

16 August 2010

Proposal for the Establishment of Japanese and Asian Versions of the Eurobond Market
Proposal for the Establishment of an “Asian Inter-Regional Professional Securities Market
(AIR-PSM)” and a “PSM-J” as its Japanese Domestic Counterpart

Shigehito Inukai

Professor, Faculty of Law, Waseda University

Chairperson, Asian Capital Market Legislation Research Group, Waseda University GCOE

Abstract

While the Asian region boasts abundant savings and demand for financing is brisk, in numerous instances the domestic financial intermediary systems of the nations of the region, in particular capital markets able to provide direct financing, are underdeveloped, a situation which presents grave difficulties for pension funds and other Asian institutional investors.

We must develop cross-border financial functions specific to the Asian region in order to support intra-regional economic growth through the efficient circulation of Asian savings within the region in a form that adds high value. What is essential for Asia is the development of a cross-border market with standards of business practice identical to those pertaining in global markets, which allows a level of freedom similar to that available in the Eurobond market, and which is unafraid of innovation.

As the first stage in achieving this goal, we must enable the listingⁱ of bonds and other financial instruments on one of Japan’s stock exchanges, and create a Japanese domestic securities market for professional investors (the PSM-J) based on the disclosure standards of the exchange. Such a market would be positioned as a Japanese version of the Eurobond market.

In the second stage, with this market as the core, it will be necessary to create an Asian Inter-Regional Professional Securities Market (the AIR-PSM), a market with a high level of freedom that spans the entire region. This market would, in its turn, represent an Asian version of the Eurobond market.

(Note) This paper is based on the content of a proposal published on April 20, 2010 by the Asian Capital Market Legislation Research Group of the Waseda University GCOE,

and also incorporates information resulting from later research. The author bears sole responsibility for the organization of these materials in this paper. For details of the original proposal, see footnote v at the end of the paper.

Research group: Asia Debt Listing Study Group, Asian Capital Market Legislation Research Group, Waseda University GCOE;

Cooperation: Capital Markets Association for Asia (CMAA) / Japan Securities Dealers Association (JSDA)

Contents

I. Background	5
1. The status of cross-border finance in the Asian region and the necessity for the creation of a regional bond market	5
2. The development of the European international bond market (Eurobond market) and Asia's dependence on the market	5
3. The importance of Japan's stance and Japan's role	6
4. Waseda University's proposal for the creation of professional securities markets in Japan and the Asian region	7
Graph and table: Scale of domestic bond markets of nations and regions of Asia	8
II. Purpose of creation of an Asian Inter-Regional Professional Securities Market (AIR-PSM)	9
1. Significance of creation of an Asian counterpart of the Eurobond market (AIR-PSM)	9
2. Meaning of AIR market and participants in projected new markets (PSM-J/AIR-PSM)	9
3. Twin targets for market creation (PSM-J/AIR-PSM) and significance	10
4. Significance of issuing international bonds denominated in Asian currencies	11
III. Principles to be embodied in an AIR-PSM	12
1. Range of application of domestic securities regulations	12
2. Accreditation of professionals / Definition of professionals	12
3. Relation of new markets to securities regulations	13
4. Principle of disclosure and disclosure rules for professional investors	13
5. Underwriting intermediaries	13
6. English-language disclosure	13
7. Selection of domestic markets or new market	13
8. Accounting standards	13
9. Taxation system	14
IV. The existence of high ethical standards as a condition for the secure establishment of the new markets (PSM-J/AIR-PSM)	14
V. Timetable for the establishment of the new markets (PSM-J/AIR-PSM) and special considerations	15
1. First stage	15
2. Second stage	16

3. The importance of dialogue within the Asian region	16
4. Concerning the relaxing of constraints in domestic foreign exchange regulations	16
5. Study of best approach to intra-regional payment and settlement for cross-border transactions	17
6. The importance of the ABMF.....	17
7. The importance of sending a message from Japan.....	17
VI. Conclusion	18

I. Background

1. The status of cross-border finance in the Asian region and the necessity for the creation of a regional bond market

Asia's market economies act as the "world's factory," and are making a significant contribution to the global economy. However, against a background of increasing international flows of capital, the contribution made by cross-border financial functions in the Asian region to Asia and the world is extremely low in comparison to its vigorous manufacturing industry and trade. Because of this, pension funds and other institutional investors are facing grave difficulties in Asian countries.

It is essential that we develop cross-border financial functions specific to the Asian region in order to support intra-regional economic growth through the efficient circulation of Asian savings within the region in a form that adds high value.

Since the Asian financial crisis in 1997, Asian nations have worked to develop their domestic financial and capital markets, chiefly on the basis of the Asia Bond Market Initiativeⁱⁱ, and spectacular progress has been made.

However, a consideration of the state of play within the region reveals that domestic financial intermediary systems, in particular capital markets that are able to provide direct financing, remain underdeveloped in many countries, and there is certainly margin for further improvement. With the exception of a small number of nations such as Japan, the scale of securities markets in Asian countries remains small (see graph and table on page 8).

In addition to further efforts in developing the domestic markets in individual Asian nations, this situation necessitates cross-border initiatives that transcend these domestic efforts. The development of a cross-border wholesale international securities market targeting professionals – an Asian Inter-regional Professional Securities Market (AIR-PSM) – that is able to satisfy regional needs that cannot be met by domestic markets is both a compelling necessity and a project of great significance.

2. The development of the European international bond market (Eurobond market) and Asia's dependence on the market

In Europe, the development of the Eurobond market, an off-shore wholesale European international securities market targeting professionals,ⁱⁱⁱ over the past several decades has enabled issuers within the region to satisfy long-term funding needs that could not be met by domestic markets, and has increased the range of opportunities available to institutional investors.

By contrast, up to this point, cross-border financial functions in the Asian region have, to a considerable degree, relied upon a European offshore wholesale securities market (a Eurobond market financing system involving the cooperation of Britain and the three Benelux countries, and predicated on the utilization of financial institutions in London's financial district and Europe's system for the settlement of international securities (the International Central Securities Depositories, or ICSD)).

Wholesale financial and capital markets essentially play the role of fulfilling cross-border financial intermediary functions as markets with global characteristics in which only specialists participate.

However, to date the majority of the domestic capital markets of Asian countries have been isolated from foreign markets by a variety of impediments, including laws and regulations (disclosure regulations, etc.), foreign exchange regulations, the related taxation systems, and country-specific market practices, and it has been difficult for domestic markets in the region to incorporate the standard practices and the innovations of global markets. As a result, there has been no fully-fledged development of cross-border financial intermediary functions in the Asian region.

Given this, up to this point in time no clear and concrete overarching design for cross-border wholesale financial and capital markets and market infrastructure to function as an essential region-specific funding mechanism has been formulated in the Asian region.

3. The importance of Japan's stance and Japan's role

Japan's initiative will be an important factor in building new markets and market infrastructure in the Asian region.

Possessing savings that can be directed towards international investment and home to numerous corporate groups expanding their activities in the Asian region, in addition to possessing security market mechanisms for issuance, distribution and settlement, Japan must actively take the initiative in

- (1) Creating and making available a venue and a system for the compilation and presentation of information (disclosure information, price, etc.) concerning investment-grade securities and other financial instruments in the Asian region (i.e., a listing place); and
- (2) Establishing a high-quality and trustworthy market environment in the Asian region, consistent with the development of a market with a high degree of integrity (i.e., displaying the quality and internal consistency appropriate to a market) and which enables the available qualified investment products to be

increased.

Happily, in the past several years the impediments isolating the domestic market from foreign markets have been removed in Japan through the efforts of policymakers and market participants.

In 2008, the Financial Services Agency revised the Financial Instruments and Exchange Act as part of its plan to enhance the competitiveness of Japan's financial and capital markets, establishing the legal framework for markets oriented towards professional investors (a private offering system for designated investors and designated financial instrument exchange markets). This provides the legal framework for the establishment of a new securities market, one not predicated on legal disclosure, corresponding to the U.S. Rule 144A market.^{iv}

In addition, the taxation system was reformed in fiscal 2010 to reduce the tax on revenues from domestic bonds held by non-residents to zero.

Here we see the opportunity to put an end to the state of isolation of Japan's domestic markets.

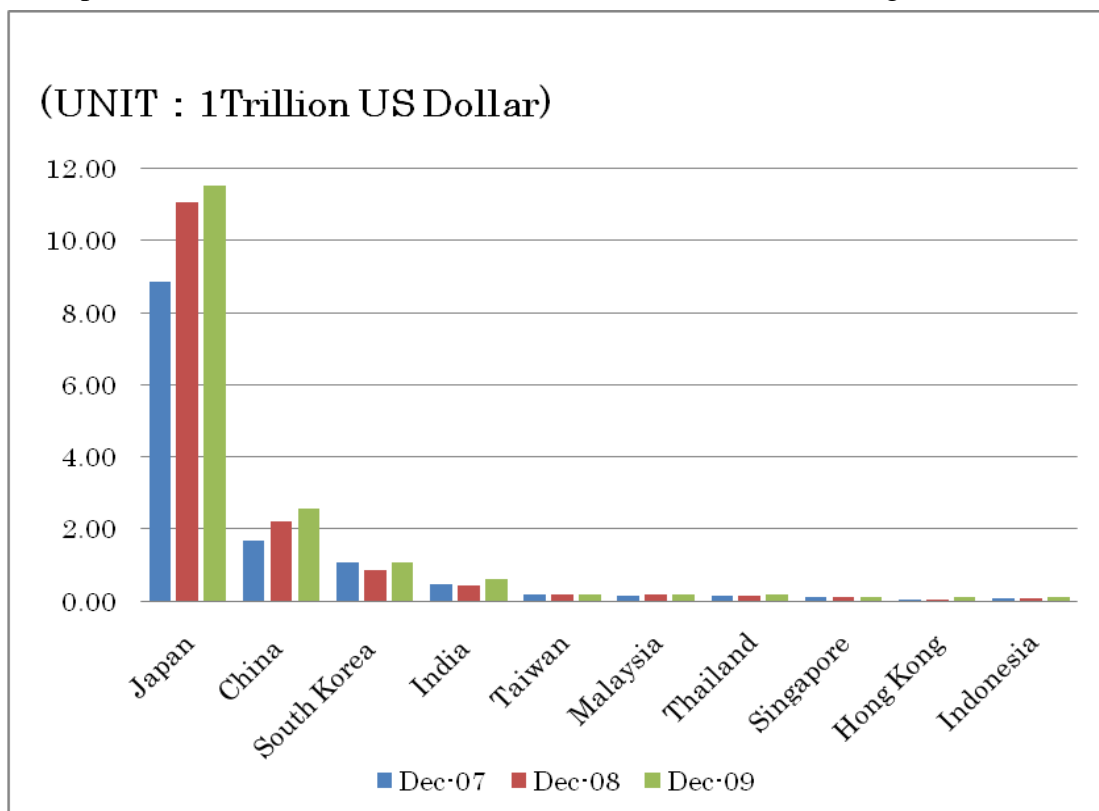
Having done away with these twin constraints in the legal and taxation systems that have conceptually separated domestic bonds from Eurobonds and other international bonds in Japan, if appropriate rules are provided for disclosure and registration (listing) in future, the necessity for separating domestic and international bonds will decline, and we will witness a radical improvement in the mobility and the convenience of the Japanese corporate bond market.

4. Waseda University's proposal for the creation of professional securities markets in Japan and the Asian region

A team of which the author is the leader is engaging in research concerning Asian capital market legislation at the Waseda University GCOE Research Center for Corporate Systems and Law (Director: Professor Tatsuo Uemura). Taking the recent systemic reforms that have done away with the restrictions that separated Japan's domestic markets from foreign markets as a favorable opportunity, in February 2010 we convened the Asian Debt Listing Study Group with the participation of front-line market personnel, lawyers, researchers, and representatives of government. For three months, the Study Group intensively considered a grand vision for Japanese and Asian versions of the Eurobond market and outlined the detailed design of the new markets. The results

of these considerations, including targets for the process of realization of the new markets, have been published. However, details of the design of the Japanese market^v have been omitted from the present translated overview).

Graph and table: Scale of domestic bond markets of nations and regions of Asia



(Unit: 1 Trillion U.S. dollar)	End of 2007	End of 2008	End of 2009
Japan	8.86	11.05	11.52
China	1.69	2.21	2.57
South Korea	1.08	0.86	1.09
India	0.46	0.43	0.60
Taiwan	0.17	0.18	0.18
Malaysia	0.16	0.17	0.18
Thailand	0.14	0.14	0.18
Singapore	0.10	0.10	0.12
Hong Kong	0.05	0.05	0.10
Indonesia	0.09	0.07	0.10

(Source: BIS, ADB – Asia Bonds Online website, Taiwan Financial Supervisory Commission)

II. Purpose of creation of an Asian Inter-Regional Professional Securities Market (AIR-PSM)

1. Significance of creation of an Asian counterpart of the Eurobond market (AIR-PSM)

Learning from the European offshore wholesale international securities market in order to establish an Asian counterpart of the Eurobond market with a high level of convenience and low restrictions on participation by issuers in regional countries and extra-regional issuers – an Asian Inter-regional Professional Securities Market (AIR-PSM) (also incorporating the domestic bond markets of individual regional nations, in which investments can be conducted by non-residents) – would ease the restrictions on participation by institutional investors in other Asian nations and from outside the region that have previously existed in Asia’s domestic markets, and would provide a supplement to regional domestic financial and capital markets and enhance regional financial intermediary functions.

By this means, it would be possible to increase the competitiveness of financial and capital markets in the region as a whole.

2. Meaning of AIR market and participants in projected new markets (PSM-J/AIR-PSM)

We have given the market which we are proposing the appellation Asian Inter-Regional Professional Securities Market (AIR-PSM), but we would like to suggest that the market should be known as the “AIR market.”

At the same time as being formed from the first letters of “Asian Inter-Regional,” the name “AIR” is also expressive of our purpose of creating a free, high-liquidity wholesale market that will be shared in common in the “air” of the domestic markets of Japan, South Korea, China and the other Asian nations.

With regard to the investors in the new market, we envision it as a high-liquidity securities market exclusively for professional investors, in which large numbers of market makers will participate. We seek to create a wholesale market for professional investors that will provide the Asian region’s first high-quality market infrastructure that is highly convenient and easy to access for issuers, intermediary institutions, etc.

In addition, it is essential that the new market should possess a structure that makes it open to other markets and market participants throughout the world.

3. Twin targets for market creation (PSM-J/AIR-PSM) and significance

As concrete targets, we propose the creation of

- (1) A Japanese domestic professional securities market (PSM-J; a professional public issue market); and
- (2) A regional cross-border international securities market targeting professional investors (AIR-PSM).

Both of these markets are to be limited to professional investors and professional market participants.

The first stage of the creation of these markets will be the establishment of the PSM-J, representing part of the AIR-PSM, via listing on one of the Japanese stock exchanges based on the disclosure standards of the exchange. The significance of this may be summarized as follows:

- (1) The convenience of the professional securities market will be increased for Japanese and Asian issuers and holders of corporate bonds by reducing the blackout period in Japan, simplifying or omitting issuance procedures, omitting procedures in the secondary market, and reducing procurement-related costs, including disclosure costs.
 - ⇒ Establishment of public issue market for professional institutional investors (PSM-J) that eschews the legal disclosure requirements applied to retail investors
- (2) Expansion and diversification of funding sources (greater distribution of debt portfolios)
 - ⇒ A professional issuing market employing English-language disclosure can be created, increasing convenience for overseas issuers. In addition, by adding Eurobonds and a Euro MTN Programme to the PSM-J eligibility requirements on the Japanese stock exchange, we will create a Euro Asia offerings market similar to the U.S. Rule 144A option.
 - ⇒ By limiting market participants to institutional investors and other professionals, it will be possible to ease the obligation of disclosure for issuing companies, and thus expand opportunities for funding for Japanese and regional issuers.
- (3) Disclosure standards for international bonds targeting professional investors issued in Japan can be established for Japanese and Asian professional investors and professionals throughout the world.

⇒ Enhancement and greater transmission of issuer information, securities information and price information with the Japanese stock exchange (listing place) as the core.

(4) For professional investors throughout the world, smoothing of the process of investment in Japan and other Asian nations, and expansion of investment opportunities.

⇒ Realization of Japanese version of the Eurobond market (PSM-J) and Asian version of the Eurobond market (AIR-PSM).

(5) Establishment of a new main market (AIR-PSM) able to supplement the domestic markets of Asian nations still in a process of development and to substitute for the existing Japanese domestic bond market.

4. Significance of issuing international bonds denominated in Asian currencies

In order to promote the stable development of an Asian regional capital market as the Asian economies globalize further in future, it will be desirable to ensure that exchange rate fluctuations do not occur during inflows and outflows of capital by issuers.

From this perspective, it will be important for corporate groups and institutional investors in Asian countries to have the ability to procure and manage funds in the currencies of their own nations. In other words, it will be necessary to establish an Asian international bond market (AIR-PSM) to offer international corporate groups seeking to expand their business in Asian nations the choice of procuring funding in the specific Asian currencies necessary for their business activities.

However, with regard to the use of major Asian currencies as the currency of denomination of the issued bonds, leaving aside the Japanese yen, the Singapore dollar, and the Hong Kong dollar, there are even restrictions on the use of the Korean won; and while individual circumstances may differ, we have no choice but to admit that the overall situation would make it difficult to issue bonds denominated in other Asian currencies.

Nevertheless, the parties involved in the creation of these new markets must not accept these difficulties as given and abandon their efforts, but rather persevere in introducing improvement by means of continuous dialogue within the region.

For example, assuming that for a nation within the region, debts and credits denominated in the national currency exist within a scope in which they can be entirely tied together, the situation may be considered not to violate the innate purpose of that

nation's exchange rate regulations. Given this, it could be made possible, on condition of a specific foreign credit framework (for example Japanese), for international bonds to be issued denominated in the currency of the nation in question (including domestic bonds able to be invested in by professional non-residents). These would include issues by a specific range of residents of the nation (including companies established in the nation by Japanese corporate groups) and Japanese companies, etc. which are non-residents. This is one option that might be considered.

III. Principles to be embodied in an AIR-PSM

Following the establishment of a Japanese domestic professional market (PSM-J) as the first stage, we seek to enable the creation of a single fully-fledged international securities market (AIR-PSM) throughout the Asian region, either through expansion of the PSM-J in the region, or by promoting the same process of market creation in other regional nations.

We believe that such an Asian professional securities market should embody the following principles:

1. Range of application of domestic securities regulations

Like the U.S., Japan and the other nations of the region will not apply their domestic securities-related regulations outside the region (i.e., the principle of territoriality will be respected without alteration).

2. Accreditation of professionals / Definition of professionals

Only professional investors will participate in the new market. In Japan, participants will be restricted to professional investors (Designated Investors) as defined by the Financial Instruments and Exchange Act that went into effect in 2007, and we will ensure against resale (transfer of securities) to retail investors.

Determination and accreditation of professional investors in each of the nations of the region will be the responsibility of the regulatory organizations or financial authorities in that nation. Within the scope of recognition of professionals, market participants including issuers and investors will be coordinated and determined using a principle-based approach (principle of compliance, etc.).

3. Relation of new markets to securities regulations

Domestic securities-related regulations for retail investors, such as legal disclosure regulations, will not apply in the new market.

4. Principle of disclosure and disclosure rules for professional investors

The question remains as to the extent of disclosure requirements for the professional market. On this point, it will be necessary for the stock exchanges, financial institutions including intermediary institutions, issuers, institutional investors and other market participants and researchers to formulate shared voluntary rules.

5. Underwriting intermediaries

Securities dealers authorized by the regulatory and supervisory bodies in each nation concerned will function as underwriting intermediaries. (In the case of securities dealers in Japan, for example, these will be dealers registered with the Financial Services Agency).

6. English-language disclosure

The market that we are seeking to establish will employ English-language disclosure exclusively, and on principle will utilize the offering circulars that were a feature of the European international offshore wholesale bond market. This Asian market for professional investors will be styled upon the European international offshore wholesale bond market in which self-regulation is the norm and securities firms are relatively free to solicit professional investors.

7. Selection of domestic markets or new market

Despite the fact that the approach adopted will differ from country to country, in principle the new market for professional investors (AIR-PSM) will coexist with domestic markets. Issuers and professional investors will be free to choose whether to use the domestic markets for retail investors or the AIR-PSM.

The introduction of an MTN Programme, etc. will make the new market the main market, and it can be expected to be a highly trustworthy market that is convenient for users to employ continuously.

8. Accounting standards

The new market will basically employ international accounting standards, but other generally-accepted accounting standards will also be recognized. Whichever accounting

standards are used, the fact that the market is a professional market will be the absolute precondition.

9. Taxation system

It is expected that the new market will not levy standard domestic withholding taxes on interest earned on bonds held by non-residents. It is also expected that there will be no tax levied when bonds are issued, such as stamp duty.

IV. The existence of high ethical standards as a condition for the secure establishment of the new markets (PSM-J/AIR-PSM)

The existence of high principle-based ethical standards will be an essential condition in order to ensure the quality (integrity) necessary to Asian markets predicated on the involvement of professional market participants.

In order to establish professional bond markets in Japan and the Asian region, and for those markets to receive public support, a high level of quality among all market participants, fair rules, a level of self-regulation able to ensure the trustworthiness of the markets, and ease of access will all be necessary.

This cannot rely solely on laws and regulations, but will also require the formulation of appropriate voluntary rules of procedure and the establishment of various forms of systemic infrastructure.

Given that its securities regulations and market systems are probably the most detailed and mature in the region, Japan should play a leading role in this process.

Japan is the first country in the world to have stipulated fair price formation as the intent and purpose of its basic law in this field, the Financial Instruments and Exchange Act.

Where Japan is therefore best-positioned, or potentially best-positioned, for the formulation of systems related to the new regional market is in taking up the duty of ensuring the functions of a high-quality capital market with fair price formation for professional investors, and to take the initiative before other Asian nations or listing places in formulating systems and practices such as voluntary rules for the new market, taking into consideration the best approach to responsibilities including fair price making and market making.

In future, we expect that the formulation and establishment of market-related systems and practices such as unique voluntary rules for market participants in the Asian region

will proceed under Japan's initiative.

V. Timetable for the establishment of the new markets (PSM-J/AIR-PSM) and special considerations

1. First stage

The target for the first stage of the establishment of the new markets, to be achieved in fiscal 2010, will be the establishment of a Japanese securities market for professionals (PSM-J), with disclosure and registration with a Japanese stock exchange (listing) as the precondition, and the commencement of operation of the market (issuing and offering) with securities transferred through the Japan Securities Depository Center, Inc.

This is to say that to commence the process, a Japanese domestic market (the PSM-J) exclusively targeting highly-specialized professional investors and market participants will be established. This new market will function as a center for disclosure and registration (listing) on a Japanese stock exchange using Japanese disclosure standards and for the accumulation of price information, becoming a comprehensive investment information center for the region. The PSM-J will be a domestic bond market, but will also form part of the Asian cross-border international bond market (the AIR-PSM).

By excluding ordinary and amateur investors such as private individuals and catering exclusively to professional investors (institutional investors, etc.), this new Japanese market will be able to waive the legal obligation of disclosure applied to retail investors. The blackout period will be reduced, issuance procedures will be simplified, procedures will be omitted in the secondary market, and procurement-related costs, including disclosure costs, will be reduced.

By these means, the mobility and convenience of the market will be increased, and it will be able to function as a Samurai bond market using English-language disclosure which will be convenient for overseas issuers.

In addition, if Eurobonds and Euro MTN Programs are established as conditions of eligibility for the PSM-J on the Japanese exchange, it will be possible to create a EuroAsia offering market resembling the U.S. Rule 144A option, which will also encompass securities that are not subject to transfer through the Japan Securities Depository Center, Inc.

This will result in smoother access to Japanese professional investors for non-Japanese issuers in the Asian region, and will establish a PSM-J/AIR-PSM that will

have a Japanese stock exchange at its core as the first stage. Japan has no exchange rate control in practice, and its investor base is comparatively well-developed.

Seizing the opportunity to remove the twin restrictions of disclosure regulations and the taxation system, it will be important for Japan to take the initiative in developing this type of market.

2. Second stage

Following the first stage, the creation, through the establishment of the PSM-J, of a PSM-J/AIR-PSM with a Japanese stock exchange at its core, in the second stage, we can expect other nations in the region to push ahead with market initiatives, with Japan's initiatives providing the de facto standard.

The establishment of an AIR-PSM, predicated upon disclosure and registration on disciplined regional stock exchanges with a Japanese exchange at the forefront, is a desirable thing for the region.

3. The importance of dialogue within the Asian region

Strategic dialogue concerning the removal of restrictions in the form of domestic foreign exchange regulations, taxation systems, disclosure regulations, trading practices, etc. will be important in achieving the expansion of the new market.

Following the establishment of the PSM-J/AIR-PSM with a Japanese stock exchange as its core, it will be vital, under Japan's initiative, to rapidly push ahead with public and private sector dialogue between policymakers and market participants throughout the Asian region, and to promote strategic dialogue concerning the removal of the limitations represented by each nation's foreign exchange regulations, taxation system, disclosure regulations, trading practices, etc.

4. Concerning the relaxing of constraints in domestic foreign exchange regulations

In the future, the creation of debt securities that contribute to the reduction of foreign exchange risk by enabling regional nations and corporate groups holding assets or bonds denominated in the currency of a regional nation to issue international bonds denominated in the same currency will be a further possibility.

For example, we can envision efforts to enable the issuance, on condition that they remain within a specific scope of foreign credit for Japan (in which debt and credit are in balance), of international bonds (including issues conducted by Japanese non-residents falling within a specific scope) denominated in the currencies of Indonesia, Thailand, Malaysia and other ASEAN countries in addition to the currencies

of South Korea and China.

5. Study of best approach to intra-regional payment and settlement for cross-border transactions

Commencing with a study of the best approach to intra-regional payment and settlement for cross-border transactions via the Japan Securities Depository Center, Inc., etc., from 2011 onwards we envision a process of dialogue with the relevant organizations in each of the nations of the region in turn.

6. The importance of the ABMF

While Japan's initiative will be important, in tandem with this it will also be desirable to rapidly establish the ASEAN+3 Bond Market Forum (ABMF), the public and private sector forum scheduled to be launched within the ABMI framework, and to push ahead with dialogues and studies concerning the status of foreign exchange controls, taxation systems, disclosure regulations, and transaction practices in each of the nations of the region, how best to remove the restrictions that these generate, and the best approach to cross-border payment and settlement.

By lowering the barriers to participation by foreign issuers and securities intermediary institutions in public offering markets targeting professional investors in a number of nations in the region, these markets will collectively function as an Asian international bond market for professional investors (AIR-PSM), and when this happens, the AIR-PSM will have been realized as a region-wide entity.

7. The importance of sending a message from Japan

We believe that it is vital for Japan to continue sending the message to other Asian nations that it recognizes and places considerable emphasis on the importance of the creation of a regional cross-border bond market for professionals, and that it seeks to realize such a market.

The inclusion of the goals of creating a professional bond market in Japan that rivals the Euro market and of fostering an Asian bond market in the financial section of the New Growth Strategy^{vi} approved by the Cabinet on June 18, 2010 is based on this perspective.

VI. Conclusion

In collaboration with issuers, institutional investors, the securities industry, stock exchanges, and related government ministries and agencies, the Asian Capital Market Legislation Research Group, with the voluntary participation of a large number of market participants, researchers, and lawyers, is conducting research on a fundamentally private sector basis to design a new wholesale bond market for professional investors, and to determine the best approach to the formulation of new rules. This proposal emerges from this research.

Our goal is to establish a wholesale bond market for professionals in which the quality of the market itself is managed more carefully, which possesses a higher degree of freedom, and in which participants are self-regulating.

We will be pleased if our intention to establish fully-fledged wholesale main markets in Japan and the rest of Asia, leaving markets for retail investors out of consideration, is understood by the readers of this report.

This proposal has been incorporated in the New Growth Strategy formulated by the Japanese government, and we greatly hope that this will function as a trigger for the rapid development of Japanese and regional wholesale financial and capital markets with the cooperation of specialists from the region.

Our ardent wish is that, based on this new vision of the creation of a Japanese and Asian version of the Eurobond market, we can see the advent, even slightly earlier, of a new era in which we possess regional financial and capital markets that unite Japan and the other Asian nations, are open to the rest of the world, and inspire confidence in their users.

Project coordinator: Shigehito Inukai

Graduated from Faculty of Law, Keio University, in 1975. Joined Mitsubishi Corporation following graduation.

Took professorship in Faculty of Law, Waseda University, in 2008.

Chairperson, Asian Capital Market Legislation Research Group, Waseda University GCOE. Joint Chairperson, Debt Listing Research Group, Waseda University GCOE. Executive President, Capital Markets Association for Asia (CMAA).

Inquiries concerning this paper can be directed to: Professor Shigehito Inukai, Faculty of Law, Waseda University,
1-6-1 Nishi-Waseda, Shinjuku-ku, Tokyo, 169-8050

Tel & Fax (Direct): +81-3-(0)3-3202-2472 Mobile: +81-3-(0)80-3360-7551

E-Mail: shige.inukai@river.dti.ne.jp Waseda GCOE HP : <http://www.globalcoe-waseda-law-commerce.org/>

-
- ⁱ In this context, “disclosure and registration” refers to the filing of the *designated securities information* specified by Japan’s Financial Instruments and Exchange Act with the designated financial instrument exchange market (“registration.” Termed “listing” in the Act) for consideration by professional investors.
- ⁱⁱ The Asian Bond Markets Initiative championed by ASEAN+3 (Japan, China, and South Korea) finance ministers. The purpose of this initiative is to develop Asian bond markets which will enable the issuance of bonds denominated in Asian currencies, in order to direct the enormous savings held in the region into investments to promote medium- and long-term growth.
- ⁱⁱⁱ The off-shore wholesale European international bond market targeting professionals refers to the offshore wholesale European international bond issue and secondary market (the Eurobond market until 1999) that was the single successful professional market in the world until 1999, when the EU came into effect (introduction of the euro in January). In terms of the provision of financial market functions for professional investors, for many years Europe enjoyed the benefits of a cross-border market in this offshore wholesale market.
- ^{iv} The Rule 144A market is a market exempted from disclosure for private offerings under Rule 144A introduced to the Securities Act of 1933 by the U.S. Securities and Exchange Commission in 1990. When bonds and other instruments targeting professional investors are issued in the U.S. markets, rather than employing public offerings, which entail stringent legal standards for document disclosure, it is normal to follow Rule 144A (Securities Act of 1933) and make the offering exclusively to qualified institutional buyers.
- In the U.S., the Rule 144A market is available as a domestic professional investor market and the Regulation S market is available as an offshore professional investor market that waive disclosure requirements. Regulation S provides for a safe harbor (i.e. exemption from disclosure) in the case of transactions conducted outside the U.S., while Rule 144A provides for a safe harbor even in the case of transactions within the U.S. for qualified institutional buyers. In both cases, resale within the U.S. is on principle restricted to qualified institutional buyers under Rule 144A.
- The precursor of Rule 144A was Regulation D (1982), composed of Rules 501 to 508, concerning private offerings made within the U.S. Regulation D stipulated the conditions for accredited investors.
- However, while Regulation D entailed an asset test, the precondition that an investor possessing assets had the ability to make judgments on all investments was criticized as being ludicrous, and Rule 144A replaces the asset test with an ownership and investment securities test. (I.e. it incorporates elements of experience in investment in risk securities).
- ^v For details of the proposal made by Waseda University and related information, see: <http://www.globalcoe-waseda-law-commerce.org/>
<http://www.globalcoe-waseda-law-commerce.org/activity/AIR-PSM.html>
- ^{vi} At the beginning of the financial strategy section of the Growth Strategy Implementation Plan (an implementation schedule) appended to the New Growth Strategy announced by the Japanese government on June 18, 2010, the development of new issue and secondary bond markets targeting professional investors was indicated as an item for early implementation (within fiscal 2010).