

Questionnaire concerning the implementation of the BASEL III guidelines and the regulatory framework for Managers of Alternative Investment Funds

Banking, Finance and Capital Markets Law Commission

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National Report of Japan

Toshikazu Sakai

Bingham Sakai Mimura Aizawa

4-3-13

Toranomon, 4th Floor

Minato-ku, Tokyo, Japan

105-0001

81-3-6721-3188

toshikazu.sakai@bingham.com

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1. Introduction

The topics of the questionnaire are the regulations with regard to Basel III as well legal aspects with regard to Alternative Investment Funds. Basel III aims to strengthen bank capital requirements by increasing bank liquidity and decreasing bank leverage. Provisions with regard to Alternative Investment Funds are supposed to increase protection of investors by increasing the regulations with regard to Managers of Alternative Investment Funds. Both topics are subject to recently emerged innovative but also intense regulation. The regulation in both fields was initiated by the financial crises and the principal aim of both of them is to prevent the systematic risks that compromise the financial market. Both regulations are highly controversial. According to proponents they are necessary to protect the financial system. Opponents on the other hand fear a regulatory overreach. Even though Basel III as well as AIFM are strongly affected by regulations of the EU/EEA, the questionnaire is designed to be answered for participants of all jurisdictions.

The questionnaire is intended to enable you as National Reporter to provide an overview on the key issues which arise in your jurisdiction in relation to the above mentioned topics. We have structured the questionnaire, based on broad open questions, in order for you to elaborate on the main topics as freely as possible and the questions should be seen more as guidance rather than specific questions that could be answered with a simple yes or no. That said, please focus on the practical aspects, rather than a theoretical analysis when completing the National Report.

Ideally, the National Reports should be no more than 10 pages and be formatted on a consistent basis. You will find the formatting guidelines attached to the E-Mail. Please ensure that these guidelines are observed.

Should the National Report be prepared by more than one National Reporter, please ensure that only one single document is provided. In such case, please also note that we will not coordinate the preparation of the Reports between the co reporters. You may do so on your own.

Looking forward to working together and we remain at your disposal whenever you have any questions or like to discuss.

All the best and looking forward to be seeing you in Prague

2. The implementation of the Basel III guidelines

2.1 Is there a basic intend in you country to implement the Basel III guidelines?

Yes, there is a basic intention in Japan to implement the Basel III guidelines.

If yes: Why does your country intend to implement the Basel III guidelines?

Japan has implemented and will implement the Basel guidelines in order to cooperate with the global efforts to facilitate the financial stability.

Japan has implemented the Basel regulations from Basel I. Most of the implementation of Basel III in Japan is effected by amendments of existing Basel implementations in Japan which reflected Basel I, Basel II and Basel 2.5.

If not: What is the reason for not implementing the Basel II guidelines?

N/A

If not: What is planed instead? Are there any similar rules already in force in your country?

N/A

2.2 In which stage of the implementation of the Basel III guidelines is your country currently? When will the rules be enacted?

The implementation of the Basel III guidelines in Japan complies with the international schedule; Japanese Basel III framework will apply to internationally active banks (i.e., those having foreign branch or foreign subsidiary, the “IAB”) from March 31, 2013.

The amendment of the JFSA Notification No. 19 (for IABs), which stipulates the capital requirements under Basel framework (see 2.4 below), was published on March 30, 2012, and became effective on March 31, 2013.

As for the domestic banks (i.e., those not having foreign branch or foreign subsidiary, the “DB”), the Financial Services Agency of Japan (the “JFSA”) provided a slightly modified version of Basel III taking into consideration of their locally-based activities. Japanese Basel III for DBs will be effective on March 31, 2014.

2.3 Is there a delay in the implementation of the Basel III guidelines? If yes, what is the main cause for it?

No. See 2.2 above.

In the Basel III Japan Assessment (see 2.4 a)(2)below), the Basel Committee on Banking Supervision (“Basel Committee”) pointed out that, due to differences in the fiscal year, the implementation in Japan deviates from the one in the other countries by 3 month (due to the year-end on March 31 rather than December 31). However, the Basel Committee concluded that no deviations vis-a-vis the Basel framework have been found.

It is planned that (i) the implementation of the counter cyclical capital buffer and the capital conservation buffer, both of which would be applied from 2016 under Basel III, will be implemented in Japan by 2016, and (ii) the implementation of the leverage ratio, which would be formally applied from 2018 under Basel III, will be implemented in Japan by 2018. See 2.4 b), c) and d) below.

2.4 Does the national implementation of the Basel III guidelines meet, exceed or undercut the stated minimum standards concerning the below mentioned issues?

The national implementation of the Basel III guidelines “meets” the stated minimum standards concerning the below mentioned issues.

a.) Capital requirements:

Japanese Basel III sets forth the same minimum standards for IABs as the original Basel text in terms of the capital adequacy ratios including Tier 1 ratio as well as the items which could be included in the Tier 1, etc. On the other hand, as mentioned in Q2.2 above, the capital requirements for DBs

are slightly more relaxed than the original Basel text based on their limited scope of activities.

To be more specific, Basel framework has been stipulated in Article 14-2 of the Banking Act. The details of the capital requirements are further delegated to JFSA Notification No. 19, which constitutes a part of the Banking Act.

The following sets forth a summary:

(1) Summary of the JFSA Notification No. 19

JFSA Nitification No. 19 “Standards to determine whether or not the condition to satisfy the capital requirement is adequate in light of the assets, etc. held by banks based on the provision of Article 14-2 of the Banking Act” stipulate the actual provisions implementing Basel regulations with respect to Piller-1 (i.e., Capital Requirements). The JFSA Notification No. 19 has 12 chapters and more than 300 articles. The table of contents thereof is as follows:

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- Chapter 1: Definition
- Chapter 2: International Standard (Consolidated Capital Ratio)
- Chapter 3: International Standard (Non-Consolidated Capital Ratio)
- Chapter 4: Domestic Standard (Consolidated Capital Ratio)
- Chapter 5: Domestic Standard (Non-Consolidated Capital Ratio)
- Chapter 6: The Standardized Approach of Credit Risk
- Chapter 7: The Internal Ratings-Based Approach of Credit Risk
- Chapter 8: Treatment of Securitization Exposure
- Chapter 8-2: CVA Risk
- Chapter 9: Market Risk
- Chapter 10: Operation Risk
- Chapter 11: Miscellaneous

JFSA amended Chapters 2 and 3 in order to comply with the Basel III standards for IABs while amended Chapters 4 and 5 for DBs with some Japanese specific modifications.

(2) Basel Committee on Bank Supervision “Basel III regulatory consistency assessment (Level 2) Japan” (October 2012)

Reviewing the condition of implementation of Basel III in Japan, the Basel Committee published the above titled report (the “Basel III Japan Assessment”) to make public its assessment as of October 2012. In the Basel III Japan Assessment, the Basel Committee gave “Grade 3” to Japan in total, and “Compliant” or “Largely Compliant” in each detailed findings. In this part, we will explain some key issues in the Basel III Japan Assessment which could have global impact.

(a) The legal form of Implementation

In the Basel III Japan Assessment, the Basel Committee pointed out that a number of the Basel standards were implemented through “secondary” regulations such as administrative notifications, guidelines, inspection manuals as well as published questions and answers, reflecting the more informal legal tradition in Japan. The Basel Committee also pointed out that some of the secondary legislation is not necessarily binding in formal terms. However, the Basel Committee still considered them to be generally binding and thus eligible to meet Basel standards based on such an evidence that supervisory action can be efficiently exercised based on these rules. See 2.6 below.

(b) Scope of application

In the Basel III Japan Assessment, the Basel Committee pointed out that, although Basel regulations do not provide any specific definition of internationally active banks, generally speaking, the definition of an internationally active bank as “a bank that has overseas business locations” may seem in contradiction with the spirit of the Basel agreement because a purely domestic bank with no establishment abroad may still compete with foreign banks in foreign markets. However, the Basel Committee concluded that, in the case of Japan, the impact of this rather restrictive definition is not material, at least for now, as banks with noteworthy overseas operations are the internationally active banks with at least one subsidiary or branch abroad.

(c) Transitional arrangements

See 3 above.

(3) International Standards

The International Standards are the Japanese standards applicable to IABs which the Basel Committee assessed and reported in the Basel III

Japan Assessment. The International Standards “meet” the Basel III standards. The following is a summary.

(a) Definition of Capital

The total regulatory capital applicable to IABs consists of (i) Common Equity Tier 1 (Article 5), (ii) Additional Tier 1 (Article 6), and (iii) Tier 2 Capital (Article 7), and the basic elements and the regulatory adjustment are stipulated for each, both in accordance with Basel III. As to the basic elements, for example, there is a restriction and limitation in inclusion of common shares issued by consolidated subsidiaries of the bank and held by third parties (i.e., minority interest) into Common Equity Tier 1. As to the regulatory adjustments, for example, (i) double gearing regulations are applicable so that reciprocal cross holdings of capital that are designed to artificially inflate the capital position of banks will be deducted in full, based on “corresponding deduction approach” and (ii) threshold deductions are applicable when banks hold certain “specific items” (such as deferred tax assets that arise from temporary differences) in excess of 10% or 15% of Common Equity Tier 1 pursuant to calculation method stipulated in applicable provisions.

(b) Minimum Capital Requirement

In accordance with Basel III, it is required for IABs to keep the following minimum capital ratio;

(i) Common Equity Tier 1

At least 4.5% of the Risk-weighted Asset (RWA)

(ii) Tier 1 Capital (the sum of Common Equity Tier 1 and Additional Tier 1)

At least 6% of the RWA

(iii) Total Capital (Tier 1 Capital plus Tier 2 Capital)

At least 8% of the RWA

(c) Risk-weighted Asset (RWA)

In accordance with Basel III, for example, the following regulations are reflected in JFSA Notification No. 19:

(i) when calculating the RWA of exposure of large regulated financial institutions, banks which adopt the internal ratings-

based (IRB) approach shall use the correlation multiplied by 1.25.

- (ii) when calculating the RWA of derivatives, it shall be calculated based not only on counterparty default risk but also on CVA risk; and CVA risk shall be calculated by either Advanced Risk Measure Approach or Standard Risk Measure Approach.

(d) Transitional arrangements

Transitional arrangements corresponding to Basel III are adopted. Capital requirements will be applied in stages, and formal application will take effect from 2015.

(4) Domestic Standards

The following is a summary of the domestic standards, which were not yet in place when the Basel Committee conducted its assessment in the Basel III Japan Assessment (October 2012).

(a) Definition of Capital

Different from Basel III standards and the International Standards in Japan, the total regulatory capital applicable to DBs is defined as “Core Capital”, which is an original concept in Japan. The basic idea of Core Capital is, on the one hand, to integrate Tier 1 Capital and Tier 2 Capital into one concept (Core Capital) and, on the other hand, to limit its basic elements only to capital which has a high level of loss absorbency as listed below:

- (i) Common shares or capital amount of Preferred Shares with mandatory convertible provision;
- (ii) Other stock surplus (excluding loss/benefit of securities valuation);
- (iii) Capital amount of stock options regarding (i); and
- (iv) Common shares issued by consolidated subsidiaries of the bank (but limited to banks or securities firms) and held by third parties (i.e., minority interest) regarding Core Capital.

The basic elements and the condition to include such elements into Core Capital are more limited and restricted than the sum of Tier 1 and Tier 2 Capital. For example, the minority interest that could be included into the basic elements is limited to the minority interest only in banks or securities firms. The framework of regulatory

adjustment applicable to DBs harmonises with Basel III standards and International Standards.

(b) Minimum Capital Requirements

In the case of DBs, the minimum capital ratio is 4%, which has been the minimum capital ratio applicable to DBs from Basel I. In Japan, while keeping this lower minimum capital ratio, as discussed above, the definition of capital is more limited and restricted than the International Standards. However, there is one exception that, if DBs were banks which adopt internal ratings-based (IRB) approach, these DBs are deemed as IABs and, in order to keep adopting and using the IRB approach, it becomes a condition to keep at least 4.5% minimum capital requirements of Common Equity Tier 1.

(c) Risk-weighted Asset (RWA)

As to the RWA, DBs “meet” Basel III standards in most part, except for the CVA risk calculation where Simplified Risk Measure Approach is permitted to certain DBs.

(d) Transitional arrangements

The period of transitional arrangements is longer than Basel III. The maximum period of transitional arrangements is for 15 years.

b.) Leverage Ration:

At present (as of March 2014), no amendment of the JFSA Notification No. 19 to implement the leverage ratio has been completed since the international standard and conditions in relation to the leverage ratio are not finalized yet. Under the Japanese Supervisory Guideline “Comprehensive Guidelines for Supervision of Major Banks, etc.” (the “Supervisory Guidelines”), it is stipulated that IABs shall calculate Leverage Ration based on Basel III quarterly (during a parallel run period (transitional period) from January 2013 to January 2017, 3% of minimum Tier 1 Leverage Ratio will be tested, and from January 2018, it is planned that international minimum standards under Basel III will apply.).

c.) Counter cyclical capital buffer:

At present (as of March 2014), no amendment of the JFSA Notification No. 19 to implement the counter cyclical capital buffer has been completed since the international standard and conditions in relation to the counter cyclical capital buffer are not finalized yet. Under the Supervisory Guidelines, it is stipulated that IABs shall sufficiently consider the counter cyclical capital buffer when banks draw up their capital plans.

d.) Capital conservation buffer:

At present (as of March 2014), no amendment of the JFSA Notification No. 19 to implement the capital conservation buffer has been completed since the international standard and conditions in relation to the capital conservation buffer are not finalized yet. Under the Supervisory Guidelines, it is stipulated that IABs shall consider the capital conservation buffer when banks draw up their capital plans.

If your country does not implement one of the above mentioned Basel III standards, is there any alternative regulation?

N/A

2.5 How many systematically relevant financial institutions are located in your jurisdiction?

Based on a publication by the Basel Committee at this stage (as of March 2014), Japanese financial institutions that constitute “global systematically important banks” (“G-SIBs”) are three banks; Bank of Tokyo-Mitsubishi UFJ, Sumitomo Mitsui Banking Corporation and Mizuho Bank, Ltd. Since the international standard and conditions to determine “global systematically important financial institutions” (“G-SIFIs”) and “domestic systematically important financial institutions” (“D-SIFIs”) are not finalized yet, it is not determined in Japan which financial institutions would be deemed as G-SIFIs and D-SIFIs. JFSA may have an authority to determine them, though it depends on the scope of “financial institutions” and applicable regulatory agencies.

2.6 How does your country regulate the capital requirements for systematically relevant financial institutions?

As far as banks, JFSA, as the supervising authority, may impose administrative orders based on Article 26 of the Banking Act (including a suspension order to suspend business operations) in order to correct the delay of banks in complying with the capital requirements. The administrative order relating to implementation of a prompt corrective action, based on Article 26 of the Banking Act, stipulates the details of administrative orders corresponding to four classifications depending on unsatisfied ratio (%) when banks do not satisfy the minimum capital requirements.

As to other financial institutions, it depends on the scope of “financial institutions”.

2.7 Do you think that many banks in your country will struggle to meet the requirements of Basel III? Why do you think so?

As to the minimum capital requirements, it is generally believed that both IABs and DBs will likely satisfy applicable requirements, though some banks may have to struggle to meet the requirements. In the case of IABs, for example, it was anticipated that the ratio of regulatory adjustments to Common Equity Tier 1 such as other intangible, defined beneficial fund assets and capitals deducted due to double gearing would be relatively high. However, three mega banks (Bank of Tokyo-Mitsubishi UFJ, Sumitomo Mitsui Banking Corporation and Mizuho Bank, Ltd.) announced in November 2012 that they expected to satisfy the minimum capital requirements of Basel III. One main reason is that Japanese banks have invested in JGB (Japanese Government Bonds) to reduce their RWAs, and other major reason is that Japanese banks have increased their profits, which could be reflected to Retained earnings (Common Equity Tier 1), in the last few years. In the case of DBs, there was a concern as to whether the international minimum requirements would be directly applied to DBs. However, due to the measure to keep the 4% minimum capital ratio in exchange for limiting the elements of the Core Capital under the domestic minimum requirements and the application of the longer period of transitional arrangements to satisfy the Core Capital requirements, it is anticipated that DBs could satisfy the requirements.

As to the leverage ratio, according to a trial calculation by Mizuho Securities in March 2011, Japanese mega banks exceeded the requirements for leverage ratio under Basel III.

However, to satisfy counter cyclical capital buffer and capital conservation buffer to be applied in the near future, Japanese banks would be required to conduct further efforts such that to increase profitability of banking business, to reduce regulatory adjustments to Tier 1 or Tier 2 and/or high RWAs (which could have relatively high returns), and to take reasonable balance between them.

3. Regulatory Framework for Managers of Alternative Investment Funds

3.1 Is there any legislation in your jurisdiction concerning Managers of Alternative Investment Funds?

The discretionary investment management business is one of the four regulated financial instruments businesses under the Financial Instruments and Exchange Act of Japan (Law No. 25 of 1948, the “FIEA”). The FIEA is the primary legislation in Japan that regulates the activities of financial instruments business operators (“FIBO”) which are registered to engage in discretionary investment management business (“Investment Managers”). It should be noted that the registration for Investment Managers is a separate and distinct registration from those investment advisers which engage in the business of providing non-discretionary investment advice (“Investment Advisers”).

The scope of the Investment Manager registration is broad and covers the management of investments in most of the commonly seen securities and financial instruments such as shares of capital stock companies, bonds, units of investment trusts, limited partnerships, etc. It should be noted that in Japan, there are separate rules and regulations which govern the activities of managers of other types of assets such as commodities or real estate. For the purposes of this report, we have limited our discussion to Investment Managers.

- 3.2 Is your jurisdiction member of the EU or the EAA and therefore legally obligated to implement the AIFM directive 2011/61/EU? If yes: Is the implementation of the AIFM directive 2011/61/EU already successfully completed?**

Japan is not a member of the EU or the EAA.

However, it should be noted that the governing authorities of Japan with respect to derivative transactions and other products governed by the AIF¹ have entered into “Memorandum of cooperation concerning consultation, cooperation and the exchange of information related to the supervision of funds and fund managers” with members of the EU or the EAA which implemented the AIFM directive 2011/61/EU.

- 3.3 At which point in time was the legislation concerning AIFM enacted?**

The FIEA was enacted in September 30, 2007.

- 3.4 What is the name of the competent supervisory authority for Alternative Investment Funds in your country?**

The Financial Services Agency of Japan (the “JFSA”) is the main supervisory authority for Investment Managers in Japan. The Ministry of Economy, Trade and Industry of Japan (the “METI”) is also a supervisory authority with respect to Investment Managers which involve in the investment management of securities investing in real estates in Japan.

- 3.5 Which minimum-capital does an AIFM require in order to obtain a licence or authorization?**

The minimum paid in capital for an Investment Manager is JPY50 million. However, it should be noted that there are many other requirements to be

¹ The Financial Services Agency of Japan (the “JFSA”), the Ministry of Economy, Trade and Industry of Japan (the “METI”) and the Ministry of Agriculture, Forestry and Fisheries.

registered as an Investment Manager in Japan (e.g. type of legal entity, staffing, etc). As a general matter, the Investment Manager registration is the second hardest registration to attain of the four registrations under the FIEA.

3.6 How long is the duration of authorisation process to obtain an AIFM-Licence?

Upon the submission of the completed application documents, the standard application review is two month as prescribed by law. However, as a matter of practice and especially recently, it is our experience that the final review of the Japan regulators may extend past the two month period and it is often difficult to predict the exact timing of this process.

3.7 What are the key elements of the authorisation process?

There FIEA enumerates clear requirements on any applicant that seeks to be registered as Investment Manager in Japan. While there are various requirements regarding capital and the form of the applicant, it is our experience that the Japan regulators are most concerned with ensuring that the applicant can properly engage in the investment management business in Japan. In connection with this, the Japan regulators will focus on staffing and compliance, and the applicant will be required to satisfy the Japan regulator on these points.

3.8 Is it mandatory for AIFM to have a local residence in your jurisdiction?

Yes. To be registered as an Investment Manager in Japan, the applicant must be either: (1) a Japan stock company having a statutory auditor and a board of directors (the board of directors must consist of at least three directors under the Company Law of Japan); or (2) the Japan branch of a foreign company that is similar to a stock company.

3.9 Does the legislation distinguish between different types of AIFM? What are the key differences between them?

Within the Investment Manager Registration, there is a sub-class registration commonly referred to the “Professional Discretionary Investment Manager” registration (the “Pro-DIM”). While a registered Pro-DIM is limited to providing management services to “Qualified Investors” (*tekikaku toushika*) and has a maximum cap on its assets under management at JPY20 billion, the registration requirements of a Pro-DIM are significantly lighter in comparison to the Investment Manager registration. Furthermore, in certain circumstances, when combined with the Type 2 FIBO registration (see our response to Q3.11 below), a Pro-DIM may engage in a self-offering of Paragraph 1 Securities.

Furthermore, while not a separate class of the registration such as the “Pro-DIM”, through elections in their methods of business, an Investment Manager can elect to manage trust assets of investment trusts and be deemed as so called “Investment Trust Manager” (aka “Entrustment Company of Investment Trust” defined in the Investment Trust and Investment Corporations Law of Japan (the “ITIC ”)). An Investment Trust Manager is permitted to sponsor the formation of investment trusts (including managing such trusts) as well as engaging in a “self-offering” of such interests of such trusts.

3.10 Are there any legislative restrictions regarding legal structures of AIFM?

Please kindly refer to our response to Q3.8.

3.11 If you are a member of the EU or EEA, can AIFM in your country obtain an EEA/EU Passport which enables to distribute AIFs to professional investors?

Japan is not a member of the EU or the EAA.

In Japan, investment management licenses (see our response to Q3.1 above) and distribution licenses are separated. In the case of investment management license, there is the Pro-DIM registration which enables to manage AIFs for “Qualified Investors” only (see our response to Q3.9 above). However, in the case of distribution license, there is no special licence applicable to the distribution of securities (including AIFs) only to professional investors.

The following are financial regulations with respect to securities distribution activities.

Any entity engaging in the marketing of securities to Japan targets is required to be registered as engaging either in a Type 1 Financial Instruments and Exchange Business (a “Type 1 FIBO”) or Type 2 Financial Instruments and Exchange Business (a “Type 2 FIBO”) depending on the type of securities that is being marketed. There are two types of “securities” covered under the FIEA: (1) those financial instruments defined as “securities” under Paragraph 1 of Article 2 of the FIEA (“Paragraph 1 Securities” or “Type I Securities”); and (2) those financial instruments defined as securities under Paragraph 2 of Article 2 of the FIEA (“Paragraph 2 Securities” or “Type II Securities”).

Paragraph 1 Securities include financial instruments such as shares of capital stock companies, bonds, units of investment trusts, shares of investment corporations, warrants, commercial paper, etc. Paragraph 2 Securities include financial instruments such as interests in limited partnerships, limited liability partnerships, limited liability companies, etc.

It should be noted that the above are general guidelines only and there are numerous exemptions which may be applicable.

If properly registered as a Type 1 FIBO or Type 2 FIBO, the Investment Manager may also engage in a securities distribution business. As a general matter, the Type 1 FIBO registration is the hardest registration to attain under the FIEA, but the Type2 FIBO registration is the second easiest registration to attain under the FIEA.

3.12 Do AIF themselves require to be licensed or authorised by a competent supervisory authority?

The need for an AIF to be registered in Japan will vary depending on whether the AIF is publicly offered or privately offered in Japan and depending on the type of legal structure of the AIF itself.

If the AIF (including both foreign AIF and domestic AIF) will be publicly offered in Japan, based on a disclosure requirement under the FIEA, the AIF will need to file a securities registration statement (*yukashouken todokesho*, “SRS”) with the JFSA before the AIFs or broker/dealer of the AIFs starts solicitation activities to sell the AIFs to investors. No such filing is required if the AIF will be offered in Japan on a private placement basis. Please also kindly refer to our response to Q3.13 below.

Separate from the above, irrespective of the manner of offering, if the AIF is a foreign corporate or foreign trust type fund, a notification (the “ITIC Notification”) must be submitted to the JFSA pursuant to the ITIC. This notification is required to monitor the foreign AIFs by the JFSA to protect Japanese investors.

Also, irrespective of the manner of offering, if the AIF is a domestic investment corporation, under the ITIC, (i) a filing to the JFSA by the REIT is required when establishing the investment corporation and (ii) a registration to the JFSA by the REIT is required when the investment corporation starts its investment. If the AIF is a domestic investment trust, under the ITIC, an investment manager of the investment trust is required to file the form (*yakkann*) of the investment trust agreement to the JFSA. In the case of investment trusts managed by an entrustor, an “Investment Trust Manager” as an entrustor is required to file the form, and in the case investment trusts managed by a trustee, a trustee is required to file the form.

3.13 How are AIFs categorized and what is the authorisation or licence requirement for each category?

For legal purposes, an AIF is most commonly categorized based on the type of securities it issues (i.e. Paragraph 1 Securities or Paragraph 2 Securities). It should be noted that the Japan laws and regulations that are applicable to a Paragraph 1 Securities and a Paragraph 2 Securities are vastly different.

If an AIF is applicable to Paragraph 1 Securities, Type 1 FIBO registration is required when a person or entity solicits and sell the AIF on behalf of the AIF as broker or dealer (See our response to Q3.11 above). Also, as noted above, in the public offering that the AIF is offered in Japan on a public offering basis, an SRS is required. For the purposes of AIF’s whose interests are deemed to be Paragraph 1 Securities, as a general matter, the definition of a “public offering” is if the interests of the AIF are solicited to 50 or more than 50 investors unless private placement conditions such as (i) private placement for qualified institutional investors (the “QIIs”) only, (ii) private placement for professional investors (*tokutei toushika*) only, or (iii) private placement for small number investors are met.

If the interests of the AIF are deemed to be Paragraph 2 Securities, a Type 2 FIBO registration is required when a person or entity engages in any solicitation or marketing with respect to the interest of such AIF (See our response to Q3.11 above). Similarly, a SRS will be required in the case that the interests of the AIF are publicly offered into Japan. It should be noted that the definition of a “public offering” varies significantly between Paragraph 1 Securities and Paragraph 2 Securities, as in the case of Paragraph 2 Securities, a public offering is defined as an offering whereby 500 or more Japanese investors subscribe to the AIF.

3.14 How long does the process of authorisation or licensing of AIFs take?

The time with respect to the licensing or registration of an AIF will depend on the type of which specific registration:

(1) Securities Registration Statement:

It takes time (in general, around 2 month, though it depends on the type of the registration statement and issuers) to prepare the registration statement. Filing is effective upon submission for the purpose of soliciting investors, but sales to investors pursuant to the registration statement are subject to certain waiting period.

(2) ITIC Notification:

It takes time (in general, around two or three weeks) to prepare the ITIC Notification. Filing is effective upon submission.

(3) Establishment of domestic investment corporation or trust:

In the case of domestic investment corporations investing in real estates (the “REIT”), it takes time (in general, around one year to one year and a half) to establish the REIT, to obtain a discretionary investment management business registration by a fund manager of the REIT, and to start investment by the REIT with registration.

3.15 Are there certain legal structures for AIFs? Please name them.

There is no one universal legal structure with respect to those foreign investment funds offered into Japan as corporate, trust, limited partnerships, SICAVs, etc are commonly offered into Japan. However, it should be noted that most open ended investment funds that are offered into Japan are structured as investment trusts for the purposes of permitting the Japanese investors with beneficial tax treatment.

Also, there is no one universal legal structure with respect to those domestic investment funds offered in Japan as trust, investment trust, general partnership (*nini-kumiai*), limited liability partnership (LLPs), limited partnership (LP), silent partnership (*tokumei kumiai*), etc. are commonly offered in Japan.

Generally speaking, depending on the type of funds such as a hedge fund, a private equity fund and a real estate fund, it can be said that there is a tendency which legal structures are preferred, for example:

(1) Hedge Fund

Domestic general partnership (*nini-kumiai*), domestic investment trusts and foreign investment trusts, foreign limited partnerships, all of which are solicited in private placement, are generally used for hedge funds.

(2) Private Equity Fund

Foreign investment trusts, foreign limited partnerships, domestic limited liability partnership (LLPs), domestic general partnership (*nini-kumiai*) and domestic silent partnership (*tokumei kumiai*), all of which are solicited in private placement, are generally used for private equity funds.

(3) Real Estate Fund

Domestic silent partnership (*tokumei kumiai*), TMK (*tokutei mokuteki gaisha*), which is a SPC investing in real estate in private placement base, and the REIT are generally used for real estate funds.

3.16 What are the key differences with reference to the authorisation and marketing of AIFs that are distributed to retail investors and those only distributed to professional investors?

Where an investor is a general investor (*ippan toushika*), the financial instruments dealer that is involved in the marketing of such fund will be subject to additional disclosure requirements to such general investor. In the case of professional investors (*tokutei toushika*) (including QIIs), the financial instruments dealer is exempt from such disclosure obligations.

Furthermore, with respect to the private placement of Paragraph 1 Securities, where the Japan investor is the QIIs, subject to certain conditions, it is not necessary to count such QII for the purpose of the 49 investor count limitation.

3.17 Are there any special requirements for leveraged AIFs?

No, there are no special requirements for leverage AIFs. However, certain publicly offered funds in Japan may be restricted from investing in a highly leveraged AIF.

3.18 Are there any special regulations with regard to private investors or semi-professional investors?

While there are no special regulations with respect to private investors or semi-professional investors, as noted in Q3.16 above, there are two investor classes in Japan - general investors and professional investors. Please see our response to Q3.16 for more details on this point.

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