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Financial Services Agency  
Securities and Exchange Surveillance Commission

Our Answers to Your Questions about  
the Financial Instruments and Exchange Act

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# Our Answers to Your Questions about the Financial Instruments and Exchange Act

## SUITABILITY

### (Question 1)

Is it true that securities firms and financial institutions cannot sell or solicit high risk products to elderly people?

1. The requirement for customer suitability is a rule which prohibits solicitation that is improper in light of the customers' knowledge, experience, financial situation and objective. This rule requires that solicitation be tailored for each customer in accordance with the customer's overall circumstances.
2. Therefore, it is not consistent with the objective of this requirement that securities firms and financial institutions treat all elderly people in the same manner (regardless of their knowledge or experience), such as:
  - Not selling high risk products to elderly people; including by:
  - Not selling products to elderly people at their first visit; or
  - Not selling products to elderly people unless they are accompanied by their family
3. Flexible and tailored sales and solicitation reflecting each customer's circumstances is desirable for both customers and financial service providers (securities firms/financial institutions).

### (Question 2)

Is it true that securities firms and financial institutions cannot engage in any transactions of financial instruments unless they find out the financial situation of their customers before each transaction?

It is not true that securities firms or financial institutions cannot engage in any

transactions of financial instruments unless they find out the financial situation of their customers before each transaction. For example, if the customer expressly indicates to a securities firm/financial institution that the customer fully understands the risks and is making a decision on his/her own, the securities firm/financial institution may, upon taking into consideration the customer's knowledge and experience, enter into a transaction of financial instruments without finding out the customer's financial situation.

#### OBLIGATION TO PROVIDE EXPLANATION

(Question 3)

Is it true that securities firms and financial institutions cannot sell high risk products unless they provide a lengthy explanation beforehand, even if the customer has extensive investment experience?

1. When selling a financial product, securities firms/financial institutions must:
  - a. Deliver documents which contain explanation on the product's scheme, risks, fees and other information necessary for customers to make their investment decisions; and,
  - b. Provide explanation on the contents of such documents in a manner and to an extent that is suitable for the customer's understanding (in light of his/her knowledge, experience, etc.).
2. Therefore, when selling a financial product to a customer who has extensive investment experience, securities firms/financial institutions do not need to provide the same explanation in the same manner as they would to a customer who has little investment experience.
3. For example, if a customer received an explanation on the same product in the past and the customer seems to have sufficient understanding of the product and its risks, securities firms/financial institutions may sell the product to the customer with only a relatively short explanation (even if the customer's prior purchase was with another service provider).

## ADVERTISEMENT RULES

(Question 4)

Is it true that risk information in advertisements on financial products must be written using letters and numbers that are 12 points or larger?

1. In the past, there were advertisements in which information that might be detrimental to customers (e.g., the product's risks) were indicated only in very small letters. From the customer's standpoint, it is important that the merits and risks of the product be written in a well-balanced manner.
2. Thus, the Financial Instruments and Exchange Act requires that risks and fees be written clearly and accurately in advertisements.
3. For example;
  - Risk information (e.g., existence of exposures to loss) must be indicated using letters that are not significantly different in size from the largest letters used in the advertisement.
  - Expectation of profits cannot be written in a manner that is grossly misleading or contrary to fact.
4. The law does not designate a specific point size for risk information in advertisements.

(Note) On the other hand, for documents to be delivered prior to entering into contract, risk information must be written clearly and accurately in boxed text using letters and numbers of at least 12 point size, and the other required information must be written clearly and accurately using letters and numbers of at least 8 point size.

(Question 5)

Is there a minimum percentage requirement for how large the letters used for risk information in an advertisement must be in comparison with the largest letters used in the advertisement?

1. The main purpose of the regulation on the size of letters used in advertisements is

for the merits and risks of a product to be indicated in a well-balanced manner. Therefore, rather than focusing on the formalistic interpretation (such as the minimum percentage size requirement in comparison with the largest letters used in the advertisement), it is important that the information contained in advertisements be easy-to-read and written from the customers' standpoint.

2. For example, it is important that efforts be made with a view to making the advertisements easy-to-read, such as using boxed text or decorated characters.

(Question 6)

Do advertisement rules apply to calendars that show the schedules of seminars hosted by securities firms?

Generally speaking, the following are not subject to advertisement rules:

- Seminar calendars that show the schedules of seminars held at branch offices of securities firms
- Mailing customers stock price charts and reference price of investment trusts (those that are considered to be part of after-sales customer service)
- Radio broadcast regarding digitization of stock certificates (those aimed at informing the public of the new system)
- Inserting in handy train schedules logos such as “X Securities, Inc. - For your specified trading account (for tax purposes)” and “Y Securities, Ltd. - Government bonds for individuals” (i.e., a kind of a catchphrases)

(Question 7)

There are various types of fees for online trading. Are securities firms required to write out all of them in advertisements?

The “fees” for online trading vary depending on the combination of transactions that the customer selects. Generally speaking, in advertisements, it is sufficient to indicate the upper and lower limits of the fee amount.

## DOCUMENTS TO BE DELIVERED PRIOR TO ENTERING INTO CONTRACT

(Question 8)

Does the obligation to provide customers with statutory documents prior to entering into contract apply to a case where the customer acquires securities as a gift?

1. In principle, the statutory documents to be delivered prior to entering into contract are not required in the following cases:
  - Acquisition of securities as a gift or as a result of corporate merger, allotment of share acquisition rights (*shinkabu yoyakukun*) to shareholders without consideration
  - Transfer of custody of beneficiary interests in investment trusts between securities firms (except for those pertaining to cumulative investment contracts)
  - Acquisition of securities through inheritance
2. With respect to inheritance, in our response to public comments regarding the Financial Instruments and Exchange Act Cabinet Orders and Ordinances announced in July 2007, we presented our view that document delivery must be made upon inheritance. This does not mean that securities firms must deliver the statutory documents to be delivered prior to entering into contract. For example, there are cases where inheritance of securities transactions results in the heir assuming securities risks. Our view is that in such cases, securities firms are required to provide the heir with appropriate explanation regarding the transactions as part of the general principle of sincerity and fairness.

## REGULATION ON FINANCIAL INSTRUMENTS BUSINESS

(Question 9)

If an investment trust manager speaks about its products in seminars, is that considered solicitation which requires registration for Type II financial instruments business? What are other examples of cases where the scope of application of the regulations on financial instruments business becomes an issue?

In addition to the case in question, the following are our views in response to

frequently asked questions regarding the scope of application of the regulations on financial instruments business:

- In cases where an investment trust manager attends an investment seminar hosted by a securities firm and speaks about specific products it provides, generally speaking, an additional registration (for Type II financial instruments business) is not required if the investment trust manager delegates solicitation of its products to the securities firm.
- In cases where a security trust is used as collateral for syndicated loan, if the security trust meets certain criteria including that the beneficiary interests in the security trust are inseparable from the loan (e.g., pursuant to an express provision in the trust deed), solicitation with respect to the beneficiary interests in the security trust does not constitute Type II financial instruments business.
- As a general matter, the Financial Instruments and Exchange Act of Japan may not apply to certain cases where an offshore branch of a Japanese bank enters into a transaction denominated in the currency of a foreign jurisdiction vis-à-vis an offshore corporate customer domiciled in that jurisdiction.
- In cases where a custodian, as standing proxy in Japan for non-resident shareholders (*jonin dairinin*), undertakes clerical work for the shareholders' request for stock repurchase under the Japanese Companies Act, as a general matter, the custodian is not considered to be acting as an agent or intermediary with respect to sales and purchase of securities.

(Note) The views contained in this document are our views at the time of the inquiry, in regard to the applicable laws and ordinances, based on the context in which the inquiry was made.

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