

**Comprehensive Guidelines for Supervision of
Financial Instruments Business Operators, etc.
(Supplementary Guidelines):
Guidelines for Supervision of High Speed Traders**

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Financial Services Agency

Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc.

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I. Basic Concept

I-1 Basic Concept for Supervision of High Speed Traders

High Speed Trading, in which financial instruments are ordered, modified and cancelled automatically at extremely high speed using algorithms (hereinafter referred to as the “HST” in Section I-1), is viewed as provider of liquidity to financial markets. It is also pointed out that increased liquidity and the resultant narrower bid/offer spread benefit general investors. On the other hand, there are various concerns over HST, such as stability and efficiency of financial markets, fairness among investors, price formation based on medium- to long-term corporate value, vulnerability of systems, etc.

Given the concerns above, aiming to create a robust market in Japan where various investors can participate without concern, the Financial Services Agency (FSA) supervises High Speed Traders by staying informed of High Speed Traders’ HST activities and ensuring that their business operations are appropriate while facilitating the traders to practice their functions appropriately.

It is therefore important for supervisory bureaus to require High Speed Traders to fully comply with legal and regulatory requirements, such as the development of an appropriate structure/system for business operation management to execute High Speed Trading business in a fair and appropriate manner, by keeping up to date on the status of High Speed Traders’ business operations via periodic hearing interviews, etc. and cumulating/analyzing various information provided by High Speed Traders to facilitate them in a timely manner to take voluntary actions for ensuring the appropriateness of business operations.

On the other hand, High Speed Traders are not Financial Instruments Business Operators, etc. (defined as financial business operators and registered financial institutions; the same shall apply hereinafter). Thus, it may be too extreme to require them to develop a structure/system as rigorous as Financial Instruments Business Operators, etc. Supervisory bureaus shall incorporate this in the supervision of High Speed Traders.

Also refer to Section I-1 of the “Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc. (hereinafter referred to as the “Comprehensive Guidelines”)” for the basic concept relating to the supervision of High Speed Traders.

I-2 Purpose of Establishment of Guideline for Supervision

In order to enable the Japanese economy to achieve sustainable development, it is important to accelerate a shift of funds “from savings to investment,” which means a shift in emphasis from indirect financing to direct financing and market-based indirect financing. To promote the shift, it is essential that financial authorities design appropriate institutional frameworks and properly motivate High Speed Traders who could influence market stability, etc. to strengthen their internal control while bearing in mind the appropriate risk management.

In order to conduct daily supervisory processes under these circumstances, we decided to work out concepts concerning supervision, supervisory viewpoints and methods of supervision, etc.

This Guideline was compiled with due consideration of the actual state of High Speed Traders so that it can be applied to various cases, and the requirements of the supervisory evaluation points specified in the Guideline shall not be uniformly applied to all High Speed Traders.

Accordingly, when applying this Guideline, it is necessary to bear in mind that even if a High Speed Trader does not literally meet the requirements of all evaluation points, the case shall not be judged inappropriate insofar as there is no problem from the viewpoint of protecting public interests and investors; it is necessary to avoid applying the Guideline in a mechanical and uniform fashion. On the other hand, it should also be borne in mind that even if a High Speed Trader formally fulfills all the functions concerning evaluation points, the case could be deemed to be inappropriate from the viewpoint of protecting public interests and investors.

Regional Finance Bureaus (including the Fukuoka Regional Finance Branch and the Okinawa General Bureau. The same shall apply hereinafter), as well as relevant divisions of the FSA, shall implement supervisory processes regarding High Speed Traders that operate in their districts of jurisdiction based on this Guideline.

II. Points of Attention in the Conduct of Administrative Processes Regarding the Supervision of High Speed Traders

II-1 Mutatis Mutandis Application of the Comprehensive Guidelines

Provisions in Section II of the Comprehensive Guidelines (excluding II-1-5 and II-6) shall apply mutatis mutandis for points of attention in administrative processes for the supervision of High Speed Traders (for List of Formats replace terms and phrases as necessary). Additionally, the following points shall be considered.

II-2 Internal Delegation

(1) Consultation with the FSA Commissioner

The directors-general of Regional Finance Bureaus (including the directors-general of the Fukuoka Regional Finance Branch and the Okinawa General Bureau. The same shall apply hereinafter.) shall hold prior consultations with the FSA Commissioner with regard to the following matters when they conduct delegated supervisory processes concerning High Speed Traders.

In addition, directors-general shall report the results of the deliberations made by their bureaus and express the opinions thereof in the consultations.

- (i) Refusal of registration under Article 66-53 of the Financial Instruments and Exchange Act (hereinafter referred to as the “FIEA”)
- (ii) Administrative dispositions, including orders to improve or suspend business operation, or rescission of registration under Article 66-62, Article 66-63(1) or (3) or Article 66-64 of the FIEA
- (iii) Dismissal of officers of High Speed Traders (for foreign corporations, limited to officers stationed in business or administrative offices in Japan or representatives in Japan) under Article 66-63(2) of the FIEA
- (iv) Dispositions necessary for investigation under Article 187 of the FIEA

(2) Reporting to the FSA Commissioner

When the directors-general of Regional Finance Bureaus conduct delegated supervisory processes regarding High Speed Traders, they shall complete the relevant processes and then report to the FSA Commissioner on the following matters.

- (i) When a High Speed Trader under the jurisdiction of the FSA has obtained registration from a Regional Finance Bureau under Article 66-50 of the FIEA, the director-general of the said bureau shall immediately send the original of the registration application and attached documents to the FSA Commissioner.
- (ii) When the directors-general of Regional Finance Bureaus have received reports based on Article 66-61(1) of the FIEA, they shall immediately send a copy thereof to the FSA Commissioner.

(3) Re-delegation to Directors-General of Finance Offices, etc.

Of the processes delegated to the directors-general of Regional Finance Bureaus under Article 43-2-3 of the Order for the Enforcement of the Financial Instruments and Exchange Act (hereinafter referred to as the

“FIEA Enforcement Order”), the directors-general may re-delegate the following processes to the director-general of Regional Finance Offices that have jurisdiction over the regions where the head offices of the applicants and High Speed Traders are located as well as to the heads of the Otaru and Kitami Branch Offices.

- (i) Administrative processes regarding the receipt of applications for registration as specified under Article 66-51(1) of the FIEA
- (ii) Administrative processes regarding the receipt of notifications based on Article 66-54 (1) and (3), Article 66-60 and Article 66-61(1) of the FIEA
- (iii) Administrative processes regarding the receipt of documents submitted under Article 66-59

III. Supervisory Evaluation Points and Various Administrative Procedures

III-1 Governance

To realize a robust financial market in which various investors can participate without concern, it is important that High Speed Traders themselves shall endeavor to develop the necessary control environment for legal and regulatory compliance and operate business, recognizing the need to manage various risks appropriately.

Therefore, in conducting daily supervisory administrative processes, it is necessary to examine what the desirable status of governance by a High Speed Trader is and take supervisory actions, from the viewpoint of whether its management team's checking of the execution of its business is conducted effectively and whether the monitoring and control of the management team is conducted effectively.

Section III-1 of the Comprehensive Guidelines shall apply mutatis mutandis to the examination of governance and supervisory actions, considering the business, characteristics, size, complexity, etc. of High Speed Traders. Additionally, the following points shall be considered.

III-1-1 Officers of High Speed Traders

(1) Major Supervisory Viewpoints

Whether the High Speed Trader appropriately takes into consideration the following eligibility requirements in the decision-making process regarding proposals for the appointment of its officers (officers who are subject to dismissal order based on Article 66-63(2) of the FIEA; hereinafter referred to as “Officers” in Section III-1-1).

- (i) A person who does not meet any of the ineligibility criteria (Article 29-4(1)(ii)(a) to (i) of the FIEA) and who did not meet any of them at the time of registration.
- (ii) A person who has not violated laws and regulations regarding High Speed Trading business operations or related business operations, or a person who has not been subjected to administrative actions taken based on laws and regulations.
- (iii) A person who has not engaged in an illegal or markedly inappropriate act regarding High Speed Trading business operations under particularly grave circumstances.

(2) Supervisory Method and Actions

In cases where an officer of a High Speed Trader is deemed to meet the ineligibility criteria specified under any of Article 29-4(1)(ii)(a) to (i) of the FIEA, or is found to have done so at the time when the officer obtained registration under Article 66-50 of the FIEA, or where an officer of a High Speed Trader is deemed to meet the ineligibility criteria specified under any of Article 66-63(1)(iii) or (v) of the FIEA, supervisors shall consider taking actions such as ordering the dismissal of the said officer based on Article 66-63 (2) of the FIEA.

In addition, they shall hold an in-depth hearing regarding the decision-making process concerning the proposal for the appointment of the said officer and, when necessary, require the submission of a report based on Article 66-67 of the FIEA. Furthermore, supervisors shall consider taking actions such as issuing an order for business improvement, if the High Speed Trader's control environment for governance is deemed to have a serious problem

and the action is deemed to be necessary and appropriate, from the viewpoint of protecting public interests and investors.

III-1-2 Adequate Staffing for Properly Conducting High Speed Trading Business Operations

(1) Major Supervisory Viewpoints

Supervisors shall examine whether High Speed Traders are adequately staffed to properly conduct High Speed Trading business operations and whether the structure/system necessary to perform the operations are established, in light of the requirements of Section III-3-1-3.

(2) Supervisory Method and Actions

The requirements specified in III-3-1-3 of this guideline are part of a comprehensive set of elements that should be taken into consideration when supervisors examine whether a High Speed Trader is adequately staffed to properly conduct its business operations. Even if an officer or an employee is deemed to not meet the requirements, it should not automatically lead to the conclusion that the High Speed Trader is not adequately staffed. The important thing is, first and foremost, that High Speed Traders strive to ensure on their own responsibility that they are adequately staffed, in light of those requirements and other elements.

However, supervisors shall hold in-depth hearings regarding the High Speed Trader's thoughts on staffing and the selection process concerning the proposed appointments of officers and employees, etc., in cases where a High Speed Trader is deemed to have failed to take those elements into consideration sufficiently in the selection process, and where it is deemed to be necessary and appropriate for the protection of the public interests and investors to hold such hearings. In addition, they shall require the submission of reports based on Article 66-67 of the FIEA when necessary.

Supervisors shall consider taking actions such as issuing an order for business improvement under Article 66-62 of the FIEA, in cases where the High Speed Trader's control environment for governance is deemed to have a serious problem as a result of the examination of the submitted report, and where the action is deemed to be necessary and appropriate from the viewpoint of protecting public interests and investors.

Furthermore, when the High Speed Trader is deemed to not be adequately staffed to properly conduct High Speed Trading business operations, as a result of the examination of the submitted report, supervisors shall consider taking necessary measures, including issuing an order for business suspension based on Article 66-63(1) of the FIEA.

It should be noted that if the High Speed Trader is an individual person, supervisors shall examine the qualifications of the person from the above viewpoints, and judge whether the staffing level for appropriate HST business operations is sufficient and take necessary actions as with the case of corporate entities.

III-2 Appropriateness of Business Operations

III-2-1 Development of Operational Control System

Sections III-2-1, III-2-2, III-2-7 to 9, III-2-11 and III-2-15 of the Comprehensive Guidelines shall apply mutatis mutandis pursuant to the examination regarding the appropriateness of business operations of High Speed Traders and resultant supervisory actions. In addition, in accordance with the content, characteristics, size and complexity of the business operations of High Speed Traders, supervisors shall conduct examinations and take actions considering the following.

III-2-1-1 Establishment of Internal Rules, etc.

Article 336(i) of the Cabinet Office Ordinance on Financial Instruments Business, etc. (hereinafter referred to as the “FIB Cabinet Ordinance”) requires High Speed Traders to develop internal rules, etc. to operate their HST business properly and take measures, such as training programs, so that employees comply with such internal rules, etc.

Supervisors shall examine the measures taken by High Speed Traders, keeping in mind the following.

- (i) whether High Speed Traders have established internal rules, etc. appropriately, considering their business, characteristics, size, complexity, etc.
- (ii) whether High Speed Traders, recognizing that compliance with internal rules, etc. is part of company-wide legal and regulatory compliance responsibility, also take measures for officers and employees, such as training programs, in accordance with Section III-2-1(1), which shall apply mutatis mutandis pursuant to Section III-2-1 of this guideline

III-2-1-2 Control Environment for Prevention of Abnormal Operations, etc.

In relation to electronic information processing systems and other equipment associated with HST (hereinafter referred to as the “HST System”), Article 66-57(i) of the FIEA requires High Speed Traders to operate HST business so that they will not be recognized as insufficient in preventing a situation where financial markets cannot function fully due to abnormal operations and other reasons in using their HST System (hereinafter referred to as “Abnormal Operation”). Further, Article 336(ii) of the FIB Cabinet Ordinance requires High Speed traders to take measures to manage the HST System adequately to remain in compliance with Article 66-57(1) of the FIEA.

In this connection, the supervisory viewpoints described in Section III-2-8-1(1) of the Comprehensive Guidelines, which apply mutatis mutandis to Section III-2-1 of this HST Guideline, shall also apply.

Supervisors shall also consider the following points.

- (i) whether High Speed Traders have adopted in their HST System a mechanism that does not execute unexpected orders or orders that may cause disruptions in financial markets (hereinafter referred to as “Abnormal Orders”); for example, a regular monitoring mechanism to prevent Abnormal Orders, by setting appropriate levels of hard and soft limits aligned with the types and size of intended trades

- (ii) whether there is a mechanism built in the HST System that promptly prevents disruptions of financial markets if Abnormal Orders are placed; for example, a mechanism to handle Abnormal Orders appropriately in accordance with the types, size, etc. of trades, such as a function to cancel Abnormal Orders to market (so-called “kill switch”)
- (iii) whether the High Speed Trader has established a function appropriately managing the operational environment for the mechanisms described in (i)-(ii) above, for example:
 - A. whether the High Speed Trader endeavored to enhance and maintain a rigorous management system related to the Abnormal Operation and Abnormal Orders through human resource allocation, including the selection of employees to make programs for transaction system and system administrators, training programs for officers, and periodic inspections of trading system management
 - B. whether at the stage of program installation, the High Speed Trader confirms the adequacy of the HST System’s data processing capability before moving to the operation stage, for example, by conducting a system test with an expectation of an increase in data to process, etc.
 - C. whether the High Speed Trader has developed a framework in which internal control department staff, etc. who can make appropriate decisions on setting, triggering and canceling hard limit, soft limit and kill switches can get involved appropriately and whether the framework functions properly
 - D. whether a contingency plan exists for the Abnormal Operation, such as large-scale abnormal orders, and is disseminated to officers and employees thoroughly

III-2-1-3 Control Environment for Prevention of Unfair Trading, etc.

Article 337 of the FIB Cabinet Ordinance requires High Speed Traders to take, without fail, necessary and appropriate prevention measures against unfair trades, including trades based on corporate-related information, market manipulation, etc.

In this connection, supervisors shall keep in mind the following.

- (i) whether the related High Speed Trader endeavors to enhance and maintain a rigorous management system related to unfair trading through human resource allocation, including the selection of employees in charge of investment decision making and employees to make programs for transaction systems, training programs for officers, and periodic inspections of trading system management
- (ii) whether the High Speed Trader has established a structure/system to prevent the buying and selling of securities utilizing corporate-related information, where the corporate-related information obtained by the traders is appropriately managed; for example, a system in which officers and employees, etc. who obtain corporate-related information will report to the internal control department, which will take measures such as placement of restrictions on trading the related shares
- (iii) whether the High Speed Trader has established and effectively utilizes trading criteria regarding market manipulation, etc., for example, as follows:
 - A. in order to ensure fairness as to High Speed Trading, whether the High Speed Trader has established criteria specifically for single-name stocks, considering the stocks’ historical price changes, the High Speed Traders’ trading share as to the stocks, the status of trading by specific staff members in charge,

etc.; and whether the trader selects stocks properly by installing a mechanism to the HST System to ensure stocks are selected based on the criteria

- B. whether the High Speed Trader has established specific criteria for screening single-name stocks, and appropriately manages trading, such as, through necessary measures to exclude unfair trades, including market manipulation (e.g., inquiries to the staff in charge of order, cautioning, and termination of trades)
- C. whether the High Speed Trader's internal control division, etc. ensures the effectiveness of selection criteria, screening criteria and implemented measures by verifying the consistency against actual status and making revisions as necessary

III-2-2 Supervisory Method and Actions

When supervisors have recognized an issue of supervisory concern regarding the control environment for operational and financial issues of a High Speed Trader, through daily supervisory administration and the reporting of problematic conduct, they shall identify and keep track of the status of voluntary improvement made by the High Speed Trader, by requiring the submission of reports based on Article 66-67 of the FIEA.

When the High Speed Trader is deemed to have a serious problem from the viewpoint of protecting public interests and investors, the supervisors shall take actions, including issuing an order for business improvement based on Article 66-62 of the FIEA.

When the High Speed Trader is deemed to have committed a serious and malicious violation of law, the supervisors shall consider necessary actions, including the issuance of an order for business suspension based on Article 66-63(1) of the FIEA.

III-3 Various Administrative Procedures

III-3-1 Registration

III-3-1-1 General Administrative Procedures for Registration

(1) Filling out Application Form for Registration

Section III-3-1(1) to (4) and (6) of the Comprehensive Guidelines shall apply mutatis mutandis as to filling out application form for registration.

(2) Documents to Be Attached to the Application Form

Section III-3-1(5) of the Comprehensive Guidelines shall apply mutatis mutandis to requirements regarding supporting documents to be attached to the application form (hereinafter referred to as the “Attachment”). Additionally, for “Overview of Trading Strategies in Operational Procedures Document” required under Article 328 (iv) of the FIB Cabinet Ordinance, High Speed Traders are required to provide information necessary to understand the basic mechanism of their trading strategies in a clear, easy-to-understand manner. In examining whether such information is provided in the Attachment, supervisors shall check whether following are described for each trading strategy.

- (i) whether the overview of trading strategies includes items (a) to (c) of Article 328 (iv) of the FIB Cabinet Ordinance, noting that the following classifications shall be used for matters stipulated in Article 328 (iv)(a)

- A. Market-making strategy

- A trading strategy where traders create orders for both sell and buy, become the counterparty to other investors, and take the bid/offer spread as their earned income

- B. Arbitrage strategy

- A trading strategy to purchase and resell to exploit the difference in prices of two positively correlated stocks (e.g. Nikkei 225 Futures and Nikkei 225 ETF) and of a single stock in different markets and make profits

- C. Directional strategy

- A trading strategy to generate profits based on the assessment of the direction of prices in the near future

- D. Other strategies

- Strategies that do not fall under market-making, arbitrage, or directional strategies above

(Note) For High Speed Traders taking combined strategies consisting of two or more of the four categories above, if it is possible to choose one as main strategy, such combined strategies shall be categorized and described under the selected main strategy. If it is not possible to determine the main strategy, the strategies shall be described under other strategies.

- (ii) whether information necessary to understand the basic mechanism of trading strategies, other than items

(a)-(c) of Article 328 (iv) of the FIB Cabinet Ordinance, is provided, noting that while such other necessary information shall be determined based on the related trader's trading strategy, the information shall include the names or trade names of High Speed Traders, etc. and authorized transaction-at-exchange operators intended to be transacted under the strategy

(3) Registration Number

(i) Each registration shall be identified by a serial number (however the following numbers shall not be used, 4, 9, 13, 42, 83, 103, and 893), which is assigned by each regional finance bureau, and the registration number to be entered into the registry of High Speed Traders shall be subject to the following rules:

e.g., Director General of Regional Finance Bureau (HST) No.

(ii) When a registration is no longer valid, its registration number shall be retired and no new number shall be issued in its place.

(iii) Registration numbers shall be managed by creating a High Speed Traders registry book using and modifying appended format III-2 of the Comprehensive Guidelines as necessary.

(4) Notification to Applicants

When registration is made in the registry of High Speed Traders, a notification of registration shall be issued to the applicant for registration using and modifying appended format III-3 of the Comprehensive Guidelines as necessary.

(5) Refusal of Applications for Registration (also refer to II-5-6 of the Comprehensive Guidelines)

(i) When registration is refused, a notification of refusal of registration shall be issued to the applicant using and modifying appended form III-4 of the Comprehensive Guidelines.

(ii) The refusal notification letter shall indicate the specific grounds for refusal: any of the applicable items out of Article 66-53 of the FIEA, false statements or missing important facts in received applications and the Attachment.

(6) Registry of High Speed Traders

(i) The registry of High Speed Traders shall be prepared according to the section from page 2 to 8 of the copy of the application for registration.

(ii) When a notification of change in items of application for registration is submitted, the relevant page of the registry for High Speed Traders shall be replaced by the revised page of the application for registration attached to the said notification.

(iii) When High Speed Traders under the supervision of the FSA submit notifications of change in the items in the application for registration, the FSA shall compile such notifications every month and send the revised pages of the application forms to the regional finance bureaus that registered the relevant High Speed Traders, by the 20th of the following month.

(7) Inspection of Registry of High Speed Traders

The inspection of the Registry of High Speed Traders prescribed in Article 66-52(2) of the FIEA and Article 331 of the FIB Cabinet Office Ordinance is to be handled as follows.

It should be kept in mind that when a person who has changed their surname files an application for inspection of the Registry of High Speed Traders, the person may enter, in addition to the current surname, the former surname in the parentheses in the column in the application form where the person entered their name as an applicant.

(i) Inspection via e-mail, etc.

- A. When receiving an application for inspection of the Registry of High Speed Traders via e-mail, etc., the relevant Finance Bureau shall check the information regarding the application, and send the relevant Registry of High Speed Traders promptly via e-mail, etc. However, when it is necessary to adjust or otherwise arrange the registry, the bureau shall send the registry as soon as it becomes possible to do so.
- B. An application for inspection of the registry of High Speed Traders via e-mail, etc. is received by e-mail, etc. containing the following information:
 - a. Applicant's name
 - b. Applicant's address
 - c. Applicant's telephone number
 - d. Email address to which the registry is to be sent
 - e. Applicant's occupation
 - f. Tradename or name and registration number of the Financial Instruments Business Operator regarding which the inspection of the registry is being sought
 - g. Purpose of the inspection
- C. When an applicant does not follow the instructions of the bureau, the bureau may refuse to send the Registry of High Speed Traders for which the application was filed.
- D. When accepting an application for inspection of the Registry of High Speed Traders in relation to a Financial Instruments Business Operator registered by the Director-General of another Finance Bureau, the bureau shall tell the applicant that they can file an application for inspection to the Finance Bureau that registered the relevant Financial Instruments Business Operator.

(ii) Inspection at a Finance Bureau

- A. The days for inspecting the Registry of High Speed Traders shall be on days other than holidays for administrative organs prescribed in Article 1 of the Act on Holidays of Administrative Organs (Act No. 91 of 1988), and the time for inspection shall be within the hours designated by the Director-General of the Finance Bureau. However, the inspection date or time may be changed when it is necessary to adjust or otherwise arrange the registry.
- B. When receiving an application for inspection, the relevant Finance Bureau shall request the applicant to enter the prescribed matters in an application form for inspection using Appended Form III-5.
- C. The Registry of High Speed Traders shall not be removed from the inspection area designated by the

Director-General of the Finance Bureau.

D. In cases where a person inspecting the registry falls under any of the following categories, their inspection may be suspended or refused:

a. Any person who does not abide by (a) through (c) above or who does not follow the instructions of the bureau

b. Any person who has defaced or damaged the Registry of High Speed Traders, or who may do so

c. Any person who has caused trouble to other inspectors, or who may do so

E. When accepting an application for inspection of the Registry of High Speed Traders in relation to a Financial Instruments Business Operator registered by the Director-General of another Finance Bureau, the bureau shall tell the applicant that they can file an application for inspection to the Finance Bureau that registered the relevant Financial Instruments Business Operator.

III-3-1-2 Points of Attention Regarding Method of Communication as part of High Speed Trading

Supervisors shall keep in mind that mechanisms to avoid conflicts with the “Other Communications” defined in Article 26(2)(ii) of the Cabinet Office Ordinance regarding Definitions under Article 2 of the FIEA (i.e. communication of information necessary to trade securities or market derivatives to parties specified under Article 26 (1) of the cabinet office ordinance above) include, for example, conclusion of an exclusive agreement regarding the use of the virtual server, etc. with the securities company, etc. undertaking orders.

III-3-1-3 Examination Items

(1) Items Regarding Examination of System’s Appropriateness

Examination regarding Article 66-53(iii) of the FIEA, whether High Speed Traders do not maintain adequate staffing levels to perform HST business- operations properly, shall be performed by checking the following items based on applications for registration, the Attachment and conducting hearing interviews. Of note, determination as to Article 66-53(iv) of the FIEA, whether the traders do not maintain an adequate structure/system to properly perform HST business- operations, shall also be made based on the following.

(i) Check, for example, against the criteria below to determine whether High Speed Traders are prepared for their business operations in terms of human resources management system/structure to make sure that there are officers or employees with sufficient expertise and experience.

A. Management’s career and capability are considered adequate for operating HST business fairly and appropriately.

B. Managing directors have sufficient experience and expertise for (i) understanding and carrying out requirements under related laws and regulations such as the FIEA, as well as points of attention described in this guideline, and (ii) compliance and risk management, which are necessary to operate HST business fairly and appropriately.

C. It is ensured that there are staff with knowledge and experience of financial instruments, such as

securities, etc. that are traded via HST and other HST-related activities.

- D. Organization and staffing level are maintained in such a way that adequate human resources are appropriately allocated and managers responsible for internal control, etc. are assigned to the relevant divisions.
- E. It is ensured that the compliance division (staff) is independent of divisions that are responsible for making investment decisions, and staff members are equipped with the knowledge and experience necessary to perform duties of compliance officer.
- F. High Speed Traders ensure there are a sufficient level and distribution of staff to complete the tasks including the following.
 - (a) Compilation and management of account books, reports and other documents
 - (b) Risk management
 - (c) Computer system management
 - (d) Corporate-related information management
 - (e) Trading management
 - (f) Internal audits
- G. An appropriate representative or appropriate agent in Japan is appointed; for example, a person who can, with a certain level of knowledge of the FIEA in relation to HST, inform the related High Speed Trader of the supervisory authority's reporting requirements, understand detailed requests for reports accurately, work in collaboration with the related High Speed trader and respond to the authority's requests appropriately, rather than simply relaying information between the trader and the supervisory authority.

(ii) When the qualifications of employees and officers are examined in a comprehensive manner in relation to the following criteria regarding organized crime groups (defined under Article 2(ii) of the Act on Prevention of Unjust Acts by Organized Crime Group Members; the same shall apply hereinafter) or their members (defined under Article 2(vi) of the same act; the same shall apply hereinafter), whether there is the risk that public confidence in the High Speed Trading business operations could be damaged because of the inclusion among its staff of officers and employees with inappropriate qualifications.

- A. Officers and employees should not be current or former members of organized crime groups.
- B. Officers and employees should not have close relationships with organized crime groups.
- C. Officers and employees should not have the experience of being sentenced to a fine for violation of the FIEA or other domestic financial laws and regulations or foreign laws and regulations equivalent thereto.
- D. Officers and employees should not have the experience of being sentenced to a fine (including similar punishments imposed under foreign laws or regulations equivalent thereto) for violation of the Act on Prevention of Unjust Acts by Organized Crime Group Members (excluding Article 32-2(7)) or equivalent foreign laws and regulations, or violation of the Penal Code or the Act on Punishment of Physical Violence and Others.

E. Officers or employees should not have the experience of being sentenced to imprisonment without work or more severe punishment (including similar punishments imposed under foreign laws or regulations equivalent thereto). (Particular attention should be paid to the case of an officer or employee being accused of committing crimes specified under Articles 246 to 250 of the Penal Code (fraud, fraud using computers, breach of trust, quasi fraud and extortion as well as attempts at these crimes)).

(Note) In the case where the related High Speed Trader is an individual, supervisors shall examine such individual's qualifications, etc. based on items (i) to (ii) above.

(2) Others

In the examination as to Article 66-53(v)(d) and (vi)(c) of the FIEA, supervisors shall check whether the “Foreign Regulatory Authority for Financial Instruments” defined in Article 189(1) of the FIEA (hereinafter referred to as the “Foreign Authority”) in the country where head office or business office engaging HST business operations of the related High Speed Trader that is a non-Japanese corporate or individual is located, is a signatory of International Organization of Securities Commissions (IOSCO)’s “Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information.” If confirmed, it shall be treated as a non-breach of Article 66-53(v)(d) and (vi)(c) of the FIEA. Otherwise, supervisors shall contact the related Foreign Authority and confirm the reliability as to responding to requests from Japanese authority for cooperation for investigation.

III-3-2 Other Administrative Procedures

Section III-3-2 to 3, and 5 of the Comprehensive Guidelines shall apply *mutatis mutandis* to matters related other administrative procedures.