulations among securities firms, banks and insurance firms

- Abolition of the ban on concurrent posts among securities firms, banks and insurance firms

2. Establishment of systems for managing conflicts of interest

- Establishment of systems for managing conflicts of interest by securities firms, banks and insurance firms
 - Implementation of proper information management and development of an appropriate internal control framework aimed at preventing customers' interests from being unfairly harmed in association with trading by the firm itself or by a group company

3. Broadening of the scope of businesses permitted to banking and/or insurance groups

- Review of the scope of businesses of banks' sibling companies
 - Introduction of a framework that allows banks' sibling companies in the same banking groups with adequate risk management to engage in spot commodity

transactions, etc.(subject to the FSA's authorization)

- Review of the scope of businesses of banks and insurance firms
 - Allowing banks and insurance firms to engage in investment advisory businesses, as well as emission trading.
- Broadening the scope of exemption to the restrictions on holding shareholder voting rights applied to banking and/or insurance groups
 - Broadening the scope of exemption to the restrictions on holding shareholder voting rights applied to banking and/or insurance groups, from the viewpoint of further promoting corporate restructuring
- Introduction of a framework for agency and intermediary operations on behalf of foreign banks
 - Allowing banks to provide agency/intermediary service for businesses of foreign banks within the same banking group
 - Notification required in cases where the entrusting foreign bank has obtained the FSA's authorization as a subsidiary company, etc. of a bank (the FSA's authorization required in any other cases)
 - Imposition of an obligation to make explanatory documents on the business and property of the entrusting foreign bank available to the public, an obligation to provide explanations for customer protection, an obligation to keep books etc.

III. Creation of fair, transparent and reliable markets

1. Review of the administrative monetary penalty system

- Raising the amount of administrative monetary penalties
 - Insider trading
 - Current provision:* based on the closing price on the day following the day of publication of insider information
 - *Proposed amendment:* based on the highest price during the two-week period after the publication
 - Market manipulation

Current provision: profits and losses realized by sales and purchases during the one-month period after the violation

→*Proposed amendment:* based on the highest price during the one-month period

- Dissemination of unfounded rumors, trading by fraudulent means

Current provision: profits and losses realized by sales and purchases during the one-month period after the violation

→*Proposed amendment:* based on the highest price during the one-month period

- False statements in offering disclosure documents

Current provision: 1% of the total offering amount (2% in the case of shares)

→*Proposed amendment:* 2.25% (4.5% in the case of shares)

- False statements in ongoing disclosure documents

Current provision: 3/100,000 of the total market value or 3 million yen

→*Proposed amendment:* 6/100,000 of the total market value or 6 million yen

➤ Review of violations subject to administrative monetary penalties

- False statements in or failure to submit tender offer bid disclosure documents: 25/100 of the total purchase amount
- False statements in or failure to submit large shareholding disclosure documents: 1/100,000 of the total market value
- Market manipulation involving wash sales: Based on the highest price during the one-month period after the violation
- Illegal market stabilization: Difference between the average price during the stabilization and the average price during the one-month period after the violation
- Failure to submit offering disclosure documents: 2.25% of the total offering amount (4.5% in the case of shares) (same as the case of false statements)

- Failure to submit ongoing disclosure documents: Amount equivalent to the audit fee
- System for increased administrative monetary penalties
 - Increasing the amount of administrative monetary penalties to 150% in cases where a person who has been subject to an administrative monetary penalty in the past five years has committed another securities violation
- System for reduced administrative monetary penalties
 - Reducing the amount of administrative monetary penalties by half in cases where any of the following acts of violation has been reported prior to an investigation by the authorities, from the viewpoint of promoting the establishment of compliance systems and preventing recurrence:
 - Insider trading in sales and purchases of treasury stock
 - False statements in offering disclosure documents and ongoing disclosure documents
 - Failure to submit a large shareholding report
- Extension of the statute of limitation
 - Extension of the statute of limitation from the current three years to five years
- Review of sanction hearing procedures
 - Respondent required to file notification of the place to which documents pertaining to the sanction hearing procedures should be serviced, similar to the system under the Code of Civil Procedures
 - Clarification that an interested person may request access to case records, except in cases where there are justifiable grounds

2. Restriction on public access to disclosure documents for which a correction order has been issued

- Introduction of a framework in which, as an exception, the authorities may decide not to make available for public disclosure documents for which a correction order has been issued

3. Delegation of authority for filing applications for prohibition or suspension of acts of violation

- Delegation of the authority held by the Commissioner of the Financial Services Agency to file applications to the courts for prohibition or suspension of acts of violation, to the Securities and Exchange Surveillance Commission

IV. Effective date

The amendments shall come into effect from a date to be specified by a Cabinet Order, within six months from the day of promulgation. (However, the amendments regarding the revamp of firewall regulations and establishment of systems for managing conflicts of interest [II. 1 and 2] shall come into effect from a date to be specified by a Cabinet Order, within one year from the day of promulgation.)