

**Placement as a Condition for Granting Credit**, described under 2), which was subjected to recommendations along with the violation described above.

(2) **The Act of Handling Private Placement on a Condition for Granting Credit**

[Violation of Item 6, Article 21 of the Ordinance of Cabinet Office concerning Securities Operations of Financial Institutions, based on Item 9, Paragraph 1, Article 42 of the SEL prior to its amendment by Law No. 97 of 2004. Provisions of Paragraph 5, Article 65-2 of the SEL were relied upon.]

- **The Marunouchi Branch of Citibank, N.A.** in its private banking operations, handled private placement on a condition for granting credit by soliciting specific clients to apply for the purchase of structured bonds while concurrently offering to lend money to the clients for the purchase of the notes. By having the clients acquire the bonds as a condition for the loan, the bank handled private placement as a condition for granting credit.

- Date of Recommendation: September 14, 2004

- Administrative Disciplinary Measure: A business improvement order.

Note 1: The disciplinary measure described above includes disciplinary measure relating to the Act of Presenting Misleading Statements with Respect to Material Facts in Connection with the Handling of Private Placement of Securities described under1), which was subjected to recommendations along with the violation described above.

Note 2:

The FSA took an administrative disciplinary action against the Japan Branch of Citibank, NA on September 17, 2004, based on the provisions of the SEL. As of the same date, the FSA also took an administrative disciplinary action against the same branch in accordance with the provisions of the Banking Law. (The reason for the disciplinary measure was the discovery of fundamental problems in the branch office's system of compliance with laws and regulations and its governance system. In particular, a number of transactions by the bank's Private Banking Division (the Marunouchi Branch and the offices in Nagoya, Osaka, and Fukuoka) were found to be injurious to the public interest, in material violation of laws and regulations, or extremely improper, which led the FSA to conclude that continued business operation of the division would be inappropriate. In addition, the Individual Finance Division was found to have an inadequate internal control system over its foreign currency deposit operations and deemed to be in need of concentrating its efforts on improving its operations.) Subsequently, the Private Banking division of the branch was shut down.

## 5. Policy Proposals

Based on the results of inspections or investigations of criminal offenses, the SESC may, if necessary, present policy proposals to the Prime Minister, the FSA Commissioner or the Minister of Finance in order to ensure fairness in securities transactions (Article 21 of the FSA Establishment Law).

Policy proposals are put forward by the SESC after its comprehensive analysis of the results it obtained through the inspections and investigations. Such proposals are intended to clarify the SESC's view on laws, regulations and self-regulatory trading rules and have it reflected in policy measures being taken by other government agencies and self-regulatory organizations. Proposals by the SESC serve as important yardsticks for relevant government authorities in formulating certain policies.

The SESC has proposed reviewing or revising existing laws or regulations on securities trading and related matters, and self-regulatory rules, when such rules and laws are found unfit to deal with issues found in actual transactions. The SESC has also pointed out problems inherent in the current legal framework for securities transactions and specific areas to be studied and reviewed from the viewpoint of ensuring fairness in trading.

During the period reviewed for this report, the inspections, etc. of securities companies resulted in discovery of no issues that required policy proposals.

## **6. Market Surveillance**

### **1) Outline**

#### **1. Outline of market surveillance**

The SESC conducts market surveillance on a broad range of securities transactions on a daily basis, including unfair securities deals, such as manipulation of stock prices and insider trading, as well as inspections of securities companies and investigations of criminal-offense cases.

Specifically, the SESC takes out stocks showing irregular movements, as the samples below show, based on the day-to-day surveillance of market movements and information obtained from various sources, and asks securities companies or SRO's that have engaged in the securities transactions in question to prepare detailed reports on the trading or submit relevant data.

Subject to market surveillance are the following:

- (1) stocks whose prices surged or plunged during a short period of time;
- (2) stocks about which important incidents that would significantly affect investors' investment judgment occurred, etc.

In addition, the SESC checks if securities companies involved in these dubious deals have committed acts that constitute violations of laws.

If the initial surveillance found problems in the securities transactions in questions, the cases will be reported to relevant SESC sections to be made clear.

#### **2. Legal basis**

To conduct market surveillance, the SESC is authorized to ask securities companies or SROs to submit reports and data on particular securities transactions if doing so is deemed necessary and appropriate from the viewpoint of maintaining fairness in trading and protecting investors' interests. Such authority delegated to the SESC and the scope of that authority are prescribed under the SEL, LFSF, FFTL and ordinances as with the SESC's authority on inspections.

#### **3. Cooperation with self-regulatory organizations**

Daily market surveillance as done by the SESC is also conducted by self-regulatory organizations such as stock exchanges and the Japan Securities Dealers Association. Their surveillance has the important function of checking if market participants are executing their business duties in an appropriate manner. The SESC keeps close cooperation with market-surveillance sections of self-regulatory organizations by exchanging necessary information on regular and extraordinary bases, and also by making mutual inquiries about data and facts on transactions.