

# **RULES CONCERNING SOLICITATION OF PROFESSIONAL INVESTORS FOR INVESTMENT IN OVER-THE-COUNTER SECURITIES, ETC.**

(April 1, 2022)

## **CHAPTER I. General Provisions**

### **(Purpose)**

**Article 1** The purpose of the Rules Concerning Solicitation of Professional Investors for Investment in Over-the-Counter Securities, etc. (hereinafter referred to as “Rules”) is to ensure fair and smooth transactions of Over-the-Counter Securities, etc. by Professional Investors and to contribute to the protection of investors by providing for the necessary matters concerning solicitation for investment of Over-the-Counter Securities, etc. to Professional Investors, and the provision or disclosure, etc. of specified information on securities.

### **(Definitions)**

**Article 2** In these Rules, the definition of the terms set forth in each of the following Items shall be prescribed therein:

- (1) Over-the-Counter Securities:  
Over-the-Counter Securities prescribed in Article 2, Item 1 of the Rules Concerning Over-the-Counter Securities.
- (2) Investment Trust Beneficiary Certificates:  
Beneficiary certificates of an investment trust prescribed in Article 2, Paragraph 1, Item 10 of the Financial Instruments and Exchange Act (hereinafter referred to as the “FIEA”) and not listed in any financial instrument exchange market.
- (3) Investment Securities, etc.:  
Investment securities or certificates of investment equity subscription rights prescribed in Article 2, Paragraph 1, Item 11 of the FIEA and not listed in any financial instrument exchange market.
- (4) Investment Trusts, etc.:  
Investment Trust Beneficiary Certificates and Investment Securities, etc.
- (5) Over-the-Counter Securities, etc.:  
Over-the-Counter Securities and Investment Trusts, etc.
- (6) Securities for Professional Investors:  
Securities for professional investors prescribed in Article 4, Paragraph 3 of the FIEA.
- (7) Specified Information on Securities:  
Specified information on securities prescribed in Article 27-31, Paragraph 1 of the FIEA.
- (8) Information on the Issuer:  
Information on the issuer prescribed in Article 27-32, Paragraph 1 of the FIEA.
- (9) Handling Association Member:

An Association Member designated by the Association as an Association Member who may make a solicitation for investment in Over-the-Counter Securities, etc. pursuant to the provisions of these Rules.

(10) Antisocial Forces:

Antisocial forces prescribed in Article 15 of the Rules for Enforcement of the Articles of Association.

## **CHAPTER II. Examination, etc. of Over-the-Counter Securities, etc.**

### **(Verification and Examination)**

**Article 3** A Handling Association Member must understand the characteristics and risks of the Over-the-Counter Securities, etc. in which it is intending to solicit investments from new customers (limited to Professional Investors (meaning the Professional Investors (excluding those deemed to be customers other than professional investors pursuant to the provision of Article 34-2, Paragraph 5 of the FIEA, and including those that are deemed to be professional investors pursuant to the provision of Article 34-3, Paragraph 4 (including when applied mutatis mutandis pursuant to Article 34-4, Paragraph 6 of the same law)) prescribed in Article 2, Paragraph 31 of the FIEA); the same shall apply hereinafter, except for Articles 9 and 10 and the main clause of Article 11) based on these Rules and examine whether or not it is appropriate to solicit investments and the range of customers from which investments are solicited.

2. When a Handling Association Member conducts the verification of Over-the-Counter Securities and Investment Securities, etc. pursuant to the provision of the preceding paragraph, it must examine the matters listed in the following items according to the category of securities listed in the respective items, in accordance with the internal rules formulated by the Handling Association Member pursuant to the provision of Article 12.

(1) Over-the-Counter Securities:

- (a) the actual existence of the issuer and its business;
- (b) the financial status of the issuer;
- (c) the social nature of the issuer, including the status of its compliance with laws and regulations;
- (d) whether or not the issuer is an Antisocial Force, whether or not the issuer has any relationship with an Antisocial Force, and its system for eliminating any relationship with an Antisocial Force and the status of operation of such system;
- (e) the status of interest between the Handling Association Member and the issuer;
- (f) the risks involved in investing in the Over-the-Counter Securities; and
- (g) in the case of private placement (limited to cases specified in Article 2, Paragraph 3, Item 2 (ii) of the FIEA; the same shall apply hereinafter) or the handling of private placement, the appropriateness of the business plan and the use of funds for private placement.

(2) Investment Securities, etc.:

- (a) the status of the development of a system for asset management, etc.;
- (b) the social nature of the issuer, including the status of its compliance with laws and regulations; and

- (c) whether or not the issuer is an Antisocial Force, whether or not the issuer has any relationship with an Antisocial Force, and its system for eliminating any relationship with an Antisocial Force and the status of operation of such system.

**3.** A Handling Association Member who has conducted the verification set forth in Paragraph 1 and the examination set forth in the preceding Paragraph shall preserve the details and results of the verification and examination, as well as the reasons therefor, for five years from the day on which the solicitation for investment in the Over-the-Counter Securities, etc. was last conducted (where no solicitation for investment has been made as a result of the verification or examination, the day on which the verification or examination was completed).

**(Terms and Conditions of Contract with Issuer for Elimination of Antisocial Forces)**

**Article 4** If a Handling Association Member intends to solicit investments from customers in Over-the-Counter Securities, etc. based on these Rules, it must conclude a contract with the issuer of such Over-the-Counter Securities, etc. on the particulars set forth in the following items by means of preparing a written contract in writing or as an electromagnetic record:

- (1) The issuer makes a commitment to the effect that it is not an Antisocial Force;
- (2) If the commitment as per the preceding Item is found to be fraudulent, the contract for the handling of Over-the-Counter Securities, etc. issued by the issuer shall be cancelled upon request from the Handling Association Member.
- (3) If the issuer is found to be an Antisocial Force, the contract for the handling of Over-the-Counter Securities, etc. issued by the issuer shall be cancelled upon request from the Handling Association Member.

**(Elimination of Antisocial Forces)**

**Article 5** If an issuer of Over-the-Counter Securities, etc. is found to be or be related to an Antisocial Force, the Handling Association Member must not solicit investments in such Over-the-Counter Securities, etc.

**CHAPTER III. Specified Information on Securities and Information on the Issuer**

**(Provision or Disclosure of Specified Information on Securities)**

**Article 6** A Handling Association Member may solicit its customers to invest in the Over-the-Counter Securities, etc. under Article 8, limited to cases where Specified Information on Securities (provided, however, that it shall mean the information equivalent to the Specified Information on Securities in the cases specified in Article 14-14 of the Order for Enforcement of the Financial Instruments and Exchange Act (hereinafter referred to as the “FIEA Enforcement Order”); the same shall apply hereinafter) pertaining to such Over-the-Counter Securities, etc. is provided to the solicited person or disclosed.

**2.** The provision or disclosure of Specified Information on Securities pertaining to Over-the-Counter Securities, etc. set forth in the preceding Paragraph shall be made by any of the methods listed in the following items:

- (1) Method in which the issuer or the Handling Association Member soliciting the investment provides the solicited persons with information in writing or by electromagnetic method, by the time of making the solicitation for investment; or

- (2) Method by which the issuer or a Handling Association Member soliciting investment continuously discloses, in accordance with the provision of Article 11, Item 3 of the Cabinet Office Order on the Provision and Publication of Information on Securities (hereinafter referred to as the “Order on Securities Information”), the Specified Information on Securities on the website of the issuer or the Handling Association Member until the day on which one year has elapsed from the date when the information was disclosed (in the cases where disclosure has been made with regard to the Securities related to the Specified Information on Securities or where the Securities related to the Specified Information on Securities have come to no longer exist due to cancellation, redemption, or any other reason, the period up to the date on which such cases occurred shall be applicable; the same shall apply hereinafter in this Article).

3. The Specified Information on Securities set forth in Paragraph 1 shall be prepared by the issuer in accordance with the Instructions for Discription separately established by the Association, using the forms set forth in the following items according to the category of securities set forth in the respective items:

- (1) Over-the-Counter Securities:  
Form 1
- (2) Investment Trust Beneficiary Certificates:  
Form 2
- (3) Investment Securities, etc.:  
Form 3

4. If, before the day on which one year has elapsed from the date of the provision or disclosure of the Specified Information on Securities provided or disclosed pursuant to Paragraph 2, there is any matter to be amended, the issuer or the Handling Association Member soliciting the investment shall provide or disclose the amended information to the counterparty of the solicitation for investment in the Over-the-Counter Securities, etc. related to the Specified Information on Securities and to the holder of the Over-the-Counter Securities, etc. using the same method as that used previously for the Specified Information on Securities.

5. A Handling Association Member must explain the method of provision or disclosure of the Specified Information on Securities to the issuer and endeavor to have the issuer comply with the method.

#### **(Provision or Disclosure of Information on the Issuer)**

**Article 7** A Handling Association Member must confirm with the customer who has come to hold Over-the-Counter Securities, etc. through the solicitation for investment pursuant to the provision of the following Article that the Information on the Issuer pertaining to the Over-the-Counter Securities, etc. is provided or disclosed, either by itself or by the issuer. Provided, however, that this shall not apply to the cases set forth in the items of Article 7, Paragraph 5 and the items of Article 8, Paragraph 1 of the Order on Securities Information.

2. The provision or disclosure of Information on the Issuer pertaining to Over-the-Counter Securities, etc. set forth in the preceding Paragraph shall be made by any of the methods listed in the following items. When a Handling Association Member specifies a reasonable period pursuant to the provisions of the items, the Handling Association Member must report such period and the reason for specifying such period to the Association in advance in writing or by electromagnetic method.

- (1) Method by which the Information on the Issuer for each business year (for Investment Trust Beneficiary Certificates, this means the specified period prescribed in Paragraph 1 of Article 24 of the FIEA, replacing certain terms pursuant to Paragraph 5 of the same Article; the same shall apply hereinafter) of the Issuer is provided to the holder of Over-the-Counter Securities, etc. that are securities for Professional Investors issued by the issuer in writing or by electromagnetic method within three months of the date on which the last day of the most recent business year has elapsed

(if provision is impossible during the period due to considerable grounds such as disasters, the period approved as reasonable by the Handling Association Member shall apply); or

- (2) Method by which the issuer or a Handling Association Member soliciting the investment prepares and discloses, in accordance with the provision of Article 11, Item 3 of the Order on Securities Information, the Information on the Issuer for the business year within three months of the date on which the last day of the most recent business year has elapsed (if disclosure is impossible during the period due to considerable grounds such as disasters, the period approved as reasonable by the Handling Association Member shall apply) on the website of the issuer or the Handling Association Member.

3. The Information on the Issuer set forth in Paragraph 1 must be prepared by the issuer in accordance with the Instructions for Description separately established by the Association, using the forms set forth in the following items according to the category of securities set forth in the respective items:

- (1) Over-the-Counter Securities:  
Form 4
- (2) Investment Trust Beneficiary Certificates:  
Form 5
- (3) Investment Securities, etc.:  
Form 6

4. When the Information on the Issuer is disclosed pursuant to the provision of Paragraph 1, the Information on the Issuer shall be disclosed continuously starting from the date of disclosure until the date of provision or disclosure of the Information on the Issuer pertaining to the business year immediately following the business year related to the Information on the Issuer (provided, however, that in the cases listed in the following items, the periods set forth in the respective items shall apply).

- (1) Where any of the items of Article 7, Paragraph 5 of the Order on Securities Information applies:  
the period from the date on which the disclosure was made to the date on which the case came to fall under any of the items
- (2) Where the securities related to the Information on the Issuer have ceased to exist due to cancellation, redemption, or any other reason:  
the period from the date on which it disclosed the Information on the Issuer to the date on which the securities ceased to exist

5. If there is any matter to be amended in the Information on the Issuer provided or disclosed pursuant to the provision of Paragraph 1, the issuer or the Handling Association Member soliciting the investment shall provide or disclose the fact that the Information on the Issuer is amended to the counterparty that received the Information on the Issuer and the holder of the Over-the-Counter Securities, etc. using the same method when the Information of Issuer was previously provided or disclosed.

6. A Handling Association Member must explain the method of provision or disclosure of the Information on the Issuer to the issuer and endeavor to have the issuer comply with the method.

## **CHAPTER IV. Method of Solicitation for Investments and Transactions**

### **(Requirements for Solicitation for Investments)**

**Article 8** A Handling Association Member may, according to the cases listed in the following items, solicit investments in Over-the-Counter Securities, etc. from customers only when it has confirmed that the requirements specified in the respective items are satisfied.

- (1) Where solicitation for investments is a private placement or handling of private placement:  
The requirements specified under Article 1-5-2, Paragraph 2 of the FIEA Enforcement Order are satisfied.
- (2) Where the solicitation for investments is an exclusive offer to sell, etc. to professional investors or handling of exclusive offer to sell, etc. to professional investors:  
The requirements specified under Article 1-8-2 of the FIEA Enforcement Order are satisfied.
- (3) Where the solicitation for investments is related to the purchase and sale of Securities (limited to those listed in (c) of the same item) prescribed in Article 1-7-3, Item 3 of the FIEA Enforcement Order:  
Notification is made to the customer who is the counterparty to the solicitation for investments, informing that the Over-the-Counter Securities, etc., may not be transferred to persons other than Professional Investors in principle (excluding the cases where a solicitation for sale is made to a customer).

**(The investment solicitation for sale by Existing Shareholders)**

**Article 9** When soliciting for investment under Item 2 of the preceding Article, a Handling Association Member may solicit investment for sale for Over-the-Counter Securities, etc. to customers who hold Over-the-Counter Securities, etc. related to the solicitation for investment.

2. When a Handling Association Member conducts solicitation set forth in the preceding Paragraph, it shall take care not to infringe on the provision of Article 40-4 of the FIEA.

**(Delivery of Written Explanation and Request for Confirmation at the Time of Commencement of Transactions)**

**Article 10** If, as a result of solicitation for investment made pursuant to Article 8, a customer (limited to those deemed to be Professional Investors pursuant to Article 34-3, Paragraph 4 of the FIEA as applied mutatis mutandis pursuant to Article 34-4, Paragraph 6 of the FIEA; the same shall apply hereinafter in this Article and the main clause of the following Article) intends to purchase any of the securities for the first time set forth in the following items, the Handling Association Member shall deliver to the customer a document listing the risks applicable to the category of securities set forth in the relevant item, explain the risks, and collect a written confirmation from the customer that the customer understands the matters listed in the written explanation and enters into the transaction at its own discretion and responsibility.

- (1) Over-the-Counter Securities
- (2) Investment Trusts, etc.

**(Delivery of Written Explanation on Individual Issues)**

**Article 11** When soliciting for investment related to purchase by a customer made pursuant to Article 8, a Handling Association Member must deliver a written explanation stating the matters listed in the following items and provide a sufficient explanation thereof to the customer who is the counterparty to the solicitation for investment:

- (1) Range of customers assumed;
- (2) Details of the risk of loss;

- (3) Conditions for liquidation and cancellation;
- (4) Important matters related to the securities of a different class (meaning the securities that are not the same class of securities prescribed in Article 10-2 of the Cabinet Office Order on Definitions under Article 2 of the FIEA; the same shall apply hereinafter) from the Over-the-Counter Securities for the solicitation for investment (limited to cases where the issuer has issued securities of a different class from the Over-the-Counter Securities subject to the solicitation for investment);
- (5) Method of provision or disclosure of Information on the Issuer; and
- (6) Other matters that the Handling Association Member deems necessary.

2. The provision of the preceding Paragraph shall not apply to the case where a Handling Association Member makes a solicitation for investment pursuant to Article 8, Item 3 and provides the customer who is the counterparty of the solicitation for investment with necessary information to inspect the website of the Unlisted PTS Operating Member (meaning the Unlisted PTS Operating Member prescribed in Article 2, Item 8 of the Rules Concerning Transactions, Etc., of Unlisted Securities over Proprietary Trading Systems (PTS), and shall be limited to those who have a proprietary trading system in which the purchase and sale of the securities are conducted) or the Handling Association Member, on which the matters listed in the respective items of the preceding Paragraph are posted.

## **CHAPTER V. Internal Control System**

### **(Internal Rules and Operational Guidelines )**

**Article 12** A Handling Association Member must provide for, in the internal rules, the matters listed in the following items according to the category of securities listed in the respective items for which the solicitation for investment is to be made under these Rules, and must develop a system for properly executing the matters set forth in the internal rules.

- (1) Over-the-Counter Securities:
  - (a) matters concerning the verification and examination conducted pursuant to the provision of Article 3;
  - (b) matters concerning the acquisition of information on the issuer;
  - (c) matters concerning the management of Professional Investors;
  - (d) matters concerning the delivery of Over-the-Counter Securities;
  - (e) matters concerning the check for unfair trading; and
  - (f) other matters that the Handling Association Member deems necessary.
- (2) Investment Trusts, etc.:
  - (a) matters concerning the verification and examination conducted pursuant to the provision of Article 3 (for Investment Trust Beneficiary Certificates, matters concerning examination shall be excluded);
  - (b) matters concerning the acquisition of information on Investment Trusts, etc.;
  - (c) matters concerning the management of Professional Investors;

- (d) matters concerning the delivery of Investment Trusts, etc.; and
- (e) other matters that the Handling Association Member deems necessary.

2. A Handling Association Member must prepare operational guidelines based on the contents of the internal rules as set forth in the preceding Paragraph, submit them to the Association, and make them disclose.

3. If there are any changes or additions to the category of the securities to be solicited, a Handling Association Member must, in advance, amend the internal rules set forth in Paragraph 1 and the operational guidelines set forth in the preceding Paragraph, submit the amended operational guidelines to the Association, and make them disclose.

### **(Notification and Disclosure as a Handling Association Member)**

**Article 13** An Association Member who intends to become a Handling Association Member must submit to the Association a notification of designation of a Handling Association Member using the specified form, the operational guidelines prepared pursuant to the preceding Article, and any other documents deemed necessary by the Association no later than 15 business days prior to the commencement of the solicitation of investments under these Rules.

2. When the Association finds that the documents submitted pursuant to the preceding Paragraph are complete, it shall designate the Association Member who submitted the notification under the preceding Paragraph as a Handling Association Member. Provided, however, that the designation may be denied if it is deemed necessary for reasons such as a violation of law or regulations, or the Association's rules, on the part of the Association Member.

3. The Association shall disclose the name of the Handling Association Member designated pursuant to the provision of the preceding Paragraph.

### **(Revocation of Designation as a Handling Association Member)**

**Article 14** A Handling Association Member who wishes to rescind its designation as a Handling Association Member must submit to the Association a written notification of rescission of designation as a Handling Association Member using the specified form, no later than five business days prior to the day on which it wishes to rescind its designation.

2. The Association may, if it finds it necessary for reasons such as a violation of law or regulation, or the rules of the Association, rescind an Association Member's designation as a Handling Association Member or suspend its designation by specifying a period, without a notification under the preceding Paragraph.

3. The Association shall, upon receipt of the notification under Paragraph 1, rescind or suspend an Association Member's designation as a Handling Association Member on the date desired by the Handling Association Member who made such notification, or in the case of the preceding Paragraph, on the date deemed necessary by the Association.

4. The Association shall disclose the name of the Handling Association Member whose designation has been rescinded or suspended pursuant to the provision of the preceding Paragraph.

5. An Association Member shall continue to assume the obligations and liabilities arising from the operations it performed as a Handling Association Member, even after its designation as a Handling Association Member is rescinded or while its designation as a Handling Association Member is suspended pursuant to the provision of Paragraph 3.



## **CHAPTER VI. Miscellaneous Provisions**

### **(Reporting to the Association)**

**Article 15** A Handling Association Member must report to the Association, in accordance with the provisions set forth by the Association, on the status of the transactions pertaining to the solicitation for investments made by the Member under these Rules by the 15th of the month following the month during which the date of such transactions falls on (for transactions related to private placement or handling of private placement, the 15th (if the date falls on a non-business day, the following business date applies) of the month following the month during which the date when such private placement or handling of private placement ended applies).

### **(Inquiries, Etc. by the Association)**

**Article 16** When the Association finds it necessary in relation to the contents of a Handling Association Member's operational guidelines or the status of its operations under these Rules, it may make inquiries to, hear explanation from or request materials from the Handling Association Member.

2. A Handling Association Member must respond to inquiries, hearings, or a demand for submission of materials prescribed in the preceding Paragraph.

### **(Delivery by Electromagnetic Method)**

**Article 17** In lieu of delivering the document set forth in Articles 10 and 11, a Handling Association Member may provide the information stated in the document by means of an electronic data processing system or other methods using information communications technology pursuant to Rules Concerning Handling of Documents Delivery, Etc. Through Electromagnetic Method (hereinafter referred to as the "Rules for Electromagnetic Information Provision"). In such case, the Handling Association Member shall be regarded as having delivered such written documentation.

2. A Handling Association Member may, as an alternative to collecting a written confirmation set forth in Article 10, obtain the information included in the confirmation by means of an electronic data processing system or other methods using information communications technology pursuant to the Rules for Electromagnetic Information Provision. In such case, the Handling Association Member shall be regarded as having collected such written confirmation.

### **(Exemptions for PTS Transactions)**

**Article 18** When soliciting for investment under Article 8, Item 3, the provisions of Articles 3 through 7 and Article 12 shall not apply.

2. For Association Member who only engage in solicitation for investment pursuant to Article 8, Item 3, the term "Handling Association Member" in Articles 8 to 11 and Articles 15 to 17 shall be deemed to be replaced with "Association Member," and the provisions of Articles 13 and 14 shall not apply.

## **SUPPLEMENTARY PROVISIONS**

This amendment comes into effect as of July 1, 2023.