Japan

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A. OVERVIEW OF THE REGULATORY STRUCTURE

1. Applicable Laws and Regulations

1.1. Regulatory Structure

1.1.1. General

The current Japanese regulatory system for investment advisers primarily consists of two laws, i.e., the Financial Instruments and Exchange Law (the "FIEL") which mainly regulates securities investment advisers and the Commodities Investment Advisory Law (the "CIAL") which regulates commodities investment advisers. This chapter focuses primarily on the regulation of securities investment advisers (the most common type of investment adviser in Japan) under the FIEL, referring to the CIAL where there are differences that should be noted. There are no substantial differences under either set of regulations between the registration requirements for domestic advisers and foreign advisers. Depending on the

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Marcia L. MacHarg & Kenneth J. Berman (eds), *International Survey of Investment Adviser Regulation*, pp. 527–560.

context, references in this chapter to investment advisers refer to both types of investment advisers.

1.1.2. The Financial Instruments and Exchange Law

Prior to September 30, 2007, businesses that provided investment advice regarding securities and securities-related derivative transactions had been regulated under the Law Concerning Regulation of Investment Advisory Business on Securities (the ''Securities Investment Advisory Law''). Also, investment managers for investment trusts (which invest in Securities (as such term is defined in section A.2.1.2 below) and certain other types of assets) had been regulated under the Investment Trust and Investment Company Law (the ''ITICL''). With the slogan of ''achievement of comprehensive and cross-sectional investor protection,'' on September 30, 2007, sweeping amendments were made to the old Securities and Exchange Law (the ''SEL'') and it was renamed the ''FIEL'' on September 30, 2007. The Securities Investment Advisory Law was abolished and merged into the FIEL, and the part of the ITICL that provided for the licensing requirements imposed on investment managers for investment trusts was consolidated with the FIEL. The FIEL also regulates the business of engaging in investment management for partnership-type investment funds (which was not previously regulated under the former SEL or the Securities Investment Advisory Law) as Investment Management Business (see section A.2.1.3 below).

1.1.3. The Commodities Investment Advisory Law

Investment advisers who advise on ''Commodity Investments'' (as defined below in section A.2.2.1 below) along with funds that invest in Commodity Investments are regulated under the CIAL which was issued in May 1991 and came into effect in April 1992.

1.2. Regulatory Authorities

1.2.1. The Financial Instruments and Exchange Law

The Prime Minister, the Financial Services Agency (the ''FSA''), the Securities and Exchange Surveillance Commission (the ''SESC'') and local financial bureaus (''LFBs'') each act as regulators with respect to investment advisers and investment funds under the FIEL. Under the FIEL, the Prime Minister has complete regulatory authority and delegates almost all of his or her authority to the FSA. In turn the FSA delegates some authority to the SESC and some to the LFBs.

The FSA covers planning and policymaking concerning the financial system, inspection and supervision of persons who conduct any of Financial Instruments Business (see section A.2.1.4 below; ''Financial Instruments Business Operators''), establishment of rules for market trading and surveillance of compliance with rules in markets.

The SESC conducts daily Securities market surveillance, inspections of Financial Instruments Business Operators, administrative investigations on whether to impose monetary penalties, review of disclosure documents and criminal investigations of Securities fraud. Where the SESC finds misconduct that impairs the fairness of trading as a result of these activities, it may recommend an administrative disciplinary action to the FSA or file formal complaints to the public prosecutor.

The LFB located in the relevant local jurisdiction accepts and processes registration materials, conducts surveillance regarding certain disclosure regulations, conducts inspections of Financial Instruments Business Operators, conducts administrative monetary penalties investigations and reviews disclosure documents.

There are also self-regulatory associations of investment advisers recognized under the FIEL—the Japan Securities Investment Advisers Association (the "JSIAA") and the Investment Trusts Association, Japan (the "JITA"). The JITA was established as a public interest corporation by permission of the Minister of Finance under the Civil Code, then reclassified as a recognized self-regulatory association under the former ITICL, and now is a recognized self-regulatory association under the FIEL. It is composed of investment managers of investment trusts (defined in Article 2, paragraph 11 of the ITICL as "investment trust trustor companies" and generally called "investment trust management companies," hereinafter: "ITM Companies") and prepares rules which can be self-imposed and provides guidance regarding investment trust management business activities.

The JSIAA was established by permission of the Minister of Finance under the Securities Investment Advisory Law, and is now a recognized self-regulatory association under the FIEL. It is composed of securities investment advisers and also prepares self-imposable rules and provides guidance regarding investment advisory business activities.

1.2.2. The Commodities Investment Advisory Law

Commodities investment advisers are regulated by the Ministry of Economy, Trade and Industry (the "METI") if underlying commodities are non-agricultural commodities and by the Ministry of Agriculture, Forestry and Fisheries (the "MAFF") if the underlying commodities fall into the category of agriculture. The Japan CTA Association is a self-regulatory association for commodities investment advisers.

2. Registration Requirements

2.1. The Financial Instruments and Exchange Law

2.1.1. General

There are different registration requirements for the provision of discretionary and non-discretionary investment advice. The registration requirements do not

materially vary regardless of whether or not investment advice is being provided to pooled investment vehicles, institutional accounts or retail clients (from a practical perspective, inclusion of clients other than Specified Investors (see section C.7.2 below) requires some additional documents to be submitted in the registration process). It also does not make a material difference whether the investment advice is provided to open-end funds, closed-end funds, hedge funds or private equity funds.

2.1.2. Definition of Securities and Derivative Transactions

The FIEL regulates businesses that provide advice related to investments with respect to Securities (see below) and Derivative Transactions (see below). ''Securities'' are defined in the FIEL as (i) the items listed in Article 2, Paragraph 1 (''Type I Securities''), and (ii) the so-called ''deemed securities'' which are provided in Article 2, Paragraph 2 (''Type II Securities''). Type I Securities are generally traditional Securities, such as stocks, bonds and interests in investment trusts. They are Securities that are typically capable of being certificated. For the purpose of investor protection, however, the FIEL deems certain rights not normally capable of being certificated as Securities, which are Type II Securities. Type II Securities include (i) beneficial rights in a trust that do not constitute Type I Securities and (ii) limited partnership interests.

''Derivative Transactions'' consist of ''Market Transactions of Derivatives,'' ''Over-the-Counter Transactions of Derivatives'' and ''Foreign Market Derivatives Transactions'' (Article 2, Paragraph 20 of the FIEL). ''Market Transactions of Derivatives'' refer to Derivative Transactions that are conducted in Financial Instruments Markets, such as the Tokyo Stock Exchange, the Osaka Securities Exchange and the Tokyo Financial Exchange Inc. (Article 2, Paragraph 21 of the FIEL). Transactions that take place on futures and options exchanges are Market Transactions of Derivatives.

''Foreign Market Derivatives Transactions'' are transactions similar to Market Transactions of Derivatives that are conducted mainly in foreign markets similar to the Financial Instruments Markets (Article 2, Paragraph 23 of the FIEL). These include futures and options listed in foreign exchanges. None of these include any commodities-related derivatives transactions. Commodities-related derivatives transactions are regulated under the Commodity Derivatives Act. Please note, however, that FX transactions are not regarded as commodities-related derivatives.

''Over-the-Counter Transactions of Derivatives'' refer to specific transactions which are not conducted in exchanges. For example, swap transactions (that are not traded on an exchange) and credit default swaps constitute Over-the-Counter Transactions of Derivatives. These specific transactions as used herein are comprised of combinations of two of the following three elements: (i) the type of transaction and either; (ii) certain underlying assets (''Financial Instruments''); or (iii) certain reference indicators (''Financial Indicators''). Over-the-Counter Transactions of Derivatives also do not include any commodities-related derivative transactions.

2.1.3. Investment Advisory Business on a Discretionary Basis

The business of providing investment advisory services on a discretionary basis can be categorized into the following three types of activities:

(i) providing investment advice based on an investment management agreement (Article 2, Provision 8, Item 12);
(ii) as an ITM Company (see section A.1.2.1 above), establishing and managing investment trusts (Article 2, Paragraph 8, Item 14) (''ITM Business''); and
(iii) managing clients' assets as the general partner of a partnership-type fund (Article 2, Paragraph 8, Item 15) (''Self-Management Business'').

In order to engage in any of these businesses (each an ''Investment Management Business''), an entity must generally register as a Financial Instruments Business Operator which conducts an Investment Management Business under the FIEL (Article 29). An entity registered to conduct an Investment Management Business is referred to in this chapter as a ''Registered Investment Manager.''

A Registered Investment Manager provides investment advice based on an investment management agreement that authorizes the manager to invest on behalf of the client in Securities or rights pertaining to Derivative Transactions based on analysis of the value of Financial Instruments, option premiums regarding Financial Instruments, or movement of Financial Indicators (''Value of Financial Instruments'') under such agreement. There are two types of investment management agreements:

(i) investment management agreements with a domestic registered corporate-type fund (Article 188, Paragraph 1, Item 4 of the ITICL); or
(ii) agreements wherein the investment adviser is fully or partly entrusted by the client with the discretion in making investment decisions based on analysis of Value of Financial Instruments and is also entrusted with the authority necessary to make investments on behalf of the client based on such investment decisions (''Discretionary Investment Management Agreement'').

Agreements in each category authorize the investment adviser to make an investment decision and execute a proposed investment activity on behalf of its clients.

An ITM Business is one where an investment trust is established in order to invest money or other property contributed by its beneficiaries in Securities or rights pertaining to Derivative Transactions based on an analysis of Value of Financial Instruments. On the other hand, the scope of investments in which an ITM Company can mainly invest has been expanded under the ITICL to ''Specified Assets'' (defined therein), which include real estate and commodities derivatives. If an ITM Company would like to invest in Specified Assets other than Securities or rights pertaining to Derivative Transactions, it must consider whether or not that will cause another license issue in addition to the matter discussed in section A 2.1.4 below.

A Self-Management Business is to invest money or other property invested or contributed by investors as a passive partner mainly in Securities or rights pertaining to Derivative Transactions based on an analysis of Value of Financial Instruments.

2.1.4. Scope of Permitted Business of a Registered Investment Manager

A Registered Investment Manager is only allowed to engage in (i) the Investment Management Business or any other Financial Instruments Business for which it has FSA registration (e.g., Non-Discretionary Investment Advisory Business (defined below)), (ii) a business that is ancillary to its Financial Instruments Business (''Ancillary Business''), (iii) a Notified Sideline Business (defined below) and (iv) any other business specifically approved by the FSA or the relevant LFB (discussed below).

A ''Financial Instruments Business'' consists of:

(i) Type I financial instruments business (''Type I Business''), including brokerage, intermediary and agency services for Type I Securities transactions and Derivative Transactions, underwriting of securities, operating PTS and custody;
(ii) Type II financial instruments business (''Type II Business''), including brokerage, intermediary and agency services for Type II Securities;
(iii) Investment Management Business; and
(iv) Investment Advisory and Agency Business (see section C.12. below), which covers Non-Discretionary Investment Advisory Business (defined below).

The FIEL does not provide a clear definition of Ancillary Business, but provides examples of such Businesses (Article 35, Paragraph 1). Examples of Ancillary Businesses include (i) lending and borrowing of Securities, or providing intermediary or agency services in respect thereof, (ii) agency services of business pertaining to payment of distributions and redemption money with regard to interests in a domestic investment trust, (iii) agency services pertaining to distribution of money, distribution of refunds or residual assets or payment of interest or redemption money with regard to interests in a domestic investment corporation, (iv) retention of assets of a registered investment corporation, (v) consultation with any other business operator with regard to a business assignment, merger, company split, share exchange or share transfer, or intermediation for these matters, and (vi) consultation with any other business operator with regard to management.

A Registered Investment Manager is also allowed to engage in certain other types of sideline business listed in Article 35, Paragraph 2 of the FIEL (collectively, the ''Notified Sideline Business'') by filing a notification of engagement in such business with the FSA or the relevant LFB. Examples of Notified Sideline Businesses include businesses pertaining to (i) transactions on a commodity market, etc. defined in Article 2, Paragraph 21 of the Commodity Derivatives

Act, (ii) money lending business defined in Article 2, Paragraph 1 of the Act on Controls, etc. on Money Lending or other money loans, or intermediary services of lending and borrowing of money, (iii) building lots and buildings transaction business defined in Article 2, Item 2 of the Building Lots and Buildings Transaction Business Act or lease of building lots or buildings prescribed in item (i) of said Article and (iv) a real estate specified joint enterprise as defined in Article 2, Paragraph 4 of the Real Estate Specified Joint Enterprise Act. If a Registered Investment Manager wants to engage in any other business, it must obtain the approval of the FSA or the relevant LFB (Article 35, Paragraph 4). The FSA is required to approve the request of the Registered Investment Manager to engage in such other business, unless the approval of the proposed business would be detrimental to the public interest, or risk management of the proposed business would be so difficult that it may jeopardize the protection of investors' interests (Article 35, Paragraph 5).

Please note that if laws other than the FIEL require a Registered Investment Manager to obtain a license, registration or approval to conduct the business above, it must obtain such license, registration or approval in accordance with the law. In other words, a notification filing or approval of the FSA or the relevant LFB under the FIEL does not exempt a Registered Investment Manager from license requirements under other laws.

2.1.5. Non-Discretionary Investment Advisory Business

A "Non-Discretionary Investment Advisory Business" is considered to be the provision of advice on:

(i) the value of Securities, option premiums regarding certain Securities or movement of certain indices relating to Securities; or
(ii) investment decisions based on an analysis of Value of Financial Instruments;

to a client on the basis of an agreement, orally or in writing (excluding newspapers, magazines, books or other publications which are issued to be sold to many and unspecified persons and which many and unspecified persons can buy as needed), for a remuneration paid by the client (such agreement is an "Investment Advisory Agreement," and the investment adviser is a "Non-Discretionary Investment Adviser").

A Non-Discretionary Investment Adviser may only provide investment advice to clients (such as its analysis regarding the value and price of a proposed investment activity), and the client itself must make the investment decision and execute (or arrange to have executed) the buying and/or selling of Securities and Derivative Transactions (i.e., the Non-Discretionary Investment Adviser cannot directly or indirectly buy or sell Securities on behalf of its customer).

Being a Registered Investment Manager does not equate to also being registered as a Non-Discretionary Investment Adviser. A Registered Investment Manager may not provide its customer(s) with advice on value, movement or price

trends of a proposed investment activity, as this could fall within the scope of Non-Discretionary Investment Advisory Business. A registration with respect to two separate categories of business would be required under Japanese law to regularly engage in both activities. Nonetheless, a Registered Investment Manager may provide ancillary investment-related information to its customers (such as research papers, information relating to credit ratings, etc.) and generally discuss investment matters with customers so long as such activities:

(i) do not extend to the "giving of advice" (which requires a Non-Discretionary Investment Adviser registration);
(ii) do not constitute the primary activities of Investment Management Business; and
(iii) the regulator does not object to the Registered Investment Manager undertaking such activities (which in certain cases requires the filing of certain information with the regulator).

Amending a Registered Investment Manager's registration to be allowed to also act as a Non-Discretionary Investment Adviser, however, should not be too difficult because the requirements to register for an Investment Management Business are relatively more rigorous and overlap in certain respects with the requirements for a Non-Discretionary Investment Advisory Business (so the increased burden on a Registered Investment Manager to satisfy the Non-Discretionary Investment Adviser registration requirements are generally not an issue).

2.1.6. Registration of Associated Persons

Under the FIEL, Registered Investment Managers and Registered Non-Discretionary Investment Advisers (each, a "Registered Entity", and collectively, "Registered Entities") must file the names of and other information concerning their directors, officers and certain employees conducting Investment Management Business and Non-Discretionary Investment Advisory Business with certain statements, certain official certificates (or affidavits) and personal histories (for details, see section B.2 below). The FIEL also requires such directors, officers and certain employees to be appropriately qualified (for details, see section B.3 below).

2.1.7. Registration of Affiliates

Under the FIEL, a person who falls under the category of a Major Shareholder of a Registered Investment Manager must file a notification of major shareholders on the prescribed form with the relevant LFB. A "Major Shareholder" means a person who directly owns at least 20% of all voting rights in the Registered Investment Manager (or at least 15% if such person has a strong role in the management of, providing financing for or enters a transaction which is important for the business of the Registered Investment Manager with the Registered Investment Manager as stipulated under the FIEL). With regard to the calculation of the ratio, voting rights held by persons who have a certain relationship shall also be included.

The notification requires a Major Shareholder to submit (i) the name, (ii) the address, (iii) the representative's name, (iv) the purpose of holding the shares, (v) the number of voting rights and (vi) the ratio of the total voting rights. Also, a declaration in which a Major Shareholder declares itself not to be disqualified must be submitted together with the notification (See sections B.3.1.5 below).

Moreover, if a Major Shareholder reduces its share of voting rights and no longer falls into the category of a Major Shareholder, it must file a notification to that effect with the FSA without delay. The requirements above are also applicable to a Major Shareholder in the Holding Company, if any. ''Holding Company'' means a company that holds more than 50% of all voting rights in the Registered Investment Manager, and a company a majority of whose assets consist of shares in its Japanese subsidiary companies (including said Registered Investment Manager). This requirement only applies to a Registered Investment Manager established as a Japanese company. In other words, a non-Japanese Registered Investment Manager and a Non-Discretionary Investment Adviser do not need to consider this requirement.

Additionally, as an application document for Financial Instrument Business Operator, an applicant must file the following information regarding ''Specified Related Companies'' (including a parent company, subsidiary company and Holding Company, specifically defined in Article 9, Item 4 of the Cabinet Office Ordinance Concerning the Financial Instrument Business):

(i) their names;
(ii) their capital amount of total contributions or other equivalent financial information;
(iii) the addresses of their head offices;
(iv) types of business;
(v) summaries of the relations with applicants (capital ties, staffing relationships (e.g., concurrent directors) and business relationships in one year); and
(vi) into which categories of Specified Related Companies they fall.

As opposed to a Major Shareholder's case, no disqualification conditions are applicable to Specified Related Companies.

2.1.8. Registration of Advisers from Outside Japan

Technically, a physical presence in Japan is not required to register as a Registered Investment Manager or Non-Discretionary Investment Adviser (''Registered Entity'') under the FIEL. But practically speaking, it would take much more time to complete a registration without any physical presence in Japan because some requirements are stipulated assuming that the applicant is a Japanese entity. In a foreign applicant's case, whether or not the requirements are met depends on the interpretation of these requirements. For instance, with respect to Registered Investment Managers, the FIEL requires an applicant to be a Japanese corporation with a board of directors or a foreign company equivalent thereto. If an applicant is

a foreign company, it generally takes some time to assure the Japanese authorities that the foreign company is equivalent to a Japanese corporation, with a board of directors. In this process, at first an applicant must explain the legal framework of the foreign company in its jurisdiction, and then how similar such framework is to that under Japanese law.

2.1.9. Exemptions

Non-Japanese Investment Advisers: Notwithstanding the foregoing, an entity that lawfully conducts investment advisory business on a non-discretionary basis in another jurisdiction can provide non-discretionary investment advisory services to Registered Investment Managers without being required to register itself unless the entity has already registered as a Financial Instrument Business Operator which conducts Financial Instruments Business other than an Investment Management Business (i.e., Type I Business, Type II Business or Investment Management Business). There is no other specific exemption for non-Japanese Non-Discretionary Investment Advisers.

Similarly notwithstanding the foregoing, an entity that lawfully conducts investment advisory business on a discretionary basis in another jurisdiction can provide discretionary investment advisory services to Registered Investment Managers without being required to register itself unless the entity has already registered as a Financial Instrument Business Operator which conducts Financial Instruments Business other than an Investment Management Business and Investment Advisory and Agency Business (i.e., Type I Business or Type II Business).

Full Delegation: In the case of a Self-Management Business, if a general partner of a partnership-type fund enters into a Discretionary Investment Management Agreement with a Registered Investment Manger and delegates its entire authority to manage the fund to the Registered Investment Manager, the general partner does not need to register as a Registered Investment Manager in Japan even though Japanese investors invest in the fund. To enjoy this exemption, certain items must be included in the partnership agreement and the Discretionary Investment Management Agreement (e.g., the partnership agreement must provide that the delegation is to be made and state the delegatee's name and the fees, and both agreements must provide that the delegatee owes the duties of loyalty and of a good manager), the Registered Investment Manager must supervise whether or not the general partner has adequate capacity to hold clients' assets, and the Registered Investment Manager must file a notification before execution of the partnership agreement.

Minority Investment: Additionally, if a foreign partnership-type fund managed by a foreign investment adviser meets both of the following two requirements, the foreign investment adviser is exempt from the Japanese registration requirement:

(i) the all Japanese direct and indirect investors in the fund are fewer than ten qualified institutional investors (as listed in Article 10, Paragraph 1 of the

Cabinet Office Ordinance Concerning the Definitions as Provided in Article 2 of the FIEL, "QII"); and

(ii) the aggregate investment amount collected from the Japanese direct investors, if any, is no more than one-third of the entire investment amount collected from the fund investors.

QIIs have two types of investors; first, certain specific business operators and institutions (e.g., banks, securities firms, insurance companies and Registered Investment Managers), which are simply designated as QIIs without any requirements or filing (i.e., QIIs of this type are per se QIIs); second, other institutions or natural persons which meet certain criteria and file a notification to become a QII. QIIs can be seen on the lists uploaded on the FSA's website (http://www.fsa.go.jp/common/law/tekikaku/index.html). The list showing per se QIIs has notes at the end indicating that some types of QIIs are not included in the list.

QII Business Exemption: Furthermore, if a partnership-type fund (i) has at least one QII, (ii) has no more than 49 non-QII partners, and (iii) is not invested in by disqualified investors, then the general partner is permitted to manage such fund without being subject to the registration requirement even if the fund has Japanese investors. In the latter case, the general partner of the partnership-type fund must file a notification with the relevant LFB before soliciting investors in Japan.

2.2. The CIAL

2.2.1. Definition of Commodity Investment

A "Commodity Investment" is defined in the CIAL and essentially means derivative transactions on certain specified commodities and commodity indexes. "Commodities" are defined in the Commodity Derivatives Act, and include some agricultural products, livestock, metals and natural resources such as oils, gold, steel, and other metals, and do not include currency exchanges.

2.2.2. Commodity Investment Advice on a Discretionary Basis

A license from the applicable minister, the METI or the MAFF, is required in order for an investment adviser to make Commodity Investments on behalf of a client after executing an agreement with the client whereby the investment adviser is (i) entrusted with complete or partial authority to make investment decisions regarding Commodity Investments and (ii) charged with the authority to invest in Commodity Investments on behalf of the client based on its investment discretion (such a licensed investment adviser being a "Licensed Commodities Investment Adviser").

The establishment of a fund that invests in Commodity Investments (a "Commodities Fund") or the sale of interests in a Commodities Fund does not in itself require such a license (but generally requires registration to conduct Type II Business under the FIEL). However, the Commodities Fund's investment decisions regarding Commodity Investments must be entrusted to a Licensed Commodity

Investment Adviser or a foreign entity with an equivalent license in its jurisdiction. This does not apply where the Commodities Fund is established as an investment trust under the ITICL. In that case the ITM Company must obtain a sideline business approval to make Commodity Investments for such an investment trust under the FIEL (see section A. 2.1.4 above).

2.2.3. Non-Discretionary Commodity Investment Advice

Unlike the FIEL, when it comes to Commodity Investments, non-discretionary investment advisers are not regulated. In other words, no license or registration is required for merely providing investment advice on a non-discretionary basis (i.e., only providing recommendations) regarding Commodity Investments. The difference between discretionary investment advice and non-discretionary investment advice is the same as that under the FIEL.

B. THE REGISTRATION PROCESS

1. How to Register

1.1. Application Form

An applicant is required to file an application with the relevant LFB. There is a prescribed application form for registration under the FIEL. Additionally, certain documents must be submitted together with the application. Some LFBs provide an application form (in Japanese) on their websites (http://kantou.mof.go.jp/kinyuu/kinshotorihou/sinsei/29toroku.doc).

1.2. Application Fee

There is no registration fee, but an applicant must submit a receipt of payment of the registration tax of JPY 150,000 together with the application.

1.3. How Long Does The Registration Process Take?

The Cabinet Office Ordinance Concerning the Financial Instruments Business stipulates that the relevant LFB must endeavor to complete the registration within two months after an official application, unless some amendments or corrections are required. From a practical viewpoint, applicants must conduct the following two steps before the official application: first, preparing a document called a ''general outline'' (*gaiyo-sho*), which is the applicant's response to the relevant LFB's questionnaire and elaborates its business plan and the reason why it wants to register as a Financial Instrument Business Operator in Japan; second, a draft of an application form and its attached documents, including some internal rules for the applicant's business for the LFB's review (in some cases, for example where the

applicant would like to conduct ITM Business, the relevant LFB sends the relevant drafts to the FSA, and the FSA reviews and comments on them) as well as responses to the LFB's additional questions. It will generally take three to four months in the case of Investment Management Business or two months in the case of Non-Discretionary Investment Advisory Business to prepare drafts of (i) the necessary internal rules and (ii) the application and attachments. It then usually takes approximately two months to complete the registration after formal submission of the application documents to the LFB.

Accordingly, the entire period would roughly be six months in the case of Investment Management Business and four months in the case of Non-Discretionary Investment Advisory Business. For a foreign applicant, it generally takes one or two more months, because all documents need to be either prepared in Japanese or filed together with a Japanese translation, and all communication with the LFB is in Japanese only.

1.4. Are There Different Registration Requirements for Non-Japanese Applicants?

If registration is required, an investment adviser registered outside Japan is subject to the same registration requirements and process. In other words, there is no advantage if applicants are registered as an investment adviser outside Japan. On the other hand, even if an applicant is a foreign entity, no special requirements are added; however, all documents must be prepared in Japanese or submitted together with a Japanese translation.

2. Required Information

Although an individual can register for Non-Discretionary Investment Advisory Business, our discussion below assumes that an applicant is not an individual. There is no material difference between that information that a discretionary investment adviser and a Non-Discretionary Investment Adviser are required to provide.

The application must include the following information about the applicant:

(i) name;
(ii) amount of stated capital or aggregate amount of equity;
(iii) titles and names of ''Officers'' (meaning directors, executive officers, auditors, and persons in positions similar thereto, and, in the case of a foreign entity, a representative in Japan);
(iv) the category or categories of Financial Instruments Businesses for which registration is sought;
(v) names and locations of the principal office, the main branch and other branches;
(vi) if business other than Financial Instruments Businesses is carried out at any branch, the type of such business;

(vii) the name of the alternative dispute resolution institution, financial instruments dealers' association and recognized investor protection association to which the applicant will belong;
(viii) the name of each financial instruments exchange of which the applicant will be a member;
(ix) if Type I Business will be carried out, the investor protection fund to which the applicant will belong; and
(x) the names of important employees (''Important Employees''), if any.

Important Employees basically consist of (a) persons overseeing compliance matters; (b) where registration is sought for Investment Management Business or Non-Discretionary Investment Advisory Business, persons who control the investment management or advisory department and persons who make investment decisions or formulate investment advice (e.g., a fund manager); and (c) where registration is sought for Non-Discretionary Investment Advisory Business, persons who control the principal office.

The application must be filed together with the following attachments:

(i) a declaration stating that applicant does not fall under the disqualifying items discussed in section B.3. below;
(ii) documents setting forth the internal rules for the business and the method of business;
(iii) documents stating business management systems, such as human resources and business systems;
(iv) personal histories of Officers and Important Employees;
(v) identification documents (mibun-shomeisho) issued by a municipal office for each Officer and Important Employee (or, if the relevant individual is not Japanese, a substitute document, such as a declaration signed by such individual);
(vi) residence certificates (jumin-hyo) issued by a municipal office for each Officer and Important Employee (or, if the relevant individual is not Japanese, a substitute document, such as an affidavit);
(vii) a declaration of each Officer and Important Employee stating that they do not fall under certain disqualifying items discussed in section B.3., ''Substantive Requirements for Registration'' below;
(viii) documents stating the conditions of Specified Related Companies;
(ix) a copy of the Articles of Incorporation;
(x) a certified copy of corporate registration;
(xi) the latest balance sheet and profit-and-loss statement;
(xii) documents showing calculation of net assets (only in the case of an application to register as an Investment Management Business);
(xiii) documents stating names and addresses of, and the number of shares held by, Major Shareholders (only in the case of an application as an Investment Management Business); and
(xiv) if the applicant is a non-Japanese entity, evidence that a foreign authority has confirmed that the solid and appropriate operation of the applicant's

Financial Instruments Business will not be prevented by any person who is a major shareholder.

Also informally required is a document called a ''general outline'' (*gaiyo-sho*), which is the applicant's response to the relevant LFB's questionnaire. Information to be stated in or attached to the general outline normally includes (i) a diagram showing the relationship among group companies, (ii) cash flow forecasts for the two years following registration, (iii) a diagram showing the business scheme, (iv) a flow chart concerning customer solicitation, and (v) an organization chart.

3. Substantive Requirements for Registration

3.1. Investment Management Business

3.1.1. Capital Requirements

An applicant must have JPY 50 million in stated capital or in aggregate amount of equity.

3.1.2. Jurisdiction of Organization

An applicant must be a Japanese corporation (*kabushiki kaisha*) with a board of directors or a foreign company equivalent thereto. In the case of a Japanese corporation, one of the directors must be a resident in Japan, as a corporate registration requirement.

3.1.3. Compliance Framework

The FSA guidelines (the ''Guidelines'') impose quite important responsibilities on a Financial Instruments Business Operator's directors, officers and employees, and particularly on the representative director and the board of directors. For the entire firm, the requirements are broad and extensive and concern various points of management, including compliance and internal administration issues. These responsibilities apply to all four categories of Financial Instruments Businesses.

In particular, the Guidelines require each firm to establish a compliance framework (including a compliance manual) and the firm's directors, officers and employees must have been familiarized with the compliance program and/or compliance manual. The compliance program or manual must be evaluated, followed up on and revised regularly or from time to time as necessary. In addition:

(i) compliance-related information must be properly reported and shared between the business department and compliance department and/or personnel in charge of the compliance;

(ii) an education system concerning compliance must be established and efforts be made to build and improve compliance awareness and keep the education effective; and
(iii) proper support must be given so that the chief of compliance matters (''Chief Compliance Officer'') and any other managers authorized to act for him or her will function effectively and such functions must be evaluated and followed up on.

However, the Guidelines clearly state that they are to be applied to various situations depending on the actual circumstances of each Financial Instruments Business Operator. There is no intention that all listed items apply to all firms without exception. The Guidelines further state that technical non-compliance with any specific item will not necessarily be inappropriate so long as no issue of public interest or investor protection is raised.

3.1.4. Human Resources Requirements

An applicant must meet certain human resource requirements. An application for registration may be rejected if the applicant is considered unable to properly conduct its business in light of both its organization and its situation concerning procurement of personnel with sufficient knowledge and experience.

The Guidelines set out the following human resources requirements for firms carrying out Investment Management Businesses:

(i) management personnel must have sufficient qualifications, with regard to their experience and ability, to fairly and appropriately handle the firm's business as a Financial Instruments Business Operator;
(ii) full-time directors and officers must have (a) sufficient knowledge and experience to understand the business management perspectives indicated in the FIEL, the related regulations and the Guidelines and sufficient knowledge and experience to operate the Financial Instruments Business based on such perspectives and (b) sufficient knowledge and experience regarding compliance and risk management to fairly and appropriately operate the Financial Instruments Business;
(iii) the firm must have personnel with knowledge and experience regarding the assets under management as an asset manager for clients; and
(iv) the firm must establish a compliance department independent of the investment management department, to which it assigns staff with sufficient compliance knowledge and experience.

In addition, the firm must maintain staffing adequate to be able to do the following:

(i) prepare and maintain books, records, reports and other documents;
(ii) satisfy disclosure requirements;

(iii) segregate the clients' assets under management from its own assets;
(iv) perform risk management;
(v) administer the firm's computer systems;
(vi) administer the firm's investment management process and its relations with customers;
(vii) administer insider and certain other client information (hojin kankei jyoho or "company-related information") (see section D.2 below);
(viii) review advertisements;
(ix) administer client information;
(x) deal with complaints and problems;
(xi) manage portfolios at the investment management division;
(xii) perform internal audits; and
(xiii) calculate and examine investment trust assets (if the firm manages investment trusts).

3.1.5. Withdrawal and Denial of Registration

The FIEL does not provide any specific procedures or forms regarding withdrawal from the application process. From a practical perspective, a document which states that an applicant will rescind its application and the reasons for the rescission should be submitted to the relevant authority.

When an appropriate application for registration is filed, the relevant LFB shall register the applicant as a Financial Instruments Business Operator unless there are grounds for denial. The grounds for denial are the following:

(i) the applicant's registration as a Financial Instruments Business Operator under the FIEL was rescinded within the preceding five years;
(ii) the applicant committed a violation of the FIEL or certain other laws and became subject to a fine within the preceding five years;
(iii) the applicant conducts another business that is considered to be against the public interest;
(iv) the applicant fails to fulfill the human resources requirements (as described in section 3.1.4 above); and
(v) the applicant does not have JPY 50 million in stated capital or in aggregate amount of equity.

In addition, an application can be denied if the applicant:

(i) is not a Japanese corporation (kabushiki kaisha) with a board of directors or a foreign company equivalent thereto;
(ii) does not have net assets of at least JPY 50 million; or
(iii) conducts any other business that is neither an Ancillary Business nor a Notified Sideline Business (see section A.2.1.4 above), and managing the risks of such other business is considered so difficult that it constitutes an impediment to providing adequate investor protection.

The application can also be denied if any of the applicant's Officers (which, for this purpose, include those, regardless of their titles or positions, having the actual power to effect control over the applicant with a degree equal to or higher than that of a director, executive officer or any equivalent person of the applicant ("Controlling Persons")) or Important Employees:

(i) has been judged to be legally incompetent, etc.;
(ii) became bankrupt and has not been discharged;
(iii) was subject to imprisonment (or a more severe penalty) within the preceding five years;
(iv) at any time during a 30-day period preceding the rescission mentioned below, was an Officer of a company whose registration as a Financial Instruments Business Operator was rescinded under the FIEL within the preceding five years;
(v) has been a director or held another equivalent position of a Japanese—or foreign-regulated company and was ordered to be dismissed or removed from such position by the relevant authority within the preceding five years; or
(vi) has committed a violation of certain laws and was subject to a fine within the preceding five years.

Unless an applicant is a non-Japanese person, the application for registration may also be denied if any of the applicant's Major Shareholders:

(i) had his or her registration as a Financial Instruments Business Operator under the FIEL revoked within the preceding five years;
(ii) committed a violation of the FIEL or certain other laws and became subject to a fine within the preceding five years;
(iii) its representative Officers (see section B.2 above) have been judged to be legally incompetent, etc.;
(iv) representative Officers became bankrupt and has not been discharged;
(v) representative Officers were subject to imprisonment (or a more severe penalty) within the preceding five years;
(vi) representative Officers at any time during a 30-day period preceding the rescission mentioned below, were Officers (including those who have the same or stronger authority than a director, executive officer, or any equivalent persons) whose registration as a Financial Instruments Business Operator was rescinded under the FIEL within the preceding five years; or
(vii) representative Officers committed a violation of certain laws and became subject to a fine within the preceding five years.

Finally, if the applicant is a foreign firm, the application may be denied unless the authorities in its home jurisdiction confirm that the solid and appropriate operation of the applicant's Financial Instruments Business will not be prevented by any person who is a Major Shareholder or equivalent.

3.1.6. Additional Requirements in the Case of Investment in Beneficial Interests in a Trust of Real Estate

In addition to the above, if the applicant would like to engage in the business of making investments in beneficial interests in a trust of real estate as its Investment Management Business, a registration as a general real estate investment manager under the Real Estate Investment Management Ministry Ordinance (or, alternatively, having established a certain level of human resources framework equivalent to that of a general real estate investment manager) is required. Investment in real estate is quite often made through investment in trust beneficial interests.

3.1.7. Investment Management Business Targeting Only Accredited Investors

A recent amendment to the FIEL effective April 2012 has established another type of Investment Management Business that targets only accredited investors, where the size of assets under management is limited to the stipulated range. Specified Investors, investors that hold more than JPY 300 million of risk assets, and pension funds whose assets are valued at more than JPY 10 billion, are included in the category of accredited investors. Their officers, directors and certain employees and parent companies are also included in the category. Certain registration requirements (e.g., minimum capital or equity, form of organization and human resources requirements) will be eased for this type of business.

3.2. Non-Discretionary Investment Advisory Business

3.2.1. Capital Requirements and Deposit

In the case of Non-Discretionary Investment Advisory Business, there is no capital requirement, as opposed to that of Investment Management Business. An applicant must make a deposit of JPY 5 million with the relevant governmental office. This deposit will be held as a reserve for clients' claims arising in connection with Investment Advisory Agreements.

3.2.2. Jurisdiction of Organization

There are no requirements for jurisdiction of an organization.

3.2.3. Compliance Framework and Human Resources Requirements

For a Non-Discretionary Investment Advisory Business, no human resource requirements exist until April 1, 2012. As regards the compliance framework, the requirements are identical to those applicable for the Investment Management Business (see section B.3.1.3 above). As discussed, the Guidelines require a Financial Instruments Business Operator conducting only Non-Discretionary Investment

Advisory Business to install a Chief Compliance Officer. Nonetheless, depending on the size, nature and other factors related to the business conducted, this may not be a strict requirement. For example, a firm conducting only Non-Discretionary Investment Advisory Business might be permitted to have an employee who handles general administration (and who may have no legal or compliance background) also handle compliance and have such employee refer compliance matters to the parent company's legal or compliance department or outside counsel as appropriate (though the firm's representative and such employee would remain responsible for all compliance matters).

3.3. Withdrawal and Denial of Registration

As is the case in Investment Management Business, the FIEL does not provide any specific procedures or prescribed form regarding withdrawal from the application process. From a practical perspective, a document which states that an applicant will rescind its application and the reasons for the rescission should be submitted to the relevant authority.

An application to register as a Financial Instruments Business Operator conducting Non-Discretionary Investment Advisory Business may be denied on one of the following grounds:

(i) the applicant's registration as a Financial Instruments Business Operator under the FIEL was rescinded within the preceding five years;
(ii) the applicant committed a violation of the FIEL or certain other laws and became subject to a fine within the preceding five years;
(iii) the applicant conducts other business that is considered to be against the public interest; or
(iv) the applicant fails to fulfill the human resources requirements (as described in section 3.1.4 above).

In addition, registration may be denied if any of the applicant's Officers (which, for this purpose, including Controlling Persons) and Important Employees:

(i) has been judged to be legally incompetent, etc.;
(ii) became bankrupt and has not been discharged;
(iii) was subject to imprisonment (or a more severe penalty) within the preceding five years;
(iv) at any time during a 30-day period preceding the rescission mentioned below, was an Officer of a company whose registration as a Financial Instruments Business Operator was rescinded under the FIEL within the preceding five years;
(v) has been a director or held another equivalent position of a Japanese or foreign-regulated company and was ordered to be dismissed or removed from such position by the relevant authority within the preceding five years; or
(vi) has committed a violation of certain laws and was subject to a fine within the preceding five years.

C. OVERVIEW OF SUBSTANTIVE REGULATION

1. Anti-fraud Provisions

The following acts are prohibited under the FIEL and the related ordinance:

(i) using fraudulent means or committing assault or using intimidation with regard to the conclusion or cancellation of an Investment Advisory Agreement or Discretionary Investment Management Agreement;
(ii) making a promise to a client that any loss that might arise will be compensated in whole or in part upon solicitation;
(iii) making an investment intended to cause a transaction to take place with the investment adviser itself or its director or executive officer (excluding certain instances);
(iv) making an investment intended to cause a transaction to take place with other investment properties which the investment adviser manages (excluding certain cases);
(v) making an investment intended to cause an unjustifiable transaction to take place regarding a particular Financial Instrument, Financial Indicator or option, for the purpose of securing the interest of the investment adviser itself or a third party other than the client by using fluctuations in the price, indicator, figure or amount receivable based on the transaction;
(vi) making an investment intended to cause a transaction to take place under terms and conditions that are different from ordinary terms and conditions and detrimental to the clients' interest;
(vii) conducting trade on its account by using information concerning a transaction conducted as an investment management business;
(viii) providing property benefits to a client or a third party or having a third party provide it to the client in order to compensate in whole or in part a loss incurred by the client from the transaction conducted as investment of clients' property or making an addition to the profit accrued to the clients from the transaction conducted as investment of clients' property (excluding certain cases);
(ix) making an investment intended to cause a transaction to take place with its auditor, directors, officers or employees (excluding certain instances);
(x) making an investment which is profitable to the investment adviser itself or a third party at the sacrifice of the client's profits;
(xi) making an investment which causes an unnecessary transaction to take place in consideration of its investment guidelines, assets under management or market conditions for a third party's benefit;
(xii) making an investment in a situation where the investment adviser is unreasonably forced to limit its way of investment or is in some other way burdensome to a third party;
(xiii) making an investment intended to conduct a transaction which falsely increases the trade volume or deliberately sets market price;

(xiv) making an investment which causes a transaction to occur with a third party of whom the investment adviser is an agent (excluding certain instances); and
(xv) placement of orders for transaction without indication of the account to which the transaction is allocated.

2. Insider Trading

Insider trading is a criminal offense in Japan, as well as in many countries. The term ''insider trading'' in Japan means (i) trading of securities, including shares of a listed company (''Shares''), by a corporate insider (''Corporate Insider'') (including a person who has received information from a Corporate Insider, and a person who has ceased to be a Corporate Insider within one year) who has come to know any Material Fact (as defined below) concerning the listed company, etc. (as defined under the FIEL), before such fact is publicized in the manner prescribed under the FIEL, and (ii) purchasing of Shares by a person concerned in the tender offer or purchases analogous to a tender offer (''Tender Offer Related Person'') (including a person who has received information regarding the tender offer from a Tender Offer Related Person, and a person who has ceased to be a Tender Offer Related Person within one year) who has come to know any Material Fact (as defined below) concerning the tender offer, before the implementation of the tender offer or purchases analogous to a tender offer is publicized in the manner prescribed under the FIEL (or the sale of Shares in a situation where a publicized tender offer or purchases analogous to a tender offer is to be suspended and the suspension has not been publicized). In the event of a violation of these prohibition provisions, the offender is subject to imprisonment for not more than five years or a penal fine of not more than JPY 5 million, or both. In addition to these criminal charges, an administrative monetary penalty may be imposed.

''Material Facts'' consist of: regarding (i) above (a) facts that decisions have been made on issues such as mergers, capital increases, etc., (b) facts that events have occurred, such as losses resulting from disaster, the threat of default, etc., (c) matters concerning account settlement which are individually described in laws or orders, (d) any material fact pertaining to the operation, business or assets of a listed company or its subsidiaries, which are likely to have a significant effect on investment decisions by investors, or (e) with respect to subsidiaries, the facts similar to (a) to (d) above and regarding (ii) above any undisclosed information concerning the implementation or the discontinuation of a tender offer or purchases analogous to a tender offer.

The JSIAA issued the ''Guideline to Prevent Insider Trading,'' a self-imposed regulation, to its member investment advisers. This regulation recommends that investment advisers:

(i) strictly control non-public Material Facts, appoint a responsible person in charge of controlling dissemination of Material Facts and strictly prohibit

officers and employees from releasing Material Facts without the approval of that responsible person; and

(ii) not give investment advice or provide discretionary investment management services on the basis of non-public Material Facts.

The CIAL does not explicitly provide anything related to insider trading.

3. Contractual Relationship with Clients

Generally, there is no legal requirement that stipulates the terms and conditions that must be contained in a Registered Investment Manager's agreements with clients. One exception is in the case of an ITM Company where the trust deed of an investment trust must set out certain terms stipulated in Article 4, Paragraph 2 of the ITICL, such as the investment guidelines, method of calculating the net asset value and the distribution policy. In addition, certain items that must be stated in a Document upon Execution (as defined in section 7.2 below) are expected to be in those agreements (such as the investment guidelines and the investment management fees).

The rules of the self-regulatory organizations also require certain provisions to be contained in the agreements. For example, a provision prescribing a client's consent or approval is required in certain cases, including where investment is made in a fund managed by an affiliate.

Under the FIEL, if a Registered Investment Manager would like to delegate all or any of its authority to manage its client's assets to a third party (which must be either an entity authorized to conduct Investment Management Business in Japan or a foreign entity licensed to conduct business equivalent of Investment Management Business in its jurisdiction), the following matters must be provided in the relevant Discretionary Investment Management Agreement or other agreement (such as the trust deed or the limited partnership agreement) with the client:

(i) that the delegating adviser will delegate all or any of its authority to manage the client's assets to a third party and such the third party's name;
(ii) a summary of the delegated work; and
(iii) the amount of fees to be paid to the third party if such fee will be charged to the client's account.

Registered Entities are required to maintain the Discretionary Investment Management Agreements and Investment Advisory Agreements, respectively as a part of their bookkeeping and recordkeeping obligations. Normally they are required to keep copies of executed versions of these agreements.

4. Standard of care

Registered Entities are subject to a duty of loyalty and a duty to exercise the due care of a prudent manager under the FIEL. These duties are not required to be set forth in a written agreement with its client and even if the agreement with the client

provides otherwise, a Registered Entity cannot be excused from these duties from a regulatory perspective.

5. Compensation Terms

Registered Non-Discretionary Investment Advisers and their clients must agree on compensation terms, although no specific terms are prescribed as a matter of law. In other words, providing investment advice without fees does not constitute Non-Discretionary Investment Advisory Business.

In the case of Investment Management Business, there are no such express requirements. Normally, however, the compensation terms are set forth in the relevant Discretionary Investment Management Agreement or other agreement.

6. Assignment of Advisory Agreements

The FIEL does not prevent a Registered Entity from assigning its advisory agreement to a third party. However, the source that provides investment advice is essential for the client and thus an agreement to be such a source of advice cannot be assigned without the client's consent. The JSIAA prepares sample investment management agreements and investment advisory agreements, and they do not explicitly include the ability to assign a client advisory agreement in the event of an acquisition of the investment adviser by a third party.

7. Disclosure Requirements

7.1. Initial Disclosure to Client

Unless a client falls into the category of a Specified Investor (defined below), prior to the execution of a Discretionary Investment Management Agreement or Investment Advisory Agreement, a Registered Entity must deliver to the client a document (the ''Pre-execution Document'') containing information which discloses the risks, costs, major terms of the proposed agreement and other stipulated items in accordance with the FIEL. In the event of an amendment to an existing agreement, the Registered Entity must deliver to the client a new Pre-execution Document or a document indicating the change in the information that was contained in the Pre-execution Document, unless the information in the Pre-execution Document remains unchanged.

7.2. Subsequent Disclosure to Clients

Same as section 7.1 above, unless a client falls into the category of a Specified Investor, immediately following the execution of a Discretionary Investment

Management Agreement or Investment Advisory Agreement, a Registered Entity must deliver to the client a document (the ''Document upon Execution'') containing information to confirm the major terms of the agreement in accordance with the FIEL. A Discretionary Investment Management Agreement or Investment Advisory Agreement, as the case may be, that includes information necessary for the Document upon Execution in accordance with the manner stipulated in the FIEL (e.g., certain items must be written in larger font size than others) can substitute for the Document upon Execution. In other words, as long as a Registered Entity executes and delivers to the client such an agreement, a Registered Entity does not additionally need to deliver the Document upon Execution.

Additionally, unless a client falls into the category of a Specified Investor, a Registered Investment Manager must deliver an investment management report regularly (at least semi-annually) to the client.

A ''Specified Investors'' is defined in Article 2, Paragraph 31 of the FIEL and includes certain financial institutions (e.g., banks, securities firms and insurance companies), listed corporations, corporations having a stated capital of at least JPY 500 million and non-Japanese corporations. If a Registered Entity receives an offer to enter into a Discretionary Investment Management Agreement or Investment Advisory Agreement from a new client that is not a QII but is a Specified Investor, the Registered Entity must give notification to the Specified Investor client by the time of entering into the agreement that the Specified Investor is entitled to be treated as a non-Specified Investor at its request, as prescribed in Article 34 of the FIEL. If the Specified Investor requests that it be treated as a non-Specified Investor, the Registered Entity must accept the request and, as prescribed in Article 34-2, Paragraph 3 of the FIEL, deliver in advance to such Specified Investor a document stating (i) the date of acceptance, (ii) the type of agreement and (iii) other relevant matters.

7.3. Regulatory Reports

Registered Entities must prepare an annual business report (the ''Business Report'') in the designated form for each business year and submit it to the FSA or the relevant LFB within three months after the end of each business year. In addition, a copy of the Business Report must be kept at all of its offices in Japan for public review for one year, starting four months after the business year end. The Business Report must include an outline of business for the relevant year, a summary of matters resolved at the shareholders meeting, concurrent positions of the officers, each major shareholder's name and address, the amount of assets under management (in the case of a Registered Investment Manager), and the number of Investment Advisory Agreements and the amount of its advisory fees (in the case of a Non-Discretionary Investment Adviser). With the FSA's approval, a non-Japanese entity can obtain a reasonable extension.

8. Personal Securities Trading

Under the FIEL, officers or employees of Registered Entities are prohibited from engaging in transactions relating to Securities or Derivative Transactions based on special information (e.g., client order trend) which might become known to them during the course of their duties. They are also prohibited from engaging in transactions relating to Securities or Derivative Transactions solely for the purpose of seeking speculative benefits. Although the term ''the purpose of seeking speculative benefits'' is vague, the purpose of this prohibition is to maintain public confidence in the fairness of an investment adviser. In order to achieve this purpose, the behavior of the officers and employees are broadly restricted.

Under the FIEL, employees of Registered Entities are not required to report their personal trading to the firm. However, many investment advisers require their employees to report personal trading or, more strictly, prohibit personal trading altogether.

9. Performance-Based Fees

There are no specific limitations on performance-based fees.

10. Advertising Restrictions

When a Registered Entity uses advertisement or similar marketing materials (''Advertisement'') regarding its Financial Instruments Business, the Registered Entity must include in the Advertisement certain information in a clear and precise manner. The required information includes:

(i) the trade name and the registration number of the Registered Entity;
(ii) the fee, commission or compensation payable to the Registered Entity relating to its Financial Instruments Business, if any; and
(iii) the risks involved in the advertised services.

The rules of the self-regulatory organizations require additional information in accordance with the type of the advertised business. For example, when an Advertisement contains information concerning the past performance of discretionary investment management, the Advertisement must include the calculation method of the performance and the reason why the benchmark is used.

Further, the Advertisement must not be materially false or misleading especially regarding profit forecasts, disclosure concerning the way in which the adviser provides the investment advice and the adviser's credibility. This requirement is applicable only to the Registered Entity's clients do not fall into the category of a Specified Investor.

In addition, according to the rules of the self-regulatory organizations, before a member investment adviser distributes Advertisement to customers, the member

must have the contents of the Advertisement examined by a person responsible for the review of Advertisements.

Although the FIEL does not define the term "Advertisement," the term generally means a communication that provides information regarding the Investment Management Business or Non-Discretionary Investment Advisory Business of the Registered Entity to the public by way of television, radio, newspaper, magazine, website, mail, facsimile, e-mail, brochure, or other media. According to the Guideline, an Advertisement includes written materials for customer solicitation, web pages, postal mail, letters, fax messages, e-mails, fliers and pamphlets and other media materials that provide information to a large number of people; however, judgment as to whether specific media materials are actually Advertisements, should be made not on the basis of the appearance or form of the materials or the method of providing them, such as an e-mail exchange, the airing of a commercial message or the provision of a gift, but on the basis of the specific contents of the materials in each case.

11. Electronic Media; Use of Internet

Registered Entities are not prohibited from providing services or advertising their services through the Internet or other electronic media. Many investment advisers set up their own websites and publish a variety of information for both potential investors and existing investors through the sites.

There are no special requirements regarding the use of the Internet or other electronic media. However, if a Registered Entity would like to deliver certain documents (e.g., the Pre-execution Document and the Document upon Execution) to its clients through the Internet or other certain forms of electronic media, it must obtain prior consent from the client. A failure to obtain such consent means that the investment adviser has breached the applicable delivery requirement under the FIEL.

12. Client Solicitors

An agency or intermediary service for the conclusion of an Investment Advisory Agreement or a Discretionary Investment Management Agreement is required to be registered. Technically, a Non-Discretionary Investment Advisory Business and the above agency or intermediary business are both categorized into the same registration type (i.e., "Investment Advisory and Agency Business" as defined in Article 28, Paragraph 3 of the FIEL). On the other hand, Registered Entities can solicit an Investment Advisory Agreement or a Discretionary Investment Management Agreement by themselves without another registration.

The solicitation of an interest in a partnership-type fund which an investment adviser conducts as a general partner also constitutes another category of Financial Instruments Business (i.e., Type II Business) and thus registration is required (however, a general partner can also enjoy the QII Business Exemption (see

section A.2.1.9 above) from this registration requirement). The solicitation of an interest in an investment trust by an ITM Company that has itself established such trust and manages it also constitutes Type II Business. On the other hand, if a person other than the ITM Company would like to solicit the investment trust, a Type I Business registration is required. A Type I Business registration is also required to solicit a corporate-type fund. Less burdensome requirements are imposed for a Type II Financial Instruments Business Operator registration than for a Type I Financial Instruments Business Operator registration. For example, a non-Japanese entity can register as a Type II Financial Business Operator without having any branch or liaison office in Japan.

A recent amendment to the FIEL effective Apri1 2012 makes it possible for an Investment Management Business that targets only accredited investors (see section B.3.1 above) to sell interests in a fund (whose asset size is limited to the stipulated amount) that it manages as the sole fund manager with full discretionary authority to make investment decisions pursuant to a Discretionary Investment Management Agreement under a Type II Business registration. In general, obtaining a Type II Business registration is not as difficult or time consuming as obtaining a Type I Business registration.

13. Books and Records

Registered Entities must prepare and keep certain books and records during the relevant statutory period. The relevant administrative order provides for what books must be prepared and what information must be kept in the books depending on the type of business which the investment adviser conducts. Although there is no prescribed form and some unnecessary information may be included, the necessary information must nevertheless be easily distinguishable from other information. Thus, simply keeping data logs is not generally allowed.

It is permissible to maintain books and records using electronic media, though, in such cases, the Guideline requires that the following conditions be met:

(i) handwritten books and documents, if any, shall be stored as image data;
(ii) the electronic media for storage shall have sufficient durability to last for the statutory retention period;
(iii) one of the electronic media used for data storage shall be designated as ''original'' and shall be clearly labeled to that effect;
(iv) a backup of the ''original'' mentioned above must be created and kept as a ''copy'';
(v) the information must be kept in a manner that makes prompt responses to client inquires possible;
(vi) hard copies of the records must be available when needed, without unreasonable delay;
(vii) tracking data history should be possible if original data is deleted or changed;

(viii) the data must be subject to an internal audit;
(ix) personnel in charge of preparation and storage of records and books must be appointed and internal rules governing the preparation and storage of books and records must be developed; and
(x) when a handwritten postscript or supplement to a hard copy of a book or document created electronically is made, a copy of that hard copy shall be saved as image data (if it is not stored as image data, the hard copy shall be stored as the original).

Although the place where books and records should be stored is not stipulated in the FIEL, according to the Guideline, books and records may be stored in an integrated manner, from the time of their creation, at the head office or the companies which are entrusted by a Financial Instruments Business Operator to create the books and records, under the condition that the following requirements are met:

(i) a system has been established to allow quick response to referrals from clients;
(ii) a system has been established to enable books and documents to be accessed at the head office within a reasonable period of time; and
(iii) the place where the books and records are to be stored does not impede internal audits.

14. Custody Regulations

When a Registered Investment Manager conducts a Self-Management Business, it must segregate its clients' assets from its own assets in accordance with statutory methods. Cash must be entrusted to an eligible custodian (e.g., a bank and licensed trustee). For assets other than cash, the method of segregation is provided with respect to each type of asset and a Registered Investment Manager is not necessarily required to appoint custodian (i.e., under certain conditions, Registered Investment Manager can hold the client's assets (other than cash) on their own). An independent audit is not legally required.

15. Soft Dollars

The FIEL does not regulate soft dollar arrangements. However, most public pension funds prohibit their investment advisers from entering into soft dollar arrangements.

16. Regulatory Inspections

Under the FIEL, the Prime Minister has the authority to conduct on-site and off-site inspections of a Registered Entity's operations and interview its employees to

ensure that the Registered Entity operates in conformity with applicable laws and regulations. As part of an off-site inspection, the Prime Minister can order the Registered Entity to submit reports or relevant materials. Additionally, the Prime Minister can order a Registered Entity's customers, certain subsidiaries, certain holding companies, or their sub-contractors to submit reports or relevant materials.

Almost all of these authorities are delegated to the SESC and the relevant LFB.

The SESC is mainly in charge of the inspection of Registered Investment Managers. On the other hand, the relevant LFB is mainly in charge of the inspection of Non-Discretionary Investment Advisers. Inspections are generally conducted on a regular basis and are also conducted when warranted due to specific issues. Under the FIEL, Japanese regulatory authorities have the power to inspect non-Japanese investment advisers as well as Japanese investment advisers.

D. ANTI-MONEY LAUNDERING, DATA PROTECTION AND CONSUMER PRIVACY

1. Anti-money Laundering

The Act on Prevention of Transfer of Criminal Proceeds (the ''APTCP'') requires an investment adviser to verify its clients' identity and report certain suspicious transactions.

Before a Registered Entity accepts a new client, the Registered Entity is required to complete a client identification process in accordance with the APTCP. At a minimum, a Registered Entity must (i) verify the identity of its client prior to the execution of the initial investment agreement with that client and (ii) maintain records of information used to verify the client's identity.

A Registered Entity must promptly report to the regulatory authority if the Registered Entity suspects that property received from its client relating to its investment advisory business may be criminal proceeds, or that its client may have engaged in criminal conduct in connection with any transaction relating to its investment advisory business. For the purposes of the APTCP, these transactions are called ''Suspicious Transactions.''

The Guideline requires that a Registered Entity avoid contact with antisocial forces. An organized crime group, a member of an organized crime group, a quasi-member of an organized crime group, a related company or association of an organized crime group, a corporate racketeer and other equivalent groups of the above are included in antisocial forces. A Registered Entity shall not enter into any agreement with antisocial forces or entities controlled by antisocial forces.

2. Data Protection and Consumer Privacy

Personal information of individuals needs to be handled in an appropriate manner in accordance with the Personal Information Protection Law (the ''PIPL'') and the

related administrative guidelines. Theoretically, the PIPL does not apply to a Registered Entity unless it handles 5,000 or more individuals' personal information every six months. However, even if the PIPL does not apply, the related administrative guidelines require a Registered Entity to handle personal information in accordance with the PIPL.

Furthermore, a Registered Entity is required to control certain important facts carefully and, as discussed in section C.2 above, to prevent insider trading or any other unfair acts. Such important facts are called "company-related information" (*hojin kankei joho*) and defined as follows; (i) any undisclosed material information concerning the management, operation or assets of a listed company, etc. which is deemed to affect investment decisions by investors, or (ii) any undisclosed information concerning the implementation or the discontinuation of a tender offer or purchases of shares analogous to a tender offer.

E. ENFORCEMENT PROCEEDINGS AND DISPUTE RESOLUTION

The Prime minister, the FSA, the LFBs and courts have enforcement authority over Registered Entities. Under the FIEL, the Prime Minister has all enforcement authority and it delegates almost all of its authority to the FSA and the FSA delegates part of its authority to the SESC and the LFBs and abstains from investigating itself. The SESC may advise the FSA to take administrative action in connection with investigations regarding certain issues (e.g., manipulation and insider trading). Alternatively, in the case of Non-Discretionary Investment Advisers, the relevant LFB performs investigations and imposes administrative orders itself.

1. Court Proceedings

Upon petition by the Prime Minister or Minister of Finance, the district court of the relevant jurisdiction may enjoin a Registered Entity from an act violating the FIEL or an order issued under the FIEL (e.g., insider trading regulations and registration requirements) if the court determines that there is an urgent issue pending and that such action is necessary and appropriate for the public interest and investor protection. In addition to the district court governing the domicile of the respondent, the district courts governing the place where the violation of the FIEL has occurred or will occur will have jurisdiction over the above cases, pursuant to a recent amendment which is expected to become effective by May 2013 at the latest.

2. Proceedings by the FSA and LFBs

In the case of a failure to comply with applicable laws and regulations, both the FSA and the relevant LFB have the authority to order Registered Entities to improve

or suspend their business operations as well as the authority to deregister them. Also, in certain cases (such as insider trading), administrative monetary penalties may be imposed. Furthermore, when the FSA and the relevant LFB find it necessary and appropriate for the public interest or protection of investors, with regard to a Financial Instruments Business Operator's business operation or the status of its property, they may order said Financial Instruments Business Operator to change its methods of business or take other necessary measures for improving its business operation or the status of its property, within the limits necessary. Such order is an administrative order, and does not pertain to any criminal sanctions.

Additionally, self-regulatory organizations also have enforcement authority. They have the authority to impose monetary penalties, to order improvements in business operations and to deprive a member of its membership privileges. Self-regulatory organizations can investigate investment advisers who are members of such organization themselves.

As opposed to the above, the FIEL does not grant clients of Registered Entities the privilege to enforce their statutory provisions. Although clients are not prohibited from complaining to the FSA, LFBs and the SESC, those regulators do not have any legal responsibility to act in response to an individual client's claim. To obtain monetary compensation, clients can use the dispute resolution system discussed below.

3. Financial ADR System

In June 2009, the FIEL was amended in order to promote customer protection by ensuring equality between Financial Instruments Business Operators and their customers, and in order to increase customer confidence in financial products and services. In order to achieve these purposes, financial institutions will be required to have out-of-court dispute resolution methods, which are aimed at establishing a so-called "financial alternative dispute resolution (ADR) system."

In particular, under the amended FIEL, which came into effect on October 1, 2010, Financial Instruments Business Operators (including Registered Entities) shall:

(i) if there is to be a designated institution that arbitrates disputes arising from their financial business ("ADR institution"), execute a relevant master agreement with the ADR institution; or
(ii) if there is to be no ADR institution, take statutory measures to (a) deal with customer complaints and (b) solve disputes with customers.

An ADR institution is designated by the FSA for certain types of business. However, because no ADR institution for Investment Management Business or Non-Discretionary Investment Advisory Business will be designated for the time being, a Financial Instruments Business Operator engaging in such business must take statutory measures to (i) deal with customer complaints and (ii) solve disputes with customers.

3.1. Measures to Deal with Customers Complaints

A Financial Instruments Business Operator must choose one of the following measures to deal with customer complaints:

(i) arrange for a third person who has experience in being a consultant in consumer matters to advise and guide its employees who are dealing with customer complaints;
(ii) establish its own business procedures and internal rules to deal with customer complaints, and publishing such procedures and rules;
(iii) utilize complaint resolution procedures established by a financial instruments operator association (such as the JSIAA) or a certified investor protection group;
(iv) utilize complaint resolution procedures established by the National Consumer Affairs Center of Japan ("NCAC") or a local consumer center;
(v) utilize complaint resolution procedures established by an ADR institution designated for businesses other than investment advisory business; or
(vi) utilize complaint resolution procedures established by a corporation designated to provide services for resolving disputes arising from financial business.

3.2. Measures to Resolve Disputes with Customers

A Financial Instruments Business Operator must choose one of the following measures to resolve disputes with customers:

(i) utilize certified dispute resolution procedures provided under the Act on Promotion of Use of Alternative Dispute Resolution;
(ii) utilize dispute resolution procedures established by a financial instruments operator association (such as the JSIAA) or a certified investor protection group;
(iii) utilize dispute resolution procedures established by a bar association;
(iv) utilize dispute resolution procedures established by the NCAC or a local consumer center;
(v) utilize dispute resolution procedures established by an ADR institution designated for business other than investment advisory business; or
(vi) utilize dispute resolution procedures established by a corporation designated to provide services for resolving disputes arising from financial business.

F. EXTRATERRITORIAL APPLICATION

Japan takes a territorial approach to the application of the law, and, in principle, the regulatory system for investment advisers is applied only to activities conducted within Japan. Whether particular activities are regarded as having been conducted

in Japan, however, is not always clear. Even if investment advisory services are provided outside Japan, as long as such services are provided to persons in Japan, such provision of investment services will be regulated under Japanese law. So, for example, any non-Japanese or Japanese investment adviser that provides investment advisory services to clients in Japan must in general register as a Registered Investment Manager or Non-Discretionary Investment Adviser. On the other hand, investment advisory services provided by a non-resident investment adviser located outside Japan would not be regulated under Japanese law if, at the time the services were rendered, the person receiving the services was also located outside Japan.

The substantive regulations do not differ in any material way if the registrant is not Japanese. Even if the clients are limited to non-Japanese investors, the regulations do not differ in any material way as long as the investment advisory services are conducted in Japan. Foreign corporations are categorized as Specified Investors and some regulatory requirements (e.g., disclosure requirements) are not applicable in cases where the investment adviser provides its investment advisory services to a foreign corporation. (Note that a foreign individual is not categorized as a Specified Investor.) In the case that investment advisers do not conduct investment advisory services in Japan, it would be arguable that the Japanese regulation does not apply to such investment advisers even if they have an office or branch in Japan.

However, several specific requirements are applicable to non-Japanese investment advisers that have not registered in Japan. Among the most important is that a person engaged in investment advisory business outside of Japan and not registered in Japan must file a notification with the FSA in advance of it establishing a representative office in Japan for collecting and providing information concerning markets and conducting other business related to securities. There is no form for the notification, but the relevant Ordinance specifies that the notice must include the following information:

(i) corporate name;
(ii) location of the head office;
(iii) scope of the filer's business;
(iv) scope of the business to be performed in Japan;
(v) location of the facility in Japan;
(vi) amount of stated capital or aggregate amount; and
(vii) title and name of the officer who holds representation.

In addition, the notice must contain information concerning the following matters related to the facility that the filer intends to establish in Japan:

(i) trade name;
(ii) name of the representative in Japan and address of such representative;
(iii) reason for the filer's intention to establish the facility;
(iv) the number of employee(s); and
(v) the scheduled date of establishment.