Annual Report
2009/2010

Securities and Exchange Surveillance Commission

JAPANESE GOVERNMENT

– About this Publication –

Starting with this publication, the period covered has changed from the previous-business-year basis (July to June) to the fiscal-year basis (April to March).

Therefore, in this publication, the period from April to June 2009 overlaps with the previous publication, and so the contents of individual cases of recommendations and formal complaints in this period are not described in the main text.

For the information on how such cases were processed, refer to the “Annual Report (2008/2009),” or the website.

Annual Report 2009/2010

〈Contents〉

1. Activities in response to the post Financial Crisis ····· 1

1) Enhancing Surveillance against Unfair Financing ····· 1

1. Outline ····· 1

2. Specific Activities ····· 1

2) Activities for Enhancing and Strengthening Verification of Financial Soundness with a Forward-looking View ····· 2

1. Outline ····· 2

2. Specific Activities ····· 2

3) Comprehensive Market Surveillance of the Overall Financial and Capital Markets, including New Financial Instruments ····· 3

1. Outline ····· 3

2. Specific Activities ····· 3

4) Collaboration with Stakeholders for Market Integrity ····· 4

1. Outline ····· 4

2. Specific Activities ····· 5

5) Activities related to International Affairs in Response to Globalization ····· 5

1. Outline ····· 5

2. Specific Activities ····· 6

2. Market Surveillance ····· 8

1) Outline ····· 8

2) Receipt of Information from the Public ····· 8

1. Outline ····· 8

2. Receipt of Information ····· 8

3) Market Trend Analysis ····· 9

1. Outline ····· 9

2. Market Surveillance Targeting Primary and Secondary Markets ····· 10

3. Comprehensive and Timely Market Oversight that Includes Responding to New Financial Instruments,etc. ····· 10

4) Market Oversight ····· 10

1. Outline ····· 10

2. Legal Basis ····· 11

3. Results of Market Oversight ····· 11

4. Close Cooperation with Self-Regulatory Organizations ····· 13

5) Future Challenges ····· 14

3. Inspections of Securities Companies and Other Entities ····18
1) Outline ····18
2) Basic Inspection Policy and Basic Inspection Plan ····19
3) Development of Inspection Manual for Credit Rating Agencies and Revision of Inspection Manual for Financial Instruments Business Operators ····20
1. Circumstance of the development and revision ····20
2. Key Points of the Manuals ····20
4) Record of Inspections ····20
5) Inspection of Collective Investment Schemes (Funds) ····21
6) Summary of Inspection Results ····21
1. Inspections of Type I Financial Instruments Business Operators ····21
2. Inspections of Type II Financial Instruments Business Operators ····22
3. Inspections of Investment Management Business Operators ····22
4. Inspections of Investment Advisory and Agency Business Operators ····22
5. Inspections of Financial Instruments Brokers ····22
6. Inspections of Self-Regulatory Organizations ····22
7) Recommendations Based on the Results of Inspections ····22
1. Recommendations Based on the Results of Inspections of Type I Financial Instruments Business Operators ····22
2. Recommendations Based on the Results of Inspections of Type II Financial Instruments Business Operators ····33
3. Recommendations Based on the Results of Inspections of Investment Advisory and Agency Business Operators ····43
4. Recommendations Based on the Results of Inspections of Financial Instruments Brokers ····47
8) Future Challenges ····48

4. Administrative Monetary Penalties Investigation ····49
1) Outline ····49
1. Purpose of the Administrative Monetary Penalty System ····49
2. Violations Subject to Administrative Monetary Penalties, and Amounts of Administrative Monetary Penalties ····50
3. Authority of Administrative Monetary Penalty Investigations ····50
2) Recommendation on Market misconduct ····51
1. Situation of Recommendations ····51
2. Outline of Recommendations Issued ····52
3) Future Challenges ····66

5. Disclosure Documents Inspection ····68
1) Outline ····68
1. Purpose of Disclosure Documents Inspection ····68

2. Authority of Disclosure Documents Inspection ····69
3. Violations Subject to Administrative Monetary Penalties, and Amounts of Administrative Monetary Penalties (Disclosure Related) ····70
2) Recommendations Based on Disclosure Document Inspection Results ····72
1. Situation of Recommendations for Issuance of Orders to Pay of Administrative Monetary Penalties ····72
2. Voluntary Amendments, etc. Triggered by Disclosure Document Inspections ····80
3) Future Challenges ····80

6. Investigations and Formal Complains in Criminal Cases ····82
1) Outline ····82
2) Purpose and Authority of Criminal Case Investigations ····82
1. Purpose of Criminal Case Investigations ····82
2. Authority and Scope of Criminal Case Investigations ····83
3) Investigations of Criminal Cases and Filing of Formal Complaints ····83
1 Investigations of Criminal Cases ····83
2 Filing of Formal Complaints ····84
3 Outline of Formal Complaints ····85
4) Future Challenges ····92

7. Policy Proposals ····96
1) Outline ····96
2) Specific Policy Proposals and Measures Taken Based on Policy Proposals ····96
1. Specific Policy Proposals ····96
2. Measures Taken Based on Policy Proposals ····98
3. Other Measures ····99
3) Future Challenges ····99

8. Efforts to Enhance Surveillance Activities and Functions ····100
1) Reinforcement and Strengthening of the Market Surveillance System ····100
1. Reinforcement of Organization ····100
2. Improvement of Capacity for Collecting and Analyzing Information ····100
3. Enhancement of Systems Infrastructures to Support Market Surveillance ····102
2) Dialogue with Market Participants and Efforts to Strengthen the Provision of Information to the Market ····102
3) Cooperation with Related FSA Departments ····103
4) Cooperation with Overseas Securities Regulators ····103
1. Participation in IOSCO (International Organization of Securities Commissions) ····103
2. Building an Information Exchange Framework ····104

Supplements

Towards Enhanced Market Integrity - SESC's Policy Statement for the 7th Term -
Table 1. Organization of the SESC
Table 2. Conceptual Chart of Relationship among the Prime Minister, the Commissioner of the FSA, the SESC, and Directors General of Local Finance Bureaus
Table 3. Relationship to Self-Regulatory Organizations
Table 4. The SESC's activities in figures
Introduction of Chairman and Commissioners

1. Activities in response to the post Financial Crisis

In FY 2009, the Securities and Exchange Surveillance Commission (SESC) continued its efforts to carry out effective surveillance against the risks of market misconduct. In light of the global financial crisis and its impacts on the real economy as well as its relevant regulatory environmental changes, the SESC has tackled current market issues and emerging risks in a prompt and forward looking manner, while enhancing Better Regulation to establish market discipline through surveillance, thereby focusing on following areas.

1) Enhancing Surveillance against Unfair Financing

1. Outline

As a recent trend in Japanese capital market shows that, among the financings by listed companies with weak performances due to worse economic conditions, etc., there have often been seen suspicious inappropriate financing cases through third-party share allocation etc., where the allottees are unclear of the identities or are concerned for the anti-social forces' involvement, or where existing shareholders' rights are heavily diluted,

Among such inappropriate financings, there were compound cases where collusions between the top management of the issuing company and the specific investors (the company is used as a "vehicle") as well as market misconducts (e.g. market manipulation, insider trading, spreading rumors or fraudulent means) and/or the false statements in financial statements in annual reports etc. entwined with the financing were found. In FY 2009, the SESC filed cases such as inflated capital increase and fictitious capital increase.

The SESC will continue to enhance its surveillances against unfair financing cases, and also conduct investigations and inspections if necessary.

2. Specific Activities

While enhancing inter-departmental activities in its organization, the SESC reinforces the cooperation with the Financial Services Agency (FSA), the local finance bureaus and the securities exchanges to enhance its ability to collect and analyze information and data, and thereby monitors third-party share allocation etc. in primary market and trends in secondary market on a daily basis.

In addition, since it is crucial to have an overall picture of the problem on unfair financing cases, the SESC is drawing on all of its functions, i.e. market surveillance, disclosure documents inspection, criminal case investigation to strengthening its information gathering through various efforts such as setting up occasions of feedbacks on detailed investigative methods for actual cases from investigation/inspection sections to market monitoring section.

Moreover, in order to raise public awareness of such problems, the SESC sends a message to listed enterprises, law firms, audit firms, securities companies etc., utilizing various means such as lecture presentations and article contributions in order to strengthen market discipline with a view to prevent unfair financing cases before it occurs. Various activities are also being carried out against unfair financing cases, i.e., developing stricter rules, e.g. the Cabinet Ordinances for disclosure and/or the listing rules of securities exchanges, etc. on allotees of third-party allocations and dilution, etc.

2) Activities for Enhancing and Strengthening Verification of Financial Soundness with a Forward-looking View

1. Outline

For financial instruments business operators operating globally, the relative weight of stock brokerage business is decreasing, but their business is diversifying and becoming more complex, ranging from trading on their own account to the creation and sale of securitization products. As a result, the risks involved in business are also increasing. If these business operators fail, there are concerns that it will not only affect the domestic market but will also have huge impacts on overseas markets.

Inspections of securities companies until now have focused on checking for the presence of acts in violation of laws and regulations from the viewpoint of ensuring fair transactions. However, after experiencing the so-called “Lehman Shock”, it has become clear that there is a possibility of systemic risks materializing, whereby failure of a financial instruments business operator will in some cases lead to dysfunction in domestic as well as overseas financial and capital markets and financial institutions. Therefore, the SESC has been aiming at further enhancement of the financial soundness verification of financial instruments business operators, with a forward-looking view.

2. Specific Activities

(1) Enhancement of inspection system

The Inspection Administrator’s Office was set up in the Inspection Division as its middle office, and staffed with experts of private financial institutions such as risk management practitioners and certified public accountants. To gain reference information for future verifications of risk management systems of financial instruments business operators, this office conducted interviews with many large domestic securities companies and foreign securities companies throughout FY 2009, about their risk management internal control, and internal audit systems.

(2) Strengthening of cooperation with supervisory departments

Stronger cooperation with supervisory departments conducting off-site monitoring of financial instruments business operators is important for verifying their financial soundness with a forward-looking view. Information on risks of these firms obtained by the supervisory departments through off-site monitoring is extremely vital for determining the focus of inspections. Problems in risk management systems found through the inspections will be monitored and then the relevant improvements will be followed up by the supervisory department. Thus, more integrated operations of both on-site monitoring through the SESC’s inspections and off-site monitoring by supervisory departments effectively lead to enhanced and reinforced risk management systems of financial instruments business operators.

From this viewpoint, the SESC routinely exchanges information and shares awareness of problems with the Supervisory Bureau of the FSA, and cooperates closely with overseas authorities through information exchange forums such as supervisory colleges, especially for monitoring financial instruments business operators that hold an important position in the market.

(3) Review of inspection results notice concerning verification of internal controls etc.

"The verification of legal violation acts" looks at past legal violations and identifies internal controls problems. In contrast, "verification of internal controls and risk management systems" has to be done from a forward-looking viewpoint, since if the identified problems of current management conditions are left unaddressed, they could lead to serious problems materializing in the future such as legal violations or financial deterioration. Especially, as far as financial instruments business operators that hold an important position in the market are concerned, forward-looking verification of internal controls need to be strengthened and enhanced. Therefore, the SESC has decided that the notice of results of inspections that place emphasis on "the verification of internal controls" should first include a description of the current state of verified management system of each risk and then the observed flaws, whereas the notice of results of inspections focused on "the verification of legal violation acts" has only the descriptions of legal violations to be pointed out.

3) Comprehensive Market Surveillance of the Overall Financial and Capital Markets, including New Financial Instruments

1. Outline

The SESC collects and analyzes a wide variety of material and information related to financial and capital markets. As part of this work, it is also focusing its attention on what kinds of risks are involved in the new financial instruments and transaction methods that are increasing in market size and importance in recent years, from the viewpoints of ensuring fairness in the market, protecting investors, and ensuring the financial health and internal controls of financial instruments business operators. It also does timely collection and analysis of information. Through such activities, the SESC aims to achieve comprehensive market surveillance of the overall market, by carrying out market oversight that is on par with the level of each risk involved in the various financial instruments and transaction methods in financial and capital markets.

In FY 2009, the SESC analyzed new financial instruments that were a large concern in the course of the recent global financial crisis, and also new transaction methods that appeared following changes in the global market structure. It also reviewed its appeals for providing information to the SESC, and added an appeal for providing information on derivatives and bonds to its websites and brochures.

The risks and issues understood from such activities will be useful to the SESC for future market surveillance, and as required will be conveyed to relevant authorities and self-regulatory organizations. The SESC is aiming to improve its overall market surveillance functions by sharing its awareness of problems, etc.

2. Specific Activities

Typical cases of analyses done in FY 2009 are given below.

(1) Analysis of CDSs

A credit default swap (CDS) is a derivatives transaction in which only the credit risk is hedged without the transfer of credit rights, against loss occurring by default of the borrower or the issuer of the bonds held. Its financial effect and transaction composition is similar to a guarantee against a credit claim.

In the recent global financial market turmoil, one of the factors which aggravated the financial crisis was large concerns about CDS. The SESC concentrated on interviewing securities companies, banks and law offices in BY 2008, with the main goal of understanding the realities of CDS in Japan.

In FY 2009, the SESC continued the interviews described above, focused on understanding the realities. It also conducted intensive interviews again with investment banks in Tokyo that participated in CDS as market makers, with the goal of understanding the risk management systems for CDS, and to construct surveillance techniques. The SESC did analyses to further understand the realities of CDS in Japan.

A report session was held for members of the International Swaps and Derivatives Association (ISDA), covering results of these repeated interviews. This provided a dialogue with market participants, and awareness of problems was shared with related organizations.

(2) Analysis of CFDs

A contract for difference (CFD) is a type of derivatives transaction. This transaction involves payment for price difference of an asset such as a listed stock or stock index, with the customer depositing a certain percentage of margin in the dealer.

In recent years, Japan has seen an increasing trend in CFD, especially among individual investors. Therefore, the SESC continued on its work in BY 2008, using interviews of dealers to understand the realities of trading, and doing analyzes from the viewpoint of protecting investors and surveillance against market misconduct.

(3) Analysis of “Dark pools”

In European and U.S. markets, along with structural changes in recent years, an increasing percentage of trades are by electronic cross-trading in securities companies which do not publish bid/ask prices, called “dark pools”. Also in Japan, the new “arrowhead” stock trading system started operating in January 2010. With its start, more diverse trading techniques and increased liquidity may also boost demand for trading via dark pools. Considering this, the SESC interviewed securities companies operating “dark pools” to understand the actual situation, and analyzed this from the viewpoints of internal controls of securities companies and ensuring fairness of transactions.

4) Collaboration with Stakeholders for Market Integrity

1. Outline

To ensure market fairness and transparency, in addition to surveillance by the authorities, stronger self-discipline and market discipline by listed companies and other market participants is essential to prevent market misconduct. In order to strengthen market discipline in FY 2009, looking at information delivery channels, articles were placed in various public relations media, and more approaches were made to organizations playing important roles in market fairness. In its cooperation with self-regulatory organizations, the SESC investigated areas which should be strengthened, it provides information that is useful for reinforcing the self-regulatory work of self-regulatory organizations, staff of self-regulatory organizations participate in training by the SESC, etc. These activities serve to strengthen both parties.

2. Specific Activities

(1) Stronger information delivery by exchange of views, lectures, and placing articles in various public relations media

In FY 2009, considering the increased risks of market misconduct due to the recent financial crisis, information was delivered about the SESC's comprehensive market surveillance system, and on recent trends in market misconduct, mainly problems of unfair financing and takeover bid related insider trading.

Specifically, information was communicated to listed companies in listed company compliance forums held by securities exchanges throughout Japan, and in lectures of the Japan Corporate Auditors Association etc. Information was also communicated to new places: Japan Federation of Certified Public Tax Accountants' Associations, tax accountants' associations, Japan Federation of Shiho-Shoshi Lawyer's Associations, Japan Federation of Gyoseishoshi Lawyer's Associations, and Japanese Bankers Association.

Also, to more effectively and efficiently communicate its messages, the SESC actively contributes articles to periodicals, websites and email magazines of self-regulatory organizations, and describes recent the SESC activities and awareness of problems, for stronger market discipline.

(2) Stronger mutual cooperation with self-regulatory organizations

As part of its continuing efforts to improve market discipline, the SESC has worked on stronger cooperation with self-regulatory organizations. In FY 2009, in addition to self-regulatory organizations under the Financial Instruments and Exchange Act, the SESC also worked on stronger cooperation with other organizations playing important roles in market fairness: the Japan Federation of Bar Associations, The Japanese Institute of Certified Public Accountants, etc.

In addition, with the Japan Securities Dealers Association (JSDA), the SESC provides periodic activities reports, and has begun holding monthly information exchange meetings at the workplace level on a wide range of topics. Starting in FY 2009, in order to teach skills such as know-how on examination and investigation of cases and to share information, self-regulatory organization staff participate in training by the SESC. Self-regulatory organization staff participate in joint meetings held twice yearly of securities transactions surveillance officers, financial instrument exchange inspectors and securities inspectors. These meetings have active discussions and exchange of views about various problems and issues concerning market surveillance, thereby sharing awareness of problems. Also, a concrete study is proceeding on how to build closer cooperation between securities company inspections, and audits and examinations of self-regulatory organization members.

5) Activities related to International Affairs in Response to Globalization

1. Outline

To cope with the progress of globalization of financial and capital markets, and the recent increase in cross-border transactions, it is absolutely essential to internationally cooperate in oversight of market misconduct. The SESC is proactively working on international affairs by means of contributing to international discussions and building closer cooperation with overseas securities regulatory authorities.

2. Specific Activities

(1) Contributions to international discussions

As a response to the current financial crisis, there have been various discussions concerning international financial issues to enhance and expand the scope of regulation and oversight, with tougher regulation of over-the-counter (OTC) derivatives, securitization markets, credit rating agencies, and hedge funds in international organizations such as the G20 (financial summit of 20 major countries and regions), Financial Stability Board (FSB), and International Organization of Securities Commissions (IOSCO). Furthermore, activities regarding problems of uncooperative countries and regions are also under discussion.

Progress has been made in the introduction and enhancement of supervision of credit rating agencies in various countries, and those operating in Japan are now subject to the SESC inspections since April 2010. There are also continuing discussions on how to handle supervisory cooperation regarding globally active credit rating agencies.

In this way, there are various discussions on financial regulations among international organizations. The SESC in collaboration with the FSA, and is working to contribute actively to international discussions, based on awareness it obtains through surveillance activities.

(2) Closer cooperation with overseas securities regulatory authorities

With the increase in cross-border transactions in financial and capital markets, in order to monitor cross-border market misconduct which impairs integrity of each countries' markets, information exchange between securities regulators is absolutely essential. On the basis of such understanding, the SESC has enhanced international cooperation in market oversight, through bilateral information exchange frameworks and the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information (multilateral MOU).

Also, related to inspections for foreign business operators located in Japan and Japanese business operators' overseas entities, the SESC has been sharing necessary information with overseas regulators. In addition, as a lesson from the financial crisis, the SESC, in close collaboration with the FSA, participates in supervisory colleges which were established for large and complex financial institutions, thus enhancing cooperation with overseas regulators.

The SESC continues cooperating with overseas regulators, and enhances oversight of market misconduct using cross-border transactions. Moreover, through efficient and effective inspections for financial business operators, and credit rating agencies which are newly added within the scope of the SESC inspections, we are working to ensure the integrity of financial and capital markets in Japan.

(3) Information collection and delivery concerning the international sector

The SESC is working on identifying both recent trends in international financial and capital market appropriately and efforts by overseas regulators for ensuring market integrity. The SESC is also working to promote understanding of its activities. Therefore, the SESC collects information on a daily basis, and interviews securities companies and self-regulatory organizations as needed in order to understand actual market conditions. Furthermore, the SESC actively exchanges views with overseas regulators and foreign financial institutions. In FY 2009, the SESC exchanged views with overseas regulators such countries as the UK, USA, Australia and China, foreign financial institutions and international industry

organizations. In August 2009, Commissioner Kumano made a speech at the “Cambridge International Symposium on Economic Crime”, as part of the SESC efforts to deliver information.

(4) Developing the current structure for closer international cooperation

In order to promptly and efficiently monitor cross-border transactions in cooperation with overseas regulators, the SESC enhances its cross-sectional cooperation, learns investigation techniques of overseas regulators, and makes efforts to gain information on overseas market misconduct cases. Also, in order to enhance international cooperation, as part of developing its human resources and building networks with overseas regulators, the SESC sends its staff to participate in training courses or secondment programs held by regulators of the UK, USA and , Hong Kong.

2. Market Surveillance

1) Outline

The Securities and Exchange Surveillance Commission (SESC) gathers a variety of information related to financial and capital markets on a daily basis, analyses market trends broadly, and conducts market oversight for suspicious cases of market misconduct, to ensure the fairness of trading in the markets.

In FY 2009, for strengthening market surveillance especially at entire primary and secondary markets, the SESC gathered and analyzed information from a broad angle on the improper financing in the primary market and various market misconducts originating from the improper financing, and also proactively investigated suspicious cases.

The SESC is also fostering cooperation with self-regulatory organizations to improve overall market surveillance functions for both primary and secondary markets. In addition, the SESC is proactively analyzing trends of new financial instruments and transactions with the objective of achieve comprehensive market surveillance on overall financial and capital markets.

2) Receipt of Information from the Public

1. Outline

The SESC receives a wide range of information from the public, including the ordinary investors and market participants as a part of its information gathering related to financial and capital markets.

Such information reflects candid opinions of investors in the markets. Such information is highly useful, because it may lead the SESC to launch market surveillance, inspections of financial instruments business operators, administrative monetary penalty investigations, inspections of disclosure documents, and investigations of criminal cases.

For this reason, the SESC uses a variety of means, such as telephone, letter, visitation, and the internet, to receive information from as many people as possible. The SESC has also made positive efforts to increase the number of contacts providing useful information, such as calling for information from the public through government bulletins and lecture meetings.

Information provided on a dispute between a financial instruments business operator and an investor might be effectively utilized in inspections and others by the SESC. If an information provider seeks individual settlement of a conflict, the SESC handles it such as by referring provider to the “Financial Instruments Mediation Assistance Center” that provides a service with consulting, complaint resolution and dispute resolution for users of financial instruments trading. In addition, the SESC also refers appropriate consultation services for people who have complaints on commodity futures trading or other products that do not fall under the jurisdiction of the SESC.

2. Receipt of Information

In FY 2009, the SESC received 7,118 reports of information from the public, approximately

10% increase than those of BY 2008 (6,412). There are various possible factors which might contribute the increase in the information received from the public, e.g., the way of gathering information were reinforced in the middle of BY 2008, information regarding malicious telemarketing of unlisted stocks by people pretending to be the SESC staff, which amounts to as many as 348 cases, and such telephone calls were broadly reported by the press, etc.

The breakdown of the means used by the public in providing information were 4,293 contacts via the internet, 1,917 by telephone, 380 in writing, 60 visitations, and 468 referrals from the local finance bureaus, showing that the internet accounted for approximately 60% of the total and that there were a remarkable increase in the number of contacts by telephone in the last two years.

In terms of the substance, 3,889 cases were on market manipulation or insider trading or rumors about individual stocks, 835 cases were on issues with suspicious financing and annual securities reports, etc. containing false statements, 1,349 cases were on sales practices and other issues of financial instruments business operators, and 1,045 cases were opinions on other issues.

Among the cases related to individual stocks, suspicions of market manipulation ranked highest (2,573 cases), making up approximately 40% of all cases. The second-largest group was on suspicions of spreading of rumors and use of fraudulent means, representing approximately 10% (627 cases) of the total. Such information was, for the most part, on unfounded rumors, investment decisions or other tips posted on internet bulletin boards, etc. Much information was also received on suspected insider trading.

With regards to issuers, many of the information tips (152 cases) were concerning annual securities reports, etc. containing false statements, followed by suspicious financing (143 cases) and non-submission of annual securities reports, etc. (109 cases).

* Information on false financial statements or suspicious financing was previously classified as information related to “individual stocks”, but since August 2009, information on suspicious wrongful acts by issuing companies (issuers) themselves is classified as information related to “issuers”.

Diverse information was also provided in connection with cases related to sales practices and other issues of financial instruments business operators, including troubles in trading systems (141 cases) and inappropriate solicitations in light of the customer’s knowledge (122 cases). (Refer to the attached figure for details)

3) Market Trend Analysis

1. Outline

The SESC has broadly analyzed the trends in financial and capital markets, based on gathered information. Recently, the SESC has made special effort into analyzing primary market trends, due to many financings seen for which there are concerns about improper financing by listed companies and hotbeds of market misconduct. The SESC has also strengthened its analysis of trends in new financial instruments and transaction methods, as part of its efforts for establishing comprehensive market surveillance of the overall financial and capital markets.

2. Market Surveillance Targeting Primary and Secondary Markets

In the primary market in recent years, allocation of shares to a third-party and other types of financing have often been observed where the identity of the allottee is unclear and there are concerns of the involvement of anti-social forces, or where the rights of existing shareholders end up becoming significantly diluted. Among the inappropriate financings in the primary market, there have been compound cases (unfair financing cases) in the secondary market that are entwined with financing, that include market manipulation, insider trading, market misconduct by means of spreading rumors & fraudulent means, and annual securities reports, etc. containing false statements.

With regards to such unfair financing cases, the SESC is collecting and analyzing information that covers both the primary and secondary markets with the close cooperation of the listing management and listing review divisions and trading review divisions of securities exchanges. Specifically, it collects and analyzes disclosed information and information from stock exchanges about listed companies, and information from the public, etc. in an effort to monitor unfair financing cases (Refer to Chapter 1, Section 1 for details of the activities of the SESC).

3. Comprehensive and Timely Market Oversight that Includes Responding to New Financial Instruments, etc.

The SESC works on timely collection and analysis of data, focusing its attention on what kinds of risks are involved in the new financial instruments and transaction methods that are increasing in market size and importance in recent years, from the viewpoint of ensuring fairness in the market, investor protection, and financial instruments business operators, etc's soundness and appropriate internal control system. Through these activities, the SESC aims at achieving comprehensive market surveillance of the overall financial and capital markets.

Analysis of a credit default swap (CDS), a contract for difference (CFD) and so-called "dark pools" are examples of analyses done in FY 2009. (Refer to Chapter 1, Section 3 for details).

The results of these analyses are shared by the SESC and the departments of the local financial bureaus engaged in the surveillance of securities transactions, and are used for future market surveillance. The information is also provided to the concerned departments of the Financial Services Agency (FSA) and self-regulatory organizations etc., in an effort to share awareness of problems and issues in market surveillance, if necessary.

As a recent change in the market, the SESC is closely monitoring whether there are any changes in transaction patterns following the introduction of *Arrowhead,* a stock trading system that began operating in January 2010 in the Tokyo Stock Exchange (TSE) because of the acceleration of order response and information transmission as well as revised trading rules accompanied to the launch of "arrowhead".

4) Market Oversight

1. Outline

In market oversight, the SESC first extracts the following kinds of stocks based on its routine oversight of market trends and on information obtained from various sources. The SESC then requests financial instruments business operators to provide detailed reports or submit materials in relation to the securities transactions.

(1) Stocks showing sharp rises or declines in price or other questionable movements
(2) Stocks for which “material facts” have been published which may have a significant influence on investors’ investment decisions
(3) Stocks that are the topic of conversation in newspapers, magazines or on the internet bulletin boards
(4) Stocks mentioned in information obtained from the general public

Next, based on these reports and materials, the SESC examines transactions with suspected market manipulation, insider trading and fraudulent means, that impair the market fairness. At the same time, the SESC examines whether the financial instruments business operators involved in these transactions have committed any questionable acts such as violating regulations prohibiting them from doing certain acts.

If these examinations reveal any suspicious transactions, they are reported to the SESC’s relevant divisions for further investigation, etc.

2. Legal Basis

In market oversight, when the SESC finds it necessary and appropriate for ensuring fairness of financial instruments trading and protecting investors, it requests financial instruments business operators and other related persons to submit reports and materials on securities transactions. The authority delegated to the SESC is prescribed in the Financial Instruments and Exchange Act (FIEA).

3. Results of Market Oversight

(1) Results

The number of cases of oversight conducted by the SESC and the local finance bureaus in FY 2009 are as follows.

Number of oversight cases		FY 2009 (April 2009 – March 2010)	BY 2008 (July 2008 – June 2009)
Total		749	1,031
	SESC	319	493
	Local finance bureaus	430	538
(Breakdown of oversight items)			
Price formation		94	132
Insider trading		649	889
Other aspects		6	10

The SESC and the local finance bureaus conduct day-to-day surveillance of trading in the markets based on overall market movements, and, as part of the surveillance, examine particular transactions as necessary. Along with collecting information related to market surveillance, the SESC is working on clarifying the facts of actual individual market transactions that are suspected of violating market fairness, by detailed analysis regardless of the size of the transactions.

In FY 2009, based on recent changes in the market environment and trends in market misconduct, the SESC especially aimed at further improving the contents of investigations of individual transactions, by actively incorporating techniques considered useful for market surveillance.

In addition, as described in Section 3-2, the SESC is working on strengthening its collection and analysis of information related to financing trends in the primary market, based on the circumstances in recent years. As a result of such information collection and analysis, the SESC examines suspected unfair financing cases from the viewpoint of fraudulent means, etc.

(2) Typical Cases Examined

The typical cases examined during FY 2009 were as follows.

(i) Examples of reasons for conducting examination related to price formation:

(a) The share price and traded volume of Company A rose sharply without any particular reason for the rise in the share price.

(b) A securities exchange reported to the SESC that the exchange found suspicious "Misegyoku", a type of market manipulation, which is a trading order with intention of misleading others and canceling it immediately after the order, by a specific contractor concerning the shares of Company B.

(c) A securities firm reported to the SESC that market manipulative transactions by specific contractors were observed concerning the shares of Company C, and the firm took the measures such as issuing a warning and stopping new transactions of the contractors.

(d) When information concerning material facts of the Company D was made public, the share price of Company D rose and dropped sharply after the announcement day and then settled in to a steady price range. Thereafter, the price rose sharply accompanied by high trading volumes without any particular reason for a higher price, and wide fluctuations were repeated later as well. Then, examination was carried out upon the information by securities companies and the ordinary investors which state that specific contractors had made repeated market manipulation actions during such stock price movements.

(ii) Examples of reasons for conducting examination related to insider trading of shares:

(a) After the announcement of Company E a takeover bid (TOB) for the shares of Company F, the share price of Company F rose significantly, and as such examinations were conducted into the transactions prior to the announcement regarding Company F stocks. Moreover, a securities company informed the SESC of suspicious transactions using borrowed name accounts. Examination was carried out based on such information.

(b) When Company G announced a downward revision of its results forecast, its share price fell sharply. Transactions prior to the announcement were examined.

(c) When Company H announced a share issuance by third-party allocation, its share price fell sharply. Transactions prior to the announcement were examined.

(d) When the SESC received an information that “someone gained large profit through insider trading” in the shares of Company I, the SESC began to examine if

there was insider trading involving a concerned contractor.

(iii) Examples of reasons for conducting oversight related to other aspects:

(a) The financial position of Company J did not improve even after repeated financings, and there was information about unusually large sum of cash withdrawals. As such, an examination was carried out to check for fraudulent means, etc.

(b) When Company K announced financing such as through new share issuance by third-party allocation, information was provided on concerns about the existence of investment in kind credits for the concerned financing, and suspicious allotees. As such, an examination was carried out to check for fraudulent means.

4. Close Cooperation with Self-Regulatory Organizations

Day-to-day market surveillance activities are also conducted by self-regulatory organizations such as Financial Instruments Exchanges and Financial Instruments Firms Associations. Their surveillance activities have a function of checking whether market participants are carrying out their business operations in an appropriate manner.

For examining transactions and other market surveillance activities, the SESC cooperates closely with these self-regulatory organizations (Cooperation with self-regulatory organizations in activities aimed at strengthening market discipline is described in detail in Chapter 1, Section 4).

(1) Use of “Compliance WAN”

The “Compliance WAN” system uses a dedicated line connected to the network nationwide securities companies with national securities exchanges, the Japan Securities Dealers Association (JSDA), the SESC and with the local finance bureaus, and electronically transfers the transaction data. As a result of examinations centered on the JSDA and securities exchanges, construction and operation of these networks has progressed.

Before the use of “Compliance WAN”, transaction data was submitted by floppy disks, email and various other means; but by unifying these means into a single method utilizing a highly secure dedicated network, the Compliance WAN has the following advantages:

(i) the leakage risk of personal information and the loss risk of storage media in the transfer of transaction data are reduced;

(ii) a reduction in the amount of time needed to request submissions and process receipts of transaction data leads to more efficient market oversight activities; and

(iii) for securities companies as well, leads to a reduction in costs for the submission of transaction data.

The new “Compliance WAN” system began its operation on January 26, 2009. The SESC and the local finance bureaus, as well as the TSE and its general trading participants started using the system on this date; and other securities exchanges, the JSDA and other securities companies on the TSE that are not general trading participants also began using the system from April 2009. Also, the individual messaging function in the Compliance WAN came online on June 1, 2009. As well as enabling data other than transaction details to be received from securities companies, individual messaging means that data can now

also be exchanged among the SESC and the local finance bureaus, and securities exchanges and the JSDA.

※ The SESC and the local finance bureaus initially used special terminals for utilizing the "Compliance WAN". However, upon the completion of the work of connecting the "Compliance WAN" to Financial Services Agency LAN and local finance bureaus WAN in FY 2009 (Financial Services Agency LAN: September 1, 2009, local finance bureaus WAN: February 1, 2010), the "Compliance WAN" can now be used by market surveyors from their desk PCs.

(2) Activities for Preventing Insider Trading

The SESC participates with securities exchanges in the "Working Group to Study Internal Controls for Preventing Insider Trading" held by the JSDA. Its study focuses on the JSDA, for development and reinforcement of internal controls to prevent market misconduct such as insider trading. Based on the "Sorting Out Issues Concerning Internal Controls for Preventing Insider Trading" summarized by this working group in May 2008, the SESC has addressed the following until now.

[1] The JSDA enacted the "Rules on Trading concerning Specific Securities of Listed Companies by Employees of Association Members" (enacted October 14, 2008, effective March 1, 2009) and developed a control system for transactions by executives of association members.

[2] The JSDA partially revised the "Rules on Development of Trading Control Systems for Preventing Market Misconduct" (revised October 14, 2008, effective April 1, 2009).

[3] The TSE partially revised the "Rules on Development of Trading Control Systems for Preventing Market Misconduct by Transaction Participants" (revised December 25, 2008, effective April 1, 2009).

With regards to the above mentioned [2], the members of the JSDA requested that any awareness of possible insider trading be reported to the SESC and the JSDA, and such reports (Trading Examination Results Reports) have been sent to the SESC since April 2009. The SESC is utilizing this report to examine suspicious transactions for insider trading.

5) Future Challenges

The market surveillance operations collect and analyze a broad range of information on the overall financial and capital markets, and also examines transactions if necessary, thereby functioning as the entry point of information for the SESC. Since the outcomes of market surveillance affect the success or otherwise of the ensuing inspections of securities companies, administrative monetary penalty investigations, criminal case investigations and so forth, not only will it be necessary to respond timely to market changes, but there is also a need to aim for effective and efficient market surveillance by prompt and accurate responses to emerging risks.

From this perspective, the SESC needs to reinforce especially the following activities based on current market trends.

(1) Upon the start of the new "arrowhead" stock trading system in January 2010 in the TSE, transaction patterns and market structure might change following the acceleration of order response and information transmissions. Therefore, it is necessary to keep eyes on such trends and to carry out accurate transaction investigations, including correspondence to the

system aspects.

(2) The SESC continues timely information gathering/analysis on the new financial instruments and transaction methods that are increasing in market size and importance as it strives to understand the risks of market misconduct, etc.

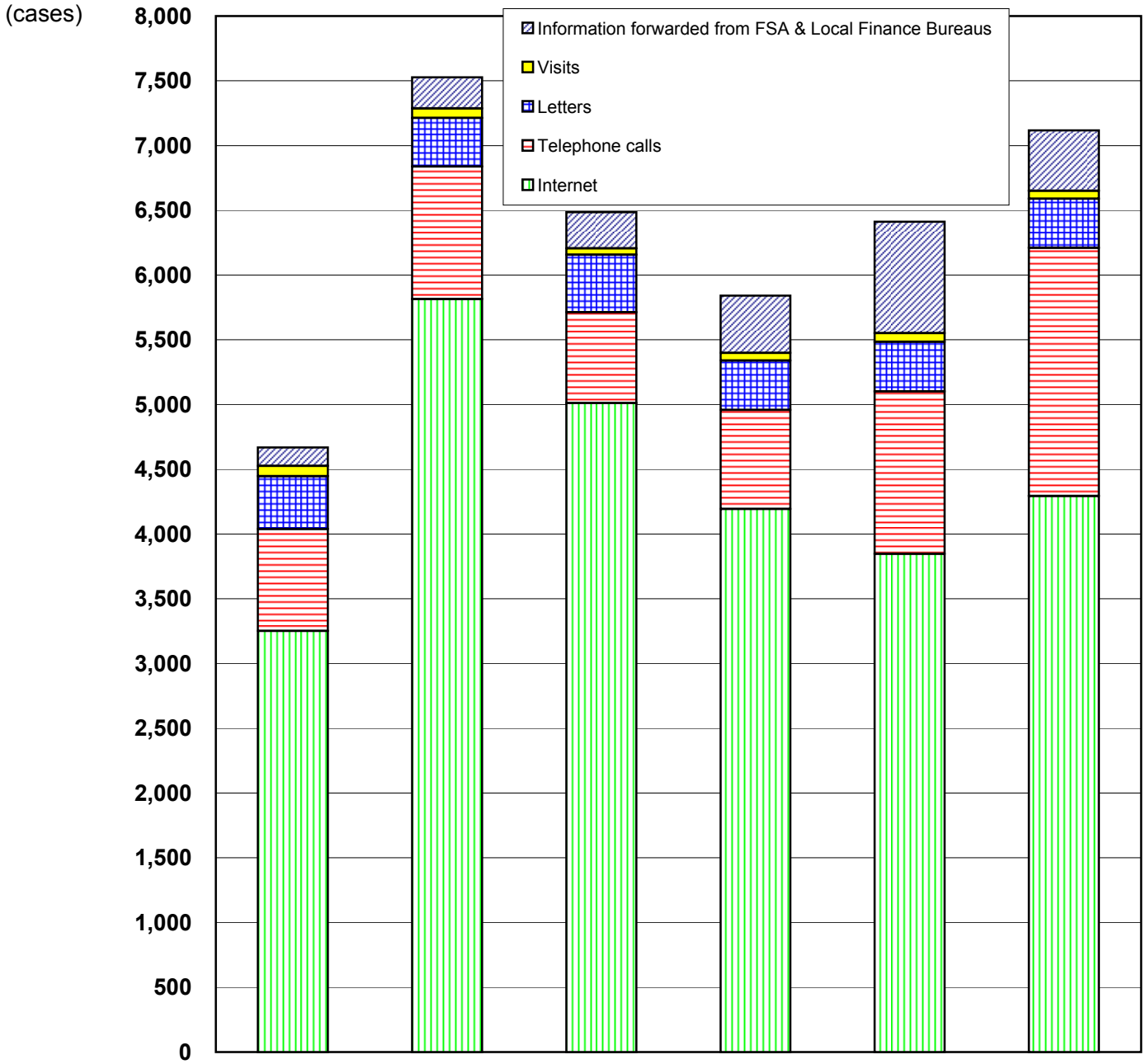
(3) Working on further cooperation between market surveillance conducted by self-regulatory organizations and trading controls functions of securities companies to improve the overall market surveillance function.

(4) Further strengthening cooperation among related institutions, to enhance the effectiveness of market surveillance for preventing inappropriate financing in the primary market and various resulting market misconduct.

(5) Proactively cooperating with foreign regulators through the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information (Multilateral MOU, etc.), to strengthen the surveillance against market misconduct using cross-border transactions.

Information Received

(Attached figure)



(# of cases)

Category \ Business year	2004	2005	2006	2007	2008	2009
Internet	3,251	5,815	5,011	4,193	3,847 (974)	4,293
Telephone calls	787	1,022	702	766	1,253 (406)	1,917
Letters	408	377	443	381	384 (93)	380
Visits	80	73	50	58	67 (15)	60
Information forwarded from FSA & Local Finance Bureaus	143	239	279	443	861 (264)	468
Total	4,669	7,526	6,485	5,841	6,412 (1,752)	7,118

Note 1: Until BY2008, "business year basis" July-June. Starting FY2009, "fiscal year basis" April-March

Note 2: ( ) in BY2008 are the cases in the period overlapping with FY2009 (April-June 2009), due to change to "fiscal year basis"

Received Information, Classified by Content

1. Old classifications

(Unit: cases)

Classification \ Year	2004	2005	2006	2007	2008	2009
[Individual stocks, etc.]						
A. Profit guarantee and loss compensation	9	10	4	5	3 -1	4
B. Insider trading	510	527	471	558	510 -108	385
C-1. Annual securities reports, etc. containing false statements	142	290	217	189	239 -64	161
C-2. Unreported offering	24	69	15	27	44 -24	45
D. Market manipulation	1,435	2,705	2,678	2,126	1,975 -539	2,753
E-1. Spreading rumors	1,029	1,614	1,124	995	814 -185	627
E-2. Other	190	175	512	712	1,204 -303	753
(Subtotal)	3,339	5,390	5,021	4,612	4,789 -1,224	4,728
[Sales practices of financial instruments business operators]						
F. Solicitation with decisive predictions	19	28	14	10	16 -2	20
G. Conclusion of discretionary account contracts	40	27	16	8	9 -3	10
H. Excessive solicitation to a large number of nonspecific customers	2	2	2	3	4 -1	6
I. Inappropriate solicitations in light of the customer's knowledge	28	18	8	7	32 -14	122
J. Unauthorized transactions	63	97	40	41	47 -15	57
K. Other	468	1,124	997	778	930 -253	1,130
K-1. Bucketing	3	-	-	-	- (-)	-
K-2. Irregularities in legal account books	5	7	9	6	0 (0)	19
K-3. Trading in executive's or employee's own account	17	5	7	15	5 -1	7
K-4. Other legal violations	61	100	130	245	160 -31	146
K-5. Violation of self-regulatory rules	54	66	334	75	28 -4	12
K-6. Other item concerning sales stance	328	946	517	437	737 -217	946
(Subtotal)	620	1,296	1,077	847	1,038 -288	1,345
[Other]						
L. Opinion on SESC, etc.	72	65	52	35	29 -8	34
M. Opinion on securities administration or policy	58	135	38	36	120 -46	107
N. Other	580	640	297	311	436 -186	904
(Subtotal)	710	840	387	382	585 -240	1,045
Total	4,669	7,526	6,485	5,841	6,412 -1,752	7,118

2. New classifications

(Unit: cases)

Classification \ Year	2009
A. Individual stocks	
a. Transaction constraints	
1. Spreading rumors or use of fraudulent means	627
2. Market manipulation	2,753
3. Insider trading	385
0. Other	50
b. Disclosure	
1. False statement in large holdings report	11
2. Not submitting large holdings reports	54
0. Other	9
(Subtotal)	3,889
B. Issuers	
a. Legal disclosure	
1. Unreported offering	45
2. Financing	143
3. Annual securities reports, etc. containing false statements	152
4. Not submitting annual securities reports, etc.	109
5. Internal controls report	2
6. Takeover bid without prior notice	14
0. Other	65
b. Association or securities exchange rules	
1. Timely disclosure	53
0. Other	2
c. Other	
1. Governance, etc.	27
0. Other	223
(Subtotal)	835
C. Financial instruments business operators	
a. Prohibited acts, etc.	
1. Solicitation with decisive predictions	20
2. Unauthorized transactions	57
3. Profit guarantee and loss compensation	4
0. Other legal violation	153
b. Business administration	
1. Inappropriate solicitations in light of the customer's knowledge	122
2. System related	141
0. Other item concerning sales practices	752
c. Accounting	
1. Irregularities in legal account books	20
2. Financial health, risk management	25
d. Association or securities exchange rule	
1. Violation of self-regulatory rules	12
e. Other	
0. Other	43
(Subtotal)	1,349
D. Other	
a. Opinion, request, etc.	
1. Opinion on SESC, etc.	34
2. Opinion on securities administration or policy	107
b. Other	
1. Unregistered business operators	208
2. Unlisted stock	471
3. Funds	29
0. Other	196
(Subtotal)	1,045
Total	7,118

(Note 1) Up to BY 2008 "Accounting period basis" was from July to June next year. From FY 2009, "Fiscal year basis" is from April to March next year.

(Note 2) Number of cases in the overlapping period of FY 2009 (April 2009 - June 2009) that were shifted to the "Fiscal Year basis" are shown in ( ) in FY 2008 .

(Note 3) Dual trading and bucketing prohibition regulations were eliminated in April 1, 2005.

3. Inspections of Securities Companies and Other Entities

1) Outline

The Securities and Exchange Surveillance Commission (SESC) conducts on-site inspections of financial instruments business operators and others entities based on the authority delegated by the Prime Minister and the Commissioner of the Financial Services Agency (FSA) under the Financial Instruments and Exchange Act (FIEA) and other relevant laws, to check their compliance with rules and regulations for ensuring fairness in financial instruments transactions and their financial soundness.

Since its inception in 1992, the SESC has conducted inspections to ensure fairness in financial transactions. Furthermore, since July 2005 when the revised Securities and Exchange Act (SEA, the predecessor of FIEA) etc. came into force to reinforce market surveillance functions, the authority to inspect financial soundness of securities companies, financial futures dealers, and others and the authority to inspect investment trust companies and others, formerly conducted by the Inspection Bureau of the FSA have been delegated to the SESC. At the same time, under the revised Financial Futures Trading Act (FFTA), companies dealing with foreign exchange margin trading (FX) have also been classified as financial futures dealers subject to the SESC inspection.

Since the FIEA came fully into effect in September 2007, regulated entities subject to the SESC inspection have been expanded to those engaged in sales or solicitation of equity units of collective investment schemes (“funds”) and those engaged in the management of these funds that primarily invest in securities or financial derivatives. Furthermore, the SESC has been authorized to inspect those who provide financial services commissioned by financial instruments business operators, Financial Instruments Firms Associations and Financial Instruments Exchanges.

Moreover, with the June 2009 passage of the Act for the Amendment of the FIEA, starting April 2010, authority to inspect credit rating agencies and designated dispute resolution bodies etc. was granted to the SESC, further expanding the scope of its inspections.

Based on the results of these inspections, the SESC may recommend to the Prime Minster and the Commissioner of the FSA that administrative disciplinary actions should be taken for ensuring the fairness of transaction, protecting investors and securing other public interests.

Responding to such recommendation, the Prime Minster, the Commissioner of the FSA, the Director-General of the Local Finance Bureau or any other competent authorities may take administrative action against the inspected entity, such as an order for rescission of registration, an order for suspension of business, or an order to take business improvements, if appropriate, upon formal hearing with the entity.

In addition, when an SESC recommendation is made against a sales representative of either a financial instruments business operator, a registered financial institution, or a financial instruments intermediary service provider, relevant Financial Instruments Firms Association to which the registration affairs of the sales representative concerned are appointed from the Prime Minister may take disciplinary action, either rescinding his/her registration or suspending his/her duties, if appropriate, upon hearings from the association member to which he/she belongs.

Furthermore, since Article 51 of the FIEA has enabled the SESC to order a financial instruments business operator to improve its way of business conducts, when deemed necessary and appropriate for the public interest or for the protection of investors, the SESC has been conducting inspections focusing on the internal control in addition to individual violations of laws and regulations.

In recent years, there have been large changes in the environment surrounding the SESC inspections, for example (1) Large expansion and increase of the number of business operators subject to the inspections, (2) Based on the experience of the global financial crisis, there is greater need to prevent failures of major financial institutions, (3) Wider use of IT systems in financial transactions (internet transactions, algorithmic trading, etc.).

Therefore, in FY 2009, from the viewpoint of performing efficient and effective inspections, the SESC has been trying to make more risk-based inspection plans and to enhance prior analysis of the firms to be inspected. Especially, as far as the financial instruments business operators etc. which hold an important position in the market, the SESC has been working to improve the verification of risk management systems including financial soundness, in cooperation with the FSA and overseas authorities.

While making these efforts to respond to the environmental changes, intensive inspections were done on investment advisors and agents, where the past SESC inspections found cross-industrial legal violations. Intensive inspections were also done on Type II financial instruments business operators which handle collective investment schemes (funds), which became subject to regulation as the 2007 FIEA came into force (refer to sections 4 through 7 in this chapter).

While working on these activities, from the viewpoint of ensuring transparency of inspections, the SESC formulated “the Inspection Manual for Credit Rating Agencies”, and partially revised “the Inspection Manual for Financial Instruments Business Operators”, which were published in March 2010 (refer to section 3 of this chapter).

Main findings through inspections have been published quarterly. The SESC invited the individual industries to offer their opinions and requests about them which led to two improvements starting with the October 2009 publication: (1) In addition to the PDF format, it is now also posted in the excel format to enable users to modify them according to their purpose, (2) Posted findings were expanded to cover the past 5 years, instead of 2 years under the previous arrangement .

2) Basic Inspection Policy and Basic Inspection Plan

From 2009 on, an “inspection year” corresponds to an accounting or fiscal year, starting on April 1 and ending on March 31.

In order to conduct securities inspections systematically, the SESC and the Directors-General of the Local Finance Bureaus develop a Basic Inspection Policy and a Basic Inspection Plan every inspection year.

The Basic Inspection Policy stipulates the priority items to be inspected and other fundamental direction of inspection for that inspection year. The Basic Inspection Plan specifies the scheduled number of entities to be inspected for that inspection year.

3) Development of Inspection Manual for Credit Rating Agencies and Revision of Inspection Manual for Financial Instruments Business Operators

1. Circumstance of the development and revision

The Act for the Amendment of the Financial Instruments and Exchange Act (passed on June 17, 2009) was coming into force on April 1, 2010 and the SESC would be granted authority to inspect credit rating agencies. Accordingly, the SESC developed the draft Inspection Manual for Credit Rating Agencies. As the Cabinet Ordinance for the Amendment of the Cabinet Office Ordinance regarding Financial Instruments Business, etc. (announced July 3, 2009) would introduce several measures such as the loss cut rule regarding FX transactions, the integration of the way to separate customers' accounts from the firm's into money trusts, and the mandatory separation of customers' accounts from the firm's for OTC derivative transactions (contract for difference (CFD)), etc. Accordingly, the SESC made a draft revision of the Inspection Manual for Financial Instruments Business Operators. The final version was published on March 31, 2010 after the public comment period from January 27 to March1.

These inspection manuals have been used for inspections which began on or after April 1, 2010.

2. Key Points of the Manuals

(1) Development of the Inspection Manual for Credit Rating Agencies

Based on the amended Act and related cabinet ordinances, this manual is structured as follows.

[1] Business management systems
[2] Establishment of operations control systems
[3] Systems for prevention of prohibited acts
[4] Information disclosure systems
[5] Internal audit systems
[6] Notes on foreign entities
[7] Others

(2) Revision of the Inspection Manual for Financial Instruments Business Operators

[1] In FX trading and CFD for individuals, items to verify if financial instruments business operators have proper systems in place to ensure loss cut transactions were added.
[2] For margin deposits in CFD, items to check if the separation of customers' assets is ensured were added.
[3] For margin deposits in FX trading, items to monitor the separation of customers' accounts were added.

4) Record of Inspections

In FY 2009, the SESC commenced inspections of 90 Type I financial instruments business

operators, 24 registered financial institutions, 1 financial instruments broker, 18 investment management business operators, 45 investment advisory and agency business operators, 9 investment corporations, 5 self-regulatory organizations, and 23 Type II financial instruments business operators.

5) Inspection of Collective Investment Schemes (Funds)

With passage of the 2007 FIEA, Type II financial instruments business operators handling collective investment schemes ("funds") became subject to regulation. The SESC and securities surveillance divisions at Local Finance Bureaus have initiated intensive inspections of those funds in FY 2009. The inspections found legal violation cases one after another, and the SESC recommended disciplinary actions against 8 business funds, including unregistered funds dealing in private placements.

Specifically, the following legal violations were found in funds: improper customer asset separation (spending invested money for other purposes, unaccounted-for use of invested money, etc.), false explanations and notices and misleading displays for customers, situations where business operators themselves deviate from their registered operations, name-lending to an unregistered business operators, etc.

As the SESC worked on such inspections, considering the unending stream of wealth-building offenses by funds, the National Police Agency established the "Wealth-building Offenses Countermeasures Working Team" in March 2010. This working team against problematic funds aims to eliminate malicious business operators and prevent wider damage, by taking effective and efficient measures corresponding to the respective authorities and roles of relevant institutions such as the National Police Agency, FSA and the SESC, with the Kanto Finance Bureau and the Metropolitan Police Department etc. as observers.

The SESC continues to inspect funds in cooperation with securities surveillance divisions at Local Finance Bureaus. Where unregistered business operators are found in the inspections, the SESC takes necessary actions in cooperation with the FSA and investigating authorities, etc. via the Wealth-building Offenses Countermeasures Working Team.

6) Summary of Inspection Results

1. Inspections of Type I Financial Instruments Business Operators

In FY 2009, inspections were completed for 139 Type I financial instruments business operators (including registered financial institutions; the same shall apply hereinafter in this chapter), and problems were found in 67 of them. Of these, 11 business operators had problems related to market misconduct, 18 had problems related to investor protection, 21 had problems related to financial soundness or accounting, and 37 had problems related to other business operations.

2. Inspections of Type II Financial Instruments Business Operators

In FY 2009, inspections were completed for 8 Type II financial instruments business operators, and problems were found in 9 business operators (including business operators which mainly do business other than Type II financial instruments business with problems found related to Type II financial instruments business). Of these, 7 business operators had problems related to investor protection, 3 had problems related to financial soundness or accounting, and 1 had problems related to other business operations.

3. Inspections of Investment Management Business Operators

In FY 2009, inspections were completed for 29 investment management business operators (investment management business operators and investment corporations. Same hereinafter in this chapter.), and problems were found in 12 of them. Of these, 1 business operator had problems related to market misconduct, 2 had problems related to investor protection, and 9 had problems related to other business operations.

4. Inspections of Investment Advisory and Agency Business Operators

In FY 2009, inspections were completed for 46 investment advisory and agency business operators, and problems were found in 32 of them. Of these, 29 business operators had problems related to investor protection, 3 had problems related to financial soundness or accounting, and 9 had problems related to other business operations.

5. Inspections of Financial Instruments Brokers

In FY 2009, inspections were completed for one financial instruments broker, and a problem related to investor protection was found.
(The SESC issued recommendations for this problem.)

6. Inspections of Self-Regulatory Organizations

In FY 2009, inspections were completed for 8 self-regulatory organizations, and problems were found in 2 of them, related to other business operations.
(Although no recommendations were made regarding the problems, the SESC did notify the self-regulatory organization of these problems.)

7) Recommendations Based on the Results of Inspections

1. Recommendations Based on the Results of Inspections of Type I Financial Instruments Business Operators

(1) **Receive Consignment & Execute for Transaction Discretionary Account Transactions** (Violation of Article 29 of the FIEA)

- **HOXSIN BUSSAN Co., Ltd.** The FX Business Department Manager (At that time. Hereinafter referred to as “Dept. Mgr. A” in these sections (1) and in (2) and (3).), agreed

with a customer doing foreign exchange margin transactions (hereinafter referred to as "Customer B" in this section (1)) that in consigning such transactions, the following could be determined without customer agreement: transaction currencies, transaction volume, buying or selling, and settlement of already established transactions before their deadlines (consignment of transaction discretionary account transactions). In an account in that customer's name from March 6 to September 4, 2007, and in an account in the name of Company C (name used for customer B's account) from September 20, 2007 to March 5, 2008, Dept. Mgr. A did transaction discretionary account transactions in each (about 1,200 total contracts, total loss of about 31,460,000 yen, including trading commissions).

• Date of recommendation

September 29, 2009

• Targets of recommendation

The company and one sales representative

• Details of the administrative disciplinary actions

(i) Order for suspension of business

6 months suspension of all over-the-counter derivatives trading

(ii) Orders for business improvement ((a) Clarify the responsibility, considering that top management itself participated in violations of laws and regulations, (b) Investigate the fundamental causes of violations of laws and regulations, and create reoccurrence prevention policies to eliminate violations of laws and regulations, (c) In addition, fundamentally review the business management system and internal controls, and work to ensure that they function properly, (d) Conduct necessary training to boost staff awareness of legal and regulatory compliance, (e) Make customers thoroughly aware of these administrative disciplinary actions, and provide suitable handling corresponding to customer intentions)

(Note) The details of the above administrative disciplinary actions include actions concerning (2) "Conduct compensating customer for loss suffered in transaction discretionary account transactions", and (3) "Avoidance of inspection", which are subject to recommendations along with these violations of laws and regulations.

• Details of the disciplinary action against the sales representative

FX Business Department Manager: Suspension of duties for 11 weeks

(Note) The details of the above disciplinary action include actions concerning (2) "Conduct compensating customer for loss suffered in transaction discretionary account transactions," which are subject to recommendations along with these violations of laws and regulations.

(2) **Conduct compensating customer for losses suffered in transaction discretionary account transactions** (Violation of Article 39(1)(iii) of the FIEA)

● **HOXSIN BUSSAN Co., Ltd.** received a request on March 5, 2008 from Customer B to compensate for losses suffered in transaction discretionary account transactions in (1) above. The company's Representative Director and President (At that time. Same hereinafter in this (2) and in (3).) and Managing Director negotiated with the customer regarding the amount and payment timing for compensation of those losses. Around March 28, it decided to accept the request for that loss compensation, and decided to pay about 31,970,000 yen to that customer as transaction loss and consolation money etc.,

and Dept. Mgr. A was instructed to pay that amount.

Following the above instructions, Dept. Mgr. A paid about 31,970,000 yen to that customer on April 3, in order to compensate Customer B for the losses suffered in the transaction discretionary account transactions of this case.

• Targets of recommendation

The company and one sales representative

(Note) For the recommendation date, and details of the disciplinary action against the sales representative and administrative disciplinary actions, refer to (1) “Receive Consignment & Execute for Transaction Discretionary Account Transactions”.

(3) **Avoidance of inspection** (Application of Article 198-6(xi) of the FIEA)

● During this on-site inspection, the Representative Director and President of **HOXSIN BUSSAN Co., Ltd.** instructed Dept. Mgr. A to give false testimony, that the company itself did not participate in the loss compensation described in (2) above. Also, the Representative Director and President repeatedly gave such false testimony himself.

Furthermore on March 26, 2009, the inspector instructed the Representative Director and President to submit related documents concerning violations of laws and regulations as described in (1) and (2) above. When that was communicated to the company’s staff, the Managing Director reported that 5 pieces of important documentary evidence related to these violations of laws and regulations such as a mediation document and receipt were stored. When the Representative Director and President received this report, he submitted only one document which does not conflict with the content of his false testimony described above. Regarding the other 4 documents, he gave an instruction to the effect “I leave it to the Managing Director”. When the Managing Director received this instruction, he destroyed 3 of the documents in a shredder.

• Target of recommendation

The company

(Note) For the recommendation date, and details of the administrative disciplinary actions, refer to (1) “Receive Consignment & Execute for Transaction Discretionary Account Transactions”.

(4) **Insufficient management of electronic data processing systems** (Application of Article 123(1)(xiv) of the FIB Cabinet Office Ordinance based on Article 40(ii) of the FIEA)

● **MJ Co., Ltd.** At least 74 cases of IT system failure occurred from April 2007 to November 2008 in its IT system for foreign exchange margin trading, and these IT system failures created losses in many customer transactions.

However, this company had insufficiently developed IT system management, and rules for response when IT system failures occurred were also lacking. Their content was ineffective, and lacked development of rules and a system for management of the external contractors which do almost all IT system management. Also, top management had weak awareness of IT system risks. This resulted in insufficient customer handling when IT system failures occurred, with only ad-hoc handling by each department, and responses like loss compensation was only for customers who submitted complaints about losses caused by the IT system failure. Also, surveys for impacts on customers during IT system failures were delegated to the external contractor, and survey results were easily accepted. This resulted in the inspection finding cases for which customer damages caused by IT

system failures were overlooked.

Due to the above, IT risk management preparations in the company were found to be extremely substandard.

• Date of recommendation

October 9, 2009

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Order for suspension of business

1 week suspension of all over-the-counter derivatives trading

(ii) Orders for business improvement ((a) Clarify the responsibility for these violations of laws and regulations. (b) Be fully aware of and study the causes of IT system failures, and create a response policy. Then work to develop an effective risk management system: execute audits and establish a rapid reporting system during IT system failure, etc. Implement it solidly. (c) Announce that the sentence "A market order is quickly contracted at the current FX rate" written in the IT system usage guide was misleading to customers who had their order contracted after the cover order was executed. (d) In each aspect of business operations, check whether there is treatment lacking fairness between customers, and whether there are gaps between explanation content and reality. Then make improvements as needed. (e) Conduct necessary training to boost staff awareness of legal and regulatory compliance.)

(Note) The details of the above administrative disciplinary actions include actions concerning (5) "Conduct providing special profits to a customer", and (6) "Conduct providing misleading display in order method presented to customer", which are subject to recommendations along with these violations of laws and regulations

(5) **Providing special profits to a customer** (Application of Article 117(1)(iii) of the FIB Cabinet Office Ordinance based on Article 38(vi) of the FIEA. Violation of Article 119(3) of the FIB Cabinet Office Ordinance based on Article 39(3) of the FIEA.)

(i) Conduct providing special profits to a customer

MJ Co., Ltd. compensated losses of 199 customers who suffered losses due to the IT system failure which occurred on April 29, 2008. However, one of the customers requested that in addition to that loss compensation, that the company arrange for the margin deposit required to place a new order. In addition to the original compensation amount, while knowing it was providing improper profit, MJ provided a total of about 350,000 yen of special profit to that customer.

(ii) Conduct in which economic benefit was provided to customers who suffered losses due to IT system failure, in order to compensate for losses, but it did not report this.

The company paid a total of about 5,120,000 yen of loss compensation to 120 of the customers who suffered losses due to IT system failures which occurred on March 6, April 29 and August 5, 2008. However, it did not report this to the Director-General of the Tokai Local Finance Bureau.

• Target of recommendation

The company

(Note) For the recommendation date, and details of the administrative disciplinary actions,

refer to (4) “Insufficient management of electronic data processing systems”.

(6) **Providing misleading display of order method presented to customers** (Application of Article 117(1)(ii) of the FIB Cabinet Office Ordinance based on Article 38(vi) of the FIEA)

- **MJ Co., Ltd.** established 2 contract methods for cases where it receives orders from customers for foreign exchange margin trading by internet trading, [1] Method in which after the customer transaction is contracted, an order is placed at the cover order counterparty, or [2] a cover order is executed at the rate of the received order, and after that cover order is executed, the customer order is contracted. Also, the company principally uses method [1] described above, while it adopts method [2] described above for special customers specified by the company.

  In this situation, in the period from May 30 to December 1, 2008, while market orders of customers of [1] were quickly contracted, at least 25,466 of 58,329 market orders of 51 customers specified in [2] were not executed. Also, at least 30 contracts were 5 or more seconds later than contracts of customers of [1], and 5 of those loss cut orders were delayed which expanded the loss, etc. Thus remarkable differences arose between the two types of customers.

  On this point, the usage guide of the trading system used by the company’s customers in trading explains “A market order is quickly contracted at the current FX rate”, but orders of customers specified in [2] differ from that explanation, and do not contract until after the cover order executes.

  The company receives many complaints that orders from customers did not execute, but it only gives a uniform explanation that “the order did not execute because our company’s presented rate fluctuated” A suitable explanation was not given to customers specified in [2].

• Target of recommendation

  The company

(Note) For the recommendation date, and details of the administrative disciplinary actions, refer to (4) “Insufficient management of electronic data processing systems”.

(7) **Inadequate response to an order for filing report** (Application of Article 52(1)(vi) of the FIEA. Violation of Article 56-2 of FIEA.)

- **BNP Paribas Securities (Japan) Limited** Tokyo Branch corresponded to a “Situation of serious defects found in business management systems and internal controls, such as ignoring inappropriate operations management”. Therefore, it received administrative disciplinary actions (hereinafter referred to as “These Administrative disciplinary actions” in this section (7)) from the Commissioner of the FSA on November 28, 2008. In These Administrative disciplinary actions, that branch “As part of the process of executing a contract, mechanically did trading of stock issued by that customer” which was found to correspond to “Conduct such as trading and other transactions of securities related to corporate related information on its own account, based on that corporate related information” as specified in Article 117(1)(xvi) of the FIB Cabinet Office Ordinance based on Article 38(vi) of the FIEA. The Tokyo Branch received an order from the Commissioner of the FSA to file a report, based on Article 56-2 of the FIEA, and the content written in the report submitted before These Administrative disciplinary actions is an important factor in this fact finding.

However, in this inspection, when the report was checked, [1] the content written in the report is insufficient and there are untrue statements, [2] It was found that the branch made that report and submitted it while its surveys and verifications were insufficient. Also, [3] In These Administrative disciplinary actions, among its transactions found which correspond to “Conduct such as trading and other transactions of securities related to corporate related information on its own account, based on that corporate related information”, transactions were found which were not found to be “As part of the process of executing a contract, mechanically did trading of stock issued by that customer”.

• Date of recommendation

October 16, 2009

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Order for suspension of business

1 week suspension of all operations done by that branch’s Stock Derivative Products Headquarters

(ii) Orders for business improvement ((a) Clarify the responsibility of staff involved in these violations of laws and regulations, (b) Work on thorough awareness of legal and regulatory compliance by providing training etc. to all staff, especially make staff of the Stock Derivative Products Headquarters thoroughly aware of securities transactions conduct prohibited in the FIEA etc., (c) Take actions required for proper functioning of internal investigations and audits, such as develop procedures and improve/strengthen systems, (d) Work on a fundamental review of the trading examination system, (e) In order to fundamentally strengthen its business management system and internal controls, do required reviews of improvement actions being implemented based on the orders for business improvement of November 28, 2008, and implement them properly.

(Note) The details of the above administrative disciplinary actions include actions concerning (8) “Conduct such as placing buy orders, aiming to fix the market of listed financial instruments”, which is subject to recommendations along with these violations of laws and regulations.

(8) **Conduct such as placing buy orders, aiming to fix the market of listed financial instruments** (Application of Article 117(1)(xix) of the FIB Cabinet Office Ordinance based on Article 38(vi) of the FIEA)

● **BNP Paribas Securities (Japan) Limited**, Tokyo Branch, Stock Options Dept. Aiming to fix the stop limit order bid price for a specific listed stock concerning that department’s business, just before closing on November 5, 2008, a trader placed large buy limit orders at 1 yen below the stop limit order price, and at the stop limit order price, thus fixed that stock’s price.

• Targets of recommendation

The company and one sales representative

(Note) For the recommendation date, and details of the administrative disciplinary actions, refer to (7) “Inadequate response to an order for filing report”.

• Details of the disciplinary action against the sales representative

Stock Options Trader: Suspension of duties for 1 year

(9) **Found organized and multiple violations of laws and regulations and other improper solicitation conducts which were ignored, with large deficiencies in the business management system and sales management system** (Application of Article 123(1)(ix) of the FIB Cabinet Office Ordinance based on Article 40(ii) of the FIEA, and Articles 51 and 64-5(1)(ii) of the FIEA)

● **Cosmo Securities Co, Ltd.** started dealing in bull style and bear type investment trusts (hereinafter referred to as "Bull Bear Trusts" in this section (9)) in November 2008 as leading investment trust products. Since March 2009, it switched to pouring effort into four different monthly distribution type investment trusts (hereinafter referred to as "Monthly Distribution Type Investment Trusts" below in this section (9)). In Cosmo Securities, it was found that regarding sales for these leading products, as described below, based on the thinking that earnings (commissions, etc.) have priority over compliance, there were many violations of laws and regulations and other inappropriate solicitation conduct through its business organization, and these were ignored.

(i) Bull Bear Investment Trusts

(a) Earnings given priority in sales promotion

Since November 2008, the Director and Senior Managing Executive Officer and Sales Headquarters Manager in charge of sales in the company (hereinafter referred to as "Sales HQ Mgr." in this section (9)) and the Sales Headquarters did strong sales promotion, giving priority to achieving earnings (commissions, etc.) targets over compliance: For example, the Sales HQ Mgr. himself phoned each office head manager and gave instructions, salespersons were given balance targets for Bull Bear Trusts, and did daily calculations to understand each salesperson's balance and history, their commissions from Bull Bear Trusts, etc.

(b) Violations of laws and regulations and other inappropriate transfer solicitations

i. Inconsistent solicitations

By checking transactions for 2,885 customers from November 2008 to August 2009, it was found that in order to boost earnings (commissions, etc.), without rational reasons, the same salespersons on the same day told different market views to different customers, and solicited transfers between bull type and bear type. This was found for 183 sales persons soliciting to 1,154 customers, for a total of 3,111 cases. Due to these 3,111 cases, customers were charged a total of about 237 million yen of commissions.

ii. Transfer solicitations lacking explanation of important items

By checking 38 of the customers with transactions in the period from November 2008 to August 2009, 237 transactions by 30 salespersons were found in which they did not explain rough profit/loss of investment trusts sold during transfer solicitations. Thus a situation was found in which important items concerning transfer were not explained. This was dealing in the company based on misunderstanding concerning solicitations for transfers of investment trusts.

Also, 11 of the above 38 customers did 5 or more transfers in February 2009. It was found that these 11 customers frequently transferred.

(c) Dysfunctional internal controls on compliance

In the company in April and May 2009, the Inspection Department and the Sales

Examination Section of the Operations Audit Department did investigations and special inspections of Bull Bear Trusts. At monthly report meetings etc., the Sales Examination Section Report and special inspection results were reported, with warnings given about Bull Bear Trusts. However, these warnings were not thoroughly given to salespersons, and the inconsistent solicitations described above in i. were also done thereafter, with a situation of insufficient correction of the inappropriate solicitation conduct concerning Bull Bear Trusts. Also, a situation was found without suppression of inappropriate solicitation conduct concerning four monthly distribution type investment trusts described in (ii) below.

(ii) Four monthly distribution type investment trusts

(a) Earnings given priority in sales promotion

In the company since March 2009, the Sales Headquarters did sales promotion with achieving targets (commissions, etc.) given priority over compliance for four monthly distribution type investment trusts, similar to its priority for the Bull Bear Trusts. A situation was found in which, while knowing about sales activities giving priority to earnings currently being done in each sales office, this was tolerated.

(b) Violations of laws and regulations and other inappropriate transfer solicitations

By checking 128 of the customers who did transactions during the period March to August 2009 in the company, to achieve earnings targets guided by Sales Headquarters as described in (a) above, inappropriate solicitation conduct described in i. and ii. below was found in 18 offices by 40 salespersons to 56 customers in a total 84 cases. Customers were charged a total of about 24 million yen of commissions due to these 84 cases.

i. Pretending not to solicit

The company Compliance Manual specifies transaction regulations. For example, it prohibits transfer proposals less than 6 months after purchase, and restricts solicitations to the elderly. The manual specifies that in case of a transfer proposal, one must prepare an “Investment Trust Transfer Explanation Document” writing that important items etc. concerning the transfer were explained, and obtain prior approval from the office head manager and the person responsible for internal controls. However, it was found that to avoid those solicitation restrictions etc., they pretended they were not making solicitations in the 84 cases described above. At those times, the salespeople did not prepare the “Investment Trust Transfer Explanation Document” described above.

ii. Lacked explanation of important items

A situation was found in which, as a result of pretending not to solicit as described in i. above, for all transactions of the above 84 cases, transfer solicitations were done in which contradictory and inconsistent explanations or biased explanations were given to customers in repeated transfer solicitations, without explaining important items affecting investment decision of customers, including the rationality of the transfer.

c. Deficient internal controls

While all head managers of the 18 offices in (b) above knew about transfer solicitations pretending not to be a solicitation as described in (b)i above done in each sales office, they tolerated it based on the thinking of giving priority to earnings. In 2 of the offices, the office head manager and vice manager themselves did transfer

solicitations pretending not to solicit.

The company set up an investment trust alarm attention system, with monitoring whether excessive investment solicitations are being made to customers. Also, the Operations Audit Department does daily monitoring of whether it is financially rational etc. to do transfer solicitations, but neither of these found any inappropriate cases concerning the four monthly distribution type investment trusts described in (b) above.

(ii) In the company, this inspection did not find guidance and management by a responsible President and top management who work for proper business management, to provide needed corrections of violations of laws and regulations and other inappropriate solicitation conduct and deficient internal controls as described above.

As described above, in the company, the Sales Headquarters and the Sales HQ Mgr. who is a member of top management did strong sales promotions, based on the thinking of giving priority to earnings (commissions, etc.) over compliance. As a result, in sales for leading investment trust products, there were many cases of inappropriate solicitation conduct done via business organizations such as sales headquarters and sales offices, and customers were charged large commissions. Also, in the company, regarding such inappropriate solicitation conduct, the internal controls department did not perform a sufficient restraining function. Thus large deficiencies were found in the company's business management and sales management.

Also, although the Sales HQ Mgr. is especially in a position where he should work for appropriate business management concerning sales, while knowing that his own instructions etc. may lead to inappropriate solicitation conduct, as a result of strong sales promotion based on the thinking of giving priority to earnings (commissions, etc.) over compliance, many cases of inappropriate solicitation conduct described above in (i)(b) and (ii)(b) were created, and each such solicitation conduct is found to be conduct which pertains to that officer.

• Date of recommendation

December 8, 2009

• Targets of recommendation

The company and one sales representative

• Details of the administrative disciplinary actions

Orders for business improvement ((a) explain the details of These Administrative disciplinary actions to customers who suffered violations of laws and regulations and other inappropriate transfer solicitations, and provide appropriate handling, (b) Clarify responsibility of top managers and people in charge of sales involved in this case, (c) Build business management with properly functioning management monitoring and mutual restraint by the Board of Directors and Corporate Auditors, (d) From the perspective of ensuring proper business management, improve the systems of the internal controls department and internal audit department, and work to ensure their complete functioning, (e) Considering this case, for thorough legal and regulatory compliance concerning investment trust sales, thoroughly review related provisions and operating procedures, and focus efforts on making the staff thoroughly aware of them; also strengthen daily education and training, working to make them thoroughly aware of the content of related laws and regulations)

• Details of the disciplinary action against the sales representative

Director and Senior Managing Executive Officer and Sales Headquarters Manager: Cancel Sales Representative registration

(10) **Loss compensation** (Application of Article 39(1)(i) and (1)(iii) of the FIEA)

- Around September 2008, a manager of Financial Products Sales Department and a manager of Stock Derivative Products Sales Department of **RBS Securities Japan Limited** offered a promise to the customer at the sales of exchangeable bonds (hereinafter referred to as "the Bonds") as part of the business that, if the customer could not resell all of the Bonds to the third party, the RBS Securities would buy back the unsold Bonds at the same price as the selling price to the customer (hereinafter referred to as "the Promise"). Based on the promise, in October 2008, although the actual value of the Bonds was falling, a manager of the Structured Products Sales Department and a manager of Stock Derivative Products Sales Department bought back the unsold Bonds from the customer at the same price as the selling price, which resulted in providing financial benefit - about 68 million yen - to compensate the customer's loss.
  - Date of recommendation
    January 19, 2010
  - Targets of recommendation
    The company and 3 sales representatives
  - Details of the administrative disciplinary actions
    Orders for business improvement ((a) Clarify responsibility for these violations of laws and regulations, (b) Check past transactions results to see whether other similar problems are occurring other than this case, and take required actions, (c) Strengthen the company's business management and internal controls, and build a system which enables proper exercise of the audit function and the functions restraining the sales departments etc., (d) Review related rules and operating procedures etc., and take required actions to ensure appropriate operating management by sales departments, (e) In order to make staff thoroughly aware of legal and regulatory compliance, provide needed training, etc.)
  - Details of the disciplinary action against the sales representatives
    Stock Derivative Products Sales Department Manager: Suspension of duties for 2 weeks
    Financial Products Sales Department Manager: Suspension of duties for 2 weeks

(11) **Insufficient management of electronic data processing systems concerning financial instruments and exchange business** (Application of Article 123(1)(xiv) of the FIB Cabinet Office Ordinance based on Article 40(ii) of the FIEA)

- **SBI Securities Co., Ltd.** IT risk management was being done based on the company's rules, but when this inspection checked the IT risk management system in the company, as described below, over 75% of the IT system failures which occurred were neglected by risk management, thus a situation was found in which IT risk management itself was not substantially functioning. Also, even for cases subject to risk management in the company, deficiencies were found in its execution situation, deficiencies were found in preparation of company rules, etc.

  The company's top management delegated IT risk management to people in charge and to external contractors, and did not understand the actual state of operations. Also, this was caused by the lack of awareness among company staff that IT system risks are

issues which the entire company should work on.

(i) Many IT system failures were neglected by IT risk management

The company rules “System Operation Management Standards” (hereinafter referred to as “Management Standards” in this (11)) became effective around April 2008. From then until August 24, 2009, there were 188 IT system failures in the company, and risk management was done based on the Management Standards.

However, when the situation of IT system failures occurring in the company was checked, at least 592 cases occurred in the above period, in addition to the IT system failures described above. Thus a situation was found in which it was neglected to make them subject to risk management. Also, for 592 IT system failures, records and reports determined in Management Standards were not done, thus a situation was found in which related departments and top management were not aware of the facts of failures occurring.

Out of 592 IT system failures, 33 cases were found to be failures which affected customers, such as inability to login or stopped taking orders.

(ii) Situation of insufficient preparations concerning safety measures

For the 188 IT system failures described in (i) above subject to risk management in the company, when its execution situation was checked, as described below, safety measures were found to be deficient, such as maintaining quality of IT system development and operation work.

(a) There are deficiencies in forms for records and reports concerning IT system failures, and there is an unclear situation of executing countermeasures corresponding to identification of the causes of failure and results analysis in each case. There were also no actions taken to periodically compile and analyze such information, taking measures to prevent reoccurrence.

(b) There is no continuous management from failure occurrence until response completed, nor management to eliminate unresolved failures, and there are long term unresolved failures. Also, there are insufficient countermeasures for preventing reoccurrence of failures, resulting in the same types of IT system failures occurring.

(iii) Deficient improvement situation for items pointed out in IT system audits, etc.

A situation was found in the company where, regarding items pointed out in IT system audits contracted to and done by an external audit institution, items were found for which improvements had not been worked on for a long time. Also, due to insufficient improvements, deficient failure management and failures due to neglect by risk management were constantly occurring.

Also, it was found that for audits done by the company’s audit department, it was not verified whether operations management was being done according to the Management Standards, thus effectiveness of IT system audits was not ensured.

(iv) Deficient rules etc. concerning IT risk management

The company was not creating basic policy on IT risk management or identifying the locations and types of risks which should be managed, etc. Thus deficiencies were found in the situation of preparing rules on IT risk management.

(v) Occurrence of IT system failures with large impacts on customer transactions

A situation was found with problems for investor protection in the company. IT system failures occur which have large effects on customer transactions, such as inability to login and order receiving suspension which the company ranks as important failures.

Also, some of these are neglected by IT risk management, there were cases found in which the actual situation of effects on customers was not fully understood, etc.

- Date of recommendation
  February 5, 2010
- Target of recommendation
  The company
- Details of the administrative disciplinary actions
  Orders for business improvement ((a) Clarify the reasons that an inappropriate IT risk management system was approved and became normal, clarify responsibility, and review the business management system, (b) Check examples of past IT system failures, including cases in which actions were not taken according to the Management Standards on IT system failures, and create similar patterns of imagined cases and countermeasures, thereby building an effective IT risk management system, (c) Rebuild staff awareness of the importance of IT system management, and in order to ensure an appropriate operations management system, work to review rules and operating procedures, provide training, etc., (d) Respond appropriately for items pointed out in past external IT system audits, and in order to properly verify the overall effectiveness of IT risk management, including response to those items pointed out, work to properly execute external IT system audits and strengthen the internal audit department's organization.

2. Recommendations Based on the Results of Inspections of Type II Financial Instruments Business Operators

(1) **Serious violations of laws and regulations which damaged public interest and investor protection in private placements of equities in collective investment scheme** (Violation of Articles 31(4) and 36-3 and 37(2) of the FIEA; application of Article 117(1)(ii) of the FIB Cabinet Office Ordinance based on Article 38(vi) of the FIEA, and Article 52(1)(v) and (1)(ix) of the FIEA)

- **New Asia Asset Management Co., Ltd.** (hereinafter referred to as "the Company" below in this (1)) obtained a change in its registration to a Type II financial instruments business on December 4, 2008, and the fund sales business operator dealt in private placement for the "Mongolia Fund" (hereinafter referred to as "Fund" below in this (1)), which intended to manage the contributions by acquiring vehicles and heavy equipment etc., and leasing them to companies doing resource development in Mongolia. However, as described below, serious violations of laws and regulations were found which damaged public interest and investor protection.

  (i) Consigning business of dealing in private placement to a non-registered business operator

  While knowing that Tokyo Principal Securities Holdings Ltd. had not obtained registration as a financial instruments and exchange business, the Company consigned to it business dealing in private placements of the fund equities, and let sales representatives of that non-registered dealer sell fund equities under the name of the Company.

  (ii) Misappropriation of fund contributions

  (a) Diversion of funds from the bank account receiving earnings

On July 28, 2009, the company's Representative Director and President ordered the company's Accounting Section Manager to withdraw about 30 million yen deposited in the fund's earnings account, and on the same day, allocated it to repay borrowing from a group company, thus funds were misappropriated.

(b) Involving in private placement dealing while knowing that the source of fund dividend was contributions from investors

The Company paid the following dividends to fund investors: total 339,130 yen on January 13, 2009, total 985,903 yen on March 10, total 1,768,484 yen on May 11, and total 397,862 yen on July 10 (management fees were deducted separately). However, at these times, absolutely no lease fees had been received, and these dividends had come from the contributions of investors, not from earnings.

While knowing that the investor contributions were the source of funds for the dividend payments, the company dealt in the private placement.

(iii) Misleading advertising and displays, etc.

(a) Display of exaggerated advertising

Regarding the 4 dividend payments described above, the company displayed "Dividend performance" and "Repaid at the planned dividend ratio corresponding to each investment amount" on its website. Although the source of funds for dividends was the investor contributions, it displayed as if these were a result of management doing well, with earnings generated, and dividends paid as planned. This display remarkably misleads investors.

(b) False representation in explanation materials, etc.

In pamphlets used in explanation materials for the fund's investors, the company displays "Lease fees are the fund's source of earnings, annual package contracts, thus are not affected by mining volume etc. Lease fees are determined at the time contracted, so dividend forecasts are also possible. Actually, dividends were paid according to plan in January and March this year." The company calls the money paid to investors "dividends", for a false representation as if the fund's earnings were generated from lease fees for heavy equipment etc., and those earnings were paid. This display would mislead investor's decisions.

Also, in paying the 4 dividends described above, although there were absolutely no lease fee revenues from lease business during that calculation period, the company pretended that it was paying dividends as if they were based on lease fee revenues. In its "Anonymous Partnership Income Statement" which wrote calculation of lease fee revenues and expenses deducted from them during that calculation period, it entered a false "lease revenues" amount calculated by simulation, and sent this to each investor.

(iv) Dealing in private placement before it gained the required registration

Before the company obtained a change in registration regarding the type of financial instruments and exchange business, the company did illegal private placement dealing concerning the fund to 2 investors around July 2008, and received a total of about 4 million yen as fund contributions and commissions.

(v) Items written in the change registration application form which differed from the truth

In obtaining a change of registration to Type II financial instruments business, according to the change registration application submitted to the Director-General of the Kanto Local Finance Bureau, the company wrote that it would place the Management

Department Manager for the department in charge of compliance operations concerning Type II financial instruments business. However, before and after the change registration application, the person written in the change registration application as Management Department Manager was not actually working in the company. Also, that person did not even plan to work as the company's employee.

• Date of recommendation

September 11, 2009

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Cancellation of registration

(ii) Orders for business improvement ((a) Urgently confirm the customers' situations and investment and management situation of assets the customers invested, discuss with salespersons of the anonymous partnership, create a policy concerning return of those assets to customers, and execute this certainly with salespersons of the anonymous partnership, (b) Fully explain (a) to customers, (c) While considering fairness among customers, take measures for complete customer protection, (d) Prepare the personnel structure necessary to explain to customers and return the contributions)

(2) **Serious violations of laws and regulations which damaged public interest and investor protection in purchase solicitation and management for collective investment schemes** (Violation of Articles 24(1) and 38(i) and 42-4 of the FIEA. Application of Article 117(1)(ii) of the FIB Cabinet Office Ordinance based on Article 38(vi) of the FIEA)

● **Concord Co., Ltd.** obtained registration for financial instruments business (Type II financial instruments business and investment management business) on March 31, 2009, mainly for business of purchase solicitation and management concerning unlisted stock funds.

The company established EPP Investment Limited Liability Partnership (hereinafter referred to as "EPP Fund" in this (2)) for investment in Company A. It established BS Investment Limited Liability Partnership (hereinafter referred to as "BS Fund" in this section (2)) and BS2 Investment Limited Liability Partnership (hereinafter referred to as "BS2 Fund" in this (2)) for investment in Company B. The company did purchase solicitations for each partnership, and managed the contributions received, investing in shares and new share subscription rights issued by these investee companies.

By doing purchase solicitation for the BS2 Fund (solicitation period: November 2008 – May 2009), the company received a total 244,020,000 yen of contributions from 230 investors (including after the subscription period passed, received a total 648,390,000 yen from 519 actual customers), but when this inspection verified the purchase subscription and management business concerning that fund were verified, as described in (i) through (iv) below, it found serious violations of laws and regulations which damaged public interest and investor protection.

(i) Large amounts of expenses charged to investors were not explained to investors

Together with 3 related companies, the company did purchase solicitation for the BS2 Fund, but out of the 210,000 yen per unit of contributions received from investors who responded to that solicitation, 120,000 yen was paid as commissions to these 3 related

companies (hereinafter referred to as “These Sales Commissions” in this section (2)).

These commissions were found to be expenses charged to investors which should be explained to investors during purchase solicitation for these funds, but in the “Document Provided Before Contract Signing”, “Document Provided During Contract Signing”, “Investment Limited Liability Partnership Contract” and in other sales solicitation materials the company gave to investors during purchase solicitation and contract signing for these funds, it wrote only the management fees which the company charges from contributions (equivalent to 3% of the total investment) etc., showing nothing about These Sales Commissions as charges to investors.

(ii) Misappropriation of contributions to BS2 Fund

As of October 13, 2009, Company B did not do procedures for issuing new share subscription rights to the company nor to BS2 Fund. Also, the company and Company B did not do any sales contract for new share subscription rights with the BS2 Fund. The BS2 Fund did not acquire any shares or new share subscription rights of the investee company.

In this situation, the company did not separate the contributions for BS2 Fund received from investors as that Fund’s own particular investment assets. They were transferred to the company’s account, and out of the 210,000 yen of investment money per unit, 120,000 yen was paid to related companies as These Sales Commissions described in (i) above. The remaining 90,000 yen was also spent and misappropriated for the company’s officer compensation and working capital.

(iii) Submission of false annual securities report for BS2 Fund

As an issuer of designated securities for BS2 Fund, on June 29, 2009, the company submitted via EDINET an annual securities report for the Fund’s 1st period (from September 15, 2008 to March 31, 2009) to the Director-General of the Kanto Local Finance Bureau.

However, although BS2 Fund did not actually acquire unlisted shares etc. (shares or new share subscription rights of Company B) as described in (ii) above, it wrote “Assets: Current Assets: Investment Securities: 229,740,000 yen” in “1. Financial Statements (1) Balance Sheet” of “No.3: Accounting Situation of Partnership etc.” in that annual securities report, which was found to be a false statement.

(iv) Providing customers with false information

Together with related companies, even after it was past the subscription period written in the securities registration statement for BS2 Fund, the company continued its purchase solicitations for the fund. Assuming that the company would acquire the partnership’s equities along with cancellations forecast for the Fund, it solicited in the form of the company transferring to investors some partnership equities which it did not yet own.

During the equities transfer contract described above, although the company did not own those partnership equities, it pretended that it had acquired and owned them, and concluded investment contracts with investors. It received a total 404,370,000 yen from 363 investors from June 1, 2009 onwards. Those payments from customers were used to pay sales commissions to related companies, and were spent on officer compensation and working capital.

In both the EPP Fund and BS Fund, after it was past the subscription period written in the securities registration statement for each Fund, the company did purchase solicitations

for their equities exceeding the limit of total issue amount. Thus problems were found it its sales management system.

• Date of recommendation

October 29, 2009

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Cancellation of registration

(ii) Orders for business improvement ((a) Urgently confirm the customers' situations and the investment and management situation of assets the customers invested etc., create a policy etc. concerning return of those assets to customers, and execute this certainly, (b) Fully explain (a) to customers, (c) While considering fairness among customers, take measures for complete customer protection, (d) Prepare the personnel structure necessary to explain to customers and return the contributions)

(3) **Asset management that damages the benefits to the investors for the fund's own benefit** (Application of Article 130(1)(ii) of the FIB Cabinet Office Ordinance based on Article 42-2(vii) of the FIEA)

● **Wisdom Capital Inc.** established "Company A Investment Partnership" (hereinafter referred to as "The Fund" in this section (3)) to invest in shares of unlisted Company A, solicited purchase of The Fund's investment units, and managed The Fund as Operating Partner. In verifying operations of The Fund, this inspection found serious violations of laws and regulations which damaged public interest and investor protection, as described below.

In May 2009, the company established The Fund to acquire Company A shares from existing shareholders of Company A and from Company A, and support a public stock offering of Company A's shares. Before that, with existing shareholders, the company's Representative Director and President decided The Fund's acquisition price of Company A shares, and promised to add padding to the decided acquisition price. Using this price padding, the existing shareholders promised to pay back to the company the excessive portion of the transfer payment paid from The Fund to existing shareholders (hereinafter referred to as "The Promise" in this section (3)).

From May to October 2009, the company solicited acquisition of The Fund's investment units, received investments from customers, and had The Fund acquire Company A shares from existing shareholders and Company A. At this time, based on The Promise, the company had The Fund acquire Company A shares from existing shareholders at a padded price. After that, part of the transfer payment paid was returned to the company from existing shareholders.

• Date of recommendation

November 12, 2009

• Targets of recommendation

The company

• Details of the administrative disciplinary actions

(i) Order for suspension of business

3 months suspension of all operations of financial instruments and exchange

business

(ii) Orders for business improvement ((a) For all funds, urgently confirm the customers' situations and investment and management situation of assets the customers invested, (b) Regarding the investment partnership, create a policy in order to recover the funds paid back to the company; fully explain that policy to the customers, and take required action based on their intentions; also fully explain the details of this administrative action to customers (including to customers of other funds), and take required action based on their intentions, (c) Work to clarify responsibility of top management concerning this conduct violating laws and regulations, and work to build a proper business management system and internal controls system, (d) Strengthen the internal audit function, and ensure effectiveness of the audit function)

(4) **Use of contributions is unclear** (Application of Article 51 of the FIEA)

- **RST Corporation** did a private placement of fund equities based on an anonymous partnership (hereinafter referred to as "Salvage Fund" in this section (4)) contract, from March 2007 to around July 2008. With the company as operator, the Salvage Fund "Aims to invest in projects to salvage historic cultural property from sunk ships", and gathered about 800 million yen of contributions in anonymous partnership contracts.

  The Salvage Fund's anonymous partnership contracts stipulating that contributions are to be allocated to invest in and provide funds to project actors defined in the contract (hereinafter referred to as "This Project" in this section (4)), and stipulating that part of investment money could be allocated to operating expenses of the operator of This Project.

  When this inspection verified the uses of contributions of the Salvage Fund spent by the company, from May 16, 2008 when the company obtained registration as a Type II financial instruments business, until the end of August 2008 (end of 13th business year) when the former Representative Director and President (hereinafter referred to as the "Former President" in this section (4)) retired, the company paid 9.3 million yen called temporary advances to the Former President, but the company did not store receipts for about 7.7 million of this. Thus the use of the contributions is unclear.

  Also, the company paid about 150 million yen including the above 9.3 million yen to the Former President as temporary advances for expenses from September 2007 to August 2008. Then the company used those temporary advances for expenses to acquire 150 million yen of rights called "Ecuador Project Rights" from the Former President. It did an accounting process in which it temporarily recorded 150 million yen as amount payable on August 31, 2008, and that amount payable and temporary advance for expenses were offset on that same date. However, there were no documents such as a document showing the rights called "Ecuador Project Rights" which the company acquired from the Former President, nor a sales contract showing that the rights were acquired from the company's Former President. Also, the basis for calculating the acquisition price is unclear.

  Meanwhile, regarding the Salvage Fund, the company notified investors on August 19, 2008 that due to regime change in the site's country, "Project management has become difficult, and the contract is ended." However, the amount of funds the company sent to project contractors for the Salvage Fund's project execution was only part of the

investment money gathered by the Salvage Fund. The remaining contributions were spent in Japan or their status is unclear.

Up until October 2, 2009 (base date of this inspection), a liquidation procedure for the Salvage Fund has not been done.

As described above, the company made unclear use of contributions, did an accounting procedure which acquired rights with unclear rights details, etc. Management was found lacking regarding the use of investment money gathered from investors.

• Date of recommendation

January 20, 2010

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Order for suspension of business

2 months suspension of all operations of financial instruments and exchange business

(ii) Orders for business improvement

(a) For all funds, the following items for each individual fund

i. Create a policy to ensure customer asset segregation for fund assets, and urgently implement it

ii. Urgently confirm details of the receipt situation of contributions etc.

iii. Urgently confirm details of the expenditure situation of contributions etc. Refer to the contracts to verify suitability of expenditures. In cases of inappropriate expenditures, considering the intentions of investors, create a policy for fund asset recovery and execute it certainly.

(b) For the Salvage Fund, the following items

i. In addition to (a) above, for unclearly used money, verify and understand the people who decided its uses and expenditures, and the reasons for deciding its expenditures. Create a policy for its recovery, and execute it certainly.

ii. Create a policy to recover the damages generated in sending money to overseas operation contractors, and execute it certainly

iii. Urgently confirm the details of execution status of projects of overseas operation contractors

iv. Fully explain the above to investors, and considering their intentions, create a fund liquidation policy, and execute it certainly

(c) Build a proper business management system and internal controls as a financial instruments business operator

(d) Take required actions for thorough legal and regulatory compliance awareness, such as by training staff in the FIEA and other related laws, regulations and rules

(e) Fully explain these administrative disciplinary actions to customers

(Note) The details of the above administrative disciplinary actions include actions concerning (5) “Private placement in a situation where customer asset segregation not ensured”, and (6) “Private placement despite dividend payment in situation without earnings generated”, which are subject to recommendations along with these violations of laws and regulations

(5) **Private placement in a situation where customer asset segregation not ensured** (Violation of Article 40-3 of the FIEA)

● **RST Corporation** did private placements of fund equities based on 6 types of anonymous partnership contracts (hereinafter referred to as “Fund” in this section (5)). When the uses etc. of contributions in each Fund were verified, it was found that private placements were done despite the lack of provisions for segregated management of contributions in the company’s articles of incorporation and anonymous partnership contracts. And as described below, separate management of contributions etc. of each Fund was not ensured.

(i) In documents called the Investment Application Form and Important Items Explanation Document which the company provided to investors before contract signing, different accounts are designated for receiving contributions for each of 6 types of Funds (hereinafter referred to as “Contributions Receiving Accounts” in this section (5),) called the “Payee account” or “Operator account”. Contributions transferred from investors of each Fund were temporarily deposited in the Contributions Receiving Account of the respective Fund.

However, after contributions to each Fund from each fund’s investors were deposited, the company consolidated these contributions into one account (hereinafter referred to as “General Account” in this section (5)). Various expenses were paid from the General Account, so customer asset segregation was not ensured regarding the points of whether those expenditures were the company’s expenses or expenses for Funds, or which Funds the expenses were for.

(ii) Diver’s Watch Sales Project is one of the projects of a Fund privately placed by the company (hereinafter referred to as “Fund A” in this section (5)). Regarding this project, the company, paid the suppliers for the diver’s watches etc. from the General Account by “transfer”, but there were cases found in which the source of funds were contributions of Funds other than Fund A. Thus customer asset segregation for payments of expenses for the company’s Funds is not ensured.

(iii) In cases where an urgent need arose to supply funds to maintain projects, the company borrowed from cooperating parties, but the use of funds was not clarified for such borrowings, for example there were cases in which a contract was not prepared. In this situation, it is not possible to judge whether they were the company’s own assets (borrowings of the company), or assets required for managing a project operated for a Fund (Fund related borrowing), and even if it was a Fund related borrowing, which fund the borrowing was related to.

Also, the company received these borrowings in the General Account which became the account into which were transferred the contributions for each Fund transferred into the Contributions Receiving Accounts. Principal and interest were repaid from the General Account.

Thus the company did not ensure customer asset segregation for management of borrowings, regarding the points of whether they were borrowings of the company or borrowings for a Fund, or which Funds the borrowings were for.

• Target of recommendation

The company

(Note) For the recommendation date, and details of the administrative disciplinary actions,

refer to (4) “Use of contributions is unclear”.

(6) **Private placement despite dividend payment in situation without earnings generated** (Application of Article 51 of the FIEA)

● **RST Corporation.** This inspection verified each Fund’s dividend situation and the earnings of projects for each Fund. A situation was found in which for some of the funds, although dividends were being paid in situations with no earnings generated for the company as operator, the company was doing private placements.

• Target of recommendation

The company

(Note) For the recommendation date, and details of the administrative disciplinary actions, refer to (4) “Use of contributions is unclear”.

(7) **Remarkably improper conduct for public interest and investor protection in private placements of units in collective investment schemes** (Application of Article 52(1)(ix) of the FIEA)

● **Art Investment Bank (Japan) Limited** dealt in private placements of units for the anonymous partnership agreement (hereinafter referred to as “No.1 Fund” in this section (7)) which does investment business investing in the AIB Art No.1 Limited Liability Partnership (referred to as “No.1 Partnership” below in this (7)), with Company A as operator. Also, as of October 21, 2009, it was dealing in private placements of units for the anonymous partnership agreement (hereinafter referred to as “No.2 Fund” in these sections (7) and (8), referred to together with No.1 Fund as “The Funds”) which does investment business investing in the AIB Art No.2 Limited Liability Partnership (hereinafter referred to as “No.2 Partnership” in this section (7), referred to together with No.1 Partnership as “The Partnerships”).

Moreover, based on a limited liability partnership contract with Company A, as a partner of The Partnerships, the company executed business concerning trading of art works etc. using funds invested in The Partnerships by Company A.

This inspection verified the company’s business of dealing in private placements for The Funds’ units, and found the following facts.

(i) No.1 Partnership is a business subject to investment by the anonymous partnership for which the company dealt in a private placement. Although No.1 Partnership paid the entire purchase price for 5 works (hereinafter referred to as “These Works” in this section (7)) to a business operator which was contracted to purchase paintings, that business operator did not pay that entire purchase price amount to auction houses and overseas business operators. Thus it was found that No.1 Partnership did not obtain ownership rights to These Works.

Although These Works were in the situation described above, even after paying the purchase price, without confirming certificates of storage etc. of These Works, without understanding the purchase contract performance status nor the status of acquisition of ownership rights for These Works, by November 4, 2009 after this inspection began, the company had ignored the fact that No.1 Partnership had not acquired ownership rights for These Works.

Also, although No.1 Partnership was in the situation described above, the company dealt in private placements until June 30, 2009 for units of No.1 Fund, which invests in

No. 1 Partnership as a financed project. When pointed out by this inspection, even after the company was aware of the above situation, it took no actions from November 4 until now to suspend dealing in private placements for units of No.2 Fund, which invests in No.2 Partnership as a financed project operated under a scheme similar to No.1 Partnership.

(ii) While aware that No.1 Partnership was in the above situation, and that No.1 Fund had not even prepared its financial results report over 6 months after its accounting closing date which is on March 31 each year, the company was found to be dealing in private placements based on deficient statements in contract related documents.

• Date of recommendation

January 29, 2010

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Order for suspension of business

3 months suspension of all operations of financial instruments and exchange business

(ii) Orders for business improvement ((a) For the partnerships subject to investment, explain the situation of not acquiring ownership rights of art works, quickly take action to recover the purchase price of art works not acquired, and perform needed procedures while considering customers' intentions, (b) While considering fairness among customers, take complete actions for customer protection, (c) Develop an organization for proper management of partnership assets, (d) Immediately correct the situation of having an unregistered business operator doing solicitation of Funds, investigate and review the sales and solicitation organization, and create a reoccurrence prevention policy, (e) Clarify responsibility, and build proper internal controls, (f) Do not improperly spend company assets, accurately understand the status of company assets, and create a cash flow plan for the next 3 months)

(Note) The details of the above administrative disciplinary actions include actions concerning (8) "Problems for public interest and investor protection in private placements of units in collective investment schemes", which is subject to recommendations along with these violations of laws and regulations.

(8) **Problems for public interest and investor protection in private placements of units in collective investment schemes** (Application of Article 51 of FIEA)

● **Art Investment Bank (Japan) Limited.** When the company's dealing in private placements of units for The Funds were verified, the facts found were that while knowing that an unregistered business operator of the financial instruments and exchange business (hereinafter referred to as "This Unregistered Business" in this section (8)) had not obtained registration for financial instruments and exchange business, the company tolerated the fact that This Unregistered Business was found to be soliciting customers to decide on investing, and was having it do solicitations.

• Target of recommendation

The company

(Note) For the recommendation date, and details of the administrative disciplinary actions,

refer to (7) “Remarkably improper conduct for public interest and investor protection in private placements of units in collective investment schemes”.

3. Recommendations Based on the Results of Inspections of Investment Advisory and Agency Business Operators

(1) **Trading of securities without registration** (Violation of Article 29 of the FIEA)

● **ISO Co., Ltd.** is a financial instruments business operator which obtained registration as an Investment Advisory and Agency Business. However, around October 2007, aiming to have the sales price of four unlisted shares which were in the company’s custody be allocated to working capital, the company’s Representative Director and President (at that time) decided to sell them to the company’s customers, and instructed the company’s employees to search for customers to which it seemed the 4 shares could be sold.

Regarding that work, the employees who received that instruction selected one of their customers, contacted and did solicitation to that person, then sold 1 of those shares on October 19, 2007, and sold 3 of those shares on November 29.

• Date of recommendation

September 4, 2009

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Order for suspension of business

3 months suspension of all operations of financial instruments and exchange business

(ii) Orders for business improvement ((a) In order to properly conduct financial instruments and exchange business (investment advisory business), develop the legal/regulatory compliance system and business management system and business operations system, (b) Clarify responsibility for this conduct, and take appropriate actions to prevent its reoccurrence, (c) Work to be doubly sure of customer protections in this case, making suitable announcements, suitably handling contract cancellations, etc., (d) Create the company’s operations management policy, considering its liabilities exceed its assets)

(Note) The details of the above administrative disciplinary actions include actions concerning (2) “Business report containing false statements”, which is subject to recommendations along with these violations of laws and regulations.

(2) **Business report containing false statements** (Violation of Article 47-2 of the FIEA)

● **ISO Co., Ltd.** Around October 2008, the Representative Director and President, received a repayment notice regarding a borrowing from the company’s customer. Therefore, he knew that there were borrowings other than the short term borrowings recorded in its business report for the period ended August 2007, and he was aware that the company had fallen into a situation of liabilities exceeding assets.

After that, in creating its business report (period ended August 2008), aiming to avoid the authorities learning that the company fell into a situation of liabilities exceeding assets, the company created a business report in December stating false figures, such as recording less than the short term debt that the Representative Director and President was

aware of, and submitted it to the Director-General of the Kanto Local Finance Bureau.

• Target of recommendation

The company

(Note) For the recommendation date, and details of the administrative disciplinary actions, refer to (1) “Trading of securities without registration”.

(3) **False advertisements that contain considerable variance with the facts** (Violation of Article 37(2) of the FIEA)

● **Forest Publishing Co., Ltd.**, aiming to obtain customers for the investment advisory business, did advertising with the following content.

(i) The company used the company’s employee as a model to create a fictional person (Investor A), and wrote “Investor A’s nickname is ‘Mister Stop Limit’. Stop limits are hit for 70% of the emerging stocks recommended by Mr. A.” in a free email magazine which the company transmitted to many people on February 8 and 15, 2008.

(ii) “We provide stock information which boasts a 70% stop limit ratio.” was displayed on the company’s website from April 1, 2008 to April 8, 2009.

However, in verifying the advisory results before the company did this advertising, it was found that far below 70% of buy recommendation individual stocks had hit their stop limit. The company displayed items concerning results of investment advisory business which considerably varied with the facts.

Also, while the company’s president knew that the ratio of individual shares which hit their stop limit could not be 70%, and that this display varied with the facts, the company intentionally did this with the aim of obtaining customers.

• Date of recommendation

September 18, 2009

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Order for suspension of business

1 month suspension of all operations of financial instruments and exchange business

(ii) Orders for business improvement ((a) Take action to prevent reoccurrence, and develop a proper business management system, (b) Appropriately announce that this advertisement considerably varies with the truth, (c) Clarify responsibility for this conduct)

(4) **Trading and mediation of securities and investment advisory business related mediation of trading of securities for customers, without registration** (Violation of Articles 29 and 41-3 of the FIEA)

● **Asian Blue Co., Ltd.** Two inspections ago (inspection date: March 24, 2004), conduct which violated laws and regulations was found, such as unregistered securities business (mediation of trading of securities) and investment advisory business related securities transactions conduct for customers. On July 16, the authorities gave it a 6 months order for suspension of business and orders for business improvement.

However, this inspection found that after expiration of the above order for suspension of business, although it had still not obtained registration for securities business (since

September 30, 2007, Type I financial instruments and exchange business), the company repeatedly and continually did similar conduct as described below.

(i) Mediation of trading of unlisted stock

(a) After the above business suspension period expired, the company's Chairman of the Board (At the time. Representative Director and President since January 15, 2008. Hereinafter referred to as "Company President" in this section (4).), restarted its business of mediation of trading of stock in an unlisted company which was pointed out two inspections ago (hereinafter referred to as "Company A" in this section (4)), as a policy to urgently improve the company's dramatically worse cash flow. Due to this, from around March 2005 to around January 2008, the company solicited Company A shares to about 90 people, arranging for at least 11 ordinary investors including 5 investment advisory business related customers to acquire them a total 19 times for a total of about 90 shares, thereby receiving mediation commission from Company A's President.

(b) Also, from October 2008 to July 2009, at least 16 times to at least 9 ordinary investors, the company solicited trading of shares of Company B which Company A's President established in March 2008, arranged for 5 of these people to acquire them a total 12 times for a total of about 311 shares, thereby receiving mediation commission from Company A's President.

(ii) Trading of unlisted stock

Around early 2008, the Company President heard from a former employee of that company that there was tradable unlisted stock (Hereinafter referred to as "Company C Shares" in this section (4)). In order to gain an earnings source to replace its commissions for mediation of Company A shares, the company temporarily purchased Company C Shares, and planned to widely resell them to the ordinary investors, to gain trading spreads. Thus around July 2008, the company purchased a total 34 shares from 2 people owning Company C Shares, and resold 2 shares to 1 ordinary investor, gaining the trading spread.

• Date of recommendation

November 10, 2009

• Target of recommendation

The company

• Details of the administrative disciplinary actions

(i) Cancellation of registration

(ii) Orders for business improvement ((a) Urgently understand the situation of financial instruments and exchange contracts with investment advisory contract counterparties and other customers, and create a plan for handling customers related to illegally concluded contracts, (b) Fully explain the details of these administrative disciplinary actions etc. to investment advisory contract counterparties and other customers, and take complete actions corresponding to their demands)

(5) **False advertisements that contain considerable variance with the facts** (Violation of Article 37(2) of the FIEA)

● **Joule Co., Ltd.** creates, publicly releases and advertises a website regarding its

investment advisory business (hereinafter referred to as “Website” in this section (5)). For 1 of the 6 advisory course plans established by the company, this Website showed the “Occupation”, “Investment Funds”, “Reason for Joining”, “Profits in 1 year after joining”, “Total profits seen since joining” for 4 people (hereinafter referred to as “Investment Performance Etc.” in this section (5)) as “Member Comments”. The content encourages understanding that this Investment Performance Etc. was of customers who had concluded investment advisory contracts with the company, and achieved good investment performance based on the company’s recommendations.

However, when this content was verified, [1] None of the 4 people were customers pertaining to the company in the first place, [2] While knowing it was not based on any data, for customers who did not exist, the company President who created the Website also created fictional investment Performance Etc., and publicly released advertising which varied with the facts.

• Date of recommendation
November 13, 2009
• Target of recommendation
The company
• Details of the administrative disciplinary actions
(i) Order for suspension of business
1 month suspension of all operations of financial instruments and exchange business
(ii) Orders for business improvement ((a) Take action to prevent reoccurrence, and develop a proper business management system, (b) Make it thoroughly known that this advertisement considerably varies with the truth, and execute complete customer handling including handling contract cancellations, (c) Clarify responsibility for this conduct violating laws and regulations)

(6) **Soliciting investments in investment partnerships, etc.** (Violation of Article 29 of the FIEA)

● **Mortgage Support Co., Ltd.** did not obtain a change in registration to a Type II financial instruments business, but from November 9, 2009 to January 18, 2010, it made investment solicitations to a total 56 investors, for investment in 2 types of collective investment schemes (hereinafter referred to as “The 2 Funds” in these sections (6) and (7)), and 45 million yen was invested in The 2 Funds by a total 14 investors (16 cases).

• Date of recommendation
February 26, 2010
• Target of recommendation
The company
• Details of the administrative disciplinary actions
(i) Cancellation of registration
(ii) Orders for business improvement ((a) Thoroughly explain to customers the reason for the administrative disciplinary actions, (b) Understand the situation of the business of the collective investment scheme and uses of its contributions etc., explain this to the customers, and sincerely respond based on their intentions)

(Note) The details of the above administrative disciplinary actions include actions

concerning (7) “False report in response to an order for filing report”, which is subject to recommendations along with these violations of laws and regulations.

(7) **False report in response to an order for filing report** (Application of Article 52(1)(vi) of the FIEA)

● Based on Article 56-2(1) of the FIEA, the Director-General of the Kanto Local Finance Bureau ordered **Mortgage Support Co., Ltd.** to file a report. In response, it filed a false report on December 25, 2009 with the aim of concealing the situation of the business described in (6) above. The company put smaller figures for number of applicants and application amounts for The 2 Funds, and while aware that the business it was doing described in (6) above corresponds to Type II financial instruments business, reported an understanding that it is within the scope of investment advisory business, etc.

• Target of recommendation

The company

(Note) For the recommendation date, and details of the administrative disciplinary actions, refer to (6) “Soliciting investments in investment partnerships, etc.”

4. Recommendations Based on the Results of Inspections of Financial Instruments Brokers

Conduct that deviates from the restrictions of financial instruments brokers (Violation of Articles 29 and 66-12 of the FIEA)

● **Hokkaido Financial Planners Co., Ltd.** is a financial instruments broker, but the company’s Representative Director and President concluded member agreements with customers of the company’s financial instruments brokerage business (Customers for which the company did mediation of financial instruments as a brokerage business. Hereinafter referred to as “Brokerage Customers” in this section (1)). While it collected membership fees from its Brokerage Customers, it provided services such as analysis and building of financial asset portfolios of Brokerage Customers. However, this business which the company was engaged in proposed individual securities and quantities of specific financial instruments, which was found to be an actual situation of performing investment advisory conduct. A situation was also found in which the company was dealing in private placements, such as explaining instrument details and proposing acquisition of private placement funds to Brokerage Customers for which it engaged in the above investment advisory conduct, instead of receiving consignment from an affiliated financial instruments business operator.

• Date of recommendation

March 5, 2010

• Targets of recommendation

The company and one sales representative

• Details of the administrative disciplinary actions

Cancellation of registration

• Details of the disciplinary action against the sales representative

Representative Director and President: Cancel Sales Representative registration

8) Future Challenges

In order to respond to the changing environment surrounding securities inspections and to ensure investor protections, the SESC intends to work on the following policies incorporated in its FY 2010 basic inspection policy.

(1) Considering the expansion and diversification of business operators subject to securities inspections, from the viewpoint of executing efficient and effective inspections, for the execution aspects of the inspections, the SESC is working to develop risk-based inspection plans, introduce advance notice inspections, and review flexibly the inspection manuals. Regarding the content of the inspections, it is enhancing verification of internal controls, etc. Also, regarding cooperation with related departments and organizations, the SESC works on strengthening close coordination between its inspections with and off-site monitoring by supervisory departments, and works with self-regulatory organizations on enhanced and stronger mutual participation in training for inspectors and information exchange, thereby enhancing the surveillance function as a whole.

(2) Based on the experience of the global financial crisis, the SESC is enhancing its verifications of the suitability of internal controls and risk management systems, especially of financial instruments business operators which hold an important position in the markets, while also cooperating closely with the Financial Services Agency and overseas authorities, from a forward looking viewpoint for preventing the emergence of operational and financial risks. Also, considering the increasing importance of ensuring the reliability of IT systems due to wider use of IT systems for the transactions of financial instruments in recent years, the SESC is putting efforts into verifying the IT system risk management systems of financial instruments business operators.

(3) In verifications of the management and sales business operators of collective investment schemes (funds), considering the many serious violations of laws and regulations such as misappropriation of contributions, the SESC will continue verifying the suitability of business management of funds and the existence of violations of laws and regulations. The SESC will take appropriate actions against cases where an unregistered business operator is found in cooperation with supervisory departments and investigative authorities.

The SESC will also continue working to verify the legal and regulatory compliance of investment advisory and agency businesses, in which many violations of laws and regulations have been found in the recent inspections.

4. Administrative Monetary Penalties Investigation

1) Outline

1. Purpose of the Administrative Monetary Penalty System

"Market misconduct," such as insider trading, market manipulation, spreading of rumors on stock markets or fraudulent means, is an act of impairing the market fairness and transparency and deceiving investors. In the past, criminal penalties have functioned as main measures for ensuring the effectiveness of the regulations on violations with respect to such market misconduct. The administrative monetary penalty system, as administrative measure, has been also introduced since April 2005 through the amendment to the Securities and Exchange Act (SEA) in 2004.

The administrative monetary penalty system is an administrative measure of imposing pecuniary penalties, in order to achieve the administrative objectives of curbing violations of Financial Instruments and Exchange Act (FIEA), including breaches in disclosure obligations as well as the market misconduct described above, so as to ensure the effectiveness of regulations. The level of amount of the pecuniary penalties has been determined by FIEA on the basis of the amount of economic benefit gained by the violator through his/her violation. With the introduction of the administrative monetary penalty system, the Securities and Exchange Surveillance Commission (SESC) established the Civil Penalties Investigation and Disclosure Documents Inspection Office on April 1, 2005, under the Coordination and Inspection Division. This office performed investigations and inspections of violations subject to the administrative monetary penalties. Then in July 2006, the office was reorganized into the "Civil Penalties Investigation and Disclosure Documents Inspection Division", and then the monetary penalties investigation organization has been enhanced with increases in staff approved each year. In response to environmental changes with increasing complexity, diversity and globalization of financial instruments and transactions, the SESC performs fast and efficient investigations utilizing features of the administrative monetary penalty system, in order to achieve highly flexible and strategic market surveillance, and thereby works to maintain trust in the financial and capital markets for market participants including investors and to ensure fairness in financial instruments and transactions.

If violations are found as a result of performing monetary penalty investigations, the SESC makes a recommendation to the Prime Minister and the Commissioner of the Financial Services Agency (FSA) for the issuance of an order to pay an administrative monetary penalty (Article 20 of the Act for Establishment of the FSA) (hereinafter referred to as "Recommendation"). In the event a Recommendation is made seeking the issuance of an order to pay an administrative monetary penalty, the Commissioner of the FSA (delegated by the Prime Minister) determines the commencement of trial procedures. Then, trial examiners conduct the trial procedures and prepare a draft decision on the case. Based on this draft decision, the Commissioner of the FSA (delegated by the Prime Minister) takes the decision on whether to issue an order to pay an administrative monetary penalty.

(Note) This chapter covers the monetary penalty investigations of market misconduct.

2. Violations Subject to Administrative Monetary Penalties, and Amounts of Administrative Monetary Penalties

The Act for the Amendment of the Financial Instruments and Exchange Act, which was passed in June 2008, raised the amounts of administrative monetary penalties for market misconduct that were already subject thereto. Regarding market manipulation prohibited in the FIEA Article 159, fictitious or collusive sales and purchase of securities (Article 159 (1)) and illegal stabilizing transactions (Article 159 (3)) also has newly become subject to the administrative monetary penalties.

Currently the violations subject to administrative monetary penalties and the amounts of those penalties are as follows:

(1) Spreading of rumors and fraudulent means (Article 173 of the FIEA)
Penalty: Difference between the value of sales, etc. (purchases, etc.) until the end of the violation (i.e. spreading of rumors or fraudulent means) and the value appraised using the lowest (highest) price during the one month after the violation

(2) Fictitious or collusive sales and purchase (Article 174 of the FIEA) (see Note)
Penalty: Difference between the value of sales, etc. (purchases, etc.) until the end of the violation (i.e. fictitious or collusive sales and purchase) and the value appraised using the lowest (highest) price during the one month after the violation

(3) Market manipulation (Article 174-2 of the FIEA, Article 174 of the former FIEA)
Penalty: Aggregate of (i) the profit or loss during the period of the violation (i.e. market manipulation through actual transactions), and (ii) the difference between the value of sales, etc. (purchases, etc.) until the end of the violation and the value appraised using the lowest (highest) price during the one month after the violation

(4) Illegal stabilizing transactions (Article 174-3 of the FIEA)
Penalty: Aggregate of (i) the profit or loss related to the violation (i.e. illegal stabilizing transactions), and (ii) the amount obtained by multiplying (x) the difference between the average price during the one month after the violation and the average price during the period of the violation by (y) the position at the start of the violation

(5) Insider trading (Article 175 of the FIEA)
Penalty: Difference between the value of sales, etc. (purchases, etc.) related to the violation (limited to those made during the six months prior to the publication of material facts), and the product of the lowest (highest) price during the two weeks after the publication of material facts and the volume of the said sales, etc. (purchases, etc.)

3. Authority of Administrative Monetary Penalty Investigations

The authority to conduct administrative monetary penalty investigations in relation to market misconduct has been prescribed in Article 177 of the FIEA under which the SESC has been

authorized:

(1) to question persons concerned with a case or witnesses, or to have any of these persons submit their opinions or reports; and

(2) to enter any business office of the persons concerned with a case and other necessary sites, to inspect the books and documents and other items.

2) Recommendation on Market misconduct

1. Situation of Recommendations

In FY 2009, there were Recommendations on 43 market misconduct cases, totaling 55,480,000 yen in terms of monetary amounts. 38 of these cases involved insider trading, with 5 cases of market manipulation. The minimum amount of penalty applied to a violator was 70,000 yen, and the largest was 11,270,000 yen. As a result, since April 2005 where the administrative monetary penalty system has been introduced, the total number of Recommendations on insider trading reaches 86 cases (by 80 individuals and by 6 corporations) in the amount of 198,790,000 yen while the number of Recommendations on market manipulation cases totally comes to 8 (all individuals) in the amount of 13,710,000 yen.

In FY 2009, as features of Recommendation cases on market misconduct, especially insider trading cases, in terms of the attribute of the violators, it is pointed out that there were cases committed by professionals and executives who need to have strong professional ethics and thorough controls of company information: for instance, we found a case of a transaction by an employee of a due diligence advisory company which was a party to a contract with the tender offeror, a case of transactions by the corporate auditor of a listed company who became aware of the material fact in the course of performing his duties, a case where a tax accountant as primary recipient of information received information on the material facts and conducted transactions, a case where an employee of credit research company received information on a material fact and conducted a transaction. FY 2009 saw a sharp increase especially in insider trading cases by a person categorized as primary recipient of information (21 cases in FY 2009 while 3 cases in FY 2008). Any person who has access to material facts not only ensures not to commit any insider trading by himself/herself, but also pays attention to control of such information on material fact.

As for Recommendation cases on insider trading, from the perspective of the type of material facts, there were stock issuance, share exchange, business alliance, business bankruptcy (commencement of corporate reorganization procedures, civil rehabilitation procedures, etc.), being subject to administrative disciplinary actions, revisions of business results forecast and tender offers, etc. There were also applications of so-called basket clause which stipulates material facts regarding business of a listed company that may have a significant influence on investors' investment decisions, although such material facts are not specifically listed in the relevant statutory law. Of these, we see a sharp increase in Recommendation cases with respect to information on tender offer. The number of cases concerning the tender offer in FY 2009 was 12, which shows a large increase from 3 cases in the previous fiscal year. This may be because the tender offer has become more available as a means of corporate restructuring, and it may also be caused by its characteristics which induce insider trading since a tender offer price is likely to be set far above the stock price at the time when the tender offer has been considered or announced and a large number of parties inside and outside the tender offeror would be involved in the tender offer.

Insider Trading

Changes in Number of Recommendation Cases by Type of Violators

	FY2009	FY2008
Officer or employee of issuer or tender offeror	14	7
Officer or employee of a party to a contract	3	7
Primary recipient of information	21	3
TOTAL	38	17

(*) "FY" is April to March the following year.

Changes in Number of Recommendation Cases by Type of Material Fact

	FY2009	FY2008
Issuance of stock, etc.	4	1
Merger or share exchange	2	3
Business alliance	0	7
Corporate reorganization or civil rehabilitation	8	0
Modification of business results forecast	2	3
Basket clause	4	0
Other material facts	6	0
Tender offer	12	3
TOTAL	38	17

2. Outline of Recommendations Issued

With respect to the Recommendation cases in FY2009, the following is an outline of the Recommendation cases on market misconduct made in the period from July 2009 to March 2010*for the issuance of orders to pay administrative monetary penalties on market misconduct.

* The cases in the period from April to June 2009 have been described in the BY 2008 (July 2008 - June 2009) SESC Annual Report.

(i) Recommendation on insider trading by a person receiving information from a party to the contract with General Holdings Co., Ltd.

This case was insider trading by a person who received information from a bank employee involved in the tender offer.

The violator received information on the fact that General Holdings Co., Ltd. (dissolved due to merger on May 1, 2009) has decided to make a tender offer for shares of General Co., Ltd. (currently, General Holdings Co., Ltd.) from an employee of a bank that was a party to a contract on sharing information concerning the management buyout with General Holdings Co., Ltd. and that employee has come to know the fact in the course of performing that contract, and then the violator purchased 3,000 shares of General Co., Ltd. in the amount of 915,000 yen on August 25, 2008, prior to this fact being publicized on September 4, 2008.

Date of Recommendation: July 8, 2009

Amount of administrative monetary penalty: 710,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: July 8, 2009
Date of order to pay penalty: August 20, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(ii) Recommendation on market manipulation related to the shares of Sowa Jisho Co., Ltd.

In an attempt to raise the price of Sowa Jisho Co., Ltd. shares and for the purpose of inducing sales and purchase of the shares, in the manner of raising the share price by matching buy orders and sell orders at around the same time at higher prices than the latest price contracted and of placing buy orders without any intention to make them executed, during the three trading days from May 1 to 7, 2008, the violator purchased a total of 72 shares of Sowa Jisho Co., Ltd. while he sold a total of 45 shares, and entrusted purchases of a total of 103 shares, as a result of which he inflated the share price from 41,300 yen to 46,500 yen. In this way, the violator conducted a series of sales and purchase of the shares and entrustment therefor that would cause fluctuations in prices of the said shares.

Date of Recommendation: July 28, 2009

Amount of administrative monetary penalty: 160,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: July 28, 2009
Date of order to pay penalty: August 27, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(iii) Recommendation on insider trading by an officer of Nissan Diesel Motor Co., Ltd.

This case is related to the criminal case where the accusation has been made for the insider trading violation concerning Nissan Diesel Motor.

The violator who was an officer of Nissan Diesel Motor became aware of the fact that NA Co., Ltd. (an SPC of which parent company was Volvo), which has executed a confidentiality contract with Nissan Diesel Motor, has decided to make a tender offer for shares of Nissan Diesel Motor in the course of performing that contract, and then he purchased 2,000 shares of Nissan Diesel Motor in the amount of 874,000 yen on February 14, 2007, prior to this fact being publicized on February 20, 2007.

Date of Recommendation: August 4, 2009

Amount of administrative monetary penalty: 200,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: August 4, 2009
Date of order to pay penalty: August 27, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(iv) Recommendation on insider trading by an officer of Harakosan Co., Ltd.

In this case, Recommendation with respect to both the sale and purchase by a Harakosan officer of Harakosan shares before the material fact was publicized.

The violator who was an officer of Harakosan Co., Ltd., in the course of his duties, became aware of the fact that the company has decided to issue convertible warrant bonds. From November 8, 2006 to January 30, 2007, prior to this fact being publicized on February 1, 2007, he sold a total of 401 Harakosan shares in the amount of 94,266,000 yen and also purchased a total of 175 Harakosan shares in the amount of 39,890,000 yen.

Date of Recommendation: September 15, 2009

Amount of administrative monetary penalty: 2,840,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: September 15, 2009
Date of order to pay penalty: October 7, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(v) Recommendation on insider trading by an employee of PwC Advisory Co., Ltd.

In this case, the material fact related to a tender offer and a person who was involved in the tender offer in terms of conducting due diligence has committed insider trading.

The violator who was an employee of PwC Advisory Co., Ltd., which was a party to an entrustment contract on providing advisory services with Fast Retailing Co., Ltd., became aware of the fact that Fast Retailing Co., Ltd. has decided to make a tender offer for shares of Link Theory Japan Co., Ltd. in the course of performing that contract, and then he purchased a total of 20 shares of that company in the amount of 2,099,000 yen on January 28, 2009, prior to this fact being publicized on January 29, 2009.

Date of Recommendation: October 23, 2009

Amount of administrative monetary penalty: 1,290,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: October 23, 2009
Date of order to pay penalty: November 20, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(vi) Recommendation on insider trading by a person receiving information from an employee of the tender offeror for shares of We've Inc.

This is the first recommendation case which involved a tax accountant (however, the tax accountant did not become aware of the facts of the tender offer in the course of his duties, but in the position of a primary recipient of information).

The violator received information on the fact that MCP Synergy No.1 Investment Limited Partnership (hereinafter referred to as "MCP Synergy") decided to make a tender offer for shares of We've Inc. from a worker engaged in the business of MCP Synergy and becoming aware of this fact in the course of his duties. On January 9 and 13, 2009, prior to this fact being publicized on January 14, the violator purchased a total of 100 shares of We've Inc, on his own account, in the amount of 777,000 yen.

Date of Recommendation: October 23, 2009

Amount of administrative monetary penalty: 820,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: October 23, 2009
Date of order to pay penalty: November 17, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(vii) Recommendation on insider trading by 7 violators including the employees of Oriental Shiraishi Corporation

In this case, there was a Recommendation has been made against 7 violators who committed insider trading with respect to the material fact that Oriental Shiraishi has decided to file a petition for commencement of corporate reorganization procedures (hereinafter referred to as this "Material Fact" in this section). The violators (1) to (3) were corporate insiders, while the violators (4) to (7) were information recipients. Among the information recipients was a credit research company employee who sold shares on margin, and he should be criticized for insider trading with respect to the information obtained since he was in position to handle information on company bankruptcies on a daily basis. On the other hand, regarding the corporate insiders (i.e. the violators (1) to (3)), it would appear that knowing this Material Fact, they would think of selling the shares in their company that they had held, but considering the unfair situation in terms of difference in access to information between those employees and other ordinary investors, those actions of sales also deserve censure.

1. Oriental Shiraishi Employees

The violator (1), who was an employee of Oriental Shiraishi, became aware of this Material Fact in the course of his duties. On November 26, 2008, prior to this fact being publicized at 5:30pm on that day, this violator (1) sold a total of 12,000 Oriental Shiraishi shares in the amount of 1,319,400 yen.

The violator (2), who was an employee of Oriental Shiraishi, became aware of this Material Fact in the course of his duties. On November 26, 2008, prior to this fact being

publicized at 5:30pm on that day, this violator (2)sold a total of 2,000 Oriental Shiraishi shares in the amount of 242,700 yen.

The violator (3), who was an employee of Oriental Shiraishi, became aware of this Material Fact in the course of his duties. On November 26, 2008, prior to this fact being publicized at 5:30pm on that day, this violator (3) sold 1,200 Oriental Shiraishi shares in the amount of 150,000 yen.

2. Recipients of Information from Oriental Shiraishi Employees

The violator (4) received information on this Material Fact from an employee of Oriental Shiraishi who became aware of this Material fact in the course of his duties. On November 26, 2008, prior to this fact being publicized at 5:30pm on that day, that violator sold 6,300 Oriental Shiraishi shares in the amount of 787,500 yen.

The violator (5) received information on this Material fact from an employee of Oriental Shiraishi who became aware of this Material Fact in the course of his duties. On November 26, 2008, prior to this fact being publicized at 5:30pm on that day, that violator sold 4,400 Oriental Shiraishi shares in the amount of 550,000 yen.

3. Recipient of Information from an Employee of a Party to a Contract with Oriental Shiraishi (Credit Research Company Employee)

The violator (6) became aware of this Material Fact by receiving information on this Material Fact, in the course of his duties, from a employee of the company which the violator (6) belonged to, and that employee received on the information on this Material Fact, in the course of his duties, from an employee of a party to a lease contract with Oriental Shiraishi, who became aware of this Material Fact in the course of his duties, and other employee of that lease contract party came to know this Material Fact in the course of performing that contract. On November 26, prior to this being publicized at 5:30pm on that day, that violator sold a total of 30,000 Oriental Shiraishi shares in the amount of 3,268,800 yen.

4. Recipient of Information from an Officer of a Party to a Contract with Oriental Shiraishi

The violator (7) received information on this Material Fact from an officer of a party to a contract on construction work with Oriental Shiraishi, who became aware of this Material Fact in the course of performing that contract. On November 26, 2008, prior to this fact being publicized at 5:30pm on that day, that person sold a total of 25,000 Oriental Shiraishi shares in the amount of 3,071,200 yen.

Date of Recommendation: October 30, 2009

<u>Amounts of administrative monetary penalties</u>
Violator (1): 610,000 yen
Violator (2): 120,000 yen
Violator (3): 70,000 yen
Violator (4): 410,000 yen
Violator (5): 290,000 yen
Violator (6): 1,490,000 yen
Violator (7): 1,590,000 yen

Process following Recommendation (Same dates for the violators (1) to (7))

Date of decision on the commencement of trial procedures: October 30, 2009

Date of order to pay penalty: November 30, 2009

Since written replies admitting these facts were submitted by all of the violators (1) to (7), no trial was conducted.

(viii) Recommendation on market manipulation related to the shares of SBI Futures Co., Ltd.

In an attempt to raise the price of SBI Futures Co., Ltd. shares and for the purpose of inducing sales and purchase of the shares, in the manner of raising the share price by matching buy orders and sell orders at around the same time at higher prices than the latest price contracted, and of purchasing the shares at higher prices than the latest price contracted to form a renewed contracted price of the shares (*kaiagari-kaitsuke*), during the period from February 26 to 27, 2009, the violator purchased a total of 456 SBI Futures Co., Ltd. shares while he sold a total of 138 shares, as a result of which he inflated the share price from 27,400 yen to 38,300 yen. In this way, the violator conducted a series of sales and purchase of the shares that would cause fluctuations in prices of the said shares.

Date of Recommendation: November 5, 2009

Amount of administrative monetary penalty: 1,000,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: November 5, 2009

Date of order to pay penalty: November 30, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(ix) Recommendation on insider trading by a person receiving information from an employee of Futaba Industrial Co., Ltd.

This case saw application of the basket clause with respect to the fact that errors were found in the past accounting figures. This was the second Recommendation in which the basket clause has been applied. In addition, as the violator in this case was a primary recipient of information on the material facts from a family relation, it has been found that the company's material information was communicated interfamilially.

The violator received from information on the fact that the errors were found in the accounting figures of Futaba Industrial Co., Ltd. for the fiscal years ended March 2006, 2007 and 2008, which is a material fact concerning the operation, business or property of the company that may have a significant influence on investors' investment decisions, from an employee of Futaba Industrial Co., Ltd. who became aware of the fact in the course of his duties. On October 6, 2008, prior to this fact being publicized on October 15, 2008,that violator sold 9,700 shares of Futaba Industrial Co., Ltd. in the amount of 11,358,700 yen.

Date of Recommendation: November 20, 2009

Amount of administrative monetary penalty: 2,580,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: November 20, 2009
Date of order to pay penalty: December 11, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(x) Recommendation on insider trading by an employee of Yamazaki Construction Co., Ltd.

The violator, who was an employee of Yamazaki Construction Co., Ltd., became aware, in the course of his duties, of the fact that that company has decided to file a petition for corporate reorganization procedures, and then sold a total of 51,000 Yamazaki Construction Co., Ltd. shares in the amount of 2,467,000 yen during the period from October 28 to 30, 2008, prior to this fact being publicized on October 30, 2008.

Date of Recommendation: December 8, 2009

Amount of administrative monetary penalty: 1,900,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: December 8, 2009
Date of order to pay penalty: December 25, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(xi) Recommendation on insider trading by a person receiving information from an employee of Hitachi, Ltd.

In this case, the employee of Hitachi, Ltd communicated to a family member the material facts concerning 3 tender offers where the company was involved during the period from March 2007 to January 2009, and that family member who received that information committed insider trading.

The violator:

(1) received information on the fact that Nidec Corporation has decided to make a tender offer for the shares of Japan Servo Co., Ltd. (currently, Nidec Servo Corporation), from an employee of Hitachi which was a party which negotiated to conclude a contract with Nidec Corporation concerning agreement on application of the tender offer, and that employee became aware of the fact in the course of negotiations for conclusion of that contract. On March 12, 2007, prior to this fact being publicized on March 13, 2007, the violator purchased a total of 25,000 Japan Servo Co., Ltd. shares on his own account in the amount of 4,950,000 yen.

(2) received information on the fact that Hitachi decided to make a tender offer for shares

of Hitachi Koki Co., Ltd., from a Hitachi employee who became aware of the fact in the course of her duties. On January 14, 2009, prior to this fact being publicized on January 15, 2009, the violator purchased a total of 5,000 Hitachi Koki Co., Ltd. shares on his own account in the amount of 3,724,000 yen.

(3) received information on the fact that Hitachi decided to make a tender offer for shares of Hitachi Kokusai Electric Services Inc., from a Hitachi employee who became aware of the fact in the course of her duties. On January 14, 2009, prior to this fact being publicized on January 15, 2009, the violator purchased 11,000 Hitachi Kokusai Electric Services Inc. shares on his own account in the amount of 4,840,000 yen.

Date of Recommendation: December 15, 2009

Amount of administrative monetary penalty: 7,520,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: December 15, 2009
Date of order to pay penalty: January 13, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(xii) Recommendation on insider trading by employees of Arisaka Company, Ltd.

This case applied the basket clause with respect to the fact that the improper accounting procedures were found over the past fiscal years in Arisaka.

1. The violator (1), who was an employee of Arisaka, became aware, in the course of his duties, of the fact that the improper accounting procedures were found over the past fiscal years in Arisaka, which falls into a material fact (hereinafter referred to as this "Material Fact" in this section) concerning the operation, business or property of the company that may have a significant influence on investors' investment decisions. On May 16, 2008, prior to this fact being publicized on May 27, 2008, that violator sold a total of 2,000 Arisaka shares in the amount of 604,200 yen.

2. The violator (2) who was an employee of Arisaka., became aware of this Material Fact in the course of his duties. On May 16, 2008, prior to this fact being publicized on May 27, 2008, that violator sold a total of 500 Arisaka shares for a total of 151,700 yen.

Date of Recommendation: December 15, 2009

Amounts of administrative monetary penalties
Violator (1): 310,000 yen
Violator (2): 80,000 yen

Process following Recommendation (Same dates for both violator (1) and (2))

Date of decision on the commencement of trial procedures: December 15, 2009
Date of order to pay penalty: January 21, 2010

Since written replies admitting these facts were submitted by both violators, no trial was conducted.

(xiii) Recommendation on insider trading by an employee of Belluna Co., Ltd.

This is a typical case of insider trading by a corporate insider where a person (in charge of IR) who was in the position to have access to the company's financial information became aware of the fact that the company would make a downward revision of its business results forecast and then committed insider trading.

The violator, who was an employee of Belluna, became aware, in the course of his duties, of the fact that Belluna would revise downward its business results forecast for the year ending March 2008. On October 12 and 17, 2007 prior to this fact being publicized on October 31, 2007, that violator sold a total of 1,800 Belluna shares in the amount of 2,085,000 yen.

Date of Recommendation: December 18, 2009

Amount of administrative monetary penalty: 290,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: December 18, 2009
Date of order to pay penalty: February 1, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(xiv) Recommendation on insider trading by violators receiving information from employees of Belluna Co., Ltd.

This is the case of insider trading by primary information recipients. The transmitters of the information were a Belluna employee and an employee of a party to a contract with Belluna, and thus both of them were in positions to become aware, in the course of their duties, of the fact that Belluna would be subject to an administrative disciplinary action which ordered suspension of business in accordance with the Act on Specified Commercial Transactions (hereinafter referred to as this "Material Fact" in this section). Both transmitted this Material Fact to their family relatives respectively, and those who received the information on this Material Fact committed insider trading.

Also, this is the first case with Recommendation on insider trading with respect to a material fact which is being subject to administrative disciplinary action.

1. The violator (1) received information on this Material Fact from a Belluna employee who, in the course of his duties, became aware of this Material Fact, and then that violator sold a total of 1,750 Belluna shares in the amount of 1,295,450 yen on July 4, 2008, prior to this Material Fact being publicized at 2:30pm on July 9, 2008.

2. The violator (2) received information on this Material Fact from an employee of a party to an outsourcing contract with Belluna, who in the course of performing the contract became aware of this Material Fact, and then that violator sold a total of 2,000 Belluna shares in the amount of 1,451,000 yen on July 9, 2008, prior to this Material Fact being publicized at

2:30pm on July 9, 2008.

Date of Recommendation: December 18, 2009

Amounts of administrative monetary penalties
Violator (1): 400,000 yen
Violator (2): 430,000 yen

Process following Recommendation (Same dates for both violators)
Date of decision on the commencement of trial procedures: December 18, 2009
Date of order to pay penalty: January 21, 2010

Since written replies admitting these facts were submitted by violators, no trial was conducted.

(xv) Recommendation on market manipulation of the shares of TOWNNEWS-SHA CO., LTD. by its employee

The violator was an employee of TOWNNEWS-SHA CO., LTD. In an attempt to raise the price of TOWNNEWS-SHA CO., LTD. shares and for the purpose of inducing sales and purchase of the shares, in the manner of raising the share price by matching buy orders and sell orders at around the same time at higher prices than the latest price contracted, and of purchasing the shares at higher prices than the latest price contracted to form a renewed contracted price of the shares (*kaiagari-kaitsuke*), during the period of 7 trading days from November 6 to 14, 2008, the violator purchased a total of 9,100 shares of the said company while he sold a total of 7,800 shares, as a result of which he inflated the share price from 172 yen to 260 yen. In this way, the violator conducted a series of sales and purchase of the shares that would cause fluctuations in prices of the said shares.

Date of Recommendation: February 2, 2010

Amount of administrative monetary penalty: 250,000 yen

Process following Recommendation
Date of decision on the commencement of trial procedures: February 2, 2010
Date of order to pay penalty: February 23, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(xvi) Recommendation on insider trading by an officer of Yamano Holdings Corporation and 2 affiliated corporations thereof

In this case, since the insider trading was committed on the accounts of corporations, the Recommendation was made against those corporations. In order for those two corporations to be subject to the Recommendation, they were recognized as primary information recipients of information on the material fact from an officer of Yamano Holdings.

1. The violator (1), who was an officer of Yamano Holdings, became aware, in the course of

his duties, of the fact that Hotta Marusho Co., Ltd., a subsidiary of Yamano Holdings, has decided to transfer the shares of its subsidiary with a change in the sub-sub company of Yamano Holdings (hereinafter referred to as this "Material Fact" in this section). During the period from October 10 to 16, 2008, prior to this Material Fact being publicized on October 29, 2008, that violator purchased on his own account a total of 32,900 Yamano Holdings shares in the amount of 1,623,500 yen.

2. Yamano Network Co., Ltd. (hereinafter referred to as "Yamano Network") received information on this Material Fact from the violator (1) who became aware of this Material Fact in the course of his duties. During the period from October 23 to 29, 2008, prior to this fact being publicized on October 29, 2008, Yamano Network purchased on its own account a total of 21,300 Yamano Holdings shares in the amount of 1,345,500 yen.

3. Yamano Beauty Chemical Co., Ltd. (hereinafter referred to as "Yamano Beauty Chemical") received information on this Material Fact from the violator (1) who became aware of this Material Fact in the course of his duties. During the period from October 7 to 9, 2008, prior to this fact being publicized on October 29, 2008, Yamano Beauty Chemical purchased on its own account a total of 28,000 Yamano Holdings shares in the amount of 1,371,400 yen.

Date of Recommendation: February 19, 2010

Amounts of administrative monetary penalties
Violator (1): 900,000 yen
Yamano Network: 290,000 yen
Yamano Beauty Chemical: 780,000 yen

Process following Recommendation (Same dates for the violator (1), Yamano Network and Yamano Beauty Chemical)
Date of decision on the commencement of trial procedures: February 19, 2010
Date of order to pay penalty: March 15, 2010

Since written replies admitting these facts were submitted by person (1) subject to an order to pay an administrative monetary penalty, Yamano Network and Yamano Beauty Chemical, no trial was conducted.

(xvii) Recommendation on market manipulation related to the shares of Suzuken Co., Ltd.

For the purpose of inducing sales and purchase of the shares of Suzuken Co., Ltd., the violator conducted, 28 times, a series of sales and purchase of the shares and entrustment therefor that would cause fluctuations in prices of the shares in the following way: (i) first he placed sell orders at higher prices than the latest price without any intention to make them executed and made the sell board look more active in order to induce other investors to place sell orders at lower prices than the current price, and then purchased the shares after pushing down the share price; and (ii) thereafter, he placed buy orders at lower prices than the latest price without intention to make them executed and made the buy board look more active in order to induce other investors to place buy orders at higher prices than the current

price, and then sold the shares after pushing up the share price.

Date of Recommendation: February 26, 2010

Amount of administrative monetary penalty: 1,590,000 yen

Process following Recommendation
Date of decision on the commencement of trial procedures: February 26, 2010
Date of order to pay penalty: March 23, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(xviii) Recommendation on insider trading by a person receiving information from an officer of Link Consulting Associates japan Corporation

The violator received information on the fact that Link Consulting Associates japan Corporation (currently, LCA Holdings Corporation) decided to issue shares and new share subscription rights from an officer of the company who in the course of his duties became aware of this fact. On April 27, 2009, prior to this fact being publicized at 7:30pm on April 28, 2009, the violator purchased a total of 64,300 of the company's shares on his own account in the amount of 2,053,300 yen, and on April 28, 2009, prior to this fact being publicized at 7:30pm on that day, sold a total of 64,300 of the company's shares on his own account in the amount of 2,276,300 yen.

Date of Recommendation: March 5, 2010

Amount of administrative monetary penalty: 980,000 yen

Process following Recommendation
Date of decision on the commencement of trial procedures: March 5, 2010
Date of order to pay penalty: March 31, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(xix) Recommendation on insider trading by a corporate auditor of Favorina Co., Ltd.

In this case, a corporate auditor of a listed company committed insider trading with respect to the material fact which he became aware of in the course of his duties.

The violator, who was a corporate auditor of Favorina Co., Ltd., became aware of the fact that the company would revise upward its business results forecast for the year ending March 2009 in the course of his duties. On February March 9 and 10, 2009, prior to this fact being publicized on March 12, 2009, he purchased a total of 150 Favorina shares in the amount of 421,255 yen on his own account.

Date of Recommendation: March 26, 2010

Amount of administrative monetary penalty: 150,000 yen

Process following Recommendation

Date of decision on the commencement of trial procedures: March 26, 2010
Date of order to pay penalty: April 16, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(xx) Recommendation on insider trading by violators receiving information from insiders of a tender offeror including an employee of Nanbu Plastics Co., Ltd.

This is a case of insider trading with respect to the fact that a tender offer would be made for the shares of Nanbu Plastics Co., Ltd., committed by four primary information recipients, with two each receiving information from two separate persons involved in the tender offer. Also, these primary information recipients subject to the Recommendation included a tax accountant and a financial institution employee.

1. Recipient of information from an ARRK Corporation employee

The violators (1) and (2) received information on the fact that NMC Fund 14 Co., Ltd. (SPC established by Nippon Mirai Capital Co, Ltd., an investment company, and having been dissolved due to merger on November 1, 2009; hereinafter referred to as "NMC Fund".) decided to make a tender offer for the shares of Nanbu Plastics Co., Ltd. (hereinafter referred to as this "Tender Offer Fact") from an employee of ARRK Co., Ltd. (former parent company of Nanbu Plastics) which was a party that negotiated to conclude a contract with NMC Fund concerning agreement on application of a tender offer and that employee became aware of this Tender Offer Fact in the course of negotiations for conclusion of that contract.

From January 26 to February 12, 2009, prior to this fact being publicized on February 27, 2009, the violator (1) purchased a total of 15,900 Nanbu Plastics shares in the amount of 7,155,600 yen on his own account.

On January 27 and 29, 2009, prior to this fact being publicized on February 27, 2009, the violator (2) purchased a total of 200 Nanbu Plastics shares in the amount of 89,600 yen on his own account.

2. Recipient of information from a Nanbu Plastics employee

The violators (3) and (4) received information on this Tender Offer Fact from an employee of Nanbu Plastics which is a party to a confidentiality contract with NMC Fund, and that employee became aware of this Tender Offer Fact in the course of performing that contract.

On February 25, 2009, prior to this fact being publicized on February 27, 2009, the violator (3) purchased a total of 1,200 Nanbu Plastics shares in the amount of 372,000 yen on his own account.

On February 25, 2009, prior to this fact being publicized on February 27, 2009, the violator (4) purchased a total of 1,000 Nanbu Plastics shares in the amount of 309,000 yen on his own account.

Date of Recommendation: March 30, 2010

Amounts of administrative monetary penalties
Violator (1): 11,270,000 yen
Violator (2): 140,000 yen
Violator (3): 1,010,000 yen
Violator (4): 850,000 yen

Process following Recommendation
Date of decision on the commencement of trial procedures: March 30, 2010
Date of order to pay penalty: April 16, 2010

Since written replies admitting these facts was submitted by the violators, no trial was conducted.

3. Other

With respect to the case of insider trading of Calpis Co., Ltd. shares by an employee of Ajinomoto Co., Inc. (hereinafter referred to as "Respondent"), on which the Recommendation was made on June 19, 2009, the Respondent denied facts on the violation subject to the Recommendation and challenged the Recommendation. Consequently, a trial date was held for the first time since the administrative monetary penalty system was introduced. The trials were held on four times from September 2009 to January 2010, in which the Respondent and a witness were questioned, etc. As a result, the order to pay an administrative monetary penalty was decided on March 16, 2010.

Facts on violation subject to Recommendation

The Respondent was an employee of Ajinomoto Co., Inc., which was negotiating conclusion of a share exchange contract with Calpis Co., Ltd. In the course of his duties, he became aware of the fact that the organ of Calpis which is responsible for making decisions on the execution of the operations has decided to make a share exchange with Ajinomoto Co., Inc., which another Ajinomoto employee became aware of in the course of negotiations for conclusion of that contract. On June 11, 2007, prior to this fact being publicized at 3:00pm on that day, the Respondent purchased, on his own account, a total of 2,000 Calpis shares in the amount of 2,213,000 yen in his wife's name.

Points of dispute in this case

Regarding the transaction in Calpis Co., Ltd. shares by the Respondent's wife,

(1) Can it be admitted that the Respondent, who became aware of the material facts of this case, instructed the Respondent's wife to make this transaction?
(2) Can if be admitted that the Respondent did this transaction on his own account?

Amount of administrative monetary penalty: 390,000 yen

Process following Recommendation
Date of decision on the commencement of trial procedures: June 19, 2009
Written reply submitted by Respondent (denied the facts on the violation): August 21, 2009

1st trial date:	September 10, 2009
2nd trial date:	October 8, 2009
3rd trial date:	November 16, 2009
4th trial date (trial conclusion):	January 28, 2010
Date of order to pay penalty:	March 16, 2010

3) Future Challenges

Five years have passed since the administrative monetary penalty system was introduced as a measure for achieving the administrative objectives of curbing violations of the FIEA so as to ensure the effectiveness of regulations, and we see an increasing tendency in the number of the Recommendations with respect to the cases of market misconduct including insider trading and market manipulation.

In the context of changes in the current environment surrounding the financial and securities markets in Japan, such as increase in complexity, diversification and globalization of the financial instruments and transactions, and also in the context of the spread of internet-based securities trading and so forth, the manner of violations has also changed considerably since when the system was introduced. As an administrative measure, the monetary penalty investigations are administrative investigations to collect evidence as a precondition for an order to pay an administrative monetary penalty (administrative action) which imposes monetary penalties on certain types of violators of the FIEA. Therefore it is considered, in principle, the degree of evidence-collection and proof in the monetary penalty investigations need not be as strict as that of investigations with respect to criminal trials and criminal cases. Because of these characteristics, the monetary penalty investigations can be made faster and more efficiently than the criminal investigations, which lead to curbing violations of the FIEA. The administrative monetary penalty system needs to be utilized more than ever as an effective tool of the market surveillance in order to make timely and quick responses to changes in the environment surrounding the financial and securities markets in Japan and to market movements as described above.

Hence, it is an urgent issue to, taking advantage of characteristics of the administrative monetary penalty system, apply that system more broadly, not only to the existing types of violating acts, but also to cross-border cases and composite cases, and to conduct prompt and efficient investigations thereof, which leads to ensuring market fairness and transparency and the protection of investors. Specifically, the SESC will be addressing the following issues:

(1) In response to changes in tendency of market misconduct cases such as an increase in insider trading related to tender offers etc., the SESC will make efforts to enhance investigation capabilities by devising investigation techniques and training, etc. and to develop human resources so that faster and more efficient investigations will be made.

(2) The SESC will exploit its monetary penalty investigation function flexibly and strategically as one of its means to actively respond to violations such as market manipulation using internet transactions, and to cases on complexly intertwined violations of market manipulation and fraudulent means and cross-border cases as well as insider trading.

(3) From the perspective of preventing market misconduct, the SESC will transmit information

through various channels: it will publish the *Casebook on the Administrative Monetary Penalties under the FIEA* which shows individual cases and also considers summarizing trend analyses thereof focused on the data to encourage self-discipline by market participants and construction of internal controls systems by listed companies.

5. Disclosure Documents Inspection

1) Outline

1. Purpose of Disclosure Documents Inspection

The disclosure system provides an accurate, fair and timely disclosure of the business contents and financial details, etc. of the disclosing company and its company group via the disclosure documents stipulated in the Financial Instruments and Exchange Act (FIEA) in order to enable sufficient investment decisions by investors in the primary and secondary markets for securities, and aims to protect the investors by providing them with an opportunity for them to decide the value of securities and to take other decisions necessary for making investments under their own responsibilities.

To ensure effectiveness of the disclosure system described above, the FIEA prescribes that, when the Prime Minister finds it necessary and appropriate, he/she may order a person who has filed a securities registration statement or a shelf registration statement, or a tender offeror or a person who has filed a large shareholding report, etc. to submit reports or materials, or may arrange inspection of their books, documents and other articles (hereinafter referred to as the "disclosure documents inspection") (regarding the specific authority, see 2 below). Previously, the authority for disclosure documents inspections was under the jurisdiction of the Kanto Local Finance Bureau, however, from the middle of October 2004, a string of inappropriate cases pertaining to disclosure under the Securities and Exchange Act (SEA) were identified. Thus, since July 2005, the authority to collect reports and inspect concerning annual securities reports, etc. containing false statements has been transferred to the Securities and Exchange Surveillance Commission (SESC) as part of the measures for strengthening the system of inspecting annual securities reports, etc. aimed at ensuring the reliability of the disclosure system.

When the administrative monetary penalty system was introduced in April 2005 in order to conduct monetary penalties investigations, the SESC placed jurisdiction over disclosure documents inspection in the Civil Penalties Investigation and Disclosure Documents Inspection Office established under the Coordination and Inspection Division. Then in July 2006, that office was reorganized into the "Civil Penalties Investigation and Disclosure Documents Inspection Division." Thereafter, it has been working on developing its organization for monetary penalties investigations of disclosure documents inspections and disclosure duty violations as well as those of market misconduct. Since July 2009, the Civil Penalties Investigation and Disclosure Documents Inspection Division has been working on inspections and investigations of the so-called unfair financing cases.

Disclosure documents inspections have been carried out to fully realize the function of the capital markets and to obtain investors' faith in the markets by means of (i) ensuring accurate company information provided to the markets quickly and fairly and (ii) suppressing breaches in the disclosure regulations.

2. Authority of Disclosure Documents Inspection

In the financial and capital markets in Japan, annual securities reports and other disclosure documents are submitted from approximately 4,400 disclosing companies, including approximately 3,700 listed companies. Specific authority for disclosure inspections of disclosure documents are as follows:

(1) The authority over requiring reporting from, and inspection with respect to, a person who has filed a securities registration statement, a person who has filed a shelf registration statement, a person who has filed an annual securities report, a person who has filed an internal control report, a person who has filed a quarterly securities report, a person who has filed a semiannual securities report, a person who has filed an extraordinary report, a person who has filed a share buyback report, a person who has filed a status report of parent company etc., a person who is found to have had an obligation to file any of these documents, an underwriter of securities, or any other related party or witness (Article 26 of the FIEA (including cases where it is applied mutatis mutandis pursuant to Article 27 of the FIEA))

(2) The authority over requiring reporting from, and inspection with respect to, a tender offeror, a person who is found to have had an obligation to have made a purchase or other type of acceptance of share certificates, etc. by tender offer, a person specially interested in either of these persons, or any other related party or witness(Article 27-22(1) of the FIEA (including cases where it is applied mutatis mutandis pursuant to Article 27-22-2(2) of the FIEA))

(3) The authority over requiring reporting from, and inspection with respect to, a person who has filed a subject company's position statement, a person who is found to have had an obligation to file a subject company's position statement, or any related party or witness (Article 27-22(2) of the FIEA)

(4) The authority over requiring reporting from, and inspection with respect to, a person who has filed a large shareholding report, a person who is found to have had an obligation to file a large shareholding report, a joint holder of either of these large shareholdings, or any other related party or witness (Article 27-30(1) of the FIEA)

(5) The authority over requiring reporting from the company that is an issuer of the shares, etc. related to a large shareholding report, or a witness (Article 27-30(2) of the FIEA)

(6) The authority over requiring reporting from, and inspection with respect to, an issuer who provided or publicized specified information, an issuer who is found to have had an obligation to provide or publicize specified information, an underwriter of securities related to specified information, or any other related party or witness (Article 27-35 of the FIEA)

(7) The authority over requiring reporting from a certified public accountant or audit firm that has conducted an audit certification (Article 193-2(6) of the FIEA)

(Note 1) The SESC has not been delegated authority for the following:

- The authority over requiring reporting from, and inspection with respect to, a person who has filed a securities registration statement, etc. before the effective date of the statement, etc. (Article 38-2(1)(i) and (ii) of the FIEA Enforcement Order)
- The authority over requiring reporting from, and inspection with respect to, a tender offeror, etc. or a

person who has filed a subject company's position statement, etc. during the tender offer period (Article 38-2(1)(iii) of the FIEA Enforcement Order)

(Note 2) The Commissioner of the Financial Services Agency (FSA) may also exercise the abovementioned authority to order the submission of a report and authority to inspect in cases where it is found urgently needed for the sake of ensuring public interest or protecting investors (provisory clause in Article 38-2(1) of the FIEA Enforcement Order); and these authorities and the authority described in Note 1 above have been delegated by the Commissioner of the FSA to the directors-general of the local finance bureaus, etc.

3. Violations Subject to Administrative Monetary Penalties, and Amounts of Administrative Monetary Penalties (Disclosure Related)

If, as a result of disclosure document inspections, disclosure documents are found to contain false statements, etc. pertaining to important matters, the SESC makes a recommendation for the issuance of an order to pay an administrative monetary penalty to the Prime Minister and the Commissioner of the FSA (Article 20 of the Act for Establishment of the FSA). In the event that a recommendation is made seeking the issuance of an order to pay an administrative monetary penalty, the Commissioner of the FSA (delegated by the Prime Minister) determines the commencement of trial procedures. Then, trial examiners conduct the trial procedures and prepare a draft decision on the case. Based on this draft decision, the Commissioner of the FSA (delegated by the Prime Minister) makes a decision on the issuance of the order to pay the administrative monetary penalty.

The Act for the Amendment of the Financial Instruments and Exchange Act, which was passed in June 2008, has made additional violations subject to administrative monetary penalties, and raised the amounts of administrative monetary penalties for violations that were already subject thereto. Currently, the violations subject to administrative monetary penalties and the amounts of those penalties are as follows：

(1) Act of having securities acquired or selling securities, through a public offering or secondary distribution etc., without submitting securities registration statements, etc. (offering disclosure for public offering or secondary distribution, etc.) (Article 172 of the FIEA)
Penalty: 2.25% of the total offering amount (4.5% in the case of shares)

(2) Act of having securities acquired or selling securities, through a public offering or secondary distribution etc., using a securities registration statement, etc. (offering disclosure for public offering or secondary distribution, etc.) containing false statements (Article 172-2 of the FIEA, Article 172 of the former FIEA)
Penalty: 2.25% of the total offering amount (4.5% in the case of shares)

(3) Act of not submitting an annual securities report, etc. (continuous disclosure documents for each business year) (Article 172-3 of the FIEA)
Penalty: Amount equivalent to the audit fee for the previous business year (or 4 million yen in the case that an audit was not conducted for the previous business year) (half of these amounts in the case of a quarterly or semiannual securities report)

(4) Act of submitting an annual securities report, etc. (continuous disclosure documents for each business year) containing false statements (Article 172-4 of the FIEA, 172-2 of the former FIEA)
Penalty: 6 million yen or 6/100,000 of the total market value of the issuer, whichever is greater (half of that amount in the case of a quarterly securities report, semiannual securities report or extraordinary report, etc.)

(5) Act of purchasing or accepting share certificates, etc. without issuing a public notice for commencing tender offer (Article 172-5 of the FIEA)
Penalty: 25% of the total purchase amount

(6) Act of issuing a public notice for commencing tender offer containing false statements, or submitting a tender offer notification, etc. containing false statements (Article 172-6 of the FIEA)
Penalty: 25% of the total market value of purchased share certificates, etc.

(7) Act of not submitting a large shareholding report or change report (Article 172-7 of the FIEA)
Penalty: 1/100,000 of the total market value of the issuer of the share certificates, etc.

(8) Act of submitting a large shareholding report or change report, etc. containing false statements (Article 172-8 of the FIEA)
Penalty: 1/100,000 of the total market value of the issuer of the share certificates, etc.

(9) Act of conducting specified solicitation, etc. without provision or publication of specified information on securities (Article 172-9 of the FIEA)
Penalty: 2.25% of the total offering amount (4.5% in the case of shares)

(10) Act of providing or publicizing specified information on securities, etc. containing false information (Article 172-10 of the FIEA)
Penalty: (a) In cases where the information on specified securities, etc. has been announced:
2.25% of the total offering amount (4.5% in the case of shares)

(b) In cases where the information on specified securities, etc. has not been announced:
The amount calculated by multiplying the amount in (a) by:
(The number of persons provided with the information on specified securities, etc.) / (The number of persons to whom the specified solicitation, etc. was made)

(11) Act of providing or announcing issuer's information, etc. containing false statements (Article 172-11 of the FIEA)
Penalty: (a) In cases where the information on the issuer, etc. has been announced:
6 million yen or 6/100,000 of the total market value of the issuer, whichever is greater

(b) In cases where the information on the issuer, etc. has not been announced:
The amount calculated by multiplying the amount in (a) by:
(The number of persons provided with the information on the issuer, etc.) /
(The number of persons to whom the information on the issuer, etc. should have been provided)

2) Recommendations Based on Disclosure Document Inspection Results

1. Situation of Recommendations for Issuance of Orders to Pay Administrative Monetary Penalties

(1) Situation of Recommendations

In FY2009, there were 10 cases of the Recommendations, totaling 711,479,998 yen in terms of monetary amount, in relation to violations of disclosure requirements such as disclosure documents containing false statements, etc. pertaining to important matters.

The Recommendations made in FY 2009 include those in relation to false statements in offering disclosure documents (Article 172-2 of the FIEA before amendment by Act 65 of the 2008 law (hereinafter referred to as the "former FIEA" in this chapter)) and recommendations in relation to false statements in ongoing disclosure documents (Article 172-2 of the former FIEA), and violation of a duty to submit a public notice for commencement of tender offer (172-5 of the FIEA). Of these, the first Recommendation was made on the case of the violation of an obligation to submit a public notice for commencement of tender offer where EBANCO HOLDINGS LIMITED purchased share purchase options issued by SAKHA DIAMOND Corp. outside of the financial instruments exchange markets without filing of a public notice for commencement of tender offer in despite of EBANCO having an obligation to file such public notice . (described in (2)(ii) below).

Also, there were wide-ranging of types of false statements in offering and ongoing disclosure documents: overstating net sales, recording fictitious sales, failure to record provision of allowance for doubtful accounts, understating provision of allowance for doubtful accounts, overstating inventory assets, etc.

The largest amount of administrative monetary penalty in FY2009 was 281,550,000 yen (false statements in annual securities reports, etc. for ARDEPRO Co., Ltd.).

* If disclosure documents has been found to contain false statements, etc. pertaining to important matters and an amendment report, etc. for such disclosure documents has not been submitted, a recommendation for an order shall be given to submit an amendment report, etc. as well as a Recommendation as described above (only two cases has been seen since 2005).

A recommendation to order submission of an amendment report, etc. is not given if the company voluntarily has made such amendment.

(2) Outline of Recommendations Issued

Of the cases of Recommendations in FY2009 based on disclosure documents inspection results, the following is an outline of the cases with Recommendations made from July 2009 to March 2010 (note).

Note: Cases from April to June 2009 are described in the BY2008 (July 2008 to June 2009) Edition of the

(i) Recommendation in relation to the false statements in the annual securities reports of Daisui Co., Ltd.

Daisui Co., Ltd. submitted to the Director-General of the Kinki Local Finance Bureau its annual securities report "containing false statements pertaining to important matters" as stipulated in Article 172-2(1) of the former FIEA, as described in the table below.

Annual securities report, etc.		False Statement			
Submission date	Document	Accounting period	Document related to financial calculation	Content (note)	Type
June 27, 2008	Annual securities report for its 73rd business year accounting period (annual securities report for period ended March 2008)	Consolidated accounting period from April 1, 2007 to March 31, 2008	Consolidated income statement	Consolidated net loss has been found to be 1,514 million yen, but was stated as 1,112 million yen.	Recording fictitious sales, etc.

Note: Rounded down to the nearest million yen.

[Date of Recommendation] July 3, 2009

[Amount of administrative monetary penalty] 3 million yen

[Process following Recommendation]

Date of decision on the commencement of trial procedures: July 3, 2009

Date of order to pay penalty: July 30, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(ii) Recommendation on no submission of public notice for commencement of tender offer concerning purchase of stock purchase options issued by EBANCO HOLDINGS LIMITED

EBANCO HOLDINGS LIMITED purchased outside of financial instruments exchange markets 9,582 stock purchase options (SAKHA DIAMOND Corp. No.8 Warrants) issued by SAKHA DIAMOND Corp. whose shares have been listed on the JASDAQ Securities Exchange, in the amount of 30 million yen, on March 25, 2009. This purchase has not been made by means of a tender offer and no submission of a public notice for commencement of tender offer has been made in despite of EBANCO having an obligation to follow these procedures as its holding ratios of shares etc. has reached 97.38 percent and there was no legal reason for exemption

The violations taken by this violator are found to correspond to the acts stipulated in Article 172-5 of the FIEA.

[Date of Recommendation] October 16, 2009

[Amount of administrative monetary penalty] 7.5 million yen

[Process following Recommendation]

Date of decision on the commencement of trial procedures: October 16, 2009

Date of order to pay penalty: November 25, 2009

Since a written reply admitting these facts was submitted by the violator was ordered to pay the penalty, no trial was conducted.

(iii) Recommendation in relation to the false statements in its annual securities reports, etc. of ARDEPRO Co., Ltd.

ARDEPRO Co., Ltd. has:

(1) Submitted to the Director-General of the Kanto Local Finance Bureau its annual securities reports, etc. "containing false statements pertaining to important matters," as stipulated in Article 172-2(1) and (2) of the former FIEA, as shown in the table below.

No.	Annual securities report, etc.		False Statement			
	Submission date	Document	Accounting period	Document related to financial calculation	Content (note)	Type
1	April 17, 2006	Semiannual report for the 19th business year interim consolidated accounting period (Semiannual report for half-year ended January 2006)	Interim consolidated accounting period from August 1, 2005 to January 31, 2006	Interim consolidated income statement	Consolidated interim net income has been found to be 1,009 million yen, but was stated as 1,425 million yen	Overstating net sales
2	October 26, 2007	Annual securities report for 20th business year consolidated accounting period (Annual securities report for period ended July 2007)	Consolidated accounting period from August 1, 2006 to July 31, 2007	Consolidated income statement	Consolidated net income has been found to be 4,710 million yen, but was stated as 6,512 million yen	Recording fictitious sales, failure to record provision of allowance for doubtful accounts
3	April 30, 2008	Semiannual report for 21st business year interim consolidated accounting period (Semiannual report for half-year ended January 2008)	Interim consolidated accounting period from August 1, 2007 to January 31, 2008	Interim consolidated income statement	• Consolidated ordinary loss has been found to be 2,379 million yen, but positive 6,705 million yen was stated as income • Consolidated interim net loss has been found to be 7,807 million yen, but positive3,915 million yen was stated as income	Overstating net sales, failure to record provision of allowance for doubtful accounts, etc.
				Interim consolidated balance sheet	Consolidated net assets have been found to be 24,965 million yen, but were stated as 38,491 million yen	

No.	Annual securities report, etc.		False Statement			
	Submission date	Document	Accounting period	Document related to financial calculation	Content (note)	Type
4	October 31, 2008	Annual securities report for 21st business year consolidated accounting period (Annual securities report for year ended July 2008)	Consolidated accounting period from August 1, 2007 to July 31, 2008	Consolidated income statement	• Consolidated ordinary income has been found to be 7,903 million yen, but positive1,129 million yen was stated as income • Consolidated net loss has been found to be 26,125 million yen, but was stated as10,413 million yen	Overstating net sales, overstating inventory assets, etc.
				Consolidated balance sheet	Consolidated net assets have been found to be 5,998 million yen, but were stated as 23,512 million yen	
5	December 15, 2008	Quarterly report for 22nd business year 1st quarter consolidated accounting period (Quarterly report for 1st quarter ended October 2008)	First quarter consolidated accounting period from August 1, 2008 to October 31, 2008	Quarterly consolidated balance sheet	Consolidated net assets have been found to be negative 1,107 million yen, but were stated as positive 13,972 million yen	Overstating inventory assets
6	March 17, 2009	Quarterly report for 22nd business year 2nd quarter consolidated accounting period (Quarterly report for 2nd quarter ended January 2009)	Second quarter consolidated accounting period from November 1, 2008 to January 31, 2009	Quarterly consolidated balance sheet	Consolidated net assets have been found to be negative 8,564 million yen, but were stated as positive 6,015 million yen	Overstating inventory assets
7	June 15, 2009	Quarterly report for 22nd business year 3rd quarter consolidated accounting period (Quarterly report for 3rd quarter ended April 2009)	Third quarter consolidated accounting period from February 1, 2009 to April 30, 2009	Quarterly consolidated balance sheet	Consolidated net assets have been found to be negative 11,014 million yen, but were stated as positive 1,045 million yen	Overstating inventory assets

Note: Rounded down to the nearest million yen. In balance sheets, negative assets indicate a deficit in consolidated net assets.

(2) Regarding the securities registration statements, to the Director-General of the Kanto Local Finance Bureau

(i) submitted on April 28, 2006 the securities registration statement with the semiannual report for half-year ended January 2006 as a reference document, and had others acquire its 21,339 shares in the amount of 3,499,596,000 yen through solicitation based on that securities registration statement on May 22, 2008.

(ii) submitted on August 6, 2008 the securities registration statement with the annual

securities report for period ended July 2007 and semiannual report for half-year ended January 2008 as reference documents, and had others acquire bonds with share options in the amount of 10,002,720,000 yen by public offering based on that securities registration statement on August 27, 2008.

The above violations taken by this company correspond to the acts stipulated in Article 172(1)(i) of the former FIEA.

[Date of Recommendation] November 24, 2009

[Amount of administrative monetary penalty] 281,550,000 yen

[Process following Recommendation]

Date of decision on the commencement of trial procedures: November 24, 2009

Date of order to pay penalty: December 25, 2009

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(iv) Recommendation in relation to the false statements in its annual securities reports, etc. of SBR INC.

SBR INC. submitted to the Director-General of the Kanto Local Finance Bureau its annual securities reports, etc. "containing false statements pertaining to important matters" as stipulated in Article 172-2(1) and (2) of the former FIEA, as shown in the table below.

No.	Annual securities report, etc.		False Statement			
	Submission date	Document	Accounting period	Document related to financial calculation	Content (note)	Type
1	January 4, 2008	Semiannual report for 11th business year interim consolidated accounting period (Semiannual report for half-year ended September 2007)	Interim consolidated accounting period from April 1, 2007 to September 30, 2007	Interim consolidated income statement	Consolidated interim net loss has been found to be 3,776 million yen, but was stated as 1,643 million yen	Understating provision of allowance for doubtful accounts, overstating net sales, etc.
2	June 30, 2008	Annual securities report for 11th business year consolidated accounting year (Annual securities report for year ended March 2008)	Consolidated accounting year from April 1, 2007 to March 31, 2008	Consolidated income statement	Consolidated net loss has been found to be 6,437 million yen, but stated as 3,533 million yen	Understating provision of allowance for doubtful accounts, overstating net sales, etc.
3	August 14, 2008	Quarterly report for 12th business year 1st quarter consolidated accounting period (Quarterly report for 1st quarter ended June 2008)	1st quarter consolidated cumulative period from April 1, 2008 to June 30, 2008	Quarterly consolidated income statement	Consolidated quarterly net loss has been found to be 580 million yen, but positive 106 million yen was stated as income	Understating provision of allowance for doubtful accounts, overstating net sales, etc.
			1st quarter consolidated accounting period from April 1, 2008 to June 30, 2008	Quarterly consolidated balance sheet	Consolidated net assets have been found to be 12,659 million yen, but was stated as16,223 million yen	

No.	Annual securities report, etc.		False Statement			
	Submission date	Document	Accounting period	Document related to financial calculation	Content (note)	Type
4	November 14, 2008	Quarterly report for 12th business year 2nd quarter consolidated accounting period (Quarterly report for 2nd quarter ended September 2008)	2nd quarter consolidated cumulative period from April 1, 2008 to September 30, 2008	Quarterly consolidated income statement	Consolidated quarterly net loss has been found to be 1,476 million yen, but was stated as 30 million yen	Understating provision of allowance for doubtful accounts, overstating net sales, etc.
			2nd quarter consolidated accounting period from July 1, 2008 to September 30, 2008	Quarterly consolidated balance sheet	Consolidated net assets have been found to be 11,732 million yen, but stated as 16,057 million yen	
5	February 13, 2009	Quarterly report for 12th business year 3rd quarter consolidated accounting period (Quarterly report for 3rd quarter ended December 2008)	3rd quarter consolidated cumulative period from April 1, 2008 to December 31, 2008	Quarterly consolidated income statement	Consolidated quarterly net loss has been found to be 3,561 million yen, but was stated as 1,651 million yen	Understating provision of allowance for doubtful accounts, overstating net sales, etc.
			3rd quarter consolidated accounting period from October 1, 2008 to December 31, 2008	Quarterly consolidated balance sheet	Consolidated net assets have been found to be 9,402 million yen, but stated 14,190 million yen	

Note: Rounded down to the nearest million yen.

[Date of Recommendation] January 29, 2010

[Amount of administrative monetary penalty] 6 million yen

[Process following Recommendation]

Date of decision on the commencement of trial procedures: January 29, 2010

Date of order to pay penalty: February 23, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

(v) Recommendation in relation to the false statements in its annual securities reports, etc. of modulat inc.

Modulat inc. submitted to the Director-General of the Kanto Local Finance Bureau its annual securities reports, etc. “containing false statements pertaining to important matters” as stipulated in Article 172-2(1) and (2) of the former FIEA, and Article 172-4(2) of the FIEA, as shown in the table below.

No.	Annual securities report, etc.		False Statement			
	Submission date	Document	Accounting period	Document related to financial calculation	Content (note)	Type
1	August 28, 2008	Annual securities report for 9th business year accounting period (Annual securities report for year ended May 2008)	Accounting period from June 1, 2007 to May 31, 2008	Income statement	• Ordinary income has been found to be 46 million yen, but was stated as 102 million yen • Net income has been found to be 1 million yen, but was stated as 61 million yen	Understating provision of allowance for doubtful accounts, etc.
2	October 14, 2008	Quarterly report for 10th business year 1st quarter accounting period (Quarterly report for 1st quarter ended August 2008)	1st quarter cumulative period from June 1, 2008 to August 31, 2008	Quarterly income statement	• Ordinary loss has been found to be 144 million yen, but was stated as 26 million yen • Quarterly net loss was 144 million yen, but stated 16 million yen	Understating provision of allowance for doubtful accounts, etc.
			1st quarter accounting period from June 1, 2008 to August 31, 2008	Quarterly balance sheet	Net assets have been found to be 417 million yen, but was stated as 606 million yen	
3	January 14, 2009	Quarterly report for 10th business year 2nd quarter accounting period (Quarterly report for 2nd quarter ended November 2008)	2nd quarter cumulative period from June 1, 2008 to November 30, 2008	Quarterly income statement	• Ordinary loss has been found to be 215 million yen, but was stated as 96 million yen • Quarterly net loss has been found to be 261 million yen, but was stated as 144 million yen	Understating provision of allowance for doubtful accounts, etc.
			2nd quarter accounting period from September 1, 2008 to November 30, 2008	Quarterly balance sheet	Net assets have been found to be 295 million yen, but was stated as 473 million yen	

No.	Annual securities report, etc.		False Statement			
	Submission date	Document	Accounting period	Document related to financial calculation	Content (note)	Type
4	April 14, 2009	Quarterly report for 10th business year 3rd quarter accounting period (Quarterly report for 3rd quarter ended February 2009)	3rd quarter cumulative period from June 1, 2008 to February 28, 2009	Quarterly income statement	• Ordinary loss has been found to be 271 million yen, but was stated as 166 million yen • Quarterly net loss has been found to be 440 million yen, but was stated as 337 million yen	Understating provision of allowance for doubtful accounts, etc.
			3rd quarter accounting period from December 1, 2008 to February 28, 2009	Quarterly balance sheet	Net assets have been found to be 119 million yen, but was stated as 281 million yen	
5	August 27, 2009	Annual securities report for 10th business accounting period (Annual securities report for year ended May 2009)	Accounting period from June 1, 2008 to May 31, 2009	Income statement	• Ordinary loss has been found to be 241 million yen, but was stated as 145 million yen • Net loss has been found to be 459 million yen, but was stated as 366 million yen	Understating provision of allowance for doubtful accounts, etc.
				Balance sheet	Net assets have been found to be 99 million yen, but was stated as 253 million yen	
6	October 14, 2009	Quarterly report for 11th business year 1st quarter accounting period (Quarterly report for 1st quarter ended August 2009)	1st quarter accounting period from June 1, 2009 to August 31, 2009	Quarterly balance sheet	Net assets have been found to be 118 million yen, but was stated as 262 million yen	Understating provision of allowance for doubtful accounts, etc.

Note: Rounded down to the nearest million yen.

[Date of Recommendation] March 12, 2010

[Amount of administrative monetary penalty] 9 million yen

[Process following Recommendation]

Date of decision on the commencement of trial procedures: March 12, 2010

Date of order to pay penalty: April 6, 2010

Since a written reply admitting these facts was submitted by the violator, no trial was conducted.

2. Voluntary Amendments, etc. Triggered by Disclosure Document Inspections

In addition to the recommendations described in "1. Situation of Recommendations for Issuance of Orders to Pay Administrative Monetary Penalties," even in cases where, as a result of disclosure document inspection, disclosure documents have been not found to contain false statements, etc. pertaining to important matters but it has been recognized that it is necessary for the relevant disclosing company to make amendments to such annual securities reports, etc., that company would be urged to do so voluntarily.

● FY2009 Situation

Total number of inspections completed		23
(of these inspections)	Recommended issuance of an order to pay an administrative monetary penalty	10
	Did not recommend issuance of an order to pay an administrative monetary penalty, but urged voluntary amendment	1

3) Future Challenges

The aims of disclosure document inspections are to fully realize the function of the capital markets and to obtain investors' faith in the markets by means of (i) ensuring accurate company information provided to the markets quickly and fairly and (ii) suppressing breaches in the disclosure regulations. In performing disclosure document inspections, very numerous and diverse parties obligated to disclose documents have been subject to law-enforcement, including approximately 3,700 listed companies which have not been under administrative supervision. Also, the environment surrounding securities markets is changing greatly daily. While keeping these factors in mind, more diverse and advanced disclosure inspections are required in terms of the following perspectives:

(1) In order to accurately collect and analyze a variety of public and non-public information regarding the securities markets, the SESC will strengthen our system for collecting and analyzing various information inside and outside the markets, and develop our system for efficiently finding leads on concealed false statements, etc.

(2) As part of our unceasing efforts to improve inspection technologies and techniques, the SESC will analyze and classify improper accounting procedures revealed in past disclosure violations in order to develop more advanced disclosure document inspection technologies and techniques. Also the SESC will work to develop techniques to collect and analyze disclosed information in order to accurately perform disclosure document inspections under the International Financial Reporting Standards (IFRS).

(3) The SESC will promote cooperation with administrative departments of the FSA, and also strengthen cooperation with financial instrument exchanges, the Institute of Certified Public Accountants and audit firms by sharing the SESC's identified challenges and related information on window-dressing cases, etc.

(4) As part of developing an environment to encourage proper self-regulating disclosure by parties obligated to disclose documents, the SESC will conduct the disclosure document inspections, etc. to encourage disclosing companies to ensure proper information disclosure made quickly thorough voluntary amendments, etc. in consideration of the purpose of introducing the administrative monetary penalty reduction system and the essence of the disclosure system. In addition, the SESC will work to improve the contents in the *Casebook on the Administrative Monetary Penalties under the FIEA* by means of analyzing the trend and stating summaries of cases which did not reach the stage of recommendations but are appropriate examples, etc.

In accordance with these basic concepts, considering that the worsening of the real economy resulting from the global financial crisis has affected finances of corporations and this has brought increased risks in causing window-dressing, the SESC will execute very detailed and prompt disclosure document inspections and, where violations of laws and regulations are found, recommend issuance of an order to pay an administrative monetary penalty, an order to submit an amendment report, etc.

6) Investigations and Formal Complains in Criminal Cases

1) Outline

In order for Japan's securities markets to properly exhibit their market functions, it is essential that investors and other market participants trust the markets. To this end, as the "market's watchman," the Securities and Exchange Surveillance Commission (SESC) works to ensure market transparency and fairness by constantly monitoring the status of compliance with market rules and imposing strict penalties for rule violations.

Since it was established in 1992, the SESC has been granted the authority to investigate and make formal complaints in malicious criminal cases which impair market fairness, such as insider trading, market manipulation, and submission of false annual securities reports ("window-dressing"). A total of 134 formal complaints have been filed until now. In response to the environmental changes of increased complexity, diversity and globalization of financial instruments and exchange, the SESC is working to achieve timely and comprehensive oversight with more strategic focus. Recent years have especially seen the appearance of fraudulent financing (unfair financing) and other complex and malicious composite cases involving both the primary and secondary markets. Strong efforts are being made for comprehensive and flexible market surveillance with an eye on the overall primary and secondary markets as the highest priority issue.

Amidst advancing globalization, to prevent any gaps opening up in its market surveillance, the SESC actively is cooperating with overseas regulators and building stronger surveillance of cross-border market misconduct.

The evolution of online trading has brought an increase in new types of criminal conduct which exploit the characteristics of online trading. The SESC is earnestly working on surveillance against such criminal conduct.

As a result of such efforts, a total of 17 formal complaints were filed in FY2009 (there were 13 cases in BY2008): 3 cases of fraudulent means involving unfair financing, 7 cases of insider trading (including 1 cross-border case), 3 market manipulation cases (1 case by a technique of false buying or selling offers which used online trading, and 2 cases involving both the primary and secondary markets involving unfair financing), and 4 cases of submission of false annual securities reports, etc. including a capital increase based on window-dressing of accounts.

2) Purpose and Authority of Criminal Case Investigations

1. Purpose of Criminal Case Investigations

For the purpose of maintaining financial and capital markets in which investors and other market participants are able to participate with a sense of security, it is important to ensuring the fairness and transparency of these markets, and to nurture feelings of trust among all market participants. One way of doing this is by strictly punishing any offenders of market rules. With an aim of clarifying the truth behind any malicious acts that impair the fairness of these financial instruments and transactions, the authority for investigating criminal cases was vested in the SESC in conjunction with its inception in 1992.

The investigation of criminal cases is prescribed in the Financial Instruments and Exchange

Act (FIEA) as an authority inherent to the SESC officials. The targeted scope of this authority is not limited to just financial instruments business operators. The SESC can also exercise this authority over investors and all other persons involved in financial instruments transactions and so forth. Furthermore, the SESC has also been given the authority to investigate criminal cases under the Act on Prevention of Transfer of Criminal Proceeds (APTCP), in which the FIEA is applied *mutatis mutandis* in this regard.

Financial instruments and transactions are becoming more and more complex, diversified and globalized. Therefore, in order to investigate criminal cases comprehensively and flexibly, the SESC conducts investigations of criminal cases focused on both primary and secondary markets.

2. Authority and Scope of Criminal Case Investigations

More specifically, the SESC has two types of authority related to the investigation of criminal cases. The SESC is authorized to conduct noncompulsory investigations, including questioning a suspect in, or witness to, a violation of the law or regulations (hereinafter referred to as a "suspected offender, etc."), inspecting articles possessed or left behind by a suspected offender, etc., and provisionally holding articles provided voluntarily or left behind by a suspected offender, etc. (Article 210 of the FIEA). The SESC is also authorized to carry out compulsory investigations, namely official inspections, searches and seizures conducted based on a warrant issued by a judge of the court (Article 211 of the FIEA, etc.).

The scope of criminal cases is specified by a government ordinance as a category of acts impairing fair securities trading (Article 45 of the FIEA Enforcement Order). Most typical criminal cases include the submission of a false annual securities report by an issuing company, insider trading by a corporate insider, and the spreading of rumors, fraudulent means and market manipulation by any persons.

Under the APTCP, in cases where a financial instruments business operator confirms the identity of individuals, an act by a customer to conceal his or her name or address is also subject to investigation as a criminal case.

At the conclusion of a criminal case investigation, the SESC official reports the results of the investigation to the SESC (Article 223 of the FIEA, Article 28 of the APTCP). In the event the investigation leads the SESC to believe that the case constitutes a violation, it files a formal complaint, and if there are any items that have been retained or seized, it sends this together with a list of retained/seized articles to a public prosecutor (Article 226 of the FIEA, Article 28 of the APTCP).

3) Investigations of Criminal Cases and Filing of Formal Complaints

1 Investigations of Criminal Cases

With respect to the formal complaints filed during FY 2009, the SESC conducted the compulsory investigations of the residences and relevant offices of suspected offenders, etc., as well as noncompulsory investigations.

In order to perform effective and efficient investigations, the SESC has been working in cooperation with other investigative bodies corresponding to the circumstances of the case. The SESC performed compulsory investigations and searches together with the Osaka

Prefectural Police Headquarters for the market manipulation and fraudulent means case involving Union Holdings Co., Ltd., and with the Metropolitan Police Department for the fraudulent means case involving Transdigital Co., Ltd.

2 Filing of Formal Complaints

In FY2009, based on the results of criminal case investigations, the SESC filed formal complaints with the following district public prosecutors offices for a total of 17 cases (46 individuals), which consisted of 7 cases (13 individuals) of suspected insider trading, 3 cases (13 individuals) of suspected market manipulation, 3 cases (10 individuals) of suspected fraudulent means, and 4 cases (10 individuals) of suspected submission of false annual securities reports etc.

Name of case	Formal complaint date	Office at which formal complaints filed
Insider trading in J.Bridge Corp. shares by a managing executive officer	April 22, 2009	Tokyo District Public Prosecutor's Office
Cross-border insider trading in J.Bridge Corp. shares by a former chairman of the board of directors using overseas dummy accounts	April 27, 2009	
Fraudulent means involving unfair financing using capital increase through the allocation of shares to a third-party by Paint House Co., Ltd.	July 14, 2009	
Market manipulation by a day trader group using techniques such as false buying or selling offers by online trading	September 29, 2009	
Large-scale insider trading in The Goodwill Group, Inc. shares	October 20, 2009	
Insider trading in Telewave, Inc. shares	December 15, 2009	
Insider trading related to a tender offer for the shares of Chugai Pharmaceutical Co., Ltd.	December 15, 2009	
Fraudulent means related to unfair financing by fictitious capital increase of Transdigital Co., Ltd.	March 26, 2010	Tokyo District Public Prosecutor's Office
Union Holdings Co., Ltd. cases (1) (2) related to market manipulation of Union Holdings Co., Ltd. shares by its managing director	(1) November 24, 2009 (2) February 9, 2010	Osaka District Public Prosecutor's Office
Fraudulent means related to unfair financing by watered capital of Union Holdings Co., Ltd.	December 24, 2009	

Insider trading related to shares of Takes Group Ltd. by its substantial manager	March 16, 2010	
Produce Co., Ltd. cases (2) (3) relating to the submission of false securities registration statements, etc., including one for initial public offering, in collusion with a certified public accountant	April 28, 2009	Saitama District Public Prosecutor's Office
Insider trading by employees of Nissan Diesel Motor Co., Ltd. related to a tender offer for its shares	July 31, 2009	
NIWS Co. HQ Ltd. cases (1) (2) related to submission of false annual securities reports etc.	(1) March 2, 2010 (2) March 19, 2010	Yokohama District Public Prosecutor's Office

3 Outline of Formal Complaints

(1) Formal Complaints against Market misconduct

(i) Fraudulent means involving unfair financing using capital increase through the allocation of shares to a third-party by Paint House Co., Ltd.

As managing director of Sovereign Asset Management Japan Co., Ltd. which was engaged in investment advisory business, the suspected offender provided guidance support for the business revitalization and continuation, etc. of Paint House Co., Ltd. A total of 278,000 new shares issued by Paint House were acquired under the name of Lotus Investment Partners which was substantially controlled by the suspected offender. In fact, most of the funds paid by the partnership in this acquisition were immediately transferred out of the company, but that information was concealed, and by announcing false information indicating that suitable capital enhancement was provided by that payment, he supported a rise in that company's share price, in an attempt to sell the company's shares just acquired in order to gain profit. In order to trade the company's shares, and with the aim of supporting a rise in the company's share price, 341,384,000 yen for share subscription rights was paid in the name of a managing partner of that partnership into the company's share payment deposit account on May 26, 2005. On that date, officers of the company published false information indicating a capital increase by exercise of the share subscription rights for the above shares, via the TDnet timely disclosure system provided by the Tokyo Stock Exchange (TSE). Furthermore, 330,750,000 yen of the above amount was transferred out of the company on May 27, recorded as a software purchase. The false information that a 278,000 shares capital increase was performed by executing share subscription rights on May 26 was published via TDnet on May 31. Fraudulent means were thereby used in order to trade securities, and in an attempt to cause fluctuations in the prices of securities.

(ii) Insider trading by employees of Nissan Diesel Motor Co., Ltd. related to a tender offer for its shares

Suspected offender A belonged to the B to B Business Department of Nissan Diesel

Motor Co., Ltd., and worked as an assistant to the officer in charge of that department. Nissan Diesel Motor and the automotive manufacturer Aktiebolaget Volvo which has its headquarters in the Kingdom of Sweden had concluded with NA Co., Ltd. (a company with the purpose of purchasing all the shares issued by Nissan Diesel Motor) a confidentiality agreement concerning execution of a tender offer. That officer knew about the performance of said agreement. Around February 13, 2007, in the course of her duties about the tender offer execution, suspected offender A came to know that the organ which is responsible for making decisions on the execution of the operations of NA Co., Ltd. had decided on its tender offer for Nissan Diesel shares. Suspected offender B was the husband of suspected offender A. Despite there being no statutory grounds for exclusion, during the period from February 14 to March 16, 2008, prior to these facts being announced, both suspected offenders conspired to buy under the name of suspected offender B a total of 300,000 Nissan Diesel Motor shares for a total price of 133,097,000 yen.

(iii) Market manipulation by a day trader group using techniques such as false buying or selling offers by online trading

Three suspected offenders conspired with the aim of financial gain.

No.1 In an attempt to raise the price of Hitachi Zosen Corporation shares and to induce active trading in the shares, on June 19, 2006, did a series of transactions via securities companies: purchased its shares by methods such as a series of high limit orders and edge prices up, and consigned purchases of its shares by methods such as placing large low price buy orders. This pushed its share price up from 156 to 161 yen, and the suspected offenders then sold a total 1,393,000 of its shares at those lifted share prices;

No.2 On the same date, after the sale by described in No.1 above, again with the same goal, did a series of transactions to consign purchases of Hitachi Zosen Corporation by methods such as placing large low price buy orders for its shares. This pushed its share price up from 161 to 163 yen, and the suspected offenders then sold a total 702,000 of its shares at those lifted share prices;

No.3 On the same date, with the same goal with respect to Mitsui Mining and Smelting Co., Ltd. shares, did a series of transactions: purchased its shares by methods such as a series of high limit orders for edging prices up, and consigned purchases by methods such as placing large low price buy orders. This pushed its share price up from 265 to 277 yen, and the suspected offenders then sold total 336,000 of its shares at those lifted share prices.

Each of them thereby created misunderstanding that there was active trading in these shares, and did a series of trades to cause fluctuations in the prices of these shares and to consign their purchases, trading those shares at the share prices being pushed up.

(iv) Large-scale insider trading in The Goodwill Group, Inc. shares

The suspected offender was the recipient of communication of the following material fact from the managing director of Goodwill Engineering, Inc., which had signed an outsourcing contract with The Goodwill Group, Inc. In performing that contract, the director learned that

the organ which was responsible for making decisions on the execution of the operations of The Goodwill Group, Inc. decided to acquire 67 percent of the shares of Crystal Co., Ltd. in order to make it a subsidiary. Despite there being no statutory grounds for exclusion, on November 7 and 10, 2006, prior to these material facts being announced, the suspected offender purchased a total of 15,000 The Goodwill Group, Inc. shares for a total price of 1,086,735,000 yen.

(v) Union Holdings Co., Ltd. case (1) related to market manipulation of Union Holdings Co., Ltd. shares by its representative director

With the aim of financial gain, suspected offenders A, B, C, D, E, F, G, H and I conspired to attempt to raise the price of shares of Union Holdings Co., Ltd. Over the period of 10 trading days from April 13 to 26, 2007, to induce active trading in the shares, they did a series of trades under the name of B and other names via multiple securities companies: purchasing a total of 9,702,100 of its shares, by methods such as placing a series of high limit orders and edging prices up, while also selling a total 8,159,200 shares. By methods such as placing large low price buy orders, they also consigned purchases of a total 1,590,500 of its shares. They thereby created the misunderstanding that there was active trading in the shares, and did a series of trades and consignments to cause fluctuations in the prices of the shares. Moreover, with the aim of creating the misunderstanding among other people such as making other people misunderstand that the shares were being traded actively, the suspected offenders sold and simultaneously purchased a total 4,636,800 of these shares via multiple securities companies under the name of B and other names, thereby doing fictitious trades without the aim of transferring rights. These manipulative transactions pushed the share price up from 154 to 179 yen. During this period of 10 trading days mentioned above, whilst the share price was pushed up, they sold 10,659,200 Union Holdings Co., Ltd. shares.

(vi) Insider trading in Telewave, Inc. shares

Around November 13, 2006, suspected offender A received information on a material fact concerning the business of Telewave, Inc., which might have a significant influence on investors' investment decisions, that is, a difference had arisen between new forecasts calculated by the company for sales and ordinary income of the Telewave's company group in the business year from April 1, 2006 to March 31, 2007 and the forecasts previously announced to the public on May 29, 2006, and these differences fell under the criteria provided by a cabinet order as differences that may have a material influence on investors' investment decisions. This information was received from an employee of Telewave, Inc., who had come to know of this fact in the course of the employee's own duties. Suspected offenders B and C are acquaintances of suspected offender A.

No.1 Prior to publication of the said material fact, suspected offenders A and B conspired to sell Telewave, Inc. shares by margin transactions, and buy it back after its publication, thereby gaining profit. Despite there being no statutory grounds for exclusion for either of them, during the period from November 15 to 20, 2006, they sold under the name of B via a securities company a total of 387 Telewave, Inc. shares for a total price of 70,689,000 yen;

No.2 Prior to publication of the said material fact, suspected offenders A and C conspired to sell Telewave, Inc. shares by margin transactions, and buy it back after its publication, thereby gaining profit. Despite there being no statutory grounds for exclusion for either of them, on November 17 they sold under the name of C via a securities company a total of 250 Telewave, Inc. shares for a total price of 44,850,000 yen.

(vii) Insider trading related to a tender offer for the shares of Chugai Pharmaceutical Co., Ltd.

Around May 21, the suspected offender received information on execution of a tender offer, that is, the organ which was responsible for making decisions on the execution of the operations of Roche Pharmholding B.V. had decided to make a tender offer for Chugai Pharmaceutical Co., Ltd. shares. This information was received from an employee of Chugai Pharmaceutical Co., Ltd., which had signed a basic cooperation contract with Roche Pharmholding B.V. This employee had come to know of this fact in the course of performing this contract. Prior to publication of the said fact, despite there being no statutory grounds for exclusion, in an attempt to gain profit, on May 22 the suspected offender purchased via securities companies a total of 382,900 Chugai Pharmaceutical Co., Ltd. shares for a total price of 62,298,500 yen.

(viii) Fraudulent means related to unfair financing by watered capital of Union Holdings Co., Ltd.

The suspected offender, conspiring with several persons related to the suspected corporation Union Holdings Co., Ltd., on the business and property of Union Holdings Co., Ltd., with respect to a capital increase through the allocation of shares to third-parties and issuance of share subscription rights by allocation to third-parties, the allottees of which included IABjapan Co., Ltd., announced by Union Holdings Co., Ltd. on February 1, 2008, planned to conduct fraudulent schemes including the publication of false information with a view to push up and maintain the share price of Union Holdings Co., Ltd. and then sell the new shares planned to be issued by the above capital increase through the allocation of shares to third-parties and by exercise of the above share subscription rights,

No.1 IABjapan Co., Ltd. was in fact no more than a corporation without substance established to be a nominal allottee in the above capital increase through the allocation of shares to third-parties. IABjapan did not actually have the ability to provide funds to pay the 459,810,000 yen for the above capital increase through the allocation of shares to third-parties. Also, IABjapan could not arrange other parties to invest this payment amount for its allocated portion. Despite this, this information was concealed, and on February 1, 2008, via the TDnet timely disclosure system provided by the TSE, Inc., false information was published indicating that IABjapan was a related company with funding ability introduced by a Malaysia OTC listed corporation, and would actually provide funds as an investor in the above capital increase through the allocation of shares to third-parties;

No.2 In fact, 204,810,000 yen of the payment under the name IABjapan Co., Ltd. for the above capital increase through the allocation of shares to third-parties was only show money. Despite this, this information was concealed, and on February 18, 135

million yen was deposited in the name of IABjapan into an account of Union Holdings Co., Ltd. as the above capital increase through the allocation of shares to third-parties. Adding other funds to this, a total 205 million yen were placed into an account in the name of IABjapan via accounts of another company, and a total of 324,810,000 yen including other payment money was deposited again into the above account as a second payment from IABjapan. This worked to pretend that the entire 459,810,000 yen was actually paid by IABjapan for the above capital increase through the allocation of shares to third-parties. False information was published via the above TDnet on February 18, to the effect that there was a capital increase by 18,510,000 new shares and 126 share subscription rights allocated to third-parties;

Fraudulent means were thus used in order to trade securities, and in an attempt to cause fluctuations in the prices of securities.

(ix) Union Holdings Co., Ltd. case (2) related to market manipulation of Union Holdings Co., Ltd. shares by its managing director

With the aim of financial gain, the suspected offender conspired with suspected offenders A, B and C of case (v) above to attempt to raise the price of shares of Union Holdings Co., Ltd. Over the period of 10 trading days from April 13 to 26, 2007, in order to induce active trading in the shares, the suspected offender was involved in a series of trades under the name of suspected offender B and other names via multiple securities companies: purchased a total of 9,460,300 Union Holdings Co., Ltd. shares by methods such as placing a series of high limit orders and edging prices up, and sold a total of 7,772,400 shares. The suspected offender and accomplices also consigned purchases of a total of 1,480,000 shares by methods such as placing large low price buy orders. They thereby did a series of trades and consignments to create the misunderstanding that there was active trading in the shares, and to cause fluctuations in the prices of the shares. With the aim of creating the misunderstanding among other people about trading conditions for those shares, such as that there was active trading in the shares, during this period of 10 trading days mentioned above, they sold and simultaneously purchased a total of 4,278,100 shares via multiple securities companies, under the name of suspected offender B and other names. The suspected offender and accomplices thereby did fictitious trades without the aim of transferring rights. These manipulative transactions pushed the share price up from 154 to 179 yen. During this period of 10 trading days mentioned above, after the share price was pushed up, they sold 10,946,700 Union Holdings Co., Ltd. shares under multiple names including the suspected offender.

(x) Insider trading related to shares of Takes Group Ltd. by its substantial manager

On September 1, 2008, Takes Group Ltd. (Until August 31, 2008, its name was Tokyo Koki Seizosho Limited. Referred to below as “Takes Group” or “Tokyo Koki Seizosho,” corresponding to whether it was before or after the name change.) announced a capital increase by issuance of new shares allocated to a third-party.

No.1 Around May 28, 2008, suspected offender A, in the course of performing duties, came to know a material fact about the business of Tokyo Koki Seizosho, that is,

the organ which was responsible for making decisions on the execution of the operations of Tokyo Koki Seizosho had decided to solicit a party which would underwrite shares.

1. During the period from June 4 to August 26, 2008, prior to this fact being announced, despite there being no statutory grounds for exclusion, suspected offenders A and B conspired to purchase a total of 342,000 Tokyo Koki Seizosho shares for a total price of 27,267,000 yen, via multiple securities companies under names including suspected offender A;

2. During the period from August 21 to 28, 2008, prior to this fact being announced, despite there being no statutory grounds for exclusion, suspected offenders A, C and D conspired to purchase a total of 89,000 Tokyo Koki Seizosho shares for a total price of 8 million yen, via multiple securities companies under the name of suspected offender D;

No.2 On September 16, 2008, suspected offender A came to know in the course of performing duties that, regarding the capital increase by issuance of new shares allocated to a third-party as described above, it was certain that the issuance of new shares corresponding to about 90% of the expected total payment amount would abort, and there was no more prospect of securing funds to invest in subsidiary business, which had been regarded as core business in order to enhance consolidated results, etc. This was a material fact concerning the operation, business and property of Takes Group that might have a significant influence on investors' investment decisions. Prior to this fact being announced, despite there being no statutory grounds for exclusion, suspected offenders A and B conspired to sell from September 16 to 19 under names including suspected offender B via multiple securities companies a total of 735,000 Takes Group shares for a total price of 101,452,000 yen.

(xi) Fraudulent means related to unfair financing by fictitious capital increase of Transdigital Co., Ltd.

On July 28, 2008, six suspected offenders conspired to pretend to pay for the exercise of share subscription rights issued by suspected corporation Transdigital Co., Ltd. and issue new shares. Related to Transdigital's business and property, in order to issue its new shares,

No.1

1 On July 29, as payment for exercise of 20 share subscription rights, pretended to pay 160 million yen into a deposit account in the name of Transdigital opened in a bank branch which handles payments for exercise of share subscription rights (below, "Transdigital Account"), and

2 On July 29, the above 160 million yen, etc. were transferred to an account in the name of Transdigital at another branch of the same bank (below, "Other Account"), etc, and 104 million yen was transferred into the Transdigital Account in a pretense of payment for exercise of 13 share subscription rights, and

3 On July 29, via the Other Account, 80 million yen was paid into the Transdigital Account in a pretense of payment for 10 share subscription rights, and

4 On July 29, cash was transferred from the Transdigital Account into the Other

Account, and 160 million yen was deposited into the Transdigital Account in a pretense of payment for exercise of 20 share subscription rights, and

5 On July 29, cash was transferred from the Transdigital Account to the Other Account, and 104 million yen was deposited into the Transdigital Account in a pretense of payment for exercise of 13 share subscription rights.

This information was concealed, and on July 29, via the TDnet timely disclosure information delivery system provided by the TSE, Inc., false information regarding exercise of the total 76 share subscription rights described above was published, indicating that a total of 608 million yen was paid in cash into the Transdigital Account, thus raising this amount of funds, and a total 76 million shares were issued by legal exercise of share subscription rights. Fraudulent means were thereby used for securities transactions.

No.2 On July 30, cash was transferred from the Transdigital Account to the Other Account, and via an account in the name of TD Strategy Investment Partnership, 184 million yen was deposited in the name of this partnership into the Transdigital Account in a pretense of payment for the exercise of 23 share subscription rights. This information was concealed, and via the above TDnet, the false information was published on July 30 that in exercising this partnership's 23 share subscription rights, a 184 million yen cash payment was deposited into the Transdigital Account, this amount of funds was hence raised, and 23 million shares were also issued by the legal exercise of share subscription rights. Fraudulent means were thereby used for securities transactions.

No.3 On July 31, cash was transferred from the Transdigital Account into the Other Account, and 96 million yen was deposited into the Transdigital Account in a pretense of payment. This information was concealed, and via the above TDnet, the false information was published on July 31 that in exercising this partnership's 12 share subscription rights, a 96 million yen cash payment was deposited into the Transdigital Account, this amount of funds was hence raised, and 12 million shares were also issued by the legal exercise of share subscription rights. Fraudulent means were thereby used for securities transactions.

(2) Disclosure Related Formal Complaints

(i) NIWS Co. HQ Ltd. case (1) related to submission of false annual securities reports, etc.

Suspected corporation NIWS Co. HQ Ltd. was holding the shares and ownership in domestic companies engaged in the development, sale, sales agency, intermediation and consulting business, etc. for various computer related software, and in foreign companies engaged in the equivalent businesses, with the aim of supporting and managing the business activities of these companies. Suspected offender A served as the company's managing director and chairman, in charge of managing the company's overall business. Suspected offender B served as a director etc, in charge of assisting suspected offender A and also managing the company's overall business. Both suspected offenders conspired regarding the company's business, and

No.1 On September 21, 2006, in the company's headquarters, an annual securities report was submitted to the Director-General of the Kanto Local Finance Bureau from an input/output device installed at that location for use in the company, using

an electronic disclosure information processing organization, by the method of recording in a file prepared in a computer for use in the Cabinet Office, for the company's consolidated business year ended June 2006. Although actually sales were 64,279,979,000 yen and ordinary loss was 482,826,000 yen, by methods such as recording false sales by circular transactions, the submitted annual securities report contained a consolidated income statement showing sales of 77,180,672,000 yen and ordinary income of 5,682,135,000 yen. They thereby submitted an annual securities report containing false statements for significant items, and

No.2 On August 29, 2007, in a public offering of shares issued by the company, they submitted, by the same method as above, to the Director-General of the Kanto Local Finance Bureau, a securities registration statement which had a reference to the annual securities report described in No. 1 above. They thereby submitted a securities registration statement containing false statements for significant items.

(ii) NIWS Co. HQ Ltd. case (2) related to submission of false annual securities reports, etc.

Both suspected offenders described in case (i) above conspired regarding the business of suspected corporation NIWS Co. HQ Ltd., and

No.1 On September 21, 2005, in the company's headquarters, an annual securities report was submitted to the Director-General of the Kanto Local Finance Bureau from an input/output device installed at that location for use in the company, using an electronic disclosure information processing organization, by the method of recording in a file prepared in a computer for use in the Cabinet Office, for the company's consolidated business year ended June 2005. Although actually sales were 64,395,461,000 yen and ordinary loss was 1,480,194,000 yen, by methods such as recording false sales by circular transactions, the submitted annual securities report contained a consolidated income statement showing sales of 7,898,735,000 yen and ordinary income of 5,931,508,000 yen. They thereby submitted an annual securities report containing false statements for significant items, and

No.2 On March 6, 2006, in a public offering and secondary distribution of shares issued by the company, they submitted, by the same method as above, to the Director-General of the Kanto Local Finance Bureau, a securities registration statement which had a reference to the annual securities report described in No. 1 above. They thereby submitted a securities registration statement containing false statements for significant items.

4) Future Challenges

Responding flexibly and quickly to changes in the environment surrounding the markets, and increasing the effectiveness of its market surveillance are key issues for the SESC. Therefore, by addressing the following issues, the SESC commits itself to investigate criminal case more effectively and efficiently.

(1) Efforts for complex and malicious composite cases covering both primary and secondary markets, such as fraudulent financing (unfair financing)

Under the 2007 policy statement *Towards Enhanced Market Integrity*, the SESC commits itself to conduct prioritized market surveillance targeting both primary and secondary markets, strongly addressing complex and malicious composite cases including unfair, fraudulent financing. This fiscal year, formal complaints were filed in three fraudulent means cases involving unfair financing. Anti-social forces were seen in the background of some unfair financing cases, and action was taken in cooperation with police authorities as needed.

Japan's still faces harsh economic and financial conditions, and there is no end to financings lacking transparency, especially for new companies with difficult cash flow. The SESC continues to make monitoring unfair financings its highest priority. It actively uses various techniques to earnestly work against fraudulent means.

(2) Monitoring a wide variety of crimes

In addition to complex and malicious composite cases involving unfair financing as described in (1) above, other criminal conduct which harms market fairness includes general types of crime such as insider trading, market manipulation, and submission of annual securities reports, etc. containing false statements (window-dressing). By broad action against these types of crimes, the SESC is striving for effective and efficient market surveillance including preventative effects.

(i) Efforts in insider trading cases

In FY2009, formal complaints were filed in 7 insider trading cases. Including cases where recommendations were made to order payment of administrative monetary penalties, notable characteristics of recent cases were company buyout related cases such as tender offers, cases by the primary recipient of information, and cases of workers who handle non-public material facts as financial advisors, etc. becoming a violator or a person delivering information. In addition to these kinds of cases, for transactions suspected as insider trading prior to material facts being announced such as transactions with good timing, the SESC provides feedback, for example on how to control information concerning tender offers, problems found as a result of investigations, etc. Such feedback is provided as necessary to self-regulatory organizations, listed companies, industries doing work handling non-public material facts, etc., thereby working to discover insider trading cases, and to also prevent their occurrence.

(ii) Efforts in market manipulation cases

In FY2009, formal complaints were filed in three market manipulation cases: 1 case by a day trader group using techniques such as false buying or selling offers via online trading, and 2 cases in both the primary and secondary markets involving unfair financing. In the latter cases, the company's managing director conspired with speculators to use listed companies to do unfair financing. Recent market manipulation cases saw two main trends as typical cases with formal complaints filed this fiscal year: new techniques such as false buying or selling offers using online trading by day traders, etc., and traditional techniques by speculators. The SESC continues to keep its eye on all kinds of market manipulation trends.

Also, for false buying or selling offer cases with formal complaints filed in FY2009, the

SESC developed and used a unique program which reproduces and analyzes in units of seconds the orders placed by suspected offenders, which led to building cases. The SESC continues to use this program, and will also do reproduction and analysis of ordering conditions which match the faster transactions by the TSE's *arrowhead* which began operating in January 2010.

(iii) Efforts in window-dressing cases

Formal complaints were filed in 4 window-dressing cases in FY2009: 2 cases related to Produce Co., Ltd., and 2 cases related to NIWS Co. HQ Ltd. With respect to Produce Co., Ltd., the company had been highly praised by the market until the very moment that they were raided by the SESC. The Commission collected and analyzed information from the market, etc., found suspected window-dressings, and began investigating them. This kind of early response prevents greater damages to the ordinary investors, and the SESC continues working to discover concealed window-dressing. Also, window-dressing is a violation done by companies facing business difficulties. Such companies have cash flow problems, thus there are also great risks of unfair, fraudulent financing, and the SESC combines work in window-dressing cases with monitoring against unfair financing.

(3) Enhanced cooperation with overseas regulators

Along with financial and economic globalization, there are now many orders from overseas for securities transactions in Japan's markets, and there are cases of market misconduct such as insider trading trying to avoid pursuit by market surveillance authorities by using accounts opened overseas. In order to discover these kinds of cross-border market misconduct, cooperation with overseas surveillance authorities is essential. Under the 2007 policy statement *Towards Enhanced Market Integrity*, the SESC commits itself to actively cooperate with overseas authorities, and prevent any gaps opening up in its market surveillance. For a cross-border insider trading case in FY2009, the SESC filed its first formal complaint in cooperation with Singapore market surveillance authorities. The SESC works on cross-border cases by actively using information exchange networks between market surveillance authorities, such as the International Organization of Securities Commissions (IOSCO) Multilateral MOU.

(4) Response to localization

Progress in online trading is eliminating geographical restrictions on securities transactions, and with the entry of emerging market companies and new listed companies into regional areas, criminal cases are also becoming more geographically widespread. In this environment, the SESC is working to conduct effective and efficient investigations in close cooperation with the investigative agencies and the local finance bureaus of each region.

(5) Stronger digital forensic operations organization

Amid the ongoing evolution of information technology, such operations as the seizure of computers, mobile phones and other types of electronic devices, the preservation, restoration and analysis of electromagnetic records saved on those devices, and making those records admissible as evidence (hereinafter referred to as "digital forensics") are growing increasingly indispensable. Therefore, by recruiting IT professional and equipping itself with mechanical devices necessary for conducting digital forensic activities, the SESC

will build up the infrastructure and human resources for digital forensics. The FY2010 budget approved procurement of equipment for storage, recovery, analysis, etc. The SESC will without delay arrange its installation, and build its effective and efficient operation structure. In order to do financial analysis using data analysis and XBRL, the SESC will continue to develop its digital forensic environment, and use the latest training to enhance its officers' skills.

(6) Development of specialist human resources

In criminal case investigations, questioning suspected offenders and analyzing seized articles requires specialist knowledge and skills; it is an important issue to develop specialist human resources equipped with these requirements. The SESC will enhance the specialist capacity of their personnel, not only by mid-career recruitment of professional personnel including attorney-lawyers and certified public accountants, but also by improving training programmes and systematic human resource management in a long-term perspective.

7. Policy Proposals

1) Outline

To establish a fair, highly transparent and sound market, and to maintain investor confidence in that market, the rules of the market should respond to changes in the environment surrounding it. So that the rules are maintained appropriately to reflect the actual conditions of the market, the Securities and Exchange Surveillance Commission (SESC) can submit policy proposals to the Prime Minister, the Commissioner of the Financial Services Agency (FSA), or the Minister of Finance. Based on the results of inspections, investigations or other relevant activities, where necessary, the SESC can propose that they take measures to ensure fairness in trading or to secure investor protection and other public interests (Article 21 of the Act for Establishment of the Financial Services Agency).

Policy proposals are submitted after the SESC has comprehensively analyzed the important issues identified in the results of its inspections and investigations. These proposals clarify the SESC's views on laws, regulations and self-regulatory rules, and it is intended that they will be reflected in the policies of the administration and of self-regulatory organizations. The policy proposals submitted by the SESC serve as an important consideration in the policy response of regulatory authorities.

In terms of the substance of specific policy proposals, when existing laws, regulations and self-regulatory rules are found to be insufficient in light of the realities of the securities market, the SESC draws attention to that fact. It then presents issues to be considered regarding the state of laws, regulations and self-regulatory rules from a perspective of ensuring market integrity and securing investor protection and other public interests, and calls on them to be reviewed.

2) Specific Policy Proposals and Measures Taken Based on Policy Proposals

1. Specific Policy Proposals

From its inception in 1992 through to fiscal year (FY) 2009, the SESC had submitted 19 policy proposals.

In FY2009, the following four policy proposals were submitted.

(1) Review of methods for segregated management in relation to foreign exchange margin trading

As a result of the intensive inspections of financial instruments business operators dealing with foreign exchange margin trading, many cases were found where, despite securities received from customers being managed through deposits with covering companies, the operators did not have a proper understanding of the amounts of securities received from customers, and were not appropriately managing their own assets separately from the assets of their customers.

In some cases:

(i) the securities deposited by customers had been withdrawn from the covering company and had been misappropriated; and

(ii) as a result of repeated proprietary trading based on customer securities that had been

deposited with a covering company, sudden changes in foreign exchange rates had magnified losses, the business operator had collapsed, and customers had sustained losses.

Consequently, appropriate measures need to be taken with regard to segregated management by financial instruments business operators dealing with foreign exchange margin trading, such as, in cases where the security deposits are cash, limiting the methods of management to money trusts.

(2) Establishment of loss-cut rules in relation to foreign exchange margin trading

A “loss-cut rule” is a rule by which a transaction is automatically settled by way of a reversing trade if the loss against a security exceeds a certain ratio. If the said rules are not functioning properly, customers may incur unexpected losses, and the business operator’s financial position may be negatively affected, or in the worst case, the business operator may go bankrupt, causing considerable losses to all its customers. For this reason, it is extremely important that loss-cut rules relating to foreign exchange margin trading are managed appropriately.

As a result of the intensive inspections of financial instruments business operators dealing with foreign exchange margin trading, cases were found where:

(i) customers’ losses had been magnified because business operators had not established loss-cut rules; and

(ii) despite loss-cut rules being established in an agreement relating to foreign exchange margin trading, receipt of additional security had been deferred at the request of the customer.

Consequently, appropriate measures need to be taken for financial instruments business operators dealing with foreign exchange margin trading, such as making the establishment of loss-cut rules compulsory.

(3) Deposit of appropriate security in relation to foreign exchange margin trading

When it comes to financial instruments business operators dealing with foreign exchange margin trading, it is extremely important that appropriate risk management systems be built. This is partly due to a specific characteristic of foreign exchange margin trading, that is, large transactions can be conducted which exceed the security deposited by a customer.

As a result of the intensive inspections of financial instruments business operators dealing with foreign exchange margin trading, cases were found where appropriate action had not been taken at times of sudden changes in exchange rates.

Under existing law, there is no regulation of securities deposited for foreign exchange margin trading: financial instruments business operators dealing with foreign exchange margin trading have designed leverage without restraint. With so-called “high-leverage products,” even a slight exchange rate fluctuation can lead to security shortfalls, and there is a risk of customers incurring unexpected losses, or the business operator’s financial position being negatively affected.

Consequently, appropriate measures need to be taken for financial instruments business operators dealing with foreign exchange margin trading, such as making it compulsory for them to accept deposits of security at a level that takes currency fluctuations into account.

(4) Review of documents requested and collected at time of application for registration

When registering financial instruments businesses, the documents submitted at the time of applying for registration are extremely important for the purpose of determining its eligibility.

As a result of the intensive inspections of financial instruments business operators dealing with foreign exchange margin trading, a case was found where a business operator had prepared a final balance sheet and a final profit and loss statement which contained false statements, and had also stated false matters in its written calculations of net assets and capital-to-risk ratio, and which had then obtained registration, having applied for registration effectively as a person to whom the conditions for refusal of registration did not apply.

Consequently, appropriate measures need to be taken for the registration of financial instruments businesses, such as requiring applicants to provide *prima facie* evidence and the like which substantiates the fact that the figures for net assets, capital-to-risk ratio and so forth contained in their application documents are not false.

2. Measures Taken Based on Policy Proposals

(1) Measures taken based on the policy proposal for the review of methods for segregated management in relation to foreign exchange margin trading

The FSA revised the Cabinet Office Ordinance regarding Financial Instruments Business, etc., prescribing that the methods for segregated management in foreign exchange margin trading should be standardized to money trusts (enforced on August 1, 2009).

(2) Measures taken based on the policy proposal for the establishment of loss-cut rules in relation to foreign exchange margin trading

The FSA revised the Cabinet Office Ordinance regarding Financial Instruments Business, etc., prescribing that the development and observance of loss-cut rules in relation to foreign exchange margin trading should be compulsory (enforced on August 1, 2009).

(3) Measures taken based on the policy proposal for the deposit of appropriate security in relation to foreign exchange margin trading

The FSA revised the Cabinet Office Ordinance regarding Financial Instruments Business, etc., prescribing that, regarding foreign exchange margin trading with individual customers, based on the notion of securing, as a margin, a level that can cover a single day's fluctuations in exchange rates, as a regulation common to both exchange transactions and over-the-counter transactions, business operators should be prohibited from conducting transactions unless they receive a margin deposit equal to at least 4% of the notional principal (enforced on August 1, 2010).

(4) Measures taken based on the policy proposal for the review of documents requested and collected at time of application for registration

The FSA revised the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc., clarifying that, as a point to note in cases where a new application for registration as a type I financial instruments business is received, applicants should be required to submit *prima facie* evidence in order to confirm that conditions for refusal of registration do not apply (applicable from August 1, 2009).

3. Other Measures

Some measures are deemed necessary to ensure market fairness and investor protection, but do not reach the stage of policy proposals. For such measures, the SESC communicates its awareness of issues through exchanges opinions with administrative departments of the FSA and self-regulatory organizations, and urges necessary policy responses. In FY2009, regarding the allocation of shares to a third-party, the SESC contributed to the revisions of the "Cabinet Office Ordinance concerning Disclosure of Corporate Affairs, etc." and rules in self-regulatory organizations.

3) Future Challenges

As described in point 2 above, the four policy proposals have been reflected in the Cabinet Office Ordinance regarding Financial Instruments Business, etc., and the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc. This is indicative of the significant contribution that the SESC has made to the development of market rules based on the realities of the securities market.

Based on the results of conducting inspections, issuing orders for the submission of reports and materials, questioning and collecting opinions, and conducting criminal case investigations pursuant to the Financial Instruments and Exchange Act (FIEA) and other laws, with regard to measures believed necessary to ensure fairness in the trading of financial instruments or to secure investor protection and other public interests, the SESC will submit policy proposals with the aim of having them reflected in the measures implemented by the administration and self-regulatory organizations. Furthermore, with regard to matters that do not require a revision of laws or regulations, and with regard to matters that are not directly linked to policy proposals, the SESC will strengthen its function of providing information, such as actively communicating its awareness of issues to the FSA, self-regulatory organizations and so forth, aiming to share its awareness of issues.

8. Efforts to Enhance Surveillance Activities and Functions

1) Reinforcement and Strengthening of the Market Surveillance System

1. Reinforcement of Organization

(1) Reinforcement of Organization

In addition to enhancing and strengthening the market surveillance function of the Securities and Exchange Surveillance Commission (SESC), as seen in the delegation of authority to conduct administrative monetary penalty investigations and the expansion of its authority to conduct inspections, the SESC has reinforced its organizational structure by expanding its organization from the previous two-division system, comprised of the Coordination and Inspection Division and the Investigation Division, to the current five-division system.

In fiscal 2010, amid the severe conditions for overall quotas of national public service personnel, as a result of requesting an increase in personnel as one of the main pillars of improving the system of administrative monetary penalties and disclosure documents inspection, an increase of 17 officers was approved. This brings the total SESC staff quota as at the end of FY 2010 to 384.

As for securities transactions surveillance officers (divisions) at the local finance bureaus, an increase of 20 officers was approved, mainly for improving the system of administrative monetary penalties and disclosure documents inspection, bringing the quota as at the end of FY 2010 to 313. Combined with the staff quotas of the SESC, the total number stands at 697.

(2) Appointment of Private-Sector Experts

From the perspective of ensuring accurate market surveillance and boosting professional expertise among its officers, during FY 2009, the SESC reinforced its investigation and inspection systems by employing a total of 23 private-sector experts with specialized knowledge and experience in the securities business, including lawyers and certified public accountants. The appointment of private-sector experts started in 2000, and as of the end of March 2010, 106 such professionals were employed at the SESC.

2. Improvement of Capacity for Collecting and Analyzing Information

(1) Utilization of the Securities Comprehensive Analyzing System (SCAN-System)

Due to the need to ascertain all the facts relating to securities transactions by analyzing complicated and massive amounts of data, the SESC has been developing a system supporting its operations called the “Securities Comprehensive Analyzing System (SCAN-System)” since 1993 in order to enhance operational efficiency. The SCAN-System is a comprehensive computer system that can be widely used in the operations of the SESC, including in the investigation of criminal cases, the investigation of administrative monetary

penalties, the inspection of disclosure documents inspection, the inspection of financial instruments business operators, day-to-day market surveillance, and in market oversight. Even after the completion of its fundamental development in 2001, efforts to review and enhance each of its functions have been continuously made aimed at achieving more efficient operations. In FY 2009, the system modifications of the data import functions have been implemented in order to adapt to the systems integration of Osaka Securities Exchange and JASDAQ Securities Exchange, and the launch of the new "arrowhead" trading system in the Tokyo Stock Exchange.

Note: The SCAN-System consists of two major functional modules: the “Securities Companies Inspection System” and the “Market Oversight System.” In addition, there are some supporting systems in the SCAN-System: the “SCAN-Internet Patrol System (SCAN-IPS),” the “SCAN-Surveillance by Technical Analysis of Corporation Finance System of Electronic Disclosure (SCAN-STAF),” and the “Information Control System” for efficiently processing information provided from the general public.

(2) Better Staff Training

The SESC uses OJT and training, etc. for staff to learn various know-how it has built up in surveillance techniques such as inspections. Staff also learn the latest information on financial and capital markets from lectures by outside lecturers, etc. These are part efforts to enhance staff quality.

The SESC also must respond to new challenges of more complex and diverse transaction forms, development of new financial instruments such as CDS and other OTC derivatives, growth of cross-border transactions, faster transaction techniques, etc. Also, the global financial crisis is an example of radical changes in the environment enveloping financial and capital markets.

To accurately respond to these conditions, in addition to previous actions, training is being provided to enable each staff to learn advanced specialized knowledge and skills, new financial instruments and transaction techniques, investigation techniques using digital forensics, etc.

As the development and utilization of the SESC personnel becomes more significant, the role played by middle-level supervisors in providing guidance to their subordinates is becoming more and more important. Therefore, meetings for middle-level supervisors have been held in an attempt to foster their awareness.

Furthermore, in order for the SESC’s officials to learn the surveillance and inspection techniques used by regulatory authorities overseas, and to then apply those techniques in market surveillance operations at the SESC, the SESC has sent staff from the SESC Executive Bureau to participate in training courses hosted by the US Securities and Exchange Commission (SEC), the US Commodity Futures Trading Commission (CFTC) and by the UK Financial Services Authority (UKFSA), and has also seconded staff to the Hong Kong Securities and Futures Commission (SFC), and the U.S. SEC and CFTC.

3. Enhancement of Systems Infrastructures to Support Market Surveillance

In FY 2009, at the phase of systems design for the next-generation system (Integrated FSA Business Support System) based on the "Optimization Plan of Business Processes and Systems on the Inspections and Supervision of Financial Institutions and Securities and Exchange Surveillance," which was founded on the philosophy of the program for Building e-Government (as per the decision dated March 28, 2006 by the e-Government Promotion Conference, FSA), the SESC has considered ways of getting the necessary system functions for each business process reflected in systems design. The primary concern is the systems development to contribute not only to raise business efficiency but also to sophisticate business processes incorporating changes in external environments like the adoption of XBRL technology in the EDINET system.

Additionally, with respect to Digital Forensics, the SESC is committed to considering means of incorporating those techniques and technologies into the SESC. The necessary system equipments and materials for the functions of "Data Recovery" have been implemented and also those for "Data Analysis" and the necessary environment have been considered for the best way to use the Digital Forensic Technologies in market surveillance.

Furthermore, described in Chapter 2, Section 4, a new "Individual Messaging Function" in "Compliance WAN" (Note) has been implemented in June 2009, which enables to request and to receive data belongs securities companies other than trading details data. The Compliance WAN has been connected to the FSA's LAN in September 2009 and Local Finance Bureaus' WAN in February 2010, that realizes each market surveyor to operate the Compliance WAN system directly from her/his PC on the desk. The SESC thus has been working to enhance its systems infrastructures for market oversight to increase convenience.

(Note) Uses a network of dedicated lines to link securities companies throughout Japan, securities exchanges throughout Japan, Japan Securities Dealers Association, the SESC and the Local Finance Bureaus. This system electronically processes trading data transferred. It launched in January 2009.

2) Dialogue with Market Participants and Efforts to Strengthen the Provision of Information to the Market

As part of its “collaboration with stakeholders for market integrity,” which is the second mainstay of the policy statement, *Towards Enhanced Market Integrity*, the SESC mentions enhancing dialogue with market participants and providing more information to markets. As such, the SESC is making efforts to communicate with individual investors and other market participants actively and widely. The SESC uses a variety of creative means to do this, including exchange of views, lectures, public talks, press releases, and the SESC website. By providing details of its activities and other information in a timely and easily understood fashion, the SESC aims to increase the understanding of its efforts among market participants and to deepen their confidence in the financial and capital markets.

Looking at the SESC efforts in FY2009, there was work to further strengthen market

discipline, a broader approach to various organizations which play important roles to ensure fairness in securities markets, articles were placed in various public relations media, etc.

3) Cooperation with Related FSA Departments

In order to ensure market fairness and transparency and investor protection, in properly executing its work, it is essential that the SESC shares its awareness of issues with the FSA, which is the regulatory agency for Japan's financial and capital markets. The SESC works on using various opportunities to cooperate with the FSA. For example, in addition to daily exchanges of information, the "Meeting for Sharing Opinions with Market Related Departments" has been held continually since January 2008, sharing problems regarding unfair financing. For the supervisory college established for large and complex financial institutions as a response to the financial crisis, the SESC cooperates with the FSA and exchanges information with foreign authorities. From the standpoint of its role in surveillance of market rules, the SESC thus exchanges information with the FSA regarding market governance.

The SESC delegates part of its work to Directors-General of Local Finance Bureaus, etc. The surveillance officers unit of each local finance bureaus performs its delegated work under the Director-General, etc., who receives instructions and supervision from the SESC. At occasions such as the Local Finance Bureaus Director-Generals Meeting held by the FSA, the SESC works to build plenty of mutual understanding with each the local finance bureaus, etc. The inspectors in the local finance bureau Meeting is held several times each year, with the aim of sharing awareness of problems regarding matters which require national cooperation, such as problems in market surveillance. The Joint Conference for the inspectors in the local finance bureau and Financial Instrument Exchange Supervisory Officers and Securities Inspectors was established in October 2008, from the viewpoint of sharing awareness of problems regarding unfair financing. This conference has been held regularly since then, as the part of the SESC's efforts to share and deepen awareness of problems.

4) Cooperation with Overseas Securities Regulators

1. Participation in IOSCO (International Organization of Securities Commissions)

IOSCO is an international organization acting with the aim of establishing international harmony of securities regulations and mutual collaboration among regulatory authorities. At present, IOSCO is composed of 193 organizations representing each country or region. The SESC became an associate member of IOSCO in October 1993. (Note: As a body representing Japan, the FSA participates in IOSCO as an ordinary member.)

In IOSCO, the Annual Conference led by the Presidents Committee which is the supreme decision-making body of IOSCO is held every year, where the top-level officials of securities regulators from various countries meet together to discuss and exchange opinions on the current situation and challenges in each securities administration. As the number of international transactions in financial and capital markets increases, it is extremely important to deepen international collaborative relationships through the exchange of information and opinions with regulators from various countries in order to carry out proper market surveillance in Japan. Therefore, from the SESC, the Chairman or the Commissioner attends

the Annual Conference of IOSCO. In addition, the SESC also participates in the Asia-Pacific Regional Committee (APRC) which is one of the Regional Standing Committees of IOSCO to discuss specific regional problems. In this way, the SESC is striving to enhance cooperation with overseas regulators.

For the purpose of discussing major regulatory issues faced by international markets and proposing practical solutions for such issues, IOSCO has established the Technical Committee, which is made up of the regulatory authorities of developed countries or regions, and as a substructure, it has established six Standing Committees (SC). The SESC is a member of the Standing Committee 4 (SC4) on enforcement and exchange of information which was set up to discuss ways of cooperation among securities regulatory authorities from different countries concerning enforcement issues and information exchange in order to respond to international securities crimes. This year, the SC4 had a discussion on promotion of dialogues with uncooperative jurisdictions and some other issues.

With regard to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information(Multilateral MOU) adopted in the Annual Conference in May 2002, which is an information sharing framework among multiple securities authorities, the SESC also participates in meetings of the Screening Group (SG) to examine countries/jurisdictions applying for the signing of the Multilateral MOU.

At the Annual Conference held in Colombo in April 2005, it was adapted that the Multilateral MOU would be an “international benchmark” for the cooperation and information exchange in relation to enforcement issues, and the IOSCO members would sign the Multilateral MOU, or make an official commitment to seek a legal authority to enable signing the Multilateral MOU, by January 1, 2010 at the latest. In May 2006, Japan submitted an application to sign the Multilateral MOU, and in February 2008, Japan was approved as a signatory country. As a result, the SESC has become able to mutually exchange information with signatories as necessary for enforcement purpose.

2. Building an Information Exchange Framework

It is absolutely essential to share Information among securities regulators in different countries, because market misconduct that may impair fairness of transactions in multiple countries’ markets is expected to occur more frequently with an increase in cross-border transactions in financial and capital markets. In order to exchange information smoothly with overseas regulators, the FSA has entered into information sharing agreements with the following regulatory bodies:

- China Securities Regulatory Commission (CSRC), China
- Monetary Authority of Singapore (MAS), Singapore
- Securities and Exchange Commission (SEC), United States
- Commodity Futures Trading Commission (CFTC), United States
- Australian Securities and Investments Commission (ASIC), Australia
- Securities and Futures Commission (SFC), Hong Kong
- Securities Commission (SC), New Zealand

As mentioned above, the FSA became a signatory to the Multilateral MOU in February 2008. As a consequence, it has become possible for the FSA including the SESC to mutually exchange information with other signatories as necessary for surveillance and law enforcement purpose. The SESC intends to ensure fairness in cross-border markets under

international cooperation.

Regarding use of these information exchange frameworks stemming from the SESC's daily market monitoring, as a result of information exchange with overseas regulators, three cases were charged by overseas regulators under their local laws and regulations. Furthermore, in April 2009, the SESC cooperated with Singapore authorities to file a formal complaint against malicious conduct using cross-border transactions.

The SESC continues to cooperate with overseas regulators proactively, and preclude any loopholes in market oversight.

Supplements

January 18, 2011

Securities and Exchange Surveillance Commission

Towards Enhanced Market Integrity

- SESC's Policy Statement for the 7th Term* -

1. Mission

The Securities and Exchange Surveillance Commission (SESC) is committed to pursuing the following mission:

○ To ensure integrity of capital markets, and

○ To protect investors

2. Policy Directions

The Japanese capital markets have been experiencing dynamic changes. Global efforts to rebuild the international regulatory frameworks are ongoing based upon lessons learned from the global financial crisis. A series of amendments have been made to the Financial Instruments and Exchange Act (FIEA). Innovations are continuing in financial products and trading methods. In response to this rapidly changing market environment, and to continue to be "feared by wrongdoers and trusted by ordinary investors", the SESC is determined to pursue our mission through the following three policy directions.

(1) Market oversight with prompt and strategic actions

- Strategic use of our regulatory tools (e.g. market surveillance, inspection of securities firms and other regulated entities, administrative monetary penalty investigation, disclosure statements inspection and investigation into a criminal case) to make our actions more prompt and effective
- Timely and prompt response to changes in market environments, trends of violations, and international regulatory developments. Forward-looking and prompt response to emerging risks
- Enhanced cooperation with self-regulatory organizations (SROs) to increase the effectiveness of the multilayered market oversight activities

(2) Outreach activities for enhanced market integrity

- Contributing to the rule-making processes at the Financial Services Agency (FSA) and other relevant authorities by raising relevant regulatory issues identified through our market oversight activities
- Outreach to market participants, through SROs and other channels, to encourage their self-discipline for market integrity
- Closer communications with market participants, and more effective dissemination of information

(3) Response to the globalization of markets

- Closer cooperation with overseas regulators to conduct market oversight activities on a global basis, in response to growing cross-border transactions and international activities by investment funds and other market participants in today's highly-globalized markets
- More effective inspections of globally active and large-scale securities firms, utilizing the international supervisory frameworks
- Further developments of human resources and organizational structures at the SESC

The SESC believes that our efforts towards fair, transparent and quality capital markets should contribute to vitalizing the Japanese capital markets and their international competitiveness by implementing comprehensive and effective market oversight activities based on the policy directions set out above.

---

* *SESC Chairman Kenichi Sado and Commissioners Shinya Fukuda and Masayuki Yoshida were appointed and started their new 3-year term on December 13, 2010*

.

3. Policy Priorities

The SESC is determined to strategically mobilize its regulatory tools and resources with particular emphases on the followings in order to conduct effective and efficient market oversight.

(1) Comprehensive and proactive market surveillance

- Comprehensive and enhanced surveillance on both primary and secondary markets as well as on cross-border transactions in order to preclude any regulatory loopholes in market surveillance
- Extensive surveillance on suspicious transactions which, at first sight, do not appear to contravene rules and regulations
- Proactive market surveillance through collection of a wide range of information with analysis of backgrounds behind individual cases or market developments
- Taking appropriate actions against cross-border market abuse, through exchange-of-information frameworks amongst securities regulators, including investigation requests and enforcement action based upon information provided by overseas regulators

(2) Strict actions to market misconduct and false disclosure statements

- Taking strict actions against market abuse such as insider dealing, market manipulation, fraudulent means including abuse of financing in primary market, and false disclosure statements
- Contribution to the regulatory system related to market misconduct based upon surveillance results

(3) Timely and efficient inspections and investigations in response to disclosure violations

- Implementation of timely and efficient disclosure inspections and investigations in order to ensure that the market participants are fairly and equally provided with accurate corporate information without delay
- Encouraging a listed company or any other issuer, if it has made false disclosure statements, to exercise its initiatives for autonomous and timely disclosure of the accurate financial information to the market as well as encouraging the related parties to achieve such appropriate disclosure
- Taking appropriate actions against public offering of securities such as stocks and corporate bonds without filing securities registration statements, with enhancing cooperation with the FSA and the Local Finance Bureaus and, if necessary, seeking petitions for court injunctions (Article 192 of the FIEA)

(4) Enhanced use of administrative monetary penalty system

- Implementation of timely and efficient inspections and investigations, taking advantage of administrative monetary penalty system, for fraudulent trading, false disclosure statements and other violations
- Exercising initiatives in order to prevent market participants from committing violations by taking various measures such as proactive provision of information regarding case precedents of administrative monetary penalties

(5) Efficient and effective inspections corresponding to the characteristics of firms to be inspected

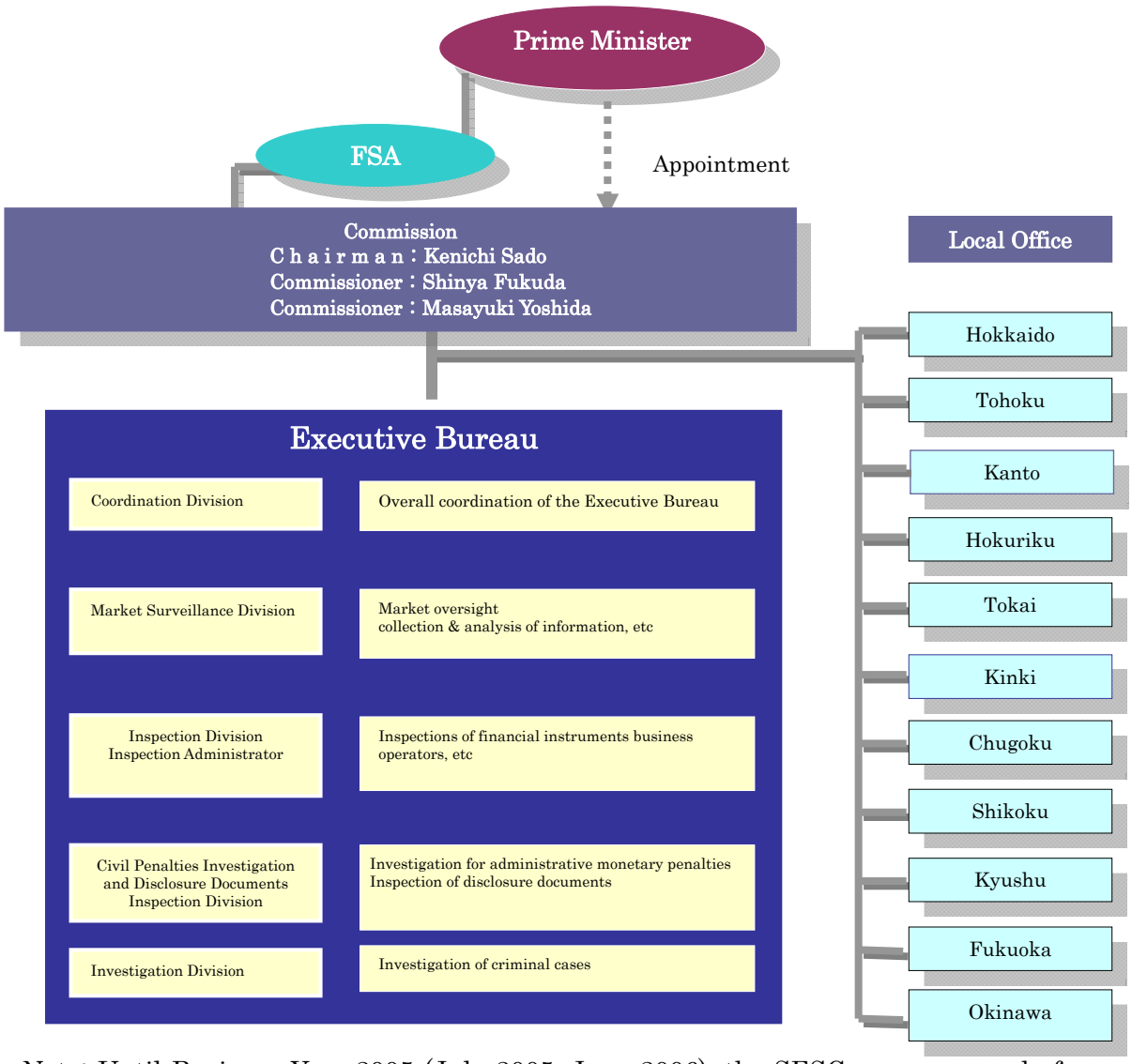
- Implementation of efficient and effective inspections through developments of knowledge and inspection techniques corresponding to the characteristics of firms to be inspected
- Implementation of inspections of globally active securities firms, verifying the appropriateness of their internal control and risk management systems from a forward-looking perspective, in response to the introduction of consolidated financial regulations
- Taking appropriate actions against malicious financial firms such as fund dealers and investment advisors, verifying their operations and compliance from the perspective of investor protection
- Taking appropriate actions against unregistered entities selling unlisted stocks or other securities, in close cooperation with the FSA, the Local Finance Bureaus and investigative authorities through petitions for court injunctions (Article 192 of the FIEA)

(6) Enhanced cooperation with SROs

- Further cooperation with SROs in areas including oversight of member firms, rule-making, as well as outreach to market participants and investors

Table 1

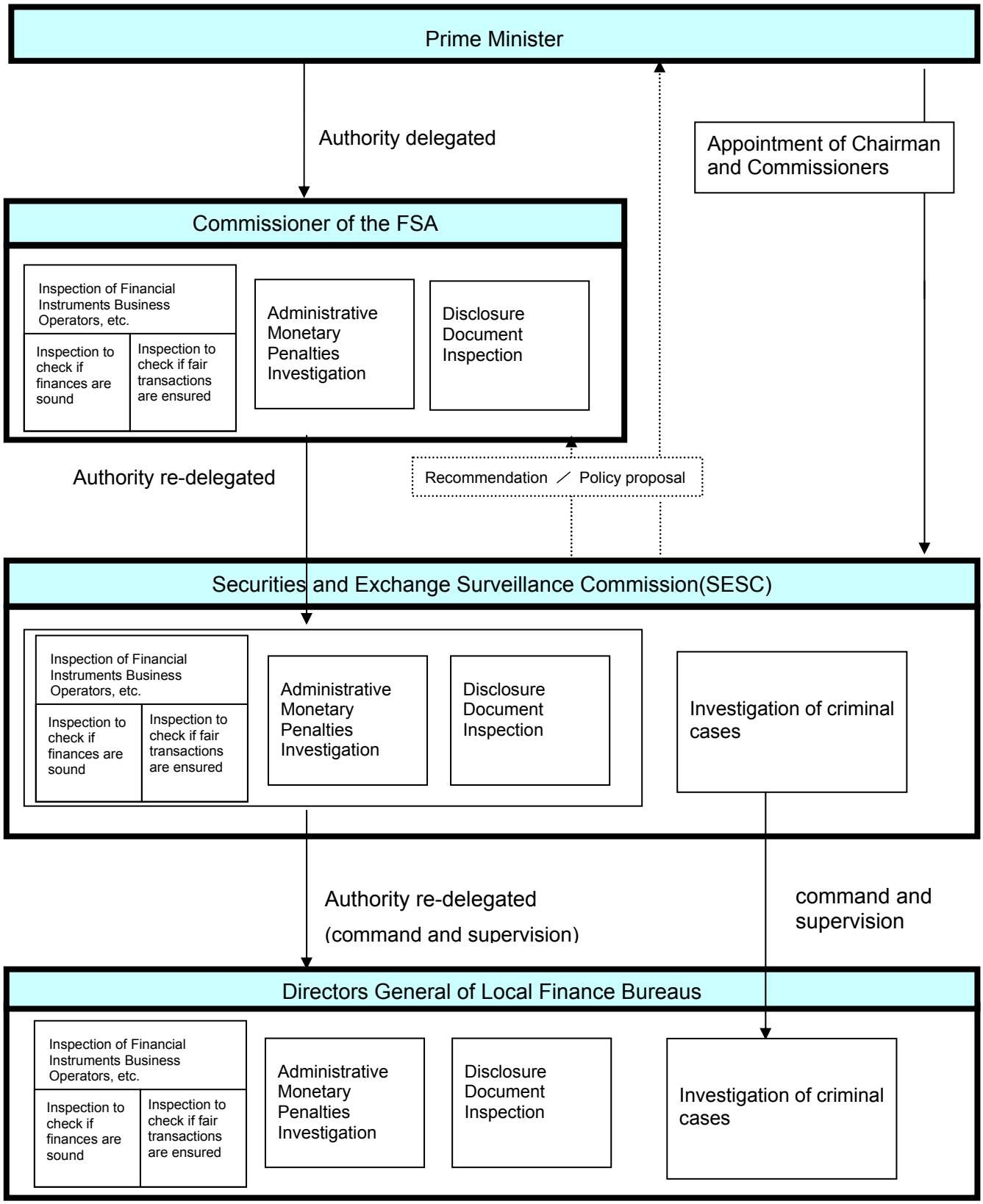
Organization of the SESC



Note: Until Business Year 2005 (July 2005~June 2006), the SESC was composed of two divisions (the Coordination and Inspection Division and the Investigation Division), and three offices (the Compliance Inspection Office, the Market Surveillance Office and the Office of Penalties Investigation and Disclosure Documents Examination) under the Coordination and Inspections Division.

Table 2

Conceptual Chart of Relationship among the Prime Minister, the Commissioner of the FSA, the SESC, and Directors General of Local Finance Bureaus



(Note 1) For the authority that the SESC delegates to Director General of Local Finance Bureau or the Director of its branch office, the SESC directs and supervises Director General of Local Finance Bureau or the Director of its branch office. (FIEA: Article 194-7 (7))

(Note 2) For an investigation of a criminal offence, the SESC directs and supervises the Director General of a Local Finance Bureau or the Director of its branch office. The SESC may, deeming it necessary for investigating a criminal offence, direct and supervise firsthand an official of a Local Finance Bureaus or the Director of its branch office. (FIEA: Article 224(4) and (5))

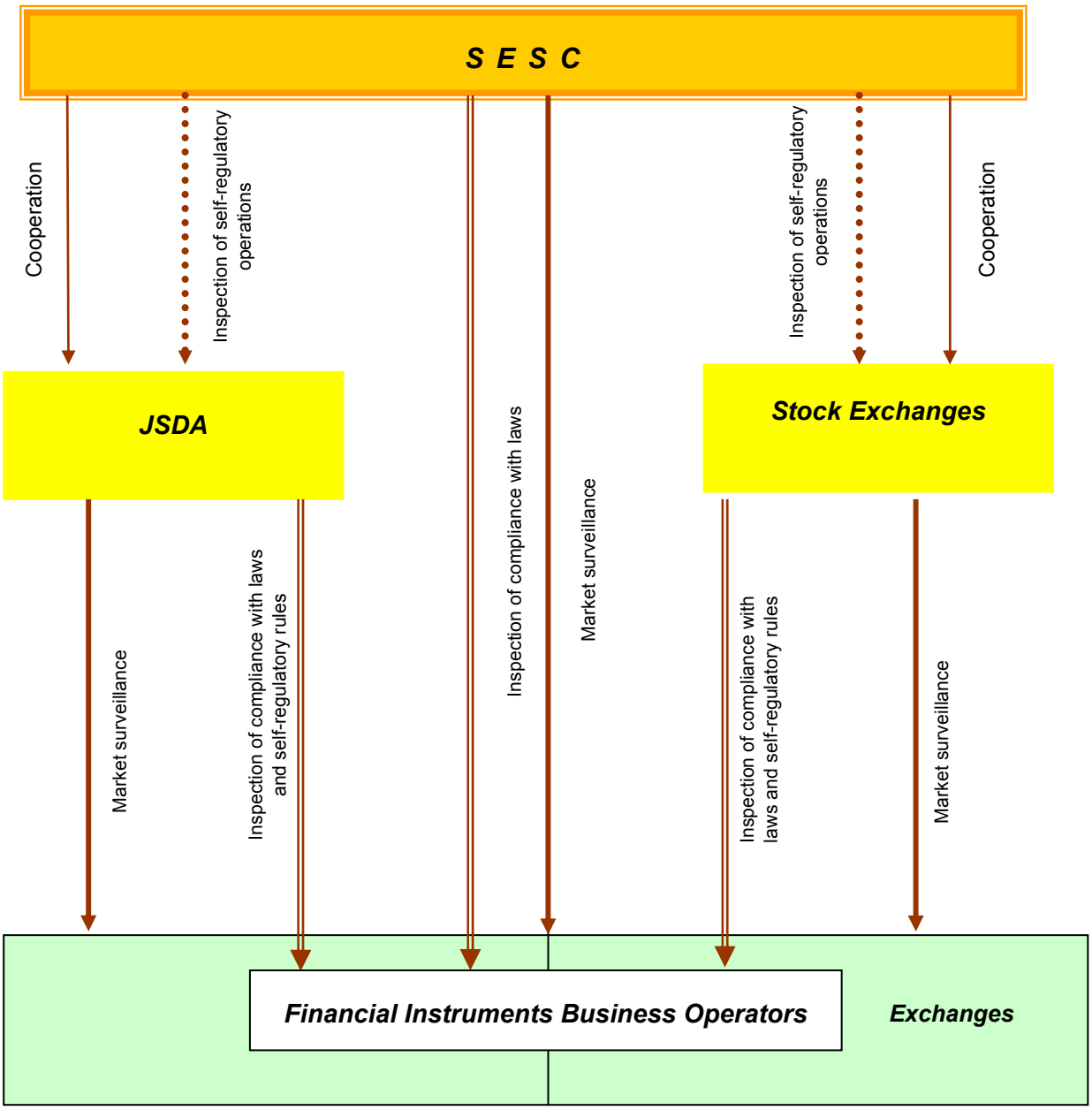
(Note 3) The SESC does not delegate authority to the Director-General of local finance bureaus, etc. related to financial instruments business operators etc designated in the following public notices

- The public notice to designate a financial instruments business operator, etc. under paragraph 5, Article 44 of the Order for Enforcement of the FIEA and paragraph 2, Article 136 of the Order for Enforcement of Act on Investment Trust and Investment Corporation
- The public notice to designate a financial instruments business operators, etc. under paragraph 6, Article 24 of the Order for Enforcement of Act on the Prevention of Transfer of Crime Proceeds

(Note 4) In addition to the above, filing in court to prohibit or suspend violations based on provisions of FIEA Article 192 Paragraph 1, and its prerequisite investigation authority based on provisions of FIEA Article 187, are delegated from the Commissioner of the FSA to the SESC. The FIEA was amended to enable redelegation of said filings and investigation authority to Director General of Local Finance Bureau or the Director of its branch office.

Table 3

Relationship to Self-Regulatory Organizations



Note: The same system applies to financial futures.

Table 4 The SESC's activities in figures

Table of Summary

(Unit: # of cases)

category \ business year	1992 to 2002	2003	2004	2005	2006	2007	2008		2009	Total
Criminal Charges (# of cases)	53	10	11	11	13	10	13	(4)	17	134
Recommendation (# of cases)	244	26	17	39	43	59	50	(19)	74	533
Recommendations based on securities inspections	244	26	17	29	28	28	18	(4)	21	407
Recommendations concerning orders to pay administrative monetary penalties	—	—	—	9	14	31	32	(15)	53	124
Recommendations concerning an order to submit amendment	—	—	—	1	1	0	0	(0)	0	2
Proposals (# of cases)	6	1	0	5	3	0	4	(4)	4	19
securities inspections: Financial instrument business operators (companies, etc.)	[771] 981	[93] 125	[83] 113	[111] 150	[107] 150	[132] 187	[156] 191	[(50)] (62)	[133] 176	[1,536] 2,011
Type I financial instrument business operators	[771] 981	[93] 125	[83] 113	[86] 111	[80] 99	[111] 138	[96] 117	[(16)] (20)	[72] 90	[1,379] 1,754
Former domestic securities companies	[770] 874	[92] 107	[83] 96	[73] 88	[68] 78	[63] 89	[78] 89	[(13)] (15)	[60] 72	[1,274] 1,478
Former foreign securities companies	106	17	17	10	9	1	7	(2)	6	171
Former financial futures dealers	[1] 1	[1] 1	[0] 0	[13] 13	[12] 12	[48] 48	[21] 21	[(3)] (3)	[12] 12	[105] 105
Type II financial instrument business operators	— —	— —	— —	— —	— —	[0] 2	[0] 1	[(0)] (1)	[17] 23	[17] 25
Asset management firms, investment advisories, agencies (former investment trust/ investment advisories)	[—] —	[—] —	[—] —	[25] 39	[27] 51	[21] 47	[57] 73	[(34)] (41)	[44] 63	[140] 232
Investment corporation (legal persons)	—	—	—	2	7	10	7	(1)	9	34
Registered financial institutions (institutions)	[62] 75	[10] 13	[20] 27	[23] 28	[26] 27	[29] 32	[24] 25	[(4)] (4)	[24] 24	[214] 247
Financial instrument broker (brokers) (Former securities broker)	[—] —	[0] 0	[0] 0	[1] 1	[1] 1	[1] 1	[0] 0	[(0)] (0)	[1] 1	[4] 4
self-regulatory organizations	3	2	0	2	6	1	5	(2)	5	22
Other	0	0	0	0	1	2	0	(0)	1	4
Companies acknowledged as having problems (companies, etc.)	686	67	67	93	142	121	112	(35)	123	1,376
Market oversight (# of cases)	[1,254] 3,138	[305] 687	[307] 674	[320] 875	[408] 1,039	[500] 1,098	[538] 1,031	[(144)] -276	[430] 749	[3,918] 9,015

Note:

1. "Business year basis" (July to June the following year) until BY2008. "Accounting year basis" (April to March the following year) since FY2009.
Numbers in parentheses ( ) in business year 2008 are in the period (April-June 2009) which overlaps with FY2009 for the transition to "accounting year basis."
2.The total number of cases of securities inspections refers to the number of cases that have been started.
The total number of cases in the market oversight refers to the number of cases that have been completed.
3.The numbers in the brackets concern Local Finance Bureaus.
4.In addition to the investigations of the financial instrument business operators indicated above (former securities companies), Local Finance Bureaus and other organizations conduct inspections of individual branches of those financial instrument business operators (former securities companies) that are assigned to the Commission.

Introduction of Chairman and Commissioners

Chairman　Kenichi SADO

Kenichi SADO was appointed chairman of the SESC In July 2007.　Before being appointed to commission, he served as superintending public prosecutor of the Sapporo High Public Prosecutors Office (2005–2006) and superintending public prosecutor of the Fukuoka High Public Prosecutors Office (2006–2007).

Commissioner　Shinya FUKUDA

Shinya FUKUDA was appointed commissioner of the SESC in July 2007. Before being appointed to the commission, he served as a Senior Partner, TOHMATSU-AOKI Audit Corporation (present TOHMATSU Audit Corporation).

Commissioner　Masayuki YOSHIDA

Masayuki YOSHIDA was appointed commissioner of the SESC in December 2010. Before being appointed to the commission, he served as a Advisor, Nagashima Ohno & Tsunematsu Law Firm .

Securities and Exchange Surveillance Commission

SESC

"for investors, with investors"

∗ Note: The two ellipses crossing each other symbolize the securities markets and financial futures markets, which are both subject to our surveillance; the cooperation between the SESC and other domestic authorities concerned; and, what's more, our relationship with investors.

And the slogan "for investors, with investors" represents the principle position of the SESC, which was established to protect investors and respect its relationship with them.

Annual Report 2009/2010

The Securities and Exchange Surveillance Commission
3-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8922, Japan
Tel: +81(3)3581-7868
Fax: +81(3)3581-9846
Website: http://www.fsa.go.jp/sesc/english/index.htm