



**Markets exclusively for professional
investors**



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Introduction¹

An amendment (the 2008 amendment) to the Financial Instruments and Exchange Law (the FIEL) was enacted in June 2008 and came into force in December 2008. It has introduced, inter alia, the concept of ‘specified investors securities’ in relation to which the usual public disclosure requirements to public offerings do not in principle apply so long as the offering or sale complies with the FIEL’s requirements and less onerous notification requirements come into play instead. This exemption from the public disclosure requirements still applies even if such securities are listed on a professional exchange market or traded on a professional over-the-counter (OTC) market (each as defined below). These aspects of the 2008 amendment were designed to provide emerging unlisted companies in or outside Japan with opportunities to raise funds in Japanese markets with fewer hurdles and costs, and to provide sophisticated investors with a wider range of investment opportunities to improve the depth of Japan’s financial and capital markets.

The Tokyo Stock Exchange (the TSE) and the London Stock Exchange (the LSE) announced in July 2008 that they are contemplating establishing an exchange market dedicated exclusively to professional participants, similar to the LSE’s Alternative Investment Market, to attract potentially emerging businesses in Japan and Asia that may be interested in raising funds with fewer hurdles and costs. The establishment of this exchange market is planned for spring 2009, soon after the implementation of the 2008 amendment.

¹ Words in bold are defined in the glossary at the end of this guide.

Scope of new regime – professional investors only

Specified investors securities

'Specified investors securities (*tokuteitoshika muke yukashoken*)'² consist of (i) securities that were the subject securities of an **initial private placement towards specified investors**; (ii) securities that were the subject securities of a **secondary private placement towards specified investors**; (iii) securities of the same kind as those referred to in (i) or (ii) above issued by the same issuer; (iv) **specified listed securities**; (v) securities that used to be specified listed securities; (vi) **specified OTC-traded securities**; and (vii) securities that used to be specified OTC-traded securities.

Eligible investors

Investors eligible to trade specified investors securities are: (1) (a) **specified investors** and (b) non-residents acquiring securities through a **financial instruments trader, registered financial institution or foreign securities firm** (such specified investors and non-residents are hereinafter referred to as 'specified investors etc'); (2) the issuer of the relevant securities; (3) a director, statutory auditor, executive officer, governor or the council of such issuer who is also the issuer's controlling shareholder; (4) a parent company of the issuer; and (5) officers and employees (officers etc) of the issuer who purchase, through a **financial instruments trader** etc or foreign securities firm with permission to trade on an exchange, the relevant securities on a continuing basis in concert with other officers etc under an agreement setting forth a pre-determined purchase plan and not based on individual investment judgement, with investment by each officer etc being less than Y1m per purchase.

Professional markets

A 'specified exchange financial instruments market' (*tokutei torihikijo kin'yushohin shijo*; a professional exchange market)³ is a financial instruments exchange market opened by an exchange on which members and other eligible market participants are prohibited, under its rules, from purchasing securities on the instructions of persons other than specified investors etc.

An **authorised financial instruments traders' association** is also permitted to open an OTC financial instruments market (a professional OTC market and, with a professional exchange market, a professional market) on which members and other eligible market participants are prohibited, under its rules, from purchasing securities at the instructions of persons other than specified investors etc.⁴

² Article 4, paragraph 3 of the FIEL.

³ Articles 2, paragraph 32 and 117-2 of the FIEL.

⁴ Article 67, paragraph 3 and article 67-12, item 5 of the FIEL and article 2-12-2, paragraph 3, item 2 of the FIEL Cabinet Order.

On the other hand, a proprietary trading system (**PTS**) – which is not equipped with high-level self-restraint functions as compared with a professional exchange market or professional OTC market – is not allowed to trade specified investors securities that are not listed or OTC registered.⁵

⁵ Article 2, paragraph 8, item 10 of the FIEL and article 1-9-3 of the FIEL Cabinet Order.

Exemption from public disclosure requirements and selling restrictions

Under the 2008 amendment, an offering only to specified investors, regardless of the number of such offerees, will be excluded from the ambit of 'public offering' (whether primary or secondary) and will be exempted from the public disclosure requirements under the FIEL (offering and continuous disclosure) so long as the conditions set out in the FIEL are met.

Offering restrictions and conditions to eligibility as private placement towards specified investors

To be eligible as (a) an initial private placement towards specified investors in the case of newly issued securities or (b) a secondary private placement towards specified investors in the case of already-issued securities, the following conditions must be met:

- 1 the offerees of the relevant private placement must only be specified investors;
- 2 if the offerees are specified investors other than qualified institutional investors (**QIIs**), the Japanese national government and The Bank of Japan, solicitation must be made via financial instruments traders etc⁶, and
- 3 the relevant securities must fall within the class of securities that shall be designated by Cabinet Order as being unlikely to be transferred to persons other than specified investors etc. The details of this condition are set forth in the Cabinet Order by type of securities. In the case of shares, the required condition is satisfied if the relevant shares are not subject to continuous disclosure requirements under the FIEL, as opposed to listed shares or OTC-traded shares, and there is a tripartite agreement among the issuer, offeror and acquirer that includes a provision to the effect that the relevant shares shall in no event be transferred to persons other than specified investors etc (alternatively, such tripartite agreement can be split into two agreements; one between the issuer and the offeror and the other between the offeror and the acquirer).⁷

Secondary sale restrictions

No offer to sell or solicit for offerings to purchase (offer) specified investors securities (other than a private placement towards specified investors) can be made unless it is one of the following:⁸

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- ⁶ This requirement is introduced because under the FIEL the question of whether a customer is a specified investor is judged by a financial instruments trader etc.
 - ⁷ Article 1-5-2, paragraph 2 and article 1-8-2, paragraph 1 of the FIEL Cabinet Order.
 - ⁸ Article 4, paragraph 3 of the FIEL; Article 2-12-2, paragraph 2 of the FIEL Cabinet Order; and article 2-7 of the FIEL Disclosure Ordinance.

- 1 an offer made to a specified investor etc via a financial instruments trader etc;
- 2 an offer made to a specified investor etc by a financial instruments trader etc for its own account;
- 3 an offer made to QIIs, the Japanese government or The Bank of Japan;
- 4 an offer made to a non-resident (as defined in the Foreign Exchange and Trade Law of Japan) via a foreign securities firm;
- 5 a tender of shares, warrants or bonds with warrants responding to a tender offer bid in accordance with the TOB requirements under the FIEL;
- 6 an offer made to an officer etc of the issuer who purchases the relevant shares of the issuer on a continuing basis in concert with other officers etc under an agreement setting forth a predetermined purchase plan and not based on individual investment judgement, with investment by each officer etc being less than ¥1m per purchase;
- 7 an offer made to a director, statutory auditor, executive officer, governor or council of the issuer of the relevant securities who is also the controlling shareholder of the issuer, specified officer or a parent company of the issuer; and
- 8 an offer made by an owner of the securities (other than the securities' issuer) if they are now specified investors securities and the owner acquired them within a year of their becoming specified investors securities.

Exemption from continuous disclosure requirements

Under the FIEL as amended by the 2008 amendment⁹, issuers of any of the following securities will be subject to continuous public disclosure requirements:

- 1 securities (other than specified listed securities) listed on a financial instruments exchange;
- 2 securities (other than specified OTC traded securities) traded as registered OTC securities;
- 3 securities the issue of which was subject to public offering disclosure requirements under the FIEL; and
- 4 securities that are owned by 1,000 owners or more.

Specified investors securities would by their very nature not fall within any of 1, 2 and 3 above and would be highly unlikely to reach the threshold set out in 4 above.

⁹ Article 24, paragraph 1 of the FIEL and article 3-6 of the FIEL Cabinet Order.

Alternative disclosure mechanisms

Although a private placement towards specified investors is not subject to the usual/full public disclosure requirements (either when an offering is made or on a continuous basis), an issuer of specified investors securities will be subject to the alternative disclosure mechanism described below.

Specified securities information

No private placement towards specified investors can be made without certain required information (specified securities information (*tokutei shoken joho*)) about the relevant specified investors securities being provided to anyone to whom the issue or sale of the securities is being solicited or publicised (on the internet or by other prescribed means); the information must be provided on or before the start of solicitation.¹⁰ If any change to the facts in the specified securities information so provided or publicised occurs within one year of the date of provision or publication, the issuer must provide or publicise corrected specified securities information.¹¹ Once specified securities information is publicised, the issuer must maintain its publication continuously until one year has elapsed after the date of publication.¹² Specified securities information does not need to be filed with or submitted to the regulators.

Specified securities information must contain (i) a statement to the effect that the information provided constitutes specified securities information; (ii) information about the relevant specified investors securities; (iii) (a) in the case of normal corporate securities, information about other securities issued by the issuer or (b) in the case of investment securities, information about assets invested or to be invested and the management thereof; and (iv) (a) in the case of normal corporate securities, information about the issuer's business and accounts or (b) in the case of investment securities, information about the investment manager of the invested assets.¹³

Issuer information

The issuer of specified investors securities or the issuer having provided or publicised specified securities information must, at least once per fiscal year, provide the owners of the relevant specified securities information with, or publicise on the internet or by other prescribed means, information about

¹⁰ Article 27-31, paragraphs 1 and 2 of the FIEL. In the case of specified listed securities, specified securities information must be publicised in accordance with the rules of the relevant exchange.

¹¹ Article 27-31, paragraph 4 of the FIEL.

¹² Article 27-31, paragraph 5 of the FIEL.

¹³ Article 27-31, paragraph 1 of the FIEL and article 2, paragraph 2 of the FIEL Specified Securities Information Ordinance A.

the issuer (issuer information (*hakkosha joho*)).¹⁴ If any of the issuer information so provided or publicised changes, the issuer must provide or publicise corrected issuer information.¹⁵ Issuer information does not need to be filed with or submitted to the regulators.

Issuer information must contain a statement to the effect that the information provided constitutes issuer information; in the case of normal corporate securities, information about other securities issued by the issuer or, in the case of investment securities, information about assets invested or to be invested and the management thereof; and, in the case of normal corporate securities, information about the issuer's business and accounts or, in the case of investment securities, information about the investment manager of the invested assets.¹⁶

Language

The language to be used for provision or publication of specified securities information and issuer information will be prescribed by the rules of the operator of the relevant professional market.

Criminal and administrative sanctions and civil liability

False information or the omission of material information in specified securities information or issuer information or breach of the obligation to provide or publicise specified securities information or issuer information may incur a criminal penalty and/or administrative fines. In addition, an issuer (and/or certain directors, officers or accountants) may incur civil liability to a bona fide acquirer of the relevant specified investors securities in respect of false information or a material omission in specified securities information or issuer information.

Obligations to notify in the case of a private placement towards specified investors

A person who conducts a private placement towards specified investors must notify the recipient of the relevant offer of the following:¹⁷

- 1 that no securities registration statement (**SRS**) has been filed with respect to the relevant private placement towards specified investors;

¹⁴ Article 27-32, paragraph 1 of the FIEL. The method of provision and publication of issuer information will be prescribed by the rules of the operators of the relevant professional market. In the case of specified listed securities, issuer information must be publicised in accordance with the rules of the relevant exchange.

¹⁵ Article 27-32, paragraph 3 of the FIEL.

¹⁶ Article 27-32, paragraph 1 of the FIEL and article 7, paragraph 3 of the FIEL Specified Securities Information Ordinance.

¹⁷ Article 23-13, paragraph 3, item 1 of the FIEL and article 14-14-2, paragraph 2 of the FIEL Disclosure Ordinance.

- 2 that the subject securities fall or are going to fall within the category of specified investors securities;
- 3 the details of selling restrictions;
- 4 that the relevant private placement towards specified investors will be subject to these requirements: (i) that, except in the cases specified in the FIEL, no on-sale can be made to a person other than specified investors etc without having filed an SRS; (ii) that there must be an indication in any marketing material to the effect that the relevant private placement towards specified investors would not be subject to the requirement to file an SRS; and (iii) that a securities notice must be filed with the relevant regulator on or before the day immediately preceding the start of solicitation with respect to the private placement towards specified investors;
- 5 if the relevant specified securities information or the issuer information has been publicised, that this has been done and the method of publication; and
- 6 that the issuer information will be provided or publicised to the owners of the relevant securities.

Obligations to notify in secondary sales

A person who conducts a secondary sale of specified investors securities (other than those subject to the public offering requirements under the FIEL or the requirements for a secondary private placement towards specified investors) must notify the counterparty of matters equivalent to those required to be notified in the case of a private placement towards specified investors.¹⁸

TOB and significant shareholding reporting requirements

Specified listed shares, specified OTC-traded shares and certain other equity or equity-linked specified investors securities are subject to the TOB requirements¹⁹ and significant shareholding reporting requirements under the FIEL.²⁰

¹⁸ Article 23-13, paragraph 3, item 2 of the FIEL and article 14-14-2, paragraph 3 of the FIEL Disclosure Ordinance.

¹⁹ Article 27-2, paragraph 1 of the FIEL and article 6, paragraph 2 of the FIEL Cabinet Order.

²⁰ Article 27-23, paragraph 1 of the FIEL and article 14-4, paragraph 2 of the FIEL Cabinet Order.

Regulations applicable to financial instruments traders etc on specified investors securities

Trade restrictions

Financial instruments traders etc (and financial instruments trade intermediaries in relation to (d) below) are prohibited from: (a) selling or purchasing specified investors securities for **ordinary investors**; (b) entering into derivative transactions with an ordinary investor with respect to specified investors securities; (c) acting as agent, broker or intermediary on behalf of an ordinary investor; or (d) dealing with an ordinary investor as a counterparty on the sale and purchase of, or a derivative transaction with respect to, specified investors securities,²¹ except in the following cases:²²

- 1 public disclosure has been made with respect to the relevant specified investors securities in accordance with the FIEL;
- 2 (i) the relevant financial instruments trader etc enters into a transaction with an ordinary investor to purchase from the ordinary investor or acts as agent, broker or intermediary on behalf of an ordinary investor; or (ii) the relevant financial instruments trader etc (or a financial instruments trade intermediary acting on behalf of the relevant financial instruments trader etc) deals with an ordinary investor as a counterparty on the purchase of specified investors securities from the ordinary investor, in each case without any solicitation to the ordinary investor;
- 3 the relevant financial instruments trader etc or financial instruments trade intermediary tenders specified investors securities to a tender offer bid in accordance with the TOB requirements under the FIEL; or
- 4 the relevant financial instruments trader etc acts as agent or intermediary on behalf of the tender offer bidder to purchase in compliance with the TOB requirements under the FIEL the specified investors listed securities, specified investors OTC-traded securities or certain other specified investors securities set out in the FIEL.

Financial instruments trader etc's obligations to notify

A financial instruments trader etc who sells – not through an exchange market, OTC market or foreign market or PTS, or not arising out of the exercise of certain securities derivatives transactions – specified investors securities or acts as agent, broker or intermediary on a purchase (other than through a market or arising as listed above) of specified investors securities,

²¹ Articles 40-4 and 66-14-2 of the FIEL.

²² The provisions of Articles 40-4 and 66-14-2 of the FIEL and articles 125-3 and 275-3 of the FIEL Trades Ministerial Ordinance.

in each case without any solicitation, must notify the recipient of the following:²³

- 1 that the subject securities fall within the category of specified investors securities;
- 2 that no public disclosure has been made about the relevant securities;
- 3 that the relevant transaction will be subject to the requirements (i) that, except in the cases specified in the FIEL, no on-sale can be made to a person other than specified investors etc without having filed an SRS, (ii) that there must be an indication in any marketing material to the effect that the relevant transaction would not be subject to the requirement to file an SRS and (iii) that a securities notice must be filed with the relevant regulator on or before the day immediately preceding the start of solicitation with respect to the transaction;
- 4 if the relevant specified securities information or the issuer information has been publicised, notice of that fact and the method of publication; and
- 5 that the issuer information will be provided or publicised to the owners of the relevant securities.

When a financial instruments trader etc receives a request from a specified investor etc (other than QIIs, the Japanese government or The Bank of Japan) to enter into a **specified investors securities trade contract** for the first time, the financial instruments trader etc must, before the execution of the specified investors securities trade contract, inform the specified investor etc in writing or electronically of items similar to those listed above together with certain other required items.

Application of regulations on unjust trade practices

Regulations on unjust trade practices (eg market manipulation and insider trading) and short sales restrictions will be applicable to specified investors securities.²⁴

²³ Article 40-5, paragraph 1 of the FIEL, article 16-7-2 of the FIEL Cabinet Order and article 125-5 of the FIEL Trades Ministerial Ordinance.

²⁴ If securities issued by a particular issuer are all specified investors securities, the announcement of 'a material fact' in relation to insider trading can be made in English: article 30, paragraph 1, item 3 of the FIEL Cabinet Order.

Relaxation of restrictions on delegation of self-restraint businesses

Delegation to a third party

Certain **self-restraint businesses** in relation to a professional exchange market can be delegated to a third party otherwise than in accordance with the requirements for delegation of self-restraint businesses under the FIEL so long as they are not in substance essential in terms of the protection of investors. Self-restraint businesses in relation to a professional exchange market delegable to a third party (delegable self-restraint businesses) are (1) investigation into whether the relevant specified investors securities or their issuer meet the listing or delisting criteria, (2) investigation into whether disclosure or provision of information made by the issuer of specified listed securities reaches the levels to trigger review of the disclosure of information by the issuer of the specified listed securities and (3) investigation into whether disclosure or provision of information made by the issuer of specified listed securities reaches the levels to trigger actions to be taken by the exchange and measures to consummate the objectives of the relevant action so taken.²⁵

Necessary measures for delegation

If an exchange delegates delegable self-restraint businesses to a third party, the exchange must take the following measures:

- 1 such measures as are necessary to delegate delegable self-restraint businesses to a party regarded to be capable of implementing the delegable self-restraint businesses properly, fairly and efficiently;
- 2 such measures as are necessary to prevent the delegatee from conducting – for the sake of gaining benefits in relation to business other than the delegable self-restraint businesses to be delegated – any action that would, in respect of the delegable self-restraint businesses, hamper the protection of investors or the fairness of any trade or unduly jeopardise the issuer of the relevant specified listed securities;
- 3 such measures as are necessary to prevent the delegatee from using information obtained in relation to the relevant delegable self-restraint businesses for any purpose that would hamper the protection of investors or the fairness of any trade or would unduly jeopardise the issuer of the relevant specified listed securities;
- 4 such measures as are necessary to preserve the independence of the delegatee from the issuer in relation to the delegable self-restraint businesses;

²⁵ Article 85, paragraph 4 of the FIEL and article 7-2 of the FIEL Exchange Ordinance.

- 5 measures (i) to examine whether the delegatee is performing the delegable self-restraint businesses properly, (ii) to enable the delegatee to improve its performance if necessary or (iii) to take any other necessary and adequate actions to supervise the delegatee, either by asking the delegatee to report periodically or as necessary on the performance of the delegable self-restraint businesses or by conducting as necessary or on a periodical basis on-site investigations or confirming by other means; and
- 6 measures to change the terms of delegation, to impose and collect penalties, to terminate the relevant delegation or to take any other action if necessary for the purpose of preserving the sound and adequate operations of the self-restraint businesses of the relevant exchange.²⁶

²⁶ Article 85, paragraph 5 of the FIEL and article 7-3 of the FIEL Exchange Ordinance.

Proposed professional exchange market to be established by TSE and LSE

The TSE and the LSE announced a proposal for and invited public comments on a J-Nomad system (see below) and listing mechanism in the proposed new market (the proposed plan). Shown below is an overview of the new professional market set out in the proposed plan.

Criteria for new listing

To list securities on the new market, the following criteria must be met:

- 1 to appoint and maintain a J-Nomad (the suggested interim term used in the proposed plan as an abbreviation of 'Japan nominated adviser') in charge of the relevant issuer;
- 2 the absence of false descriptions in listing application documentation, which must be prepared in the same language (either Japanese or English) as that used in the disclosure documentation;
- 3 to procure an accountant's unqualified opinion or an equivalent accountant's opinion on financial statements for the most recent fiscal years (up to three years);
- 4 the absence of any transfer restrictions with respect to the relevant specified investors securities to be listed;
- 5 a share transfer agent (*kabushiki jimu daiko kikan*) has been appointed or will be appointed before the listing;
- 6 handling of book-entry clearance at a designated clearing house has been agreed or will be agreed before the listing;
- 7 listing application documentation has been prepared with the co-operation of the J-Nomad and has been reviewed by legal counsel;
- 8 to respect the functions of markets and the rights of shareholders;
- 9 the issuer's business operations have been conducted fairly and faithfully;
- 10 the J-Nomad has confirmed that corporate governance and internal control systems have properly been established and are functioning;
- 11 appropriate accounting principles (J GAAP, International Accounting Standards, US GAAP or such other accounting principles as shall be agreed to be appropriate by the J-Nomad and the accountants with proper adjustments disclosure compared with any one of the first three) have been adopted;
- 12 the issuer is in a position to make timely disclosure; and
- 13 to be compliant with such other items as shall be determined by the exchange from time to time.

Conditions for maintenance of listing

Maintenance of J-Nomad

The issuer of specified listed securities must continuously maintain the appointment of a J-Nomad in charge of itself. If the existing J-Nomad ceases to act for the issuer, the issuer must appoint a replacement within one month of the date on which the J-Nomad ceased to act. Failure to do so will result in the issuer's specified listed securities being delisted.

Sound standing to continue business operations

The issuer must have sufficient standing to be capable of continuing its business operations (ie it must maintain the absence of any situation that would trigger or require the bankruptcy, civil rehabilitation, corporate re-organisation or other insolvency of the issuer).

Post-listing obligations

Timely disclosure

The standards for timely disclosure of reportable events will be equivalent to those for listed companies in the existing exchange markets in Japan, except for the standards applicable to unlisted parent companies etc.

Disclosure of financial information

- Financial information prepared in accordance with appropriate accounting standards shall be disclosed at least twice a year.
- Annual financial information shall be prepared in a format equivalent to an annual securities report and accompanied by an audit certificate.
- Semi-annual financial information shall be accompanied by an audit certificate or its equivalent.
- Quarterly disclosure is optional.
- Disclosure shall be made in either English or Japanese – the issuer may choose.

J-Nomad

The proposed exchange will nominate a J-Nomad as an advisor to advise and supervise a listing applicant or listed company for the purpose of the applicant or listed company fulfilling its responsibility and obligations. For the purpose of the FIEL, this is the delegation by the exchange of delegable self-restraint businesses to the relevant J-Nomad.²⁷

Roles of the J-Nomad

Vis-a-vis listing applicants

- To assess whether, with respect to a listing applicant and the securities proposed to be listed on the new exchange market, the proposed listing

²⁷ Article 85, paragraph 4 of the FIEL.

would be appropriate in the light of the listing criteria to be established by the new exchange.

- To assist with the preparation by the listing applicant of the listing application documentation.
- If the J-Nomad considers that the proposed listing is appropriate, to submit to the new exchange confirmation of its assessment of listing eligibility.

Vis-a-vis listed companies

- To ensure the observance of the listing continuation criteria and the fulfillment of the post-listing obligations by the listed company of which the J-Nomad is in charge.
- The appointment of a contact person vis-a-vis the listed company in question.
- When the listed company discloses information about the company, to confirm and advise beforehand that the information to be disclosed is accurate information about the company from the investors' standpoint.
- To submit such documents showing corporate actions etc taken by the listed company as shall be required by the new exchange.
- To procure 'market participants facilitating sales' of the relevant listed securities issued by the listed company of which the J-Nomad is in charge and to endeavour to have an analysts report on the listed company issued.

Eligibility of a J-Nomad

To be eligible as a J-Nomad, an entity must meet the following conditions:

- it is a corporation with a track record within the previous two years in the field of corporate finance;
- there must be two or more full-time executives authorised by the new exchange;
- it maintains sufficient functions and control systems to perform the duties of a J-Nomad; and
- it has the will and ability to make a contribution to the development of the new market as a partner, operating the new market with the new exchange.

Although a J-Nomad need not be a financial instruments trader, it must have relevant experience and expertise. In dealing with emerging enterprises in Asia, a J-Nomad is expected to be equipped with the ability and resources to handle cross-border public offering transactions.

Trading systems, clearance and settlement

Trading systems, clearance and settlement are the same as those for the existing exchange markets.

Trade participants

The new exchange will authorise as a trade participant on the new market (i) a person holding general trading eligibility in respect of the TSE, (ii) members of the LSE and (iii) such other persons as shall be deemed appropriate by the new exchange in accordance with its rules.

Trade participants are in principle prohibited from accepting orders for sale and purchase of specified investors securities from persons other than specified investors etc.²⁸

²⁸ See article 117-2, Paragraph 1 of the FIEL.

Glossary

Authorised financial instruments traders' association (*ninka kin'yushohin torihikigyo kyokai*)

shall have the meaning given in article 2, paragraph 13 of the FIEL.

Financial instruments trade intermediary (*kin'yu chukaigyosha*)

means a financial instruments trade intermediary registered as such with the Japanese Financial Services Agency (JFSA) under article 66 of the FIEL.

Financial instruments trader (*kin'yushohin torihiki gyosha*)

means a financial instruments trader registered under article 29 of the FIEL and is any of the following: (i) type I financial instruments trader, (ii) type II financial trader, (iii) investment management business operator or (iv) investment advisory business operator.

Financial instruments trader etc (*kin'yushohin torihiki gyosha to*)

means either or both of a financial instruments trader and a registered financial institution.

Foreign securities firm (*gaikoku shokengyosha*)

shall have the meaning given in article 58 of the FIEL.

Initial private placement towards specified investors (*tokuteitoshika muke shutoku kan'yu*)

means an initial private placement of newly issued securities targeted solely at specified investors as defined in article 4, paragraph 3, item 1 of the FIEL.

Ordinary investors

means investors other than (i) specified investors etc, (ii) the issuer of the relevant specified investors securities and (iii) certain other eligible offerees set out in the FIEL.

Private placement towards specified investors

means either an initial private placement towards specified investors or a secondary private placement towards specified investors.

PTS

means a proprietary trading system with respect to which a financial instrument trader is required to obtain approval from the JFSA under article 30 of the FIEL.

QIIs

means qualified institutional investors (*tekikaku kikantoshika*) as defined in article 2, paragraph 3, item 1 of the FIEL.

Registered financial institutions (*toroku kin'yukikan*)

shall have the meaning given in article 2, paragraph 11 of the FIEL.

**Secondary private placement towards specified investors
(tokuteitoshika muke uritsuke kan'yu to)**

means a secondary private placement of already-issued securities offered only to 50 or more specified investors at a uniform term as defined in article 2, paragraph 6 of the FIEL.

Self-restraint business

is defined in article 84, paragraph 2 of the FIEL to mean (i) business related to listing or delisting, (ii) investigation on status of compliance by members with the applicable laws, regulations, administrative actions or the exchange's articles or other rules and (iii) such other business as shall be prescribed by Ministerial Ordinance to preserve fairness of trades on the relevant exchange.

Specified investors (tokuteitoshika)

means any of (i) QIIs, (ii) the Japanese government, (iii) The Bank of Japan, (iv) municipal governments, (v) statutory corporations established by special statutes, (vi) investors' protection funds stipulated in article 79-21 of the FIEL, (vii) the Deposit Insurance Corporation of Japan, (viii) the Agricultural and Fishery Co-operative Saving Insurance Corporation, (ix) insurance policyholders' protection corporations stipulated in article 259 of the Insurance Business Law, (x) special-purpose companies (*tokutei mokuteki kaisha*) stipulated in article 2, paragraph 3 of the Assets Liquidation Law, (xi) companies whose shares are listed on a financial instrument exchange, (xii) corporations whose paid-in capital can, upon having considered their trading record and other circumstances, be regarded to be ¥500m or more, (xiii) registered financial instruments traders or corporations that have filed exempted business notifications as stipulated in article 63, paragraph 3 of the FIEL and (xiv) foreign corporations,²⁹ provided, however, that any specified investor listed in (iv) through to (xiv) can, upon request to the relevant financial instrument trader etc, be treated as an investor who is not a specified investor (a non-specified investor) in relation to transactions of the same kind on which the specified investor deals with the financial instruments trader etc and that certain non-specified investors (including individuals) meeting the required criteria can, upon request to the relevant financial instruments trader etc, be treated for different kinds of transactions as a specified investor.

Specified investors securities trade contract

shall have the meaning given in article 40-5, paragraph 2 of the FIEL.

Specified listed securities (tokutei jojo yukashoken)

means securities listed only on a professional exchange market.

²⁹ Article 2, paragraph 31 of the FIEL and article 23 of the FIEL Definitions Ordinance.

Specified OTC-traded securities (*tokutei tentobaibai yukashoken*)

means OTC traded securities on which the authorised financial instruments traders' association permitted to open the relevant OTC financial instruments market prohibits members and other eligible market participants, under the association's rules, from purchasing such OTC-traded securities on the instructions of persons other than specified investors etc.

SRS

means a securities registration statement required to be filed with the JFSA under articles 4 and 5 of the FIEL.

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