

Financial Regulation Newsletter

February
2018

Annual Reporting and Disclosure Requirements for QII-targeted Business Exemption in Japan

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1. Background

Under the Financial Instruments and Exchange Act of Japan (the “**FIEA**”), unless an exemption applies the general partner (“**GP**”) of a limited partnership (“**LPS**”) that mainly invests in securities is, in principle, required to be registered as a financial instruments business operator (a “**FIBO**”) in two separate registration categories:

- (i) in order to market interests in the LPS to Japanese investors, the GP must be registered as a FIBO that conducts Type II Financial Instruments Business (a “**Type II FIBO**”); and
- (ii) in order to manage the investments of the LPS, the GP must be registered as a FIBO that conducts Investment Management Business (an “**IMBO**”).

The widely-relied-upon QII-targeted business exemption (more literally translated, the “Special Business Activities for Qualified Institutional Investors” exemption; the “**QII Exemption**”) allows a GP to conduct such marketing activities and such investment management activities for the LPS without registration as either a Type II FIBO or an IMBO.

As stated in our client alert of February, 2016¹, the FIEA was amended effective March 1, 2016 to impose stricter regulation over the QII Exemption. Among other things, the amendment subjected GPs relying on the QII Exemption (“**Exempted Operators**”) to the annual reporting and disclosure requirements described below.

¹ https://www.jurists.co.jp/en/newsletters/12/newsletter_19173.html

2. Annual Business Report

An Exempted Operator must prepare a business report (“**Business Report**”) for each fiscal year and file it within three months from the fiscal year end² with the applicable authority³ through, in principal, the Financial Services Agency Business Support Integration System. We anticipate that many non-Japanese Exempted Operators’ fiscal years are calendar years; such Exempted Operators must file their Business Reports by the end of March 2018 (technically, April 2). For most such Exempted Operators, this will be their first filing, as the filing requirement applies to fiscal years commencing on or after March 1, 2016.

The Business Report can be prepared in English. The English-language form to be used, together with an example of a completed document, is available on the website of the Kanto Local Finance Bureau (“**KLFB**”).⁴

The items to be completed are broad, and include information about both the Exempted Operator itself and also the LPS of which the Exempted Operator serves as general partner.

Required information about the Exempted Operator itself includes, among other things: the types of current business operation; an overview of the business operation in the relevant fiscal year; the status of officers and employees, business offices, shareholders and external auditing; and the status of the marketing activities and investment management activities conducted in reliance upon the QII Exemption.

Required information about the LPS includes, among other things: the type of the LPS; the status of the limited partners (including the name and capital contribution amount for each “Qualified Institutional Investor”); the invested assets; the total invested amount; the net assets; the total assets; and the distribution amount. However, if the LPS’s limited partners are limited to certain professional investors, certain reporting items may be omitted.

Also, the Exempted Operator must prepare a balance sheet and profit and loss statement for the relevant fiscal year and file them with the applicable authority.

3. Disclosure of Annual Explanatory Document

An Exempted Operator must also prepare an explanatory document (“**Explanatory Document**”) for each fiscal year, which is to be disclosed publicly within four months from the fiscal year end⁵. The disclosure must continue for at least one year. Exempted Operators whose fiscal years are calendar years must publicly disclose their Explanatory Document by the end of April 2018. As with the Business Report filing requirement, the Explanatory Document disclosure requirement applies to fiscal years commencing on or after March 1, 2016. Thus, once again, for most such Exempted Operators this will be their first time.

The Explanatory Document is essentially an excerpt of the Business Report, with fewer items to be completed. For example, while the Business Report must include certain information about the LPS’s investments (such as the invested assets, total invested amount, net assets and total assets) and the name of each limited partner that is a “Qualified Institutional Investor”, such items need not be included in the Explanatory Document. While an Exempted Operator may choose instead to disclose the entire Business Report, it is anticipated that many Exempted Operators will prefer the Explanatory Document in order to avoid making public the LPS’s investment details and

² If a non-Japanese Exempted Operator is unable to file its Business Report by the deadline due to laws or customs of its home jurisdiction, it may request a deadline extension from the relevant authority.

³ The Kanto Local Finance Bureau, if the Exempted Operator is a non-Japanese entity with no principal business office in Japan.

⁴ <http://kantou.mof.go.jp/kinyuu/kinshotorihou/pagekthp032000272.html>

⁵ If a non-Japanese Exempted Operator is unable to disclose the Explanatory Document by the deadline due to laws or customs of its home jurisdiction, it may request a deadline extension from the relevant authority.

publicly identifying investors.

The Explanatory Document may be prepared in English. The English form to use is available on the KLFB website.⁶

Disclosure must be made either: (i) by placing the Explanatory Document for public inspection at the Exempted Operator's principal business office as well as business offices that undertake marketing and/or investment management activities in reliance upon the QII Exemption; or (ii) via the internet or other means that permits anyone to have easy access to the Explanatory Document at any time. However, according to the Financial Services Agency's response to public comments, disclosure method (i) above is not available to an Exempted Operator with no business office in Japan. Thus, such an Exempted Operator must use method (ii) above.

4. Conclusion

We anticipate that many non-Japanese Exempted Operators' fiscal years are calendar years. They are required to file Business Reports by the end of March 2018 (technically, April 2), and to publicly disclose Explanatory Documents (or Business Reports) by the end of April 2018. For most such Exempted Operators, this will be their first time.

Given that some preparation time is needed, we recommend that such Exempted Operators to start the drafting process at their earliest convenience.

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⁶ <http://kantou.mof.go.jp/kinyuu/kinshotorihou/pagekthp032000272.html>