

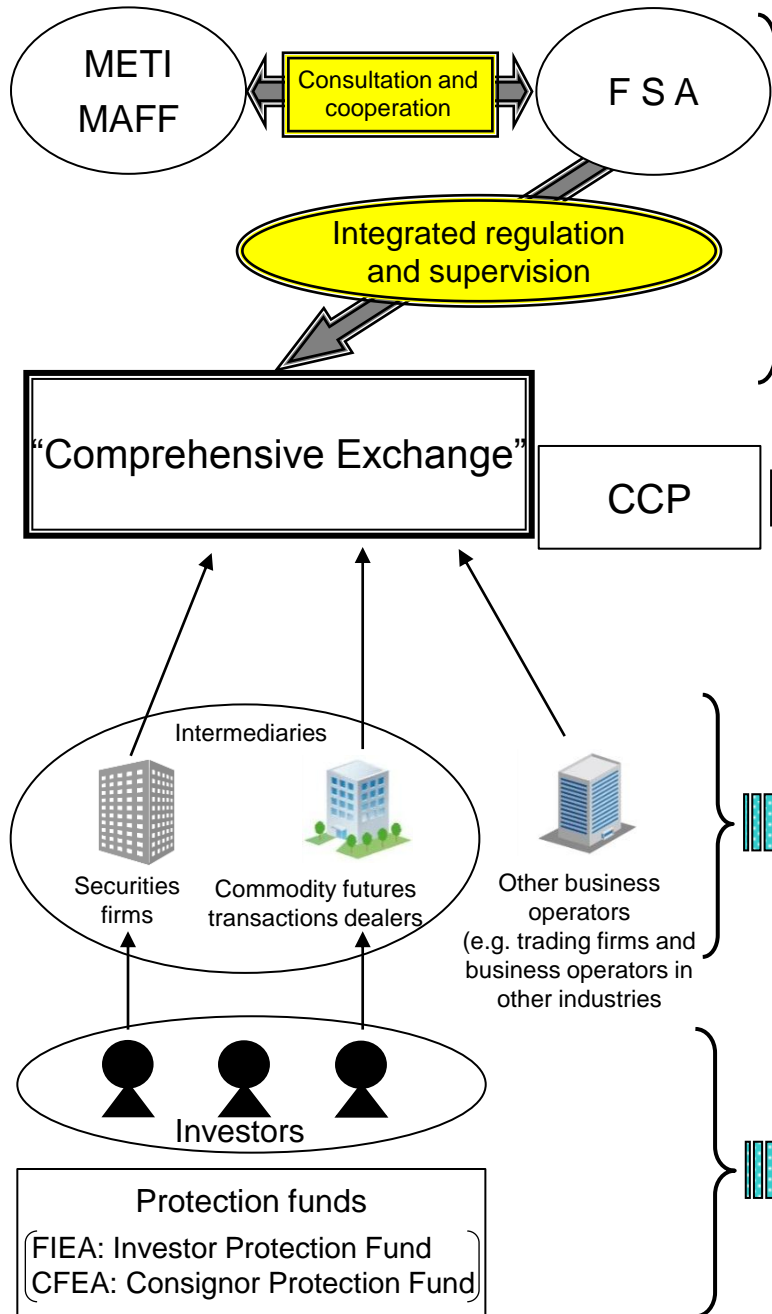
**Financial Instruments and Exchange  
(Amendment) Act of 2012  
[Briefing Materials]**

October 2012  
Financial Services Agency

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# Facilitating the Establishment of a “Comprehensive Exchange”



## Achieving a comprehensive market by establishing a “Comprehensive Exchange”

- Integrated supervision by the agency in charge of the financial industry with regard to a “Comprehensive Exchange” in which commodity derivatives are traded (Note)  
⇒ To eliminate inefficiency arising from regulation and supervision by multiple authorities
- Consultation and cooperation between the agency in charge of the financial industry and the agency in charge of the commodity industry  
⇒ To prevent adverse impact on the “production and distribution of commodities”

## Achieving convenient and safe CCPs

- CCPs on an “Comprehensive Exchange”  
CCPs on securities exchanges: Include clearing services for commodity derivatives in the scope of their authorized business  
CCPs on commodity exchanges: Grant an exception to the requirement for the license for clearing services for commodity derivatives

## Adopting a system, which allows participation of a wide range of business operators

- Securities firms: Include commodity derivatives brokerage services in the scope of Type I financial instruments business  
⇒ To allow their participation in commodity derivatives brokerage services
- Commodity futures transactions dealers: Apply the same financial criteria as those under the existing Commodity Futures Exchange Act (CFEA) if they are only engaged in commodity derivatives brokerage services among financial instruments business  
⇒ To facilitate their participation in trading on a “Comprehensive Exchange”
- Other business operators: Each exchange may designate business operators other than those in the financial industry (e.g. trading firms and business operators in other industries) as participants in commodity derivatives trading.

## Adopting an efficient and fair “investor protection” system

- Protection fund: Obligate operators to participate in the “Investor Protection Fund”  
The existing commodity futures transactions dealers are exempted from this obligation if they have participated in the “Consignor Protection Fund”
- Regulations on market misconducts: Apply the same regulations applied to market transactions of derivatives under the Financial Instruments and Exchange Act (FIEA)
- Regulations on the conduct of operators: Apply the existing regulations under the FIEA in principle, while taking into account those under the CFEA, etc.

(Note) Rice, etc. are excluded for the time being.

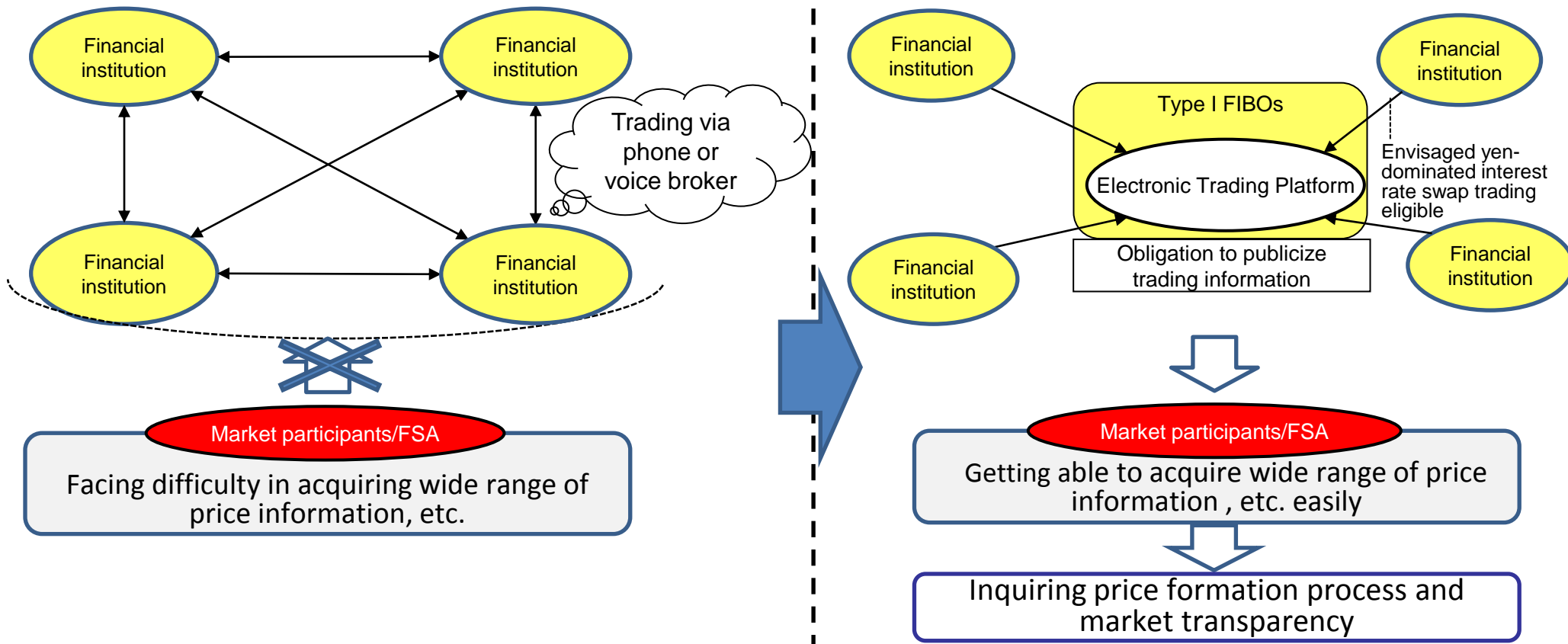
# Updating the OTC Derivatives Regulations (obligatory use of electronic trading facilities)

## Outline of the framework

○ To contribute to increasing market transparency, the amended FIEA requires Financial Instrument Business Operators (FIBOs), etc., to use Electronic Trading Platforms (ETP) when entering into certain types of OTC derivatives transactions, taking into account international discussion including the Leaders Statement at the G20 Pittsburg Summit (Note)

(Note) Points of the Leaders Statement at the G20 Pittsburg Summit (Sep. 25, 2009) (concerning OTC derivatives)

- (i) Trading of all standardized OTC derivative contracts on exchanges or electronic trading platforms ⇒ Addressed in the present revision
- (ii) Clearing of all standardized OTC derivatives contracts through central counterparties ⇒ (Promulgated in the Amendment of the FIEA in 2010)
- (iii) Reporting of OTC derivatives contracts to trade repositories ⇒ (Already addressed in the 2010 FIEA (Amendment))



(Note) Taking into consideration the fact that cross-border transactions are significant, the amended FIEA includes a framework to facilitate providing services by foreign ETP operators under the lighter permission rather than register as Type I FIBOs.

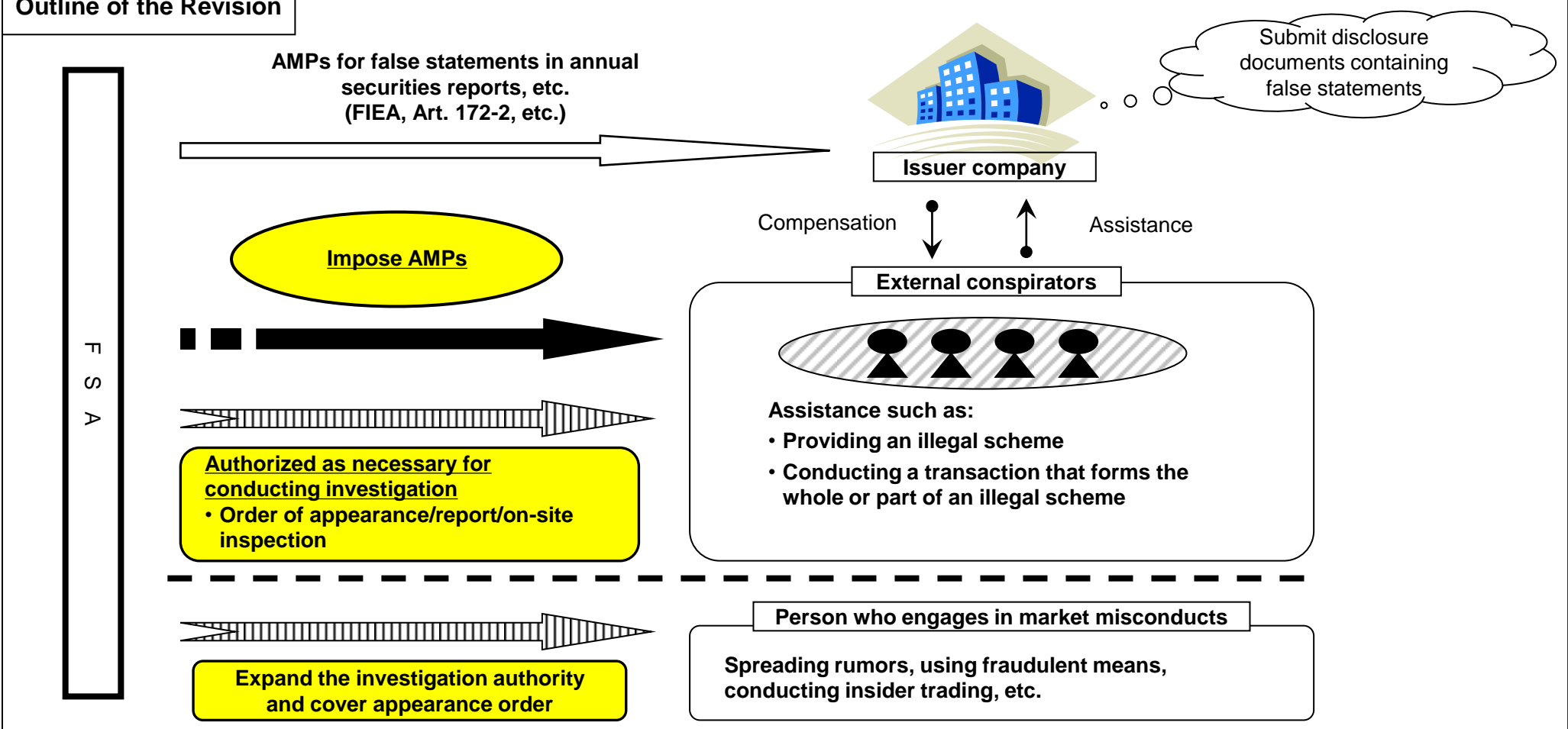
# Revision of AMP (Administrative Monetary Penalty) System:

- (i) Impose AMP upon the conducts assisting the issuer submitting false statements
- (iii) Provide legal authority in investigations concerning AMP

## Backgrounds

- Schemes employed by listed companies, etc. in making false statements have become complicated due to the assistance of external conspirators. Under the legislation prior to the revision, a person who submits disclosure documents containing false statements is subject to criminal penalties and AMPs, whereas a person who assists the submission of such documents may be charged as an accomplice of such criminal offender but is outside the scope of AMP.
- There is a possibility that a subject person refuses to accept the investigation on an AMP case regarding market misconducts, etc.

## Outline of the Revision



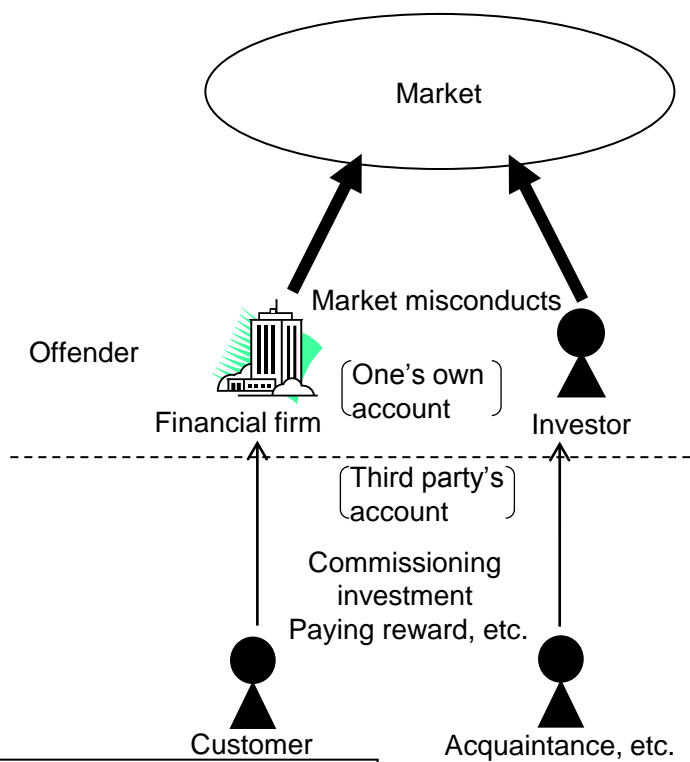
# Revision of AMP (Administrative Monetary Penalty) System:

## (ii) Expand the scope of market misconducts subject to the AMP

### Existing System

Scope of persons subject to criminal penalties: Person who commits an offense, irrespective of whose account he/she uses in trading

Scope of persons subject to AMP:  
 Person who commits an offense in trading on one's own account  
 Person who commits an offense in trading on a third party's account, including:  
 (i) Person who commits an offense in trading on the account of his/her dependent or its subsidiary, etc.  
 (ii) FIBO or registered financial institution (e.g. bank) who commits an offense in trading on the customer's account

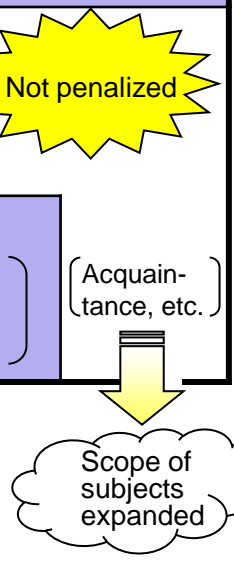


Subjects of AMP

Offender		Trading on one's own account	Trading on a third party's account
		Operators	FIBO/ registered financial institution (e.g. bank)
Other business operators (engaged in investment of deposited assets)	Penalized		( Customer ) <b>Not penalized</b>
Investors		Penalized	Penalized ( Dependent, etc. Subsidiary, etc. ) ( Acquaintance, etc. )

### Outline of the Revision

○ Expand the scope of subjects of AMP to include cases of market misconducts undertaken by operators or investors other than FIBOs, etc. on a third party's account



# Revision of Insider Trading Regulations

## Outline of the Revision

- Exempt the following transactions of corporate reorganization from application of insider trading regulations (Note):
  - Succession of equity stakes as part of a business transfer, in instances where insider trading is unlikely to occur
  - Use of treasury shares as a compensation for merger, etc.

(Note) Prohibition of the trading of share certificates, etc. of a company by the company's insider while knowing the undisclosed material facts about the company

### Succession of equity stakes as part of a business transfer

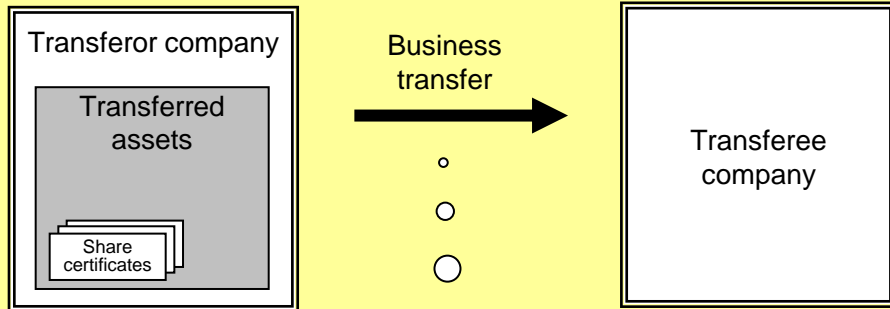
#### Existing rule

Insider trading regulations shall apply if the underlying assets of the business transfer contain equities of the transferor company

#### Revised rule

Exempt the case where insider trading is unlikely to occur (e.g. where the equities account for only part of the succeeded assets (less than 20%)).

\* The same rule will apply to a merger and company split.



Exclude the case where insider trading is unlikely to occur

### Use of treasury shares as a compensation for corporate reorganization

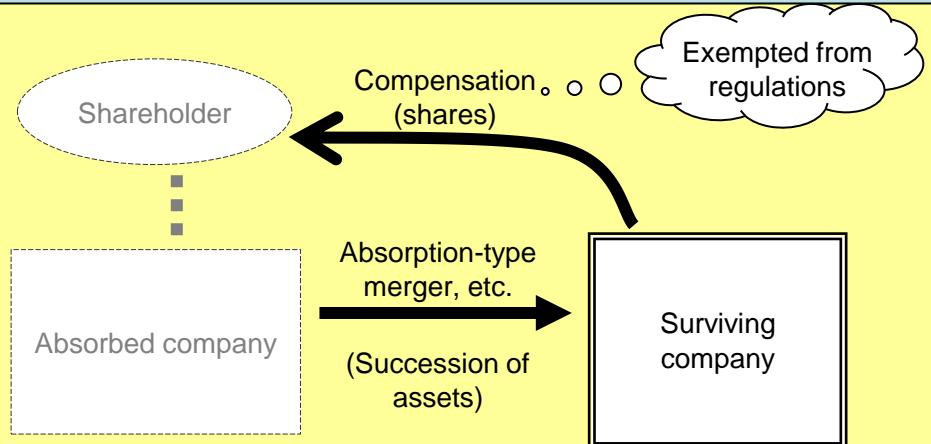
#### Existing rule

Insider trading regulations shall apply to the use of treasury shares as compensation for corporate reorganization.

#### Revised rule

Exempt the case of corporate reorganization where compensation is determined through the negotiation based on the assessment of the succeeded assets in whole and therefore insider trading is unlikely to occur

\* The issue of new shares as compensation for corporate reorganization is exempted from insider trading regulations under the existing rule.



## Schedule for Enforcement of New Rules

