

# Outline of the Act for Amendment of the Financial Instruments and Exchange Act, etc. for Strengthening the Foundations of Capital Markets and the Financial Industry

Finance must back up and support the real economy and enterprises

Finance must lead the economy as a growing industry itself



The issue is strengthening the foundations of Japan's capital markets and financial industry

Achievement of the diverse and smooth provision of financing measures

## Development of legal system for rights offerings (capital increase by allotment of share options without contribution)

- More flexible methods of delivering prospectuses, etc
- More diversified means of capital increase for listed companies.

## Expansion of scope of borrowers for commitment lines

- Expand scope of commitment line borrowers to beyond large enterprises
- Provide new fundraising technique to medium-sized enterprises, etc.

## Lifting the ban on finance leases by main financial institutions, such as banks and insurance companies

- Subsidiaries are already allowed to provide finance leases. Also allow provision by financial institutions such as main banks and insurance companies.
- SMEs receive one stop service.

Provision of asset investment opportunities which can be effectively used Japanese national assets

## Relaxing the regulation of investment management businesses with limited types of clients, such as professional investors

- Relax registration requirements (minimum capital, etc.)
- Encourage the launching of investment management businesses.

## More flexible regulation for asset securitization schemes

- Simplify procedures for changing an asset securitization plan, and relax regulations on asset acquisition, etc.
- Simplify fundraising procedures for urban redevelopment, etc.

## Expansion of the scope of English disclosure

- For English disclosure by foreign companies, expand the scope of subject disclosure documents to include securities registration statements, etc.
- Promote Japan listings by foreign companies

Securing reliability of markets

## Response to sales of unlisted stocks, etc. by unregistered financial instruments business operators

- Invalidate the sales of unlisted stocks, etc. by unregistered financial instruments business operators in principle.
- Prohibit advertising and solicitation by unregistered financial instruments business operators.
- Increase maximum criminal penalties for unregistered financial instruments business operators, etc.
- Prevent occurrence of damage to investors purchasing unlisted stocks, etc.

## Expansion of grounds on refusing registration of investment advisories and agencies

- Add personnel composition requirements as grounds for refusing registration of investment advisories and agencies.
- Prevent occurrence of damage to investors.

# 1. Diversification of capital increase techniques for listed companies (System Development concerning Rights Offerings)

> A rights offering is a capital increase technique where share options are allotted to all shareholders without contributions

This capital increase technique pays attention to fair treatment of existing shareholders, and there are calls for its active use from the viewpoint of investor protection

## Revision

### More flexible methods of delivering prospectuses

Make it unnecessary to prepare and deliver prospectus to all shareholders



Shorten time-period  
Reduce cost burden

Acquisition and exercise of unexercised share options by securities companies to be treated as "Underwriting of Securities" (Impose regulations, such as a suitable underwriting examination obligation)



Investor protection  
Gain soundness of capital market

### Review of the scope of "Underwriting of Securities"

# 2. Provide new fundraising technique to medium-sized enterprises, etc. (Expansion of scope of borrowers for commitment lines)

> In a commitment line contract, the lender establishes a line of credit for a certain period and amount, and the borrower pays fees for that

- > Large corporations (at least ¥500 million in capital or ¥20 billion in liabilities)
- > Corporations with over ¥300 million in capital
- > Companies submitting securities report, etc.



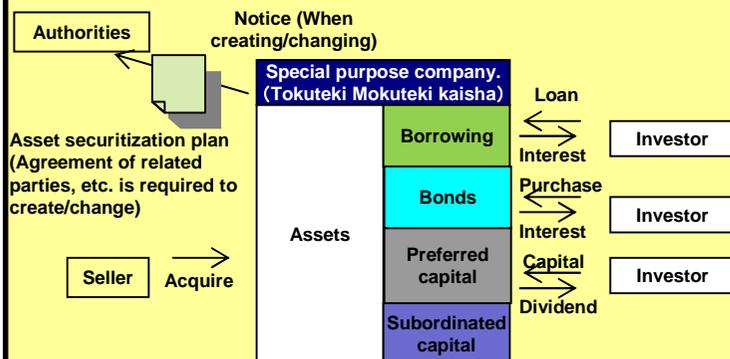
## Revision

Add:

- > Corporations with net assets over 1 billion yen
- > Subsidiaries of large corporations, etc.
- > Financial institutions (securities companies, money lending business operators, etc.) etc.

# 3. Simplify fundraising procedures for urban redevelopment, etc. (More flexible regulation of asset securitization schemes)

> An asset securitization scheme gathers capital from investors and acquires assets, then distributes cash flow generated from the assets, based on a plan determined in advance (asset securitization plan)



Pointed out:  
• Plan change procedures are complex  
• Excessive regulation

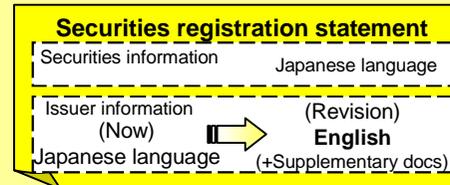
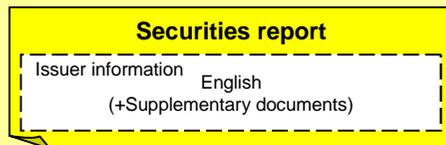
## Revision

- > Relax notice obligation and procedures for changes in asset securitization plan (partially exempt from change notice obligation, etc.)
- > Review regulations on asset acquisition (Exempt from obligation for segregated management of properties, etc.)
- > Promote innovative schemes for asset securitization (Develop system to promote issuance of Islamic bonds using a Special Purpose Trust)

#### 4. Promote Japan listings by foreign companies (**Expansion of the scope of English disclosure**)

- English disclosure is a system enabling submission of foreign companies' securities reports in English

Must develop an environment for easy listings by foreign companies, and expand investment opportunities for investors



#### 5. Prevent occurrence of damage to investors purchasing unlisted stocks, etc.

#### (**Response to sales of unlisted stocks, etc. by unregistered financial instruments business operators**)

Establish a rule providing certain transactions to be invalidated

- If an unregistered financial instruments business operator sells stocks or bonds, etc. of any unlisted company, the relevant sales contract shall be void in principle

#### Other measures

- Prohibit advertising and solicitation by unregistered financial instruments business operators
- Increase maximum criminal penalties for unregistered financial instruments business operators

Note: Number of consultations regarding unlisted stocks (study by National Consumer Affairs Center of Japan)

FY2007: 2,615 consultations, FY2008: 3,071, FY2009: 6,114 (FY2009 as of 12/31/2009: 3,257), FY2010 (as of December 31): 5,362

# Outline of the Act for Amendment of the Financial Instruments and Exchange Act, etc. for Strengthening the Foundations of Capital Markets and the Financial Industry

(Background)

Finance must back up and support the real economy and enterprises

Finance must lead the economy as a growing industry itself



The issue is strengthening the foundations of Japan's capital markets and financial industry

## I. Achievement of the Diverse and Smooth Provision of Financing Measures

### **1. Development of Legal System for Rights Offerings**

- More flexible methods of delivering prospectuses
  - Instead of the obligation to prepare and deliver prospectuses to all shareholders if there is an allocation of stock options, it shall be sufficient to (1) submit a securities registration statement (post in EDINET), and (2) post information, such as the EDINET's web site.
- Review of the scope of "Underwriting of Securities"
  - Acquisition and exercise of unexercised share options by securities companies to be treated as "Underwriting of Securities." Imposes regulations, such as a suitable underwriting examination obligation.
- Clarification of important facts of insider trading
  - Clearly writes that share option allotment without compensation is an important fact of insider trading

Note: A rights offering is a capital increase technique where share options are allotted to all shareholders without contributions.

### **2. Expansion of Scope of Borrowers for Commitment Lines**

- Add the following types of corporations to the scope of borrowers of commitment lines
  - Corporations with over 1 billion yen of net assets, subsidiaries of large corporations, foreign corporations corresponding to persons with over 1 billion yen of net assets
  - Limited liability companies for asset securitization
  - Mutual company under the Insurance Business Act, type I financial instruments business operator, investment management business operator, securities finance company, money lender

Note: In a commitment line contract, the lender establishes a line of credit for a certain period and amount, and the borrower pays fees for that.

### **3. Lifting the Ban on Finance Leases by Main Financial Institutions, such as Banks and Insurance Companies**

- Subsidiaries are already allowed to provide finance leases. Also allow provision by main financial institutions, such as banks and insurance companies.

Note: A finance lease meets two requirements: (1) Early cancellation prohibited, (2) Entire amount of property price and incidental costs are recovered by lease fees (full payout).

## **II. Provision of Asset Investment Opportunities which can be Effectively Used Japanese National Assets**

### **1. Relaxing the Regulation of Investment Management Businesses with Limited Types of Clients, such as Professional Investors**

- Relax registration requirements for investment management businesses
  - Relax registration requirements for investment management businesses up to a certain size targeting qualified investors
- Relax regulations on solicitation of fund shares
  - Treat solicitation of beneficial interests in investment trusts and investment corporations by a person engaged in the investment management business mentioned above as a type II financial instruments business instead of a type I financial instruments business.

### **2. More Flexible Regulation of Asset Securitization Schemes**

- Relax the notice obligation for changes in asset securitization plans
  - Exempt from the change notice obligation regarding matters unrelated to the scheme's framework
- Review regulations on asset acquisition and fundraising
  - Exempt from obligation to set up a trust for property combined with real estate, etc.
  - Replace the overlapping obligation of real estate appraisal and third party survey on real estate with that of real estate appraisal.
  - When a Special Purpose Company acquires assets, eliminate the obligation for notification of important matters by the party transferring assets, etc.
  - Eliminate restrictions on uses of funds borrowed by Special Purpose Companies
- Promote innovative schemes for asset securitization (issuance of Islamic bonds using mechanism of Special Purpose Trust)
  - For issuance of quasi-bond beneficial interests, abolish the obligation to issue other types of beneficial interests

### **3. Expansion of the Scope of English Disclosure**

- Expand scope of documents covered by English disclosure to include securities registration statements
  - Expand scope of English disclosure by foreign companies to include securities registration statements and extraordinary reports

## **III. Securing Reliability of Markets**

### **1. Response to sales of unlisted stocks, etc. by unregistered financial instruments business operators**

- Establish the rule providing certain transactions to be invalidated
  - If an unregistered financial instruments business operator sells stocks or bonds, etc. of any unlisted company, the relevant sales contract shall be void in principle
- Prohibit advertising and solicitation
  - Prohibit advertising and solicitation by unregistered financial instruments business operators

➤ Strengthen criminal penalties

- Increase maximum criminal penalties for unregistered financial instruments business operators, to imprisonment with work for not more than five years or a fine of not more than five million yen (not more than 500 million yen for a corporation)

Note: Currently, imprisonment with work for not more than three years or a fine of not more than three million yen (a fine is also not more than three million yen for a corporation).

## **2. Expansion of grounds for refusing registration of investment advisories and agencies**

- Add personnel composition requirements as grounds for refusing registration of investment advisories and agencies

#### IV. Effective Date

