

Outline of 2012 Financial Instruments and Exchange (Amendment) Act

[Promulgated on
September 12, 2012]

Changes in circumstances surrounding
Japan's financial / capital markets

To enhance the international
competitiveness of Japan's markets and
enhance convenience to users

To improve the financial system
in light of the turmoil
in the global financial / capital markets

To develop appropriate regulations
assuring users of secure transactions

Facilitating the Establishment of
a "Comprehensive Exchange"

Based on the "New Growth Strategy", the "Strategy for Rebirth of Japan", etc., the following legal and regulatory frameworks are to be developed to facilitate the establishment of a "Comprehensive Exchange", in which securities, financial derivatives and commodity derivatives are traded comprehensively.

Development of regulations for commodity derivatives and exchanges

➤ To enable Financial Instruments Exchange to trade commodity* derivatives

➤ Financial Services Agency (FSA), on the Prime Minister's delegated authority, conducts supervision of a "Comprehensive Exchange" under the Financial Instruments and Exchange Act (FIEA). **

Development of regulations for operators

➤ To develop a framework enabling intermediaries, CCPs, etc. to trade and to process securities, financial derivatives and commodity derivatives comprehensively.

Cooperation with MAFF and METI

➤ To ensure mutual cooperation with the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Economy, Trade and Industry (METI) through creation of a framework for prior consultation with these ministries, regarding the exercise of certain supervisory powers over commodity derivatives transactions on a "Comprehensive Exchange"

⇒ **Establishment of a "Comprehensive Exchange"**
To enhance user convenience

Improving the fairness and transparency of OTC
derivatives transactions, etc.

Updating the OTC Derivatives Regulations

➤ Obligatory use of electronic trading platforms for certain OTC derivatives transactions, in accordance with the international consensus for OTC derivatives market reforms.

⇒ **To ensure fairness and transparency of OTC derivatives transactions**

Ensuring appropriate regulations against market misconducts

Revision of AMP (Administrative Monetary Penalty) System

➤ To expand the scope of AMP system to cover the following conducts;

- conducts of an external conspirator to help an issuer submit disclosure documents containing falsified financial statements
- market misconducts by persons other than Financial Instruments Business Operators on other persons' accounts

➤ To provide legal authority in investigations concerning AMP

⇒ **To deter conducts that hamper fairness and transparency of the markets**

Revision of insider trading regulations

➤ To exempt the following conducts related to reorganization from the scope of insider trading regulations

- succession of equities derived from business transfer in which violation is unlikely to occur.
- use of treasury shares in compensation for merger, etc.

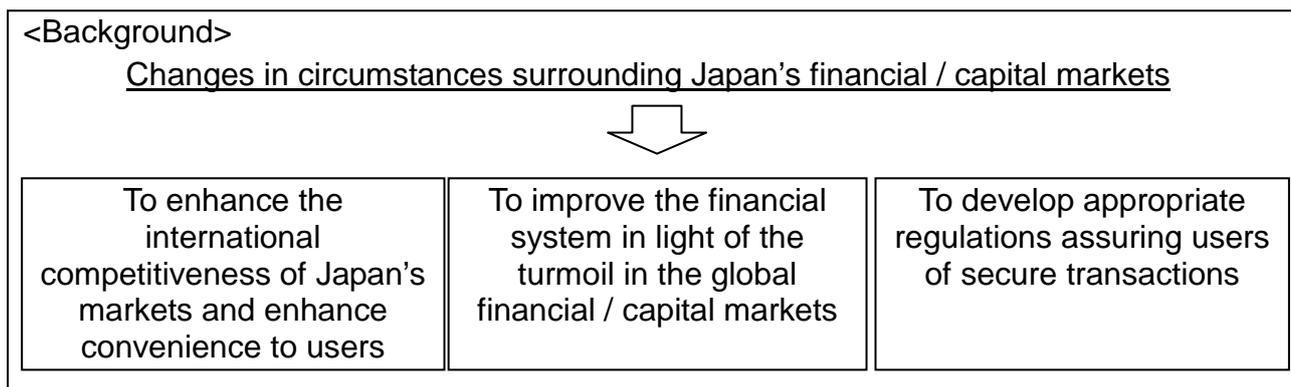
⇒ **To facilitate management of company groups**

* Rice etc. are excluded for the time being.

** Exchanges handling only commodity derivatives remain subject to supervision by MAFF and / or METI.

*** Of the OTC derivatives market reforms, legislation concerning "mandatory central clearing" and "mandatory storage and reporting of trade data" has been promulgated (Amendment of the FIEA in 2010.)

Outline of 2012 Financial Instruments and Exchange (Amendment) Act



I Facilitating the Establishment of a “Comprehensive Exchange”

1. Development of regulations for commodity derivatives and exchanges

- To define commodities* as “Financial Instruments” and enable Financial Instruments Exchanges to trade commodity derivatives
(* Rice etc. are excluded from this definition for the time being.)
- Financial Services Agency, on the Prime Minister's delegated authority, conducts supervision of a “Comprehensive Exchange”, in which securities, financial derivatives and commodity derivatives are traded comprehensively, under the Financial Instruments and Exchange Act (FIEA) **
(** Exchanges specializing on commodity derivatives remain subject to regulation under the Commodity Derivatives Act and to supervision by the Ministry of Agriculture, Forestry and Fisheries (MAFF) and / or the Ministry of Economy, Trade and Industry (METI).)
- To develop a framework to allow certain types of companies which trade commodities (e.g., trading companies) as participants of the commodity derivatives transactions on a “Comprehensive Exchange”

2. Development of regulations for operators

- To develop a framework enabling intermediaries, CCPs, etc. to trade and to process securities, financial derivatives and commodity derivatives comprehensively
 - To add commodity derivatives transactions on a “Comprehensive Exchange” as an authorized business of Type 1 Financial Instruments Business Operator (FIBO)
 - To take into account the existing regulations set under the Commodity Derivatives Act whilst bringing into line with that of FIEA for regulations concerning the business conduct rules for operators
 - To add commodity derivatives clearing on a “Comprehensive Exchange” as an authorized business of the Financial Instruments CCP

3. Development of regulations against market misconducts

- To extend the scope of the existing regulation on derivatives transactions under the FIEA to include market misconducts of commodity derivatives transactions on a “Comprehensive Exchange”

4. Cooperation with MAFF and METI

- To ensure mutual cooperation with MAFF and METI through creation of a framework for prior consultation with these ministries, regarding the exercise of certain supervisory powers over commodity derivatives transactions on a “Comprehensive Exchange”

II Improving the fairness and transparency of OTC derivatives transactions

1. Updating the OTC Derivatives Regulations

- Obligatory use of electronic trading platforms for OTC derivatives transactions
 - Mandatory use of electronic trading platforms provided by FIBOs for certain types of OTC derivatives transactions conducted by FIBOs, in light of the international consensus for OTC derivatives market reforms
 - To develop a framework to enable foreign operators ,who provide an electronic trading platform to FIBOs in Japan upon the permission of the Prime Minister

III Ensuring appropriate regulations against market misconducts

1. Revision of AMP (Administrative Monetary Penalty) System

- To impose AMP upon the conducts assisting the issuer submitting falsified financial statements
 - To expand the scope of AMP, certain conduct by an external conspirator (e.g. a financial intermediary) to assist an issuer submitting disclosure documents containing falsified financial statements
- Expand the scope of market misconducts subject to the AMP.
 - To expand the scope of AMP, any market misconduct undertaken by firms or investors other than FIBOs on a third party account (e.g., customer accounts)
- Provide legal authority in investigations concerning AMP
 - To provide legal authority to issue appearance order in investigations for matters concerning AMP against external conspirators and the perpetrators of market misconducts

2. Revision of insider trading regulations

- To exempt from insider trading regulations certain transactions relating to corporate reorganization
 - To exempt the succession of equity stakes as part of a business transfer^{***}, in instances where insider trading is unlikely to occur (e.g. where the equities are insignificant in the succeeded assets (less than 20 percent of the total assets))
(^{***} The same exemption is applied to company mergers and break ups.)
 - To exempt from the insider trading regulation the use of treasury shares as a compensation for merger, etc. as per exemption for the case of new share issuance

IV Effective date

