

Provisional Translation

**Issues Facing Improvement of Alternative Dispute Resolution  
in the Financial Sector  
(Chairman's Memorandum)**

June 24, 2008

Financial Service Dispute Resolution Liaison Group

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## **No. 1 Introduction**

The Financial Service Dispute Resolution Liaison Group (hereinafter referred to as "the Group") is an independent body that has been established with the voluntary participation by consumer administrative agencies, consumer groups, the financial services industry and self-regulatory organizations (hereinafter referred to as "financial industry organizations"), bar associations, financial authorities and other relevant parties to improve the alternative dispute resolution in the financial sector, in response to the report (on June 27, 2000) of the Financial System Council.

The Group held 38 meetings since the first one on September 7, 2000. The Group conducted exchanges of information across the sectors and discussions among Group members with various backgrounds regarding financial industry organizations' measures focusing on five key points: ① the enhancement of coordination among organizations, ② the increased transparency of complaint and dispute resolution support procedures, ③ the expansion of a system to follow-up cases subject to complaint and dispute resolution support, ④ the positive announcement of complaint and dispute resolution support results, and ⑤ the improvement of public relations activities and other operations for consumer access to such support.

The Chairman's Memorandum reviews major activities of the Group over the past eight years and summarizes discussions on issues with regard to the improvement of the alternative dispute resolution (ADR) system in the financial sector.

## **No. 2 Major Activities at the Financial Service Dispute Resolution Liaison Group**

### **1. Development of Complaint and Dispute Resolution Support Model**

Wide gaps in the complaint and dispute resolution support system had initially existed among financial industry organizations participating in the Group. In June 2002, the Group developed "the Model of Complaint and Dispute Resolution Support by Industry and Self-regulatory Organizations in the Financial Sector (hereinafter referred to as "the Model")." Based on the consensus that the Model would have to be developed as a guideline or benchmark for the improvement of complaint and dispute resolution support measures, the Group then indicated the complaint and dispute resolution support procedures that were

considered feasibly ideal at that time.

Since the Model development, financial industry organizations have voluntarily improved financial ADR. Mainly through a follow-up on the implementation of the Model, the Group, for its part, has encouraged them to improve financial ADR voluntarily.

## **2. Revision the Model**

On the present Model, they were pointed out that ① the definition of "complaints" is difficult to understand, is likely to be interpreted narrowly and fails to meet users' diverse dissatisfactions, and that ② the responsibility of financial industry organizations is left unspecified, in such cases where they ask third parties such as bar associations to undertake the complaint and dispute resolution support. In response, the Group at its 35th meeting (on March 31, 2008) agreed to revise the Model. In the future/From now on, the Group will review the actual financial ADR situations and launch a working group to revise the model.

## **3. Introduction of Overseas Financial ADR Systems**

At the Group's 28th meeting (in January 2005), the Financial Research and Training Center of the Financial Services Agency introduced overseas financial ADR systems by reporting such systems in the United Kingdom, Australia and the Republic of Korea. Later, the FSA Research and Training Center published the report as a FY 2005 discussion paper titled "Comparison of Legal Consideration of Financial ADR Systems -- Mainly on Systems for Korea, the UK and Australia."

## **4. Introduction of Systems Contributing to Securing Neutrality and Fairness of Financial ADR**

The Group has repeatedly introduced a certification system, under the Act on Promotion of Use of Alternative Dispute Resolution (ADR Promotion Act); a certified investor protection organization system, under the Financial Instruments and Exchange Act; and encouraged financial industry organizations to obtain certifications under these systems.

As of June 2008, one organization (the Japan Securities Dealers

Association) had applied for the ADR Promotion Act certification, two (the Life Insurance Association of Japan and the General Insurance Association of Japan) had obtained investor protection organization certifications under the Financial Instruments and Exchange Act, and one (Japanese Bankers Association) had been preparing an application for the certification.

### **No. 3 Problems in Present Financial ADR**

#### **1. Consulting and Complaint Resolution Support by Financial Industry Organizations**

The financial ADR by financial industry organizations often begins with a complaint resolution support phase, in which users and companies hold direct negotiations. If complaints fail to be resolved, these organizations may provide the dispute resolution support. In this respect, many members commented that financial industry organizations in the complaint resolution support phase of the financial ADR support should not leave companies to resolve complaints, but should support users through advices and mediation based on a neutral stance. They further commented that these organizations should provide integrated support, covering from receipt of complaints to completion of the dispute resolution support.

Majority of the members from consumer groups, bar associations and academia commented that the small number of complaint resolution support cases indicated these organizations might have failed to pick up users' complaints sufficiently.

On the other hand, many members from financial industry organizations commented that they had no intention of concealing complaints, and were trying to pick up complaints more widely.

#### **2. Dispute Resolution Support by Financial Industry Organizations**

##### **(1) Methods, etc. of Dispute Resolution Support**

According to the Group's fact-finding survey about financial ADR, users do not apply for dispute resolution support for most complaints that were left unresolved in the complaint resolution support phase.

On this finding, majority of the members from consumer groups, bar

associations and academia commented that financial industry organizations failed to disseminate and publicize the complaint and dispute resolution support system among users sufficiently; that these organizations should positively encourage users to apply for the dispute resolution support, since some users would believe that their complaints had been resolved to their disadvantage through their direct negotiations with companies in the complaint resolution support phase; and that procedures for applications for the dispute resolution support should be made easier, since users would be tired of their months-long direct negotiations with companies in the complaint resolution support phase, and give up resolving their complaints.

On the other hand, many members from financial industry organizations commented that it is important for these organizations and companies to seriously deal with complaints in the complaint level, and that these organizations were trying to resolve complaints through advice to users and mediation to companies.

Majority of the members from consumer groups, bar associations and academia commented that organizations that entrusted arbitration centers of bar associations to undertake the dispute resolution support had never implemented such support on their own, that even in cases where such support was given, companies sometimes failed to deal with complaints faithfully, and that it was a problem that financial industry organizations which do not have their own dispute resolution support bodies failed to support users in financial disputes until their resolution.

On the other hand, members from financial industry organizations explained that the number of dispute resolution support cases was small, since a number of complaints and disputes were limited, and that it was difficult for small organizations to give dispute resolution support by setting up their own dispute resolution support bodies.

## **(2) Effectiveness of Dispute Resolution Support**

Majority of the members from consumer groups, bar associations and academia commented that companies' obligations to accept financial ADR procedures and respect financial ADR results failed to be secured sufficiently.

On the other hand, members from financial industry organizations said these organizations created rules for respecting financial ADR results and were administrating neutral, fair and effective dispute resolution support bodies.

### **3. Evaluation of Voluntary Efforts at the Financial Service Dispute Resolution Liaison Group**

Majority of members from consumer groups, bar associations and academia commented that although the Group's voluntary efforts over some eight years after the report given by the Financial System Council in 2000 led to some improvements in the financial ADR, these improvements were difficult to be praised as sufficient, and that measures beyond the framework of the Group's voluntary efforts should be taken.

On the other hand, many members from financial industry organizations commented that these organizations were enhancing their voluntary efforts to realize more effective ADR services and wanted others to watch progress in such efforts.

## **No.4 Roles of Financial ADR**

### **1. Concept of Financial ADR**

The financial ADR is a mechanism that does not only protect individual users in financial trouble of which resolution depends on high-level expertise, but also secures the effectiveness of rules to improve financial transactions, making wide-ranging contributions to the protection of users. The expansion of financial ADR should contribute to increasing consumers' confidence in financial transactions and promoting the sound development of financial and capital markets.

In order to secure the fair, prompt and transparent resolution of financial complaints and disputes, therefore, we must consider the further expansion of the financial ADR capability and develop a neutral system that would be used widely.

In the United Kingdom, the financial industry offered to finance the creation of an independent third party organization and accept its decisions, in order to eliminate people's sense of distrust in the industry (offering funding

without intervention). But an opinion at the Group said the industry in Japan might have fallen short of recognizing that contributions to a third party organization which makes decisions unfavorable to the industry represent a way to win people's trust.

Another opinion said that financial ADR improvements should secure three key points: ① a horizontal spread of functions going across business boundaries, ② a vertical spread that is ADR with comprehensive procedures provided for complaint resolution and dispute resolution, and ③ quality of procedures representing neutrality, fairness, transparency, confidentiality, promptness and low cost.

## **2. ADR Administrator**

From the view point of financial expertise, many members commented that the private sector, rather than the government sector, should administrate the financial ADR by taking advantage of know-how, experience, and human resources accumulated at financial industry organizations that actually undertook ADR services.

The Group's members shared the view that the private sector's financial ADR should cooperate and coordinate with an administrative ADR of the National Consumer Affairs Center of Japan, which is enhanced by recent revision of act, in order to resolve financial troubles appropriately and prevent recurrence or their expansion.

## **3. Securing Neutrality and Fairness**

Majority of the members from consumer groups, bar associations and academia commented that those engaged in dispute resolution support regarding the financial ADR should be guaranteed a position to exercise their authority neutrally and fairly.

Majority of the members from consumer groups, bar associations and academia said those engaged in consulting and complaint resolution support regarding the financial ADR should be positioned to exercise their authority neutrally and fairly without unnecessary considerations to companies, in order to pick up a wide range of complaints.



Majority of the members from consumer groups, bar associations and academia commented that in the case that financial ADR bodies are created within financial industry organizations, organizational measures to secure and demonstrate independence and transparency of the financial ADR bodies should be taken, such as the establishment of an independent committee including representatives of users for financial ADR administration, self-supporting accounting systems, and enhancement of the transparency of organizational procedures.

On the other hand, members from financial industry organizations commented that the financial ADR could fail to work without companies' confidence and should be neutral and fair to companies as well as users.

#### **4. Securing Effectiveness**

##### **(1) Self-regulatory organizations**

Self-regulatory organizations may be interpreted variously. Our concept is that self-regulatory organizations' financial ADR will contribute to the protection of users, if they are designed to work autonomously for the sound development of financial and capital markets, rather than for the development of member companies.

Some financial industry organizations such as the Japan Securities Dealers Association have some legal regulatory authority on member companies, while others have no such authority. Members from consumer groups and bar associations commented that if industry organizations became self-regulatory organizations under relevant industry law, they could accumulate binding self-regulatory rules flexibly and promptly, adopt these rules for the resolution of complaints and disputes, and consider improvements in sales promotion methods through the resolution of disputes.

On the other hand, many members from financial industry organizations said that industry organizations' shift to self-regulatory bodies under relevant industry law would be a greater industry-wide problem beyond the perspective of the financial ADR and would not necessarily lead to the enhancement of their ADR functions. They also said that among measures other than such shift,

agreements between voluntary industry organizations and the legislation of ADR functions would secure the effectiveness of the financial ADR. Similar opinions were given by members from bar associations and academia.

Members from academia and financial industry organizations said that industry organizations' shift to legal self-regulatory bodies for financial ADR functions would not necessarily guarantee these functions' neutrality and fairness to users, and that legal self-regulatory bodies' binding authority on member companies would not necessarily serve the best interest of consumers.

## **(2) Financial ADR Body Certification**

Majority of the members from consumer groups, bar associations and academia commented that the government sector including the Financial Services Agency should certify specific organizations as financial ADR bodies in order to secure high-quality ADR operations and that conditions for such certification should include a setup of the system to secure neutrality and fairness, a readiness to select procedure implementers with expertise in financial affairs, and procedure rules securing effective dispute resolutions.

## **(3) Requiring Companies to Conclude Contracts with Financial ADR Bodies**

Majority of the members from consumer groups, bar associations and academia commented that the government should require companies to conclude contracts with financial ADR bodies certified by the FSA or any other government agency, by adopting such contracts as a condition for business licenses; that companies should be required to accept ADR procedures, negotiate with relevant parties faithfully and respect ADR results; and that users should be given easier access to financial ADR.

## **(4) Litigation Support**

Members from academia commented that if companies rejected resolutions given by financial ADR bodies, users should be allowed to select lawyers, who have contracts with these ADR bodies, as their representatives for filing suits against these companies or accepting suits, with lawyer fees shouldered by these ADR bodies.

## **5. Unified, Comprehensive Financial ADR Bodies**

Many members commented that while it would be desirable to create a unified, comprehensive third party organization for the financial ADR in the future, prudent considerations should be given to such approach because of unresolved relevant problems, including whether or not the unification and comprehensiveness could secure technicality and promptness of resolutions. They also commented and that unification and comprehensiveness should be considered over the medium to long term, while financial industry organizations upgrade their financial ADR arrangements to desirable levels through voluntary efforts and legislation for their standardization, and enhance coordination among financial ADR bodies.

There was a remark that even the financial ADR through a unified, comprehensive third party organization may fail to effectively solve troubles with unregistered financial companies.

Many members from relatively smaller financial industry organizations said that similar industry organizations which cannot set up individual dispute resolution support bodies on their own should create a joint dispute resolution support body that horizontally goes across their business boundaries. A similar opinion came from members from academia.

On a horizontal ADR system that goes across business boundaries within the financial industry, members from bar associations and financial industry organizations commented that a mechanism might be considered for an industry-wide organization to ① work as a one-window entry that is desirable for the ADR process, to ② resolve cases involving effective decisions by transferring them to the ADR of specialized financial industry organizations, and to ③ put in order, compile and publish complaints and disputes as a means of checking the ADR operations of financial industry organizations.

On the other hand, financial industry organizations participating as observers in the Group commented that a new law should be created to establish a single financial ADR body covering all financial transactions. Before the new legislation, the opinion said that financial industry organizations as certified dispute resolution supporters under the ADR Promotion Law should develop a

comprehensive ADR body which would horizontally go across business boundaries within the financial industry.

## **6. Course of Actions**

Majority of the members from consumer groups, bar associations and academia said legislative actions should be taken to develop a mechanism to secure certain levels and qualifications for financial ADR bodies and evaluate their operations from the viewpoint of users.

Majority of the members from consumer groups, bar associations and academia commented that legislative actions should be taken to require companies to accept dispute resolution support procedures at financial ADR bodies that meet certain levels and qualifications, faithfully negotiate at relevant ADR bodies, and respect decisions and other conclusions given by these ADR bodies.

On the other hand, many members from financial industry organizations commented that these organizations' past model-based voluntary efforts were securing fairness and neutrality of the financial ADR and companies' acceptance of ADR procedures and that, therefore, actions might be limited to these organizations' enhancement of their voluntary efforts.

## **No. 5 Conclusion**

It is hoped that the Group's discussions on issues facing the financial ADR improvement will be promptly utilized for financial industry organizations' financial ADR improvement efforts and the government's concrete deliberations toward the improvement of the financial ADR.

END

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**Number of cases of consultation, complaint and dispute resolution support  
by financial industry and self-regulatory organizations during FY 2007**

(Cases)

Business category	Name of organization	Consultation	Complaint					Complaint				
		Number of cases	Cases of filing	Cases of resolution support			Cases of filing	Cases of resolution support				
				Pending cases	Settled cases	Failed cases		Pending cases	Settled cases	Failed cases		
Deposit	The JF Marine Bank Consultation Office	2	19	19	0	19	0	0	0	0	0	0
	Trust Companies Association of Japan	757	20	24	2	22	0	2	2	1	1	0
	Japan Bankers Association	38,700	2,174	492	80	359	53	1	0	0	0	0
	National JA Bank Consultation Office	1,502	387	414	70	284	60	0	0	0	0	0
	National Association of Shinkin Banks	1,199	12	12	0	10	2	0	0	0	0	0
	National Central Society of Credit Cooperatives	662	46	46	7	39	0	1	0	0	0	0
	National Association of Labour Banks	156	53	53	0	50	3	0	0	0	0	0
Insurance	Life Insurance Association	9,989	10,148	3,822	178	2,501	1,143	40	55	28	24	3
	The General Insurance Association of Japan	92,975	17,447	2,131	362	1,639	unseizable	26	10	1	8	1
Investment service	The Financial Futures Association of Japan	12	139	139	15	116	8	10	10	4	5	1
	Investment Trusts Association, Japan	428	20	20	0	20	0	0	0	0	0	0
	Japan Securities Dealers Association	6,438	773	773	20	580	173	173	194	54	73	67
	Japan Securities Investment Advisers Association	15	30	17	2	11	4	3	3	2	0	1
	Commodity Futures Association of Japan	2,901	197	200	54	93	53	131	182	61	87	34
	Japan Commodities Fund Association	11	9	9	0	9	0	0	0	0	0	0
	The Association for Real Estate Securitization	1	0	0	0	0	0	0	0	0	0	0
Other type	Japan Financial Services Association	8,108	43	43	1	39	3	—	—	—	—	—
	Issuance of Advanced Payment Certificate Association	544	1	1	0	1	0	0	0	0	0	0
Total		164,400	31,518	8,215	791	5,792	1,502	387	456	151	198	107

(Source) Financial Service Dispute Resolution Liaison Group 37th meeting material No.1

“Efforts for complaint and dispute resolution support by financial industry and self-regulatory organizations (FY2007)”