

Frequently Asked Questions

Regarding the Notification Requirements for Foreign Audit Firms, etc.

Summary

As a result of recent public consultations regarding the notification requirements for foreign audit firms, etc., the Financial Services Agency (hereinafter referred to as “the FSA”) has received approximately 120 comments from nine organizations.

Many of the comments raised questions on issues such as how the exemption from notification requirements will be implemented, how to deal with confidential information when the notification of such information to the FSA might lead to possible conflict with local laws, for what activities within the notification process the agent is necessary, and in what languages notification should be made. Other comments were more focused on specific issues such as the extent of the information that needs to be provided in the respective element of the notification document and attachments.

This document aims not only to respond to the comments received by the FSA but also to provide a comprehensive picture of the newly introduced notification requirements for “foreign audit firms, etc.” **Section A** provides a brief introduction including how the legislation process has been and will be carried out. **Section B** outlines discussions of major issues as specified above. **Section C** provides detailed analysis on specific matters regarding notification requirements. Finally, for reference purposes, English translation of the final texts of the Cabinet Office Ordinance and its forms, as well as the relevant provisions of the Certified Public Accountants Act, etc., are included in **Appendix A and B**.

The FSA may update this document from time to time, taking into account implementation of notification requirements, developments in international discussions, and so on. Readers are therefore recommended to check whether or not the latest version has been made available.

Section A Introduction

- (1) On September 28, 2007, the FSA published for public consultation the proposed Cabinet Orders¹ and Cabinet Office Ordinances², to implement the revised Certified Public Accountants Act, etc., which were passed by the Diet in June 2007 and will take effect in April 2008, based on Article 39 of Administrative Procedure Act (Act No.88 of 1993), in the Japanese language on the FSA's website.

On October 16, 2007, English translation of the provisions of the proposed Cabinet Office Ordinance pertaining to the notification requirements for foreign audit firms, etc. and relevant documents were also published on the FSA's website for further public consultation. As a result of the public consultation in the English language, the FSA received approximately 120 comments from nine organizations. The FSA appreciates those who took the time to examine the proposed provisions for responding to the consultation.

This document aims not only to respond to the comments received by the FSA but also to provide a comprehensive picture of the newly introduced notification requirements for foreign audit firms, etc. under the revised Certified Public Accountants Act regime.

- (2) As you may have noticed from the Appendix A, the proposed Articles 83 to 89 of the proposed Cabinet Office Ordinance at the time of public consultation is separated from other provisions, and now constitutes Articles 1 to 8 of the "Cabinet Office Ordinance Regarding Notification Requirements for Foreign Audit Firms, etc."

The decision to separate part of the proposed Cabinet Office Ordinance regarding notification requirements for foreign audit firms, etc. from other provisions came as the FSA found it necessary to conduct further analysis of the comments received, in light of the volume and quality of comments received. The "Cabinet Office Ordinance Regarding Notification Requirements for Foreign Audit Firms, etc." was promulgated on March 14, 2008.

¹ A Cabinet Order is an order established by the Cabinet as a means of implementing an Act or stipulating provisions delegated by the Act. As a legislative instrument, the Cabinet Order is positioned below the Act.

² A Cabinet Office Ordinance is an ordinance issued by the Prime Minister, as a chief of the Cabinet Office, as a means of implementing an Act or a Cabinet Order or stipulating provisions delegated by the Act or Cabinet Order insofar as it is within the Prime Minister's administrative authority. As a legislative instrument, the Cabinet Office Ordinance is positioned below the Act and the Cabinet Order.

Cabinet Office Ordinances other than those relating to the notification requirements for foreign audit firms, etc. was promulgated, on December 7, 2007, in the form of the “Cabinet Office Ordinance under the Certified Public Accountants Act”, together with other relevant Ordinances³.

- (3)** Notwithstanding the difference in promulgation dates, the “Certified Public Accountants Act” (hereinafter referred to as “the CPA Act”), the “Cabinet Order for Implementing the Certified Public Accountants Act” (hereinafter referred to as “the Order”) and the relevant Orders, as well as all the relevant Ordinances including the “Cabinet Office Ordinance Regarding Notification Requirements for Foreign Audit Firms, etc.” (hereinafter referred to as “the Ordinance”) will become effective on April 1, 2008, pursuant to Article 1, Supplementary Provisions of the Act for Partial Revision of the Certified Public Accountants Act, etc.

³ The relevant Ordinances are: the “Cabinet Office Ordinance Regarding Administrative Monetary Penalty under the Certified Public Accountants Act”, the “Registration Rule for the Non-Certified Public Accountant Partners of Audit Firms”, the “Amended Cabinet Office Ordinance on Audit Certification of Financial Statements, etc. ”, and the “Rule on Depository Money for Limited Liability Audit Firms.” These Ordinances and Rules are not applicable to foreign audit firms, etc.

Section B Major Questions

(1) Exemptions from notification requirements (proviso of Article 34-35 of the CPA Act)

Article 34-35 of the CPA Act states that “A person... shall notify the Prime Minister in advance, pursuant to the provisions of a Cabinet Office Ordinance, provided, however, that *this shall not apply to a person who is determined by a Cabinet Office Ordinance as one who is deemed to receive appropriate supervision of the administrative agency of the foreign state that supervises persons who provide services...*”.

A number of respondents pointed out that the proposed Ordinance did *not* specify a person who qualifies as one who is deemed to receive appropriate supervision of the administrative agency of a supervising foreign state *nor* a process to determine whether a person qualifies for the provision, and suggested that the FSA specify them.

Although the FSA does not preclude the possibility of establishing persons or processes for determining the aforementioned points in the future, we believe that it is premature to define them in a Cabinet Office Ordinance at this stage. The FSA has been aware of the global developments of audit oversight authorities in many jurisdictions⁴, but things are still fluid⁵. Despite the growing need for audit oversight authorities, many jurisdictions expect their audit oversight to develop in a longer time scale, wherein the experience necessary for the adequate and independent conducting of oversight and inspection have not been sufficiently accumulated.

The FSA continues to watch the global developments, with particular considerations given to the independence, quality and transparency of audit oversight functions as well as the need to ensure reciprocity in implementing the proviso of Article 34-35 of the CPA Act, and to maintain responsiveness to future developments as it considers necessary and appropriate.

⁴ In the US, the Public Company Accounting Oversight Board (PCAOB) was established by the enactment of Sarbanes and Oxley Act of 2002. In the EU, member states are required to form a public oversight body in transposing the Statutory Audit Directives (2006/43/EC). In other jurisdictions, audit oversight bodies have been developed (e.g. Canada, Australia) or are being developed.

⁵ The PCAOB published a proposal for the policy statement aimed at establishing criteria for the application of Rule 4012 in December 2007. The EU published the draft decision concerning transitional measures for provisions concerning treatment of third country auditors in January 2008.

(2) Treatment of confidential information

a) Treatment of confidential information within the FSA and the CPAAOB

First and foremost, neither the FSA nor the Certified Public Accountants and Auditing Oversight Board (hereinafter referred to as “the CPAAOB”) shall disclose and use personal information for the purposes other than its intended purposes⁶.

In addition, the FSA officers/ the CPAAOB members and its officers, as national public officers, are subject to a strict confidentiality obligation, and shall not disclose any confidential information that they have obtained in the course of the performance of their duties, both during office and after resignation⁷. Failure to comply with this confidential obligation will lead to criminal penalties of either up to one year imprisonment or a fine of up to 500 thousand yen.⁸

Even in case where disclosure of particular information is requested based upon the Act on Access to Information Held by Administrative Organs (Act No. 42 of 1999), disclosure of certain information is to be refused under the Act, as admitted as “Non-Disclosure Information” prescribed in Article 5 of the Act. For example, the following information (although the proceedings are not all-inclusive) is prescribed as “Non-Disclosure Information” in the Act.

- (a) Information concerning an individual (excluding information concerning the business of an individual who operates said business) or information the disclosure of which could specify the identity of the individual,
- (b) Information concerning a juridical person or other entities or information concerning the business of an individual who operates said business, the disclosure of which poses a risk of harm to the rights, competitive position, or other legitimate interests of such juridical persons or individuals, and

⁶ Unless laws or regulations require otherwise. For example, Paragraph (2) of Article 8 of the Act on the Protection of Personal Information Held by Administrative Organs (Act No.58 of 2003) indicates that the head of an Administrative Organ may, in certain circumstances, use by himself or herself or provide another person with Retained Personal Information for purposes other than the Purpose of Use. However, it is also stipulated that this shall not apply where it is found that the use by the head himself or herself or provision to another person of the Retained Personal Information for purposes other than the Purpose of Use is likely to cause unjust harm to the rights or interests of the Individual Concerned or a third party.

⁷ Paragraph (1), Article 100 of the National Public Service Act (Act No.120 of 1947). In exceptional cases, however, where officers of the FSA become witnesses and/or appraisers in accordance with the laws and regulations, they may have to disclose such confidential information (Paragraph (2) of Article 100 of the National Public Service Act).

⁸ Item (xii), Article 109 of the National Public Service Act.

- (c) Information that is considered by the head of an administrative organ, with reasonable grounds, to risk harming the security of the State, damaging relationships of mutual trust with other countries or international organizations, or causing disadvantages in negotiations with other countries or international organizations, if made public.

b) Treatment of confidential information when the submission of such information to the FSA may violate local laws governing matters such as data privacy and professional confidentiality

A number of respondents raised concerns that, by complying with the notification requirements under the CPA Act, there could be cases where foreign audit firms, etc. would be in violation of restrictions imposed by local laws governing matters such as data privacy and professional confidentiality. The FSA considers it critical in its implementation of the notification requirements that all persons intending to provide notification are free from such concerns. As a result, in finalizing the Ordinance, the FSA established a provision that allows the notifying person⁹ to withhold certain information provided certain conditions are met.

More specifically, in cases where the notifying person finds it impossible to submit any of the information prescribed in Article 5 (1) of the Ordinance due to restraints by the governing law of the jurisdiction wherein the principal office of the notifying person is located, the notifying person may be exempt from submitting such information if description of the following matters for each relevant element prescribed in Article 5 (1) is submitted instead.

- (a) The fact that the notifying person cannot submit information due to restraints by the governing law of the jurisdiction in which the principal office of the notifying person is located and the relevant provisions of such governing law,
- (b) The legal opinion of the attorney who certifies that the matters described pursuant to (a) above are correct and accurate, and,
- (c) In cases where the notifying person needs to obtain permission, consent and/or approval (“permission, etc.”) in order to submit such information and the notifying person has not been able to submit such information due to the notifying person’s failure in obtaining such permission, etc., the measures that the notifying person has taken to obtain such permission, etc. as well as the reason why the notifying

⁹ As for the scope of the “notifying person”, please refer to **Section C (2)**.

person failed to obtain such permission, etc¹⁰.

(3) Agents

The proposed Ordinance suggested that the notifying person should appoint agents for all types of notification to the FSA. In the final texts of the Ordinance, appointment of an agent is required only when the notifying person provides initial notification pursuant to Article 34-35 of the CPA Act. Despite some comments against making the establishment of agents obligatory, the FSA determines that the agent is still necessary in ensuring that someone is within its close reach when the FSA requests correction of information or submission of additional information, in relation to the initial notification. This would be emphasized by the fact that the notification document and attachments are in principle to be completed in the Japanese language (See **Section (4)** below).

On the other hand, the FSA clarified that establishing an agent is not required for notifications of changes in information, pursuant to Article 34-37 of the CPA Act, and providing notifications of abolition of services, etc. pursuant to Article 34-39 of said Act.

The responsibilities of agents are not specifically prescribed in the CPA Act but are governed by the contract and by general laws in Japan¹¹.

The duties of agents in providing notification on behalf of foreign audit firms, etc. include all actions derived from such notification. They include, for example, drafting the notification document or attachments thereto and liaising between the FSA and foreign audit firms, etc. in regards to the notification. However, agents are not required to maintain audit work papers prepared by the notifying person under the CPA Act or the Ordinance.

(4) Language

A number of comments were made asking the FSA whether the notification process should be exercised in the Japanese language. While it is legally difficult to allow all documents submitted to the FSA to be in any foreign languages, the FSA considers it

¹⁰ Article 5 (2) of the Ordinance.

¹¹ The Civil Code of Japan (Act No. 89 of 1896) is basically applied to acts between private persons. Although notification to the FSA by persons who intend to become “foreign audit firms, etc.” under the CPA Act is not acts between private persons, acts by agents could be regarded similar to “acts by agents” (as a type of acts between private persons) prescribed from Article 99 to 118 of the Civil Code of Japan, as long as it is permitted in consideration of the legal nature of such acts.

critical to mitigate the language burden for the notifying person in order for the notification requirements to function smoothly. Therefore, in the final texts of the Ordinance, the FSA added a provision that allows the notifying person to submit attachments in the English language.

More specifically, the notifying person need not submit information with the Japanese language translation in cases where; (a) said information is contained in the attachments to the notification document, and (b) said information is to be submitted in the English language¹². However, it should be noted that the notification document has to be written in the Japanese language.

¹² Article 1 of the Ordinance.

Section C Detailed Questions

(1) What is meant by “services that are found to correspond to the services provided in Article 2(1) of the CPA Act” ?

Throughout the CPA Act and the Ordinance, the term “services that are found to correspond to the services provided in Article 2(1) of the Act” can be found in relation to the eligibility of the notifying person or the description of business performance. Some respondents expressed their concerns that “services provided in Article 2(1)” may, when translated into foreign languages and applied by foreign auditors, be interpreted to encompass a broader range of non-audit services and therefore cause notifications to be made beyond the original intent of the notification requirements.

In order to ensure internal consistency within the legislative documents, Article 2 (1) of the CPA Act is quoted both in the CPA Act and the Ordinance. However, the FSA understands that the scope of statutory work of auditors varies from jurisdiction to jurisdiction and that the phrase “services that are found to correspond to (Article 2(1) service)” has been introduced for that very reason. The FSA considers that it includes “audits of financial statements” as well as “reviews” of quarterly financial reports in some jurisdictions. For the sake of convenience, in the following of this document, “services that are found to correspond to the services provided in Article 2(1) of the Act” is rephrased as “audit and attestation services”.

(2) Who is required to provide notifications? What legal form a “notifying person” may take?

Paragraph (7), Article 1-3 of the CPA Act stipulates that a “notifying person” who has provided notification to the FSA pursuant to Article 34-35 is defined as “foreign audit firms, etc.”¹³

Pursuant to Article 34-35 of the CPA Act, a person should notify the FSA when he/she is;

- (a) A person who makes it his/her practice to audit or certify financial documents for fees at the request of others in a foreign state in compliance with the laws and regulations of the foreign state in question, and
- (b) Intends to provide services that are found to correspond to the services prescribed

¹³ Paragraph (7), Article 1-3 of the CPA Act.

in Article 2(1) of the CPA Act¹⁴ concerning *financial documents* to be submitted by an issuer of certain *securities* (hereinafter referred to as a “notifying person”.)

“Financial documents” which are to be submitted under the Financial Instruments and Exchange Act (Act No.25 of 1948) (hereinafter referred to as “the FIEA”) include all disclosure documents that are required by the FIEA for issuers of the “securities” listed below, regardless of whether they constitute primary disclosure documents pursuant to Article 5 of the FIEA or continuous disclosure documents pursuant to Article 24 of the FIEA, or in the case of continuous disclosure, whether they constitute annual securities reports, semiannual securities reports or quarterly securities reports based on Article 24, Article 24-5, or Article 24-4-7 of the FIEA.¹⁵ In other words, as long as an audit report is contained in the disclosure documents required under the FIEA and unless an audit attestation is provided by a Japanese CPA or a Japanese audit firm under the CPA Act, notification should be provided by one or more of “foreign audit firms, etc.”

“Securities” within the scope are as follows;

- Securities listed in Article 2(1)(xvii) (securities or certificates which have been issued by a foreign person) of the FIEA that have the nature of securities listed in the following items in the same paragraph¹⁶;
 - Item (iv); Specified corporate bonds prescribed in the Act on Liquidation of Assets (Act No. 105 of 1998),
 - Item (v); Corporate bonds (including those issued by a mutual company),
 - Item (vii); Preferred equity investment certificates prescribed in the Act on Preferred Equity Investment by Cooperative Structured Financial Institutions (Act No. 44 of 1993),
 - Item (viii); Preferred equity investment certificates and securities indicating preemptive rights for new preferred equity investment prescribed in the Act on Liquidation of Assets,
 - Item (ix); Share certificates and share warrant certificates,
 - Item (xii); Beneficiary securities of loan trusts,
 - Item (xiii); Beneficiary securities of special purpose trusts prescribed in the Act on Liquidation of Assets,

¹⁴ Paragraph (1), Article 2 of the Act stipulates that a (Japanese) certified public accountant may make it his/her practice to audit or attest financial documents for fees at the request of others.

¹⁵ The reports submitted to the FSA pursuant to provisions of the Banking Act (Act No.59 of 1981), Insurance Business Act (Act No. 105 of 1995) or any other Acts are not included in the “financial documents” in this context.

¹⁶ Item (iii), Article 30 of the Order.

- Item (xiv); Beneficiary securities of trusts issuing beneficiary securities prescribed in the Trust Act (Act No. 108 of 2006),
 - Item (xv); Promissory notes which have been issued by a juridical person in order to raise the funds necessary to operate its business and issued by banks or other deposit-taking institutions delegated by a juridical person to issue promissory notes with letters “CP (commercial paper)” affixed thereto¹⁷, or
 - Item (xvi); Mortgage securities prescribed in the Mortgage Securities Act (Act No.15 of 1931)
- Beneficiary securities of foreign investment trusts prescribed in the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951) as listed in Article 2(1)(x) of the FIEA¹⁸
 - Foreign investment securities prescribed in the Act on Investment Trusts and Investment Corporations, as listed in Article 2(1)(xi) of the FIEA¹⁹
 - Securities or certificates which have been issued by foreign persons, indicating a beneficial interest of a trust in which loan claims held by persons engaging in banking business or persons otherwise conducting money lending on a regular basis are entrusted, or indicating any other similar rights²⁰, as listed in Article 2(1)(xviii) of the FIEA²¹
 - Securities or certificates which indicate options as listed in Article 2(1)(xix) of the FIEA or depository receipts as listed in Item (xx) of the same Article, limited to those issued by foreign persons²²
 - Certificate of deposits issued by a foreign juridical person as listed in Article 1(1)(i) of the Cabinet Order for Implementing the Financial Instruments and Exchange Act (Order No. 321 of 1965)²³
 - Rights listed in the following items of Article 2(2) of the FIEA as deemed to be

¹⁷ Article 2 of “Cabinet Office Ordinance Regarding Definitions Included in Article 2 of the Financial Instruments and Exchange Act” (Ordinance No. 14 of 1993)

¹⁸ Item (i), Article 30 of the Order.

¹⁹ Item (ii), Article 30 of the Order.

²⁰ Article (iii) of “Cabinet Office Ordinance Regarding Definitions Included in Article 2 of the Financial Instruments and Exchange Act”

²¹ Item (iv), Article 30 of the Order.

²² Item (v), Article 30 of the Order.

²³ Item (vi), Article 30 of the Order.

securities pursuant to the same article²⁴:

- Item (ii); Beneficial interests of trusts which are claimable against foreign persons,
- Item (iv); Membership rights of general partnership companies or limited partnership companies (limited to those designated by a Cabinet Order²⁵) or membership rights of limited liability companies which are claimable against foreign persons, or
- Item (vi); Equivalents to membership rights for partnership agreements based on foreign laws and regulations

The legal forms of a “notifying person” can include proprietorship, partnership, incorporated association, limited liability company, limited liability partnership, or any other legal entity that is applicable to the criteria outlined above. Moreover, it also includes an individual accountant if the person in question falls under the categories above²⁶. It should be noted, however, that individual accountants that are merely associated with or employed by foreign audit firms, etc. are not themselves required to provide notification, although foreign audit firms, etc. have to list on the firm’s notification certain information pertaining to certain individual accountants who are associated with the foreign audit firms, etc.

Foreign audit firms or individual accountants who play a substantial role in the preparation or furnishing of audit reports with respect to any issuers are not required to provide notification under the CPA Act as long as they do not prepare audit reports for the financial documents required under the FIEA. Therefore, notification is not necessary for those auditors who only provide referral works for subsidiaries or branch offices of Japanese companies.

Foreign audit firms or individual accountants that prepare audit reports for foreign companies listed on any one of the financial instruments exchanges in Japan have to provide notification to the FSA, as it is one of the compelling cases where issuers are required to submit annual securities reports²⁷.

²⁴ Item (vii), Article 30 of the Order.

²⁵ In case of membership rights of a general partnership company, all partners must be either joint-stock companies or limited liability companies. In case of membership rights of limited partnership company, all unlimited liability partners must be either joint-stock companies or limited liability companies (Article 1-2 of the Order for Implementing the FIEA.)

²⁶ For convenience, legal entities that are not individuals are called “juridical person” in this document.

²⁷ Article 24 (1) (i) of the FIEA stipulates that, where a security is listed on financial instruments exchanges under the FIEA, the issuer should submit the annual securities report.

In some jurisdictions, joint audits are conducted for auditing companies of all or specific sectors. One respondent asked which of the audit firms should provide notification. The FSA considers it necessary for all parties of the joint audits to provide notification, as in general forms of joint audits, all audit firms with equal roles jointly express an opinion on the financial statements of a company, thereby sharing responsibility for audit works. By sharing service provision, responsibility, and production of a single audit report, all audit firms could be regarded as assuming sufficient responsibility for ensuring that a certain level of audit quality is maintained so as to ensure public trusts in financial documents.²⁸

In cases where foreign audit firms or individual accountants plan to provide audit attestation services for a prospective client, it is conceivable that they would provide notification prior to committing any engagement with the prospective client. In such cases, the section pertaining to the name and location of the foreign companies, etc. (hereinafter referred to as “foreign issuers”) (Item (iii) of the Article 4 of the Ordinance) may be left blank. Thereafter, when the foreign audit firms, etc. formally commit to the audit and attestation services, they should provide notification of this change pursuant to Article 6 of the Ordinance. The contents of notifications of changes are published in the official gazette²⁹.

It is worth noting that a notifying person who serves several foreign issuers (including foreign investment funds) need not provide notification per issuer. Once the initial notification is completed, it is a matter of providing notification of change in regards to foreign issuers for which the notifying person performs audit and attestation services.

(3) Who should be notified?

All information should be submitted to the following address:

Financial Services Agency Corporate Accounting and Disclosure Division,
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²⁸ The International Standard on Auditing (ISA) 600 “Audits of Group financial statements” refers to joint audit in the following way: “Group engagement partner- The partner or other person in the firm who is responsible for the group audit engagement and its performance, and for the auditor’s report on the group financial statements that is issued on behalf of the firm. Where joint auditors conduct the group audit, the joint engagement partners and their engagement teams collectively constitute the group engagement partner and the group engagement team.”

²⁹ Article 34-37 (2) of the CPA Act.

(4) By when should initial notification be made?

Article 34-35 of the CPA Act stipulates that when a person intends to become a foreign audit firm, etc., he/she has to notify the FSA in advance of providing audit and attestation services concerning financial documents of foreign issuers. In cases where a notifying person is performing audit and attestation services for foreign issuers in the initial accounting period commencing after the effective date, the Act requires the notification document be submitted to the FSA prior to the provision of said audit and attestation services. On the other hand, the attachments to be submitted pursuant to Paragraph (1) of Article 34-36 of the Act can be submitted up to six months after the submission of the notification document. Notwithstanding that, should the provision of the audit report be conducted before said date, the attachments are to be submitted by the day before the provision date in question.

The actual deadline for the notification document may vary. Under the assumption that the provision of audit and attestation services begins only after auditors are appointed for respective accounting period, the notification should be made immediately after the auditor is appointed for the accounting period. For example, if the beginning of fiscal year of a foreign issuer is April 2008 and the auditor is appointed at the beginning of July 2008, the notification document should be submitted immediately after that time and the attachments should be submitted by the end of December 2008. If the beginning of fiscal year of a foreign issuer is January 2009 and the auditor is appointed at the beginning of April 2009, the notification document should be submitted immediately after that time and the attachments should be submitted by the end of September 2009.

(5) Is there a fee for notification?

No, the FSA does not claim any fees for persons who provide notification.

(6) When does the notification take effect?

Notification takes effect, in principle, on the date when the FSA receives the notification document and attachments. If they are submitted separately, notification takes effect, in principle, on the date of receipt of the last piece of documents.

There is no disapproval or rejection of notification. However, should the FSA consider all or part of the proposed notification to be inaccurate or incomplete, the notifying person may be requested to correct certain information or provide the FSA with additional information through the contact address given in the notification document. In that case, the notification is not formally accepted until the correction has been made or the requested information has been submitted³⁰.

When effective notifications are made, the FSA will normally make information listed on the notification document as well as the date of receipt of each notification public in the official gazette no later than a month after the end of every month. In exceptional cases such as where the number of notifications exceeds the processing capacity of the FSA, it may take longer (over a month). One can confirm whether or not notification has been provided in a formal manner and when it took effect by confirming the official gazette. In addition, the FSA plans to maintain a list of the “foreign audit firms, etc.” on its website and update the information on a frequent basis.

(7) How should notification be carried out?

When providing notification, the notifying person should submit *two* copies of the notification document as well as *two* copies of all attachments. Not only should submission be made through the agent and primarily in the Japanese language (please refer to (3) and (4) of **Section B**), but the documents should be provided in paper form. The FSA does not currently have a plan for operating an electronic submission system.

(8) What information should be provided?

Among the comments directed to the FSA, most of them were seeking for clarification of extent of information that should be provided. In this subsection, the FSA presents detailed analysis of each item that needs to be provided.

(a) What should be submitted for “articles of incorporation”?

Item (i), Paragraph (1) of Article 5 of the Ordinance specifies that “articles of incorporation and certification of registry, or any other similar documents” should be contained in the attachments.

³⁰ In case of joint audits, if one of the two joint auditors only notified in time whilst the other failed to do it, notification will not be formally accepted.

One respondent asked the FSA what should be submitted in lieu of articles of incorporation if the issuer is not a joint-stock company but different type of legal entities such as a proprietorship, partnership, incorporated association, limited liability company or limited liability partnership. Although it may vary in different jurisdictions as to what constitute documents equivalent to articles of incorporation and certification of registry, the documents that are deemed to be equivalent to the articles of incorporation for legal entity should be one that may substitute for articles of incorporation³¹. Besides, in fulfilling the notification, when a notifying person is a legal entity that is not a joint-stock company, certain parts of the notification document and attachments should be filled in on the same basis as joint-stock companies³².

(b) What is the scope of “responsible individuals”? Who should provide professional history?

At the time of public consultation, Item (iii) of Article 85 of the proposed Ordinance suggested that the names of the individuals responsible for performing audit attestation services for foreign issuers falling under the scope of notification requirements (“responsible individuals”) should be provided in the notification document. On the other hand, Item (ii) of Article 86 suggested that “professional history of individuals” responsible for performing audit and attestation services, including documents certifying his/her professional qualifications, be required among the matters to be contained in the attachment.

A number of respondents asked the FSA to clarify the scope of the persons covered by each term. Based on consideration of the fact that the names of individuals are not always shown on the audit reports, the FSA decided to delete the requirements for individual names in Item (iii) of Article 85. Instead, the FSA considers it appropriate for the names of those individuals to be provided in the attachments, thereby avoiding disclosure in the official gazette, accompanied by their professional history in Item (ii) of Article 86.

For clarification, individuals whose names and professional histories should be provided in Item (ii), Paragraph (1) of Article 5 of the Ordinance corresponds to “engagement partner” as defined in the IFAC definition in the Code of Ethics for

³¹ For example, it may be partnership agreement in case a notifying person is a partnership.

³² See Article 4 (2) of the Ordinance and Footnote (1) of Form 1. Translation of forms is available in the Appendix A.

Professional Accountants³³ who provides audit attestation services for foreign issuers falling under the scope of notification requirements. The IFAC definition states that an “engagement partner” is a “partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.”

(c) What should be provided in terms of “documents certifying qualification”?

“The documents certifying ... qualification of being a professional in the auditing and accounting fields” of individual accountants are required to be contained in the attachments pursuant to Item (ii), Paragraph (1) of Article 5.

The FSA recognizes that requiring documents such as copies of licensing certificates or similar documents issued by the authority of the relevant jurisdictions may impose too heavy a burden on the notifying person. It is sufficient for the notifying person to provide information which provides reasonable assurance that the individual has the professional qualification necessary to provide audit and attestation services (e.g. description of a registration number as a CPA, CA or other equivalent qualifications.)

(d) What should be provided as “a description of auditing standards and other audit regimes in the jurisdiction”?

Item (iii) (a), Paragraph (1) of Article 5 of the Ordinance requires “a description of auditing standards and other audit regimes in the jurisdiction” as part of the “outline of audit system in the jurisdiction of notifying person”. A few respondents asked the FSA to indicate what kind of description is expected here. The FSA requests that the notifying person provide an outline of audit standards, quality control standards or any other similar disciplines with which the notifying person is required, recommended or determined to comply, regardless of the characteristics of the standard-setting body. It should be noted that the FSA does not necessarily request the full text of the standards³⁴. The purpose of this article is for the FSA to be informed of at least the identity of professional standards or other audit disciplines on which basis the foreign audit firms, etc. is performing audit and attestation services.

³³ International Federation of Accountants’ Ethics Committee, “Code of Ethics for Professional Accountants”, June 2005.

³⁴ For example, a mere reference to ISAs would be sufficient.

However, the FSA understands that the information regarding the audit standards and other audit regimes in the notifying person's jurisdiction may already have been obtained through other channels, and in that case there may be no need for said information to be submitted by the notifying person³⁵.

This change is reflected in Paragraph (1) of Article 5. Specifically, a notifying person is regarded to have submitted sufficient information on Item (iii)(a), Paragraph (1) of Article 5, if it has provided reference materials pertaining to public information such as internet-based information made available by administrative agencies or similar organizations ("foreign administrative agencies, etc.") and any other information that the Commissioner of the FSA deems appropriate.

In case where a notifying person has principal offices in more than one jurisdiction and provides audit and attestation services to foreign issuers in accordance with two or more standards, it should be noted that the description of auditing standards and other audit regimes should be provided for each of the jurisdiction in question.

(e) What should be provided as "a description of the audit supervisory system"?

A number of respondents suggested that the FSA may obtain the information concerning "a description of the audit supervisory system by the administrative agency" from the audit oversight authority supervising the notifying person. The FSA understands that such information may already have been obtained through other channels, and in that case there may be no need for said information to be submitted by the notifying person³⁵.

This change is reflected in Paragraph (1) of Article 5. Specifically, a notifying person is regarded to have submitted sufficient information on Item (iii)(c), Paragraph (1) of Article 5 if it has provided reference materials pertaining to public information such as internet-based information made available by foreign administrative agencies, etc. and any other information that the Commissioner of the FSA deems appropriate.

³⁵ The FSA endeavors to gather information on foreign audit supervisory system by disseminating a questionnaire to foreign audit oversight authorities in more than 20 jurisdictions. The questionnaire consists of questions on audit regulations covering such matters as (1) the registration system, (2) the public oversight system, (3) the inspection (or audit quality review) system, (4) the system of investigation, regulatory action, and disciplinary actions in relation to audit quality, (5) possible assistance to Japanese audit oversight authorities, (6) governance and disclosure of audit firms, (7) auditor qualification and education, and (8) auditor independence, auditing standards, and quality control standards.

Where the notifying person provides the information on this item, the FSA considers the requirements of information should be proportionate with the FSA's needs, while it should not be too burdensome to the notifying person. Therefore, the notifying person needs to provide a brief and concise outline of (1) the registration and auditor qualification system, (2) the public oversight system, (3) the system of inspection (or quality assurance review), and (4) the system of investigation and disciplinary actions.

In case where a notifying person has principal offices in more than one jurisdiction and provides audit and attestation services to foreign issuers that require notification by the notifying person, it should be noted that the description of audit supervisory system should be provided for each of the jurisdiction in question.

(f) What should be provided for “a document which confirms that the notifying person is compliant with all the relevant laws and regulations”?

Item (iv), Paragraph (1) of Article 5 of the Ordinance requires that “a document which confirms that the notifying person is compliant with all the relevant laws and regulations and that the notifying person maintains proper operations” in the provision of audit and attestation services to be attached to the notification document. A number of respondents asked the FSA what is expected of this. It should be noted that confirmation need not be conducted by an audit oversight authority or any similar authorities. Rather, the FSA expects the notifying person to make said confirmation on their own.

Moreover, the term “laws and regulations” does not refer to every possible law and regulation existing in the jurisdiction of the notifying person nor the laws or regulations of Japan. It merely refers to the laws and regulations that govern the performance of statutory audit and attestation services in relevant jurisdictions. The FSA considers it important that there is a confirmation from the side of foreign audit firms, etc. that their audit and attestation services are provided in compliance with the relevant laws and regulations of which compliance is critical for maintaining quality of such audit and attestation services.

(g) What should be provided as “a description of services that are found to correspond to those provided in Article 2(1) of the Act and other services”?

In regards to “services that are found to correspond to those provided in Article 2(1) of the Act” in Item (v)(a), Article 5(1) of the Ordinance, please refer to the first

subsection of this section.

“Other services”, on the other hand, may include all professional services³⁶, namely, services requiring accountancy or related skills performed by a professional accountants, including accounting, auditing, taxation, management consulting or financial management services, other than those that are found to correspond to the services provided in Article 2(1) of the CPA Act.

(h) What should be provided for “a description of performance of business operations, including those related to quality control policies”?

In Item (v)(b)1., Article 5(1) of the Ordinance, the FSA aims to obtain information on how a notifying person structures and maintains business operations. More specifically, a notifying person is requested to describe, in a brief, concise, and clear manner, at least the following information:

- (a) Measures taken to ensure appropriateness of business performance, such as those concerning fundamental management policies, management control, and compliance with relevant laws and regulations; and
- (b) Measures taken to formulate and implement the quality control policies of the notifying person, such as those concerning surveillance on implementing quality control policies and clarification of responsibilities.

(i) What should be provided in regards “the date and the results of the latest quality assurance review”?

In Item (v)(b)2., Article 5(1) of the Ordinance, as a part of the description of the performance of the business operations relevant to the notifying person, the Ordinance requires that the notifying person, if it has been subject to a review of its status of “quality control management” concerning audit and attestation services by foreign administrative agencies, etc. or other equivalent review (“review, etc.”), should contain the date and the results of such review, etc. in the attachments. The results of the review, etc. may include inspection reports given to the notifying person from relevant audit oversight authority or the outcome of the review conducted by relevant professional association of accountants based on the statutory requirements.

The FSA considers this information essential so as to obtain sufficient understandings

³⁶ IFAC, “Code of Ethics for Professional Accountants”, June 2005

of notifying person's quality control status. However, due to the specific characteristics of this information³⁷, the FSA also anticipates that there should be circumstances where a notifying person cannot submit the information due to legal or regulatory reasons, and either of the two types of escape clauses embedded in the Ordinance might be used.

Firstly, the requirements shall not apply to the case where, taking into account the establishment of co-operative relationships between the FSA and such foreign administrative agencies, etc. or of any other circumstances, the Commissioner of the FSA concurs that the notifying person is exempt from this obligation.³⁸ "Establishment of co-operative relationship" could include, for example, situations where an official information exchange frameworks have been in place among audit oversight authorities and actual exchange of information has been conducted.

Secondly, the notifying person can be exempt from the obligation if it can be demonstrated that such act could result in infringement of laws or regulations in their own jurisdictions, for example resulting from sharing the report from the notifying person with the FSA is refused by the foreign authority responsible for the report³⁹. Here, the FSA recognizes the sensitive nature of the information potentially contained in the reports and the confidentiality obligation that may be imposed on the audit profession in such circumstances.

It should be noted that this information should be provided only if the notifying person will have been subject to the review, etc. at the time of initial notification. Non-submission of this information due to non-existence of prior review, etc. does not invalidate the notification from the notifying person.

Given that the international discussion is ongoing on this matter, the Ordinance stipulates that Item (v)(b)2. shall not be applied within three months of the effective date. In other words, the requirements of submission of the report will be first effective as of July 2007.

(j) What is the scope of the "network"?

Item (v) (c) 2., Paragraph (1) of Article 5 of the Ordinance, requires description of

³⁷ The results of the review, etc. are assumed to have been originally produced by the foreign administrative agencies, etc. or the professional association of accountants, but not by the notifying person.

³⁸ Item (v)(b)2., Paragraph 1, Article 5 of the Ordinance.

³⁹ Paragraph 2, Article 5 of the Ordinance.

business associations in case the notifying person is a member of a network.

The term “network” here may be understood as the same meaning as under the IFAC definition of “network”. Namely, “network” is “a larger structure:

- (a) That is aimed at co-operation, and
- (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.”⁴⁰

(k) What is the scope of “notifying person’s offices”? How is this different from “affiliated companies”?

Item (iv) (1) (b), Paragraph (1) of Article 86 of the proposed Ordinance required certain information pertaining to “affiliated companies” of the notifying person. On the other hand, Item (iv) (4) of the same Article required certain information on the “offices” of the notifying person.

A number of respondents asked the FSA to clarify and limit the scope of both concepts. The FSA meant that the term “affiliated companies” refers to the firms which belong to the same “network” of the notifying person and which are domiciled in the notifying person’s jurisdiction, such as firms that provide tax services or consulting services under a single name in the notifying person’s home country. Item (v) (c) 2., Paragraph (1) of Article 5 of the Ordinance was amended to reflect this clarification.

On the other hand, the term “offices” refers instead to more of an internal allocation of resources, such as the London office or the Manchester office of a UK-based audit firm. While a number of comments suggested that this should be limited to offices that are involved in undertaking audit and attestation services for foreign issuers for whom audit and attestation services notification should be made, the FSA considers this information important in becoming aware of the notifying person’s managerial policies regarding resource allocation from the viewpoint of ensuring effective business operations. Item (v) (d), Paragraph (1) of Article 5 of the Ordinance was amended to reflect this change.

(l) To what extent should “administrative sanctions or similar sanctions” be

⁴⁰ IFAC, “Code of Ethics for Professional Accountants Section 290 (Independence-Assurance Engagement) (revised)”, July 2006

described? What should be provided at minimum? Does this include sanctions against individual partners or employees of audit firms subject to notification requirements? What is the definition of “foreign administrative agencies, etc.”?

Taking into account the comments received, the FSA decided to make three major modifications to the original Item (iv) of Article 85 of the proposed Ordinance, which required information in respect of administrative or similar actions pertaining to the notifying person in relation to the audit and attestation services that have been provided.

Firstly, the original term “administrative sanctions or similar sanctions” was intended to cover criminal proceedings (limited to those initiated by a government entity) or administrative proceedings in relation to performances of audit and attestation services. In order to make this point clear, the FSA made changes to Item (vi), Paragraph (1) of Article 5 of the Ordinance.

In describing these proceedings, the notifying person should provide, at the very least, (a) their name, the filing date, and case number if any, (b) the name and the address of the court, tribunal, or body in which such proceeding was filed, (c) the names of all defendants or respondents, (d) the name of the foreign issuer that was the subject of the audit report in question, (e) the statutes, rules, or other requirements that the notifying person was found to have violated, and (f) the outcome of the proceeding, including any sentences or sanctions imposed.

Secondly, for the purpose of clarification, the FSA decided to limit the history of disciplinary proceedings to those commenced within five years prior to the provision of notification. Information on pending disciplinary proceedings should also be provided.

Thirdly, a number of comments expressed concerns that the submission of such information, which is to be published in the official gazette, might be problematic due to foreign employment law, data protection law or confidentiality obligations in some jurisdictions. Based on these comments, the FSA transferred the provision to Paragraph (1), Article 5 of the Ordinance,⁴¹ so that the notifying person may be exempt from the requirements if conditions set out under Article 5(2) are met (see (2)

⁴¹ Item (vi), Article 5(1) of the Ordinance.

of **Section B**).

The term “foreign administrative agencies, etc.” includes any entities that could trigger or impose disciplinary proceedings on auditors in respect of their provision of audit and attestation services. Non-profit organizations or self-regulatory organs could fall under this category as well as governmental authorities.

One respondent asked the FSA whether criminal, administrative sanctions or similar sanctions imposed on the notifying person include those levied against persons associated with the notifying person, such as employees of an audit firm where said firm constitutes the notifying person. The description of criminal, administrative sanctions or similar sanctions is required only for the notifying person and does not cover its constituents including employees of audit firms. However, in cases where there have been any such sanctions imposed on partners of the notifying person responsible for the audit engagements of foreign issuers, this should be included in the “professional history” prescribed in Item (ii), Paragraph (1) of Article 5.

(9) When should information be updated?

Information contained within the notification document has to be updated within two weeks of the relevant events affecting information therein.

It is worth noting that information subject to the two-week rule is limited to information on the notification document, which is listed in Article 4 of the Ordinance. Information provided in the attachments based on Paragraph (1), Article 5 of the Ordinance is not subject to the two-week updating rule. Nevertheless, the FSA reserves the possibility of calling for updates of the information given by the attachments, as it is deemed necessary.

Form No.2 should be used for notification of timely updates to the FSA. One should submit *two* copies of this form. In addition, information to be provided in this form will be published in the official gazette.

A number of respondents pointed out that the “stated capital or total equity of an audit firm”, which is subject to the two-week notification of change rule, changes very frequently and it imposes undue burden on foreign audit firms, etc. The FSA has modified the provisions in Form 2 so as to ensure that small changes to levels of stated

capital or total equity on the part of audit firms are not subject to the requirements of updating information. It therefore does not lead to notification of change upon every single change.

More specifically, the amount of stated capital or total equity of an audit firm rounded to the highest digit of 1% of the original amount should be the amount shown on the form and, unless this amount changes, the foreign audit firm, etc. need not provide notification of change⁴². This original amount converted into the Japanese currency and the exchange rate used for calculating that amount should also be included in the form.

(10) How should “notification of abolition of services, etc.” be carried out?

Foreign audit firms, etc. shall, when faced with any of the following circumstances, notify the FSA to that effect:

- (a) When the foreign audit firm etc, has ceased performing audit and attestation services concerning financial documents of foreign companies, etc., or
- (b) When the foreign audit firm, etc. has filed a petition of proceedings similar to commencement of bankruptcy proceedings, commencement of civil reorganization proceedings, commencement of corporate reorganization proceedings or commencement of liquidation in the jurisdiction where its principal office is located⁴³.

The notification of abolition of services should be made pursuant to Form 3 (“notification document of abolition of services”) to the FSA. It should be made in paper form and *two* copies have to be submitted. The abolition of notification takes effect on the date of receipt of the Form 3 by the FSA.

Once the notice of abolition of services is accepted by the FSA, the fact will be made public⁴⁴ on the FSA’s website.

(11) What are the results of failure to provide notification?

⁴² Footnote (2) of the Form 1. For example, if the notifying person has \$12,345,678 of members’ capital at the time of the initial notification, the number to be provided in the notification document is \$12,300,000 (accompanied by the amount converted to Japanese yen and the exchange rate used for the conversion). In this case, the notification of change is not necessary until the point either the capital increases to \$12,350,000 or decreases to \$12,249,999.

⁴³ Article 34-39 (1) of the CPA Act.

⁴⁴ Article 34-39 (2) of the CPA Act.

No disciplinary actions against foreign audit firms, etc. are stipulated under the CPA Act or the FIEA for failure of notification by foreign audit firms, etc. However, from the accounting periods commencing after April 2008, audit reports prepared by the foreign audit firms, etc. are invalidated if notification is not provided to the FSA prior to the production of the audit reports⁴⁵.

It should be noted, however, that for the foreign issuers, lack of submission of the annual securities report with a valid audit report is subject to criminal penalties of either up to five years imprisonment or a fine of up to 5 million yen (500 million yen in case of a juridical person), or both of aforementioned penalties⁴⁶.

Moreover, for foreign issuers whose securities are listed on the Japanese financial instruments exchange, this may lead to the delisting of the relevant securities from the exchange⁴⁷.

Note, however, that the FSA will endeavor to respond in a practical manner to exceptional circumstances, and early consultation is recommended in such cases.

(12) Instructions to foreign audit firms, etc.

The FSA may give necessary instructions to foreign audit firms, etc. in cases where the foreign audit firms, etc. have violated the CPA Act or rules under the CPA Act or where operation of audit and attestation services concerning financial documents of foreign issuers by the foreign audit firms, etc. is found to have been significantly inappropriate, and if it is deemed necessary so as to assure proper operation of such services⁴⁸.

The FSA may, when it has given instructions to the foreign audit firm, etc. but such instructions were failed to follow, publicize to that effect and the contents of said instructions. Failure to follow the instruction does not always lead to publication. The FSA considers the situation of each case and decides whether or not to publicize said

⁴⁵ The scope of audit reports to be invalidated is limited to audit reports for which notification has not been made. It does not invalidate audit reports which have already been provided.

⁴⁶ Article 197-2 (v), 207 (1)(ii) of the FIEA.

⁴⁷ Article 602, 604, 912, etc. of the Tokyo Stock Exchange Securities Listing Regulations specify that should an annual securities report with a valid audit report to be submitted by a foreign issuer whose stocks or debentures are listed on the exchange not be submitted within one month after the deadline for such submission, the stocks or debentures shall be delisted.

⁴⁸ Article 34-38 (1) of the CPA Act.

information⁴⁹.

It should also be noted that, in a case where such publication is made, audit reports prepared by the foreign audit firm, etc. are invalidated. Once the FSA admits that the foreign audit firm, etc. that have been the subject of publication have made efforts to rectify the matters instructed, their audit reports will be again validated⁵⁰.

(13) Submission of relevant reporting document

Paragraph (1) of Article 49-3-2 stipulates that the FSA may, when it finds it necessary and appropriate to do so in light of public interest or investor protection, request that foreign audit firm, etc. report or submit relevant reporting documents on the audit and attestation services concerning financial documents of foreign issuers provided by the foreign audit firm, etc. in question.

(14) When and how inspections may be conducted?

Paragraph (2) of Article 49-3-2 of the CPA Act states that “The Prime Minister may, when he/she finds it necessary and appropriate in light of public interest or investor protection, have relevant officials enter the offices of a foreign audit firm, etc. or other places related to the services thereof and inspect its books and documents and any other objects related to the services in question”.

Despite a growing consensus as to the need for robust oversight, most respondents stressed the importance of cross-border cooperative arrangements for the implementation of the notification requirements. Moreover, some respondents commented that the FSA should take note of the possible regulatory or legal impediments in undertaking inspection outside their national territory and/or potential sensitivity in the data privacy, client confidentiality and consent issues when conducting inspections.

Through a number of regulatory discussions with foreign counterparts, the FSA, together with the CPAAOB, recognizes the difficulties and challenges inherent to oversight activities whose outreach extends across jurisdictions. Although the FSA/CPAAOB have to fulfill the oversight responsibilities in regards to foreign audit firms, etc. by way of, *inter-alia*, on-site inspection to the foreign audit firms, etc., the FSA/CPAAOB appreciate the importance of efficiency in implementing the oversight activities, provided that the

⁴⁹ Article 34-38 (2) of the CPA Act.

⁵⁰ Paragraph (3), Article 193-2 of the FIEA.

mandate of protecting public interests and investor protection is sufficiently ensured. In this context, the FSA/CPAAOB endeavor to enhance international cooperation⁵¹ and seek greater reliance on other foreign independent audit oversight authorities. One of the future visions would be achieving mutual reliance on regular inspections and other supervisory activities to the extent possible.

Taking into account the subsequent developments of notification from foreign audit firms, etc. as well as those of international cooperation among audit oversight authorities, the CPAAOB intends to deliberate and then publicize its inspection policy relating to foreign audit firms, etc. within an appropriate timeframe.

⁵¹ The FSA / CPAAOB proactively participate in the activities of the International Forum of Independent Audit Regulators (IFIAR), the forum consisting of independent audit oversight authorities from more than 20 jurisdictions. The IFIAR was formally established in March 2007, when the first meeting was held in Tokyo. Furthermore, the FSA has promoted international dialogue in various ways. For example, Mr.Gomi, then the Commissioner for the FSA met with Mr.Olson, Chairman for the PCAOB in March 2007, and Mr. Yamamoto, then the Minister for Financial Services met with Mr. McCreevy, Commissioner for the Internal Market and Services of the European Commission in June 2007.

Appendix A Cabinet Office Ordinance and its forms

(Translations are not official, but for reference purposes only.)

Cabinet Office Ordinance Regarding Notification Requirements for Foreign Audit Firms, etc. (Ordinance No. 9 of 2008)

Article 1 (Attachment of translation in the Japanese language)

Documents to be submitted to the Commissioner of Financial Services Agency pursuant to Chapter 5-4 of the Certified Public Accountants Act (hereinafter referred to as “the Act”) should be accompanied by the translation in the Japanese language; provided, however, if they are the attachments specified in Paragraph (2), Article 5 of the Ordinance and are written in the English language, this shall not apply.

Article 2 (Notification)

A person who intends to give notification under the provisions of Article 34-35 of the Act (hereinafter referred to as “notifying person”) shall submit to the Commissioner of the Financial Services Agency two sets of the Form No. 1 specified in Paragraph (1) of Article 34-36 and two sets of attached documents specified in Paragraph (2) of the same Article.

Article 3 (Agent)

A Notifying person shall nominate a person who has his/her residence in Japan and has been granted authority on all matters regarding notification under the provision of Paragraph (1) of Article 34-35 of the Act (hereinafter referred to as “an agent”).

Article 4 (Other matters in the notification document)

(1) Other matters to be notified, specified in Item (v), Paragraph (1) of Article 34-36 of the Act, include the following:

- (i) in the case of a juridical person, the date of incorporation and the name of the jurisdiction of the governing law applicable to the incorporation of said juridical person;
- (ii) in the case where notifying person is an individual and if he/she belongs to a juridical person, the name of said juridical person and the location of his/her principal office;
- (iii) name and location of the principal office of the foreign issuers (meaning the persons who submit “financial documents of a foreign company, etc.” specified in Paragraph (1) of Article 34-35 of the Act) for whose financial documents notifying person provides services that are found to correspond to the services provided in Article 2(1) of the Act.

(2) In the case where the notifying person constitutes a partnership or similar organization, matters listed on Article 34-36 (1), the preceding paragraph and the subsequent Article should be described in a similar manner as one would be a juridical person.

Article 5 (Matters to be contained in the attachment)

- (1) Matters to be included in the attachment of the notification, specified in Paragraph (2) of Article 34-36 of the Act, include the following; provided, however, that the notifying person is regarded to have submitted sufficient information on (a) or (c) of Item (iii), Paragraph (1) of Article 5 if it has provided reference materials pertaining to public information such as internet-based information made available by foreign administrative agencies or similar organizations (“foreign administrative agencies, etc.”) which supervise persons who perform services that are found to correspond to the services provided in Article 2 (1) of the Act in the jurisdiction where the principal office of the notifying person is located and any other information that the Commissioner of the FSA deems appropriate.
- (i) Articles of incorporation and certification of registry, or any other similar documents;
 - (ii) Name and professional history of individuals responsible for performing services that are found to correspond to the services prescribed in Article 2(1), for financial documents of foreign companies, etc., including documents certifying such individuals’ qualification of being a professional in the auditing and accounting fields;
 - (iii) Outline of audit system in the jurisdiction where the principal office of the notifying person is located, which include following matters:
 - (a) Description of auditing standards and other audit regimes in the jurisdiction;
 - (b) Name and location of the foreign administrative agencies, etc. which oversees the notifying person’s services that are found to correspond to the services provided in Article 2(1) of the Act;
 - (c) A description of the audit supervisory system by the foreign administrative agencies, etc. which oversees persons who performs services that are found to correspond to the services provided in Article 2(1) of the Act;
 - (iv) A document which confirms that the notifying person is compliant with all the relevant laws and regulations and that the notifying person maintains proper operations in providing services that are found to correspond to the services provided in Article 2(1) of the Act.
 - (v) Matters related to business operations of notifying person, which include the following:
 - (a) A description of services that are found to correspond to the services provided in Article 2(1) of the Act and other services,
 - (b) A description of the performance of the relevant business operations, which include the following matters:
 1. Status of “quality control management” specified in Paragraph (3) of Article 34-13 of the Act;
 2. If the notifying person has been subjected to a review of the status of “quality control management” concerning audit and attestation services by foreign administrative

agencies, etc. or any other equivalent review (“review, etc.”), the date and the results of such review, etc.; provided, however, that this shall not apply to the case where, taking into account the establishment of co-operative relationships between the FSA and such foreign administrative agencies, etc. or of any other circumstances, the Commissioner of the FSA concurs that the notifying person is exempt from this obligation.

(c) A description of business associations with other auditors, which is to include the following;

1. In cases where the notifying person is affiliated with Japanese certified public accountants or Japanese auditing firms in regards to his/her services, which are found to correspond to the services provided in Article 2(1) of the Act, a statement to that effect and a description of such business associations;

2. In cases where the notifying person is a member of a network comprised of foreign auditors, meaning that the person makes it his/her practice to audit or attest financial documents for fees at the request of others who perform their operations in more than one jurisdiction under the same name, etc., an outline of such networks, their arrangements and the names and locations of the principal offices of firms which belong to the same network of the notifying person and which are domiciled in the jurisdiction of the notifying person.

(d) A description of the notifying person’s offices, including the following matters (in case the notifying person maintains more than one office, state for each office)

1. Name;

2. Office location;

3. Number of employees who have qualification as a professional in the auditing and accounting fields;

(vi) Contents of any criminal, administrative sanctions or similar sanctions imposed on notifying person by foreign administrative agencies, etc. or similar organizations in relation to services that are found to correspond to the services provided in Article 2(1) of the Act within five years before the initial notification, if any

(vii) Documents certifying that the notifying person has granted authority on all matters regarding notification specified in Paragraph (1) of Article 34-35 to an agent who resides in Japan.

(2) In cases where the notifying person has found it impossible to submit any information prescribed in Paragraph (1) of Article 5 due to restraints by the governing laws or regulations of the jurisdiction where the principal office of the notifying person is located, the notifying person may submit description of the following matters for each of the relevant information prescribed in Article 5(1) instead of submitting said information.

(i) The fact that the notifying person cannot submit information due to restraints by the

governing laws or regulations of the jurisdiction where the principal office of the notifying person is located and the relevant contents of provisions given by such governing laws or regulations,

- (ii) A legal opinion of the attorney which certifies that the matters described in (a) are correct and accurate, and,
- (iii) In cases where the notifying person needed to obtain permission, consent and/or approval (the “permission, etc.”) in order to submit such descriptions and the notifying person has not been able to submit such information due to notifying person’s failure to obtain such permissions, etc., information regarding measures that the notifying person has taken to obtain such permission, etc. and the reason why the notifying person failed to do so.

Article 6 (Notification of Change)

Foreign audit firms, etc. (specified in Article 1-3 (7)) who intend to give notification under the provisions of Paragraph (1) of Article 34-37 shall submit to the Commissioner of the Financial Services Agency two sets of Form No. 2.

Article 7 (Matters to be publicized upon formulation of rectification)

Matters to be publicized, specified in Paragraph (3) of Article 34-38 of the Act include the following:

- (i) The date on which the publication pursuant to Paragraph (2) of Article 34-38 was made and the name of the foreign audit firms, etc. that was subject to the instruction specified in Paragraph (1) of the same Article;
- (ii) A description of the instructions specified in Paragraph (1) of Article 34-38;
- (iii) The fact and the reason for which the foreign audit firm, etc. is admitted to have rectified matters under the instructions set forth in Paragraph (1) of Article 34-38 of the Act.

Article 8 (Notification of Abolition of Services, etc.)

Foreign audit firms, etc. who intend to provide notification under the provisions of Paragraph (1) of Article 34-39 shall submit to the Commissioner of the Financial Services Agency two sets of the Form No. 3.

Supplementary Provisions of the Ordinance

Article 1 (Effective date)

This Ordinance becomes effective on the date the Act for Partial Revision of the Certified Public Accountants Act, etc. (Act No 99 of 2007) becomes effective (April 1, 2008.)

Article 2 (Transitional measures regarding attachments)

In case where the notifying person is performing services that are found to correspond to the services provided in Article 2 (1) of the Act for the initial accounting period commencing after the effective date, the attachments to be submitted pursuant to Paragraph (1) of Article 34-36 of the Act can be submitted up to six months after the submission of the notification document. (Should the provision of the audit report come before said date, the attachments are to be submitted up to the previous day of said provision date.)

Article 3

Item (1)(v)(b)2., Article 5 of the Ordinance shall not be applied within three months of the effective date.

**English translation of the forms is for information only.
Forms should be submitted in the Japanese language.**

Form 1 (Regarding Article 2 of the Ordinance)

(JIS A4)

Date

To: Commissioner of the Financial Services Agency

Notifying person

Name:

In the case of a juridical person, name of the juridical person and name and position of a representative person

Address or location:

Telephone number: () -

E-mail address:

Contact person

Name:

Telephone number: () -

E-mail address:

Agent

Name or common name

Address or location:

Telephone number: () -

E-mail address:

stamp

Notification Document for Foreign Audit Firm, etc.

I hereby provide notification under the provisions of Paragraph (1), Article 34-35 of the Certified Public Accountants Act.

1 Notifying person

Name (trade name or known name)	
Location of the principal office	

2 In the case of a juridical person (1)

Name of directors	
Amount of stated capital or contributions (2)	
Date of incorporation	

Name of jurisdiction giving governing laws for incorporation (3)	
--	--

3 In the case where notifying person is an individual and if he/she belongs to a juridical person

Name of said juridical person	
Location of the principal office of said juridical person	

4 The foreign issuers for whose financial documents notifying person provides services that are found to correspond to the services provided in Article 2(1) of the Act.

Name	Location of principal office

(Notes)

- (1) In the case where the notifying person constitutes a partnership or similar organization, describe in a similar manner as one would be a juridical person.
- (2) In the case where the amount of stated capital or contributions of the notifying person is in foreign currency, describe the amount rounded to the highest digit of 1% of the original amount. The original amount converted into Japanese currency and the exchange rate used for calculating said converted amount should also be provided in the form.
- (3) The name of the jurisdiction giving the governing laws for incorporation is the name of the jurisdiction of the governing law applicable to the incorporation of said juridical person, relevant to Item (i), Paragraph (1), Article 4 of the Ordinance.
- (4) When providing the names, additionally provide them in the original language in parentheses.

**English translation of the forms is for information only.
Forms should be submitted in the Japanese language.**

Form 2 (Regarding Article 6 of the Ordinance)

(JIS A4)

Date

To: Commissioner of the Financial Services Agency

Notifying person

Name: { In the case of a juridical person, name of the juridical person and name and position of a representative person }
 Address or location:
 Telephone number: () -
 E-mail address:

Contact person

Name:
 Telephone number: () -
 E-mail address:

Agent

Name or common name
 Address or location: stamp
 Telephone number: () -
 E-mail address:

Notification Document for Changes in Information

I hereby provide notification under the provisions of in Paragraph (1) of Article 34-37 of the Certified Public Accountants Act.

Date of change	Articles of change	Contents of change		Note
		After	Before	

(Note)

If an agent has been appointed for this notification, provide information regarding the agent.

**English translation of the forms is for information only.
Forms should be submitted in the Japanese language.**

Form 3 (Regarding Article 8 of the Ordinance)

(JIS A4)

Date

To: Commissioner of the Financial Services Agency

Notifying person

Name:

In the case of a juridical person, name of the juridical person and name and position of a representative person

Address or location:

Telephone number: () -

E-mail address:

Contact person

Name:

Telephone number: () -

E-mail address:

Agent

Name or common name

Address or location:

Telephone number: () -

E-mail address:

stamp

Notification Document for Abolition of Services, etc.

I hereby provide notification under the provisions of in Paragraph (1) of Article 34-39 of the Certified Public Accountants Act.

- 1 Name of foreign audit firm, etc. (2)
- 2 Date of the initial notification
- 3 Date of abolition of services, etc.
- 4 Contents of abolition of services, etc. (3)

(Notes)

(1) Agent

If an agent has been appointed for this notification, provide information regarding the agent.

(2) Name of foreign audit firm, etc.

Additionally provide it in the original language in parentheses.

(3) Contents of abolition of services, etc.

State which one of the respective items in Paragraph (1), Article 34-39 of the CPA Act applies.

Where it falls under Item (ii) of said paragraph, describe the type of proceedings.

Appendix B Revised Certified Accountants Act etc.

(Translations are not official, but for reference purposes only.)

Certified Public Accountants Act (Act No. 103 of 1948)

Article 1-3 (Definitions)

- (1) The term “financial documents” as used in this Act refers to inventories of property, balance sheets, profit and loss statements, and other documents concerning finance (including those in electronic form [which refers to records that are made in electronic or magnetic form or any other form that cannot be recognized by human senses to be provided for computer-based information processing and that are specified by a Cabinet Office Ordinance; the same shall apply hereinafter] in cases where electromagnetic records are created in lieu of such documents).
- (2) The term “to publicize” as used in this Act means to give a public notice or to put matters in a state under which shareholders, creditors, and many other persons may be informed.
- (3) The term “audit firm” as used in this Act means a juridical person established under this Act for the purpose of systematically providing the services set forth in Paragraph (1) of the subsequent Article.
- (4)~(6) (omitted)
- (7) The term “foreign audit firm, etc.” as used in this Act refers to a person who has given notification under the provisions of Article 34-35(1).

Article 2 (Services of Certified Public Accountants)

- (1) A certified public accountant may make it his/her practice to audit or attest financial documents for fees at the request of others.
- (2) In addition to the services prescribed in the preceding paragraph, a certified public accountant may make it his/her practice to compile financial statements, to examine or plan financial matters, or to be consulted on financial matters for fees at the request of others, using the title of certified public accountant, provided, however, that this shall not apply to matters for which the provision of such services is restricted by other laws.
- (3) The provisions of paragraph (1) shall not preclude a certified public accountant from engaging in the services set forth in the same paragraph as an assistant to another certified public accountant or an audit firm.

Article 34-13(Development of Service Control Framework)

- (1) An audit firm shall develop service control frameworks pursuant to the provisions of a Cabinet Office Ordinance in order to perform its services fairly and accurately.
- (2) The service control framework prescribed in the preceding paragraph shall include the

following matters (referred to as the “status of operation of services” in Article 44(1)(xii), Article 46-9-2(1) and Article 49-4(2)(ii)):

- (i) Measures aimed at ensuring fair execution of services
 - (ii) Formulation and implementation of quality control policy for services
 - (iii) Measures aimed at excluding the possibility of partners that are not certified public accountants from having undue influence on the execution of services set forth in Article 2(1) which are provided by partners who are certified public accountants
- (3) Quality control for services set forth in item (ii) of the preceding paragraph refers to the taking of measures necessary for the prevention of the occurrence of situations that would impair the appropriateness, fairness or credibility of services with regard to matters concerning the conclusion and renewal of contracts pertaining to services, the appointment of partners in charge of services or any other persons, provision and reviewing of services and the implementation of any other business specified by a Cabinet Office Ordinance, in accordance with their respective characteristics.
- (4) • (5) (omitted)

Article 34-35 (Notification)

- (1) A person who makes it his/her practice to audit or certify financial documents for fees at the request of others in a foreign state in compliance with the laws and regulations of said foreign state shall, when intending to provide services that are found to correspond to the services prescribed in Article 2(1) concerning financial documents to be submitted by an issuer of securities listed in Article 2(1)(xvii) of the Financial Instruments and Exchange Act that have the nature of securities listed in Item (ix) of the same paragraph or any other securities specified by a Cabinet Order or to be submitted by any other person specified by a Cabinet Office Ordinance pursuant to the provisions of the same Act (such financial documents shall be hereinafter referred to as “financial documents of a foreign company, etc.”), notify the Prime Minister in advance, pursuant to the provisions of a Cabinet Office Ordinance, provided, however, that this shall not apply to a person who is determined by a Cabinet Office Ordinance as one who is deemed to receive appropriate supervision of the administrative agency of the foreign state that supervises persons who provide services that are found to correspond to those set forth in the same paragraph concerning financial documents of the foreign company, etc. or an organization equivalent to such an administrative agency.
- (2) The Prime Minister shall, when notification under the provisions of the preceding paragraph has been given, make a public statement to that effect in an official gazette.

Article 34-36 (Matters For Which Notification Is To Be Provided)

- (1) A person who intends to provide notification under the provisions of paragraph (1) of the

preceding Article shall submit to the Prime Minister a notification document containing the following matters:

- (i) Name
 - (ii) Location of the principal office
 - (iii) The names of the board members, in the case of a juridical person
 - (iv) The amount of stated capital or the total amount of equity, in the case of a juridical person
 - (v) Other matters specified by a Cabinet Office Ordinance
- (2) The notification document under the provisions of the preceding paragraph shall attach the articles of incorporation and other documents containing matters specified by a Cabinet Office Ordinance.

Article 34-37 (Changes to the Notified Matters)

- (1) A foreign audit firm, etc. shall, when there have been changes to any matters listed in the items of paragraph (1) of the preceding Article, notify the Prime Minister to that effect within two weeks pursuant to the provisions of a Cabinet Office Ordinance.
- (2) The Prime Minister shall, when there has been notification under the provisions of the preceding paragraph, make a public statement to that effect in an official gazette.

Article 34-38 (Instructions, etc. to Foreign Audit Firms, etc.)

- (1) The Prime Minister may provide necessary instruction to a foreign audit firm, etc. where said foreign audit firm, etc. has violated this Act or an order under this Act or where operation of the services that are found to correspond to the services set forth in Article 2(1) concerning the financial documents of a foreign company, etc. by a foreign audit firm, etc. is found to be significantly inappropriate, and if he/she finds it necessary in order to assure proper operation of such services
- (2) The Prime Minister may, when he/she has given instructions under the provisions of the preceding paragraph and the foreign audit firm, etc. that has received the instructions fails to follow them, publicize such failure and the details of said instructions.
- (3) The Prime Minister shall, when he/she finds that after the publication under the provisions of the preceding paragraph the foreign audit firm, etc. of the same paragraph has made efforts to rectify the matters contained in the instruction set forth in paragraph (1), publicize these findings and any other matters specified by a Cabinet Office Ordinance.

Article 34-39 (Notification of Abolition of Services, etc.)

- (1) A foreign audit firm, etc. shall, when faced with any of the following circumstances, notify the Prime Minister to that effect:

- (i) When the foreign audit firm, etc. has ceased to provide services that are found to correspond to those set forth in Article 2(1) concerning the financial documents of a foreign company, etc.,
 - (ii) When the foreign audit firm, etc. has filed the same kind of petition as that for the commencement of bankruptcy proceedings, the commencement of civil reorganization proceedings or the commencement of corporation reorganization proceedings in the state where its principal office is located under the laws and regulations of said state.
- (2) The Prime Minister shall, when there has been notification under the provisions of the preceding paragraph, make a public statement to that effect.

Article 35 (Establishment)

- (1) The Certified Public Accountants and Auditing Oversight Board (hereinafter referred to as the “Board”) shall be established within the Financial Services Agency.
- (2) The Board shall administer the following affairs:
- (i) Examining and deliberating matters concerning disciplinary actions against certified public accountants and registered foreign certified public accountants and actions against audit firms (excluding orders under the provisions of Paragraph (1) of Article 34-21-2 to audit firms);
 - (ii) Making recommendations to the Prime Minister concerning administrative actions or any other measures to be taken in order to assure proper operations of the services set forth in Article 2(1) provided by certified public accountants, registered foreign certified public accountants or audit firms, services that are found to correspond to those set forth in the same paragraph provided by foreign audit firms, etc., or the affairs of the Japanese Institute of Certified Public Accountants;
 - (iii)~ (iv) (omitted)

Article 41-2 (Recommendations)

The Board may, when it has exercised its authority under the provisions of Paragraph (1) of Article 46-12, Paragraph (1) or (2) of Article 49-3 or Paragraph (1) or (2) of Article 49-3-2 based on the provisions of Paragraph (2) or (3) of Article 49-4 and finds it necessary to do so, make recommendations to the Prime Minister concerning administrative actions or any other measures to be taken in order to assure the proper operation of the services set forth in Article 2(1) provided by certified public accountants, registered foreign certified public accountants or audit firms, services that are found to correspond to those set forth in the same paragraph provided by a foreign audit firm, etc., or affairs of the Japanese Institute of Certified Public Accountants, based on the results of such exercises of authority.

Article 49-3-2 (Collection of Reports from and On-Site Inspections to Foreign Audit Firms, etc.)

- (1) The Prime Minister may, when he/she finds it necessary and appropriate in light of public interest or investor protection, request that foreign audit firms, etc. report or submit relevant reporting documents on the services that are found to correspond to the services set forth in Article 2(1) concerning financial documents of foreign companies, etc. provided by the foreign audit firms, etc.
- (2) The Prime Minister may, when he/she finds it necessary and appropriate in light of public interest or investor protection, have relevant officials enter the offices of the foreign audit firm, etc. or other places related to the services thereof and inspect the books and documents and any other objects related to the services that are found to correspond to the services set forth in Article 2(1) concerning the financial documents of foreign companies, etc. provided by foreign audit firms, etc.
- (3) (omitted)

Article 49-4 (Delegation of Authority)

- (1) The Prime Minister shall delegate his/her authority under this Act (excluding those specified by a Cabinet Order) to the Commissioner of the Financial Services Agency.
- (2) (omitted)
- (3) The Commissioner of the Financial Services Agency may, based on the authority delegated under the provisions of paragraph (1), delegate the authority under the provisions of paragraph (1) and paragraph (2) of the preceding Article to the Board, pursuant to the provisions of a Cabinet Order.
- (4) ~ (5) (omitted)

Cabinet Order for Implementing the Certified Public Accountants Act (Order No. 343 of 1952)

Article 30 (Securities that are the subject of financial documents of a foreign company, etc.)

“The securities which are to be specified by a Cabinet Order” pursuant to Paragraph (1), Article 34-35 of the Act are as follows:

- (i) Beneficiary securities of foreign investment trusts as prescribed in Article 2(1)(x) of the Financial Instruments and Exchange Act (“FIEA”)
- (ii) Foreign investment securities as prescribed in Article 2(1)(xi) of the FIEA
- (iii) Securities listed in Article 2(1)(xvii) of the FIEA that have the nature of securities listed in Items (iv), (v), (vii) to (ix), or (xii) to (xvi) in the same paragraph;

- (iv) Securities listed in Article 2(1)(xviii) of the FIEA
- (v) Securities listed in Article 2(1)(xix) of Item (xx) of the same Article, limited to those issued by a foreign person
- (vi) Securities or certificates listed in Article 1(1)(i) of the Cabinet Order for Implementing the Financial Instruments and Exchange Act
- (vii) Rights listed in the items (ii), (iv) or (vi) of Article 2(2) of the FIEA as deemed to be securities pursuant to the same article

Financial Instruments and Exchange Act (Act No. 25 of 1948)

Article 2 (Definitions)

(1) The term "securities" as used in this Act means the following:

- (i) National government bonds;
- (ii) Municipal bonds;
- (iii) Bonds issued by a juridical person under a special act (excluding those listed in the following item and item (xi));
- (iv) Specified corporate bonds prescribed in the Act on Liquidation of Assets (Act No.105 of 1998);
- (v) Corporate bonds (including those issued by a mutual company; the same shall apply hereinafter);
- (vi) Certificates of capital contribution issued by a juridical person under a special act (excluding those listed in the following item, item (viii) and item (xi));
- (vii) Preferred equity investment certificates prescribed in the Act on Preferred Equity Investment by Cooperative Structured Financial Institutions (Act No. 44 of 1993; (hereinafter referred to as "Preferred Equity Investment Act");
- (viii) Preferred equity investment certificates and securities indicating preemptive rights for new preferred equity investment prescribed in the Act on the Liquidation of Assets;
- (ix) Share certificates and share warrant certificates;
- (x) Beneficiary securities of investment trusts or foreign investment trusts prescribed in the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951);
- (xi) Investment securities, investment corporation bonds or foreign investment securities prescribed in the Act on Investment Trusts and Investment Corporations;
- (xii) Beneficiary securities of loan trusts;
- (xiii) Beneficiary securities of special purpose trusts prescribed in the Act on Liquidation of Assets;
- (xiv) Beneficiary securities of trusts issuing beneficiary securities prescribed in the Trust Act (Act No. 108 of 2006);
- (xv) Promissory notes which have been issued by a juridical person in order to raise the

funds necessary to operate its business and are designated by a Cabinet Office Ordinance;

- (xvi) Mortgage securities prescribed in the Mortgage Securities Act (Act No. 15 of 1931);
 - (xvii) Securities or certificates which have been issued by a foreign state or foreign person and have the nature of securities or certificates listed in items (i) to (ix) or item (xii) up to the preceding item (excluding those specified in the following item);
 - (xviii) Securities or certificates which have been issued by a foreign person, indicating a beneficial interest of a trust in which loan claims held by persons engaging in banking business or persons otherwise conducting money lending on a regular basis are entrusted, or indicating any other similar rights, and are designated by a Cabinet Office Ordinance;
 - (xix) Securities or certificates which indicate rights pertaining to transactions specified in Article 2(21)(iii) conducted in a financial instruments market, in accordance with the standards and procedures prescribed by the one who establishes the financial instruments market in question, rights pertaining to transactions which are conducted in a foreign financial instruments market (meaning the foreign financial instruments market defined in Article 2(8)(iii)(b); hereinafter the same shall apply in this item) and similar to transactions specified in Article 2(21)(iii), or rights pertaining to transactions specified in Article 2(22)(iii) or (iv) conducted in neither a financial instruments market nor foreign financial instruments market (those rights are hereinafter referred to as “options”);
 - (xx) Securities or certificates which have been issued by a person to whom securities or certificates listed in any of the preceding items are deposited in a state other than the state in which such securities or certificates were issued and which indicate the rights pertaining to the deposited securities or certificates; and
 - (xxi) In addition to those listed in the preceding items, the securities or certificates prescribed by a Cabinet Order as those for which it is found, when taking into consideration the state of distribution thereof and other factors, necessary to secure the public interest or protection of investors.
- (2) Rights to be indicated on securities listed in items (i) to (xv) of the preceding paragraph, securities listed in item (xvii) of the preceding paragraph (excluding those which have the nature of securities listed in item (xvi) of the preceding paragraph) and securities listed in item (xviii) of the preceding paragraph and rights to be indicated on securities listed in item (xvi) of the preceding paragraph, securities listed in (xvii) of the preceding paragraph (limited to those which have the nature of securities listed in item (xvi) of the preceding paragraph) and securities listed in items (xix) to (xxi) of the preceding paragraph and are designated by a Cabinet Office Ordinance (hereinafter collectively referred to as “rights to be indicated on securities” in this paragraph and the following paragraph) shall, even when securities indicating these rights have not been issued, be deemed as securities indicating these rights, and the rights listed in the following items shall, even when they are rights

that are not to be indicated on securities or certificates, be deemed as securities indicating these rights, and the provisions of this Act shall apply to all these rights.

- (i) Beneficial interest in a trust (excluding those to be indicated on beneficiary securities of investment trusts specified in item (x) of the preceding paragraph and those to be indicated on securities listed in any of items (xii) to (xiv) of the preceding paragraph);
- (ii) Rights which are claimable against a foreign person and which have the nature of the rights specified in the preceding item (excluding those to be indicated on beneficiary securities of foreign investment trusts specified in item (x) of the preceding paragraph and those to be indicated on securities listed in items (xvii) and (xviii) of the preceding paragraph);
- (iii) Membership rights of a general partnership company or a limited partnership company (limited to those designated by a Cabinet Order) or membership rights of a limited liability company
- (iv) Membership rights of a foreign juridical person which have the nature of rights specified in the preceding item;
- (v) Among the rights based on a partnership contract prescribed in Article 667(1) of the Civil Code (Act No. 89 of 1896), a silent partnership agreement prescribed in Article 535 of the Commercial Code (Act No. 48, 1899), a limited partnership agreement for investment prescribed in Article 3(1) of the Limited Partnership Act for Investment (Act No. 90 of 1998) or a limited liability partnership agreement prescribed in Article 3(1) of the Limited Liability Partnership Act (Act No. 40 of 2005), membership rights of an incorporated association or other rights (excluding those based on laws and regulations of a foreign state), rights for which the holders thereof (hereinafter referred to as an “equity investor” in this item) can receive either dividends of profits arising from the business conducted by using money (including those designated by a Cabinet Order as being similar to money) invested or contributed by the equity investors (such business is hereinafter referred to as the “invested business”) or distributed assets of the invested business, and which do not fall under any category listed in the following items (excluding rights to be indicated on securities listed in the items of the preceding paragraph and rights which are regarded as securities under provisions of this paragraph (excluding this item)).
 - (a) Rights of an equity investor in the case where all equity investors participate in the invested business as specified by a Cabinet Order.
 - (b) Rights of an equity investor where it is provided that equity investors will not receive dividends of profits or distribution of assets of the business invested in an amount exceeding the amount invested or contributed by them (excluding rights listed in (a)).
 - (c) Rights based on an insurance contract in which a person who engages in insurance business as defined in Article 2(1) of the Insurance Business Act (Act No. 105 of 1995)

is the insurer, a mutual aid contract concluded with a cooperative specified in Article 5 of the Agricultural Cooperatives Act (Act No. 132 of 1947) which engages in the service specified in Article 10(1)(x) of the said Act, a mutual aid contract concluded with a cooperative provided in Article 4 of the Consumers' Cooperatives Act (Act No. 200 of 1948) which engages in the mutual aid service specified in Article 10(2) of the said Act, a mutual aid contract concluded with a cooperative provided in Article 2 of the Fishery Cooperatives Act (Act No. 242 of 1948) which engages in the service specified in the Article 11(1)(xi), 93(1)(vi-ii) or 100-2(1)(i) of the said Act, a mutual aid contract concluded with a cooperative provided in Article 3 of the Small and Medium Sized Enterprise, etc., Cooperatives Act (Act No. 181 of 1949) which engages in the mutual aid service specified in Article 9-2(2)(vii) of the said Act or a real estate specified joint enterprise contract defined in Article 2(3) of the Real Estate Specified Joint Enterprise Act (Act No. 77 of 1994) (excluding rights listed in (a) and (b)).

(d) In addition to those listed in (a) to (c), rights prescribed by a Cabinet Order as those which are deemed not to hinder public interest or protection of equity investors, even if they are not regarded as securities.

(vi) Rights based on laws and regulations of a foreign state which are similar to those specified in the preceding item; or

(vii) In addition to those listed in the preceding items, rights prescribed by a Cabinet Order as those for which it is found, when taking into consideration the fact that they have an economic nature similar to securities provided in the preceding paragraph and rights listed in the preceding items and other circumstances, necessary and appropriate to secure the public interest or protection of investors by regarding them as securities.

(3)~(31) (omitted)

Article 5 (Filing of Securities Registration Statement)

(1) Issuer of securities who intend to make a registration for public offering or secondary distribution of securities (excluding a public offering or secondary distribution of securities to be made with regard to specific securities (meaning securities designated by a Cabinet Order as those for which information that has material influence on investors' investment decisions is information on asset management or other similar business conducted by the issuer of the securities; the same shall apply hereinafter in this paragraph and paragraph (5) of this Article and Article 24); the same shall apply hereinafter in this paragraph and the following paragraph) under Article 4(1) or (2) shall file a statement containing descriptions on the following matters with the Prime Minister as provided by a Cabinet Office Ordinance, if the issuer is a company (including a foreign company; the same shall apply hereunder, except in Article 50-2(9) and Article 156-3(2)(iii)) (including the case where the company is to be established by the issuance of said securities (excluding specific securities; the

same shall apply hereinafter from this paragraph to paragraph (4)); provided, however, that, in the case where it is necessary to make the public offering prior to determining the issue price of the securities or in other cases specified by a Cabinet Office Ordinance, the statement may be filed without stating the issue price or other matters specified in a Cabinet Office Ordinance among the matters required to be described under item (i) below:

- (i) Matters pertaining to the public offering or secondary distribution; and
- (ii) Trade name of the company, financial conditions and other important matters concerning the business of the corporate group (meaning the group consisting of said company and other person whose majority of voting rights are held by said company or other person who satisfies the requirements specified by a Cabinet Office Ordinance as those having a close relationship with said company (limited to companies or other organizations designated by a Cabinet Office Ordinance); the same shall apply hereinafter) to which the company belongs and those of the company and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or investor protection.

(2)~(6) (omitted)

Article 24 (Filing of Annual Securities Report)

- (1) When securities (excluding specific securities; hereinafter the same shall apply in this Article, except in the following items) issued by a company fall under any of the categories specified in the following items, the company shall file, for each business year, a report stating the trade name of the company, the financial conditions and other important matters concerning the business of the corporate group to which the company belongs and those of the company and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or investor protection (hereinafter referred to as "annual securities report") with the Prime Minister within three months after the end of the business year in question (or, in the case of a foreign company, within the period designated by a Cabinet Order as the period necessary and appropriate for the public interest or investor protection) as provided by a Cabinet Office Ordinance; provided however, that this shall not apply to cases where the securities issued by the company fall under the category of securities specified in item (iii) below (limited to share certificates and other securities designated by a Cabinet Order), the numbers of holders of the securities on the last day of the business year in question and on the last day of the business years that began within four years of the day on which the aforementioned business year began are fewer than the number provided by a Cabinet Order, and the company has obtained an approval from the Prime Minister pursuant to provisions of a Cabinet Office Ordinance as one the absence of whose annual securities reports does not

impair the public interest or investor protection (limited to companies for which five years has already passed since the end of the year of the commencement of filing of reports (meaning the business year that includes the day on which the main clause of Article 4(1) or (2) or the main clause of Article 23-8(1) or paragraph (2) of the same Article became applicable to the public offerings or secondary distributions of the securities; if multiple business years fall under the category, the latest one of such business years)); where the securities issued by the company fall under the category of securities specified in item (iv) below and either the amount of stated capital of the company is less than 500 million yen (or, in the case where the securities are rights in securities investment business, etc. that are deemed as securities under Article 2(2), the amount that is provided by a Cabinet Order as the amount of stated capital of the company is less than the amount designated by a Cabinet Order on the last day of the business year in question) or the number of holders of the securities on the last day of said business year is fewer than the number designated by a Cabinet Order; and where the securities issued by the company fall under the category of securities specified in item (iii) or (iv) below and the company has obtained an approval from the Prime Minister pursuant to provisions of a Cabinet Office Ordinance as one the absence of whose annual securities reports does not impair public interest or investor protection.

- (i) Securities listed on a financial instruments exchange;
- (ii) Securities designated by a Cabinet Order as those whose state of distribution can be regarded as being equivalent to securities referred to in the preceding item;
- (iii) Securities of which public offerings or secondary distributions have been subject to the main clause of Article 4(1) or (2) or the main clause of Article 23-8(1) or paragraph (2) of the same Article (excluding those specified in the preceding two items); or
- (iv) Securities (limited to share certificates, rights in securities investment business, etc. that are deemed as securities under Article 2(2) and other securities designated by a Cabinet Order) issued by the company, where the number of its holders on the last day of the business year in question or on the last day of any one of the business years that began within four years of the day on which the aforementioned business year began is not less than the number designated by a Cabinet Order (or where, in the case of rights in securities investment business, etc. that are deemed as securities under Article 2(2), the number of its holders on the last day of the business year in question is not less than the number designated by a Cabinet Order) (excluding those specified in the preceding three items)

(2)~(15) (omitted)

Article 24-4-7 (Filing of Quarterly Securities Report)

- (1) A company which is required to file annual securities reports as set forth in Article 24(1)

(including a company which files annual securities reports under Article 23-3(4); the same shall apply in the following paragraph) and which has issued securities falling under the category specified in Article 24(1)(i) or is otherwise designated by a Cabinet Order (such a company is referred to as a “listed company, etc.” in this paragraph and the following paragraph) shall, if its business year is longer than three months, file, for each three-month period of its business year (excluding periods designated by a Cabinet Order), a report stating the financial conditions of the corporate group to which the company belongs and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or investor protection (hereinafter referred to as the “matters to be stated in a quarterly securities report” in this paragraph) (such a report is hereinafter referred to as a “quarterly securities report”) with the Prime Minister within the period designated by a Cabinet Order which is not exceeding 45 days after the three-month period. In such case, a listed company, etc. which conducts business designated by a Cabinet Office Ordinance shall submit a quarterly securities report stating, in addition to the matters to be stated in a quarterly securities report, financial conditions of the company and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or investor protection with the Prime Minister within the period designated by a Cabinet Order which is not exceeding 60 days after the three-month period.

(2)~(13) (omitted)

Article 24-5 (Filing of Semiannual Securities Report and Current Report)

(1) A company which is required to file annual securities reports as set forth in Article 24(1) (including a company which files annual securities reports under Article 23-3(4); the same shall apply in paragraph (4)) and which is not a company that is required to file quarterly securities reports under Article 24-4-7(1) (including a company which files quarterly securities reports under Article 24-4-7(2); the same shall apply in paragraph (3)) shall, if its business year is longer than six months, file, for each business year, a report stating the financial conditions and other important matters concerning the business of the corporate group to which the company belongs and those of the company and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or investor protection pertaining to the first six months of the business year (such a report is hereinafter referred to as a “semiannual securities report”) with the Prime Minister within three months after the end of the first six months.

(2)~(16) (omitted)

Article 193-2 (Audit Attestation of Certified Public Accountant or Audit Firm)

(1) For the balance sheet, profit and loss statement and other documents relevant to

financial accounting specified by a Cabinet Office Ordinance (“financial accounting documents” in paragraph (4) and the following article) to be submitted under the provisions of this Act by an issuer of securities listed in a financial instruments exchange or other person specified by a Cabinet Order (“specified issuer” in the next article), audit attestations shall be conducted by a certified public accountant or an audit firm that has no particular interest in the issuer or person in question, provided, however, that this shall not apply to the following cases:

- (i) In the case where an issuer of securities listed in Article 2(1)(xvii) that have the nature of securities listed in Item (ix) of the same paragraph or any other securities specified by a Cabinet Order has received, from a foreign audit firm, etc. (“foreign audit firm, etc.” as defined by Article 1-3(7) of the Certified Public Accountants Act; the same shall apply to item (i) of the following paragraph and paragraph (3)), attestations that are recognized by a Cabinet Office Ordinance as corresponding to an audit attestation;
 - (ii) In the case where an issuer referred to in the preceding item has received attestation that is recognized by a Cabinet Office Ordinance as corresponding to an audit attestation from a person referred to in the proviso to paragraph (1) of Article 34-35 of the Certified Public Accountants Act as a person specified by a Cabinet Office Ordinance; or
 - (iii) In the case where an issuer has been approved by the Prime Minister that a lack of an audit attestation will not undermine public interest nor fail to protect investors.
- (2) For the internal control reports to be submitted under Article 24-4-4 by an issuer of securities listed in a financial instruments exchange or other person specified by a Cabinet Order, audit attestations shall be conducted by certified public accountants or audit firms that have no particular interest in the issuer of person in question, provided, however, that this shall not apply to the following cases:
- (i) In the case where an issuer referred to in item (i) of the preceding paragraph has received an attestation that is recognized by a Cabinet Office Ordinance to correspond to audit attestation from a foreign audit firm, etc.;
 - (ii) In the case where an issuer referred to in the preceding item has received an attestation that is recognized by a Cabinet Office Ordinance to correspond to an audit attestation from a person referred to in the proviso to paragraph (1) of Article 34-35 of the Certified Public Accountants Act as a person specified by a Cabinet Office Ordinance; or
 - (iii) In the case where an issuer has been approved by the Prime Minister that a lack of an audit attestation will not undermine public interest nor fail to protect investors.
- (3) The provisions of item (i) of paragraph (1) and item (i) of the preceding paragraph shall not apply in the case where it is publicized under paragraph (2) of Article 34-38 of the Certified Public Accountants Act that the foreign audit firm, etc. as referred to in these provisions fails to follow the instructions given under paragraph (1) of Article 34-38 of said Act or where it is publicized under paragraph (2) of Article 34-39 of said Act that the foreign

audit firm, etc. provided the notification prescribed in paragraph (1) of Article 34-39 of said Act (except in cases where the publication prescribed in paragraph (3) of Article 34-38 of said Act is made after the publication prescribed in paragraph (2) of Article 34-38 of said Act).

(4) ~ (8) (omitted)