



プロタイプ
政策研究所
Policy Research Institute

Newsletter No.002 | August 15th 2023

Amendments of Cabinet Office Order on Financial Instruments Business, etc. for the improvement of Concurrent Engagement in an Investment Advisory Business

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The Amendments of Cabinet Office Order on Financial Instruments Business, etc. for the improvement of concurrent engagement in an investment advisory business was promulgated on August 1, 2023¹, and will come into force on August 15, 2023; this newsletter outlines the amendment.

1. Registration and Notification for Investment Advisory Business (投資助言業)

In order to conduct a thorough eligibility review of important personnel, the registration application for an investment advisory business required the inclusion of the names of individuals who make investment decisions based on the analysis of financial products (analysts, etc.), and any changes of such individuals must be promptly notified to Financial Services Agency, Japan (JFSA).

Some businesses, especially large type I financial instruments business operators, expressed concerns about the administrative burden of registering and notifying numerous employees who qualify as analysts and important personnel.

The amendment allows the omission of the notification of the names of individuals who have equivalent qualifications to important personnel (e.g., individuals registered as overseas representatives of the company) and who are appropriately managed within the organization and engaged in advisory services.

2. Documents Provided Before and at the Time of Entering an Investment Advisory Contract (投資顧問契約) and a Discretionary investment contract (投資一任契約)

From the perspective of providing information to clients, it was required for an investment advisory business to include the names of individuals who perform analysis of financial product values or investment decisions based on such analysis (analysts, etc.), and individuals engaged in advisory services (advisors) in the documents provided before (契約締結前交付書面) and at the time of entering an investment advisory contract (契約締結時交付書面) and a discretionary investment contract (including provided by its agency such as

¹ <https://www.fsa.go.jp/news/r5/shouken/20230801/20230801.html>



Financial services intermediary (金融サービス仲介業) and Financial Instruments Intermediation (金融商品仲介業)).

However, some businesses asserted that it could be challenging to specify and include the names of individual analysts and advisors in the documents, particularly when providing advisory services systematically to clients.

In such cases, the amendment allows the use of alternative descriptions, such as the names of departments responsible for conducting analysis and advisory services, assuming that the individuals involved can be identified from the company's records, and the necessary information can be provided to clients when they request it.

3. Written Record of Advice Based on Investment Advisory Contracts

Investment advisory businesses were required to create and retain a written record of advice based on investment advisory contracts as part of their bookkeeping. Some businesses raised concerns that (i) the items to be recorded and their contents are not clear, and (ii) recording the content of individual advice can be administratively burdensome, leading to inadequate communication with clients, especially when providing paid advice to a wide range of clients.

To address these concerns, the amendment clarifies the points which need to be considered when making the record and allows alternative ways (such as using record-keeping methods already installed in practice) to reduce the current burden.

4. Clarification of the Scope of Prohibition of Loans and Other Transactions Related to Investment Advisory Services for Type 1 Financial Instruments Business Operator (第一種金融商品取引業者)

In the interest of protecting investors from malicious operators engaging in unauthorized transactions and fund misappropriation, investment advisory businesses were prohibited from providing loans, mediating loans, acting as intermediaries, or acting as agents for loans to clients in connection with their



investment advisory services. Some businesses expressed concerns that they may not be able to offer certain services such as securities collateral loans or their intermediation when conducting an investment advisory business concurrently with the type I financial instruments business.

The amendment permits loans and related transactions by the type I financial instruments business operators when they engage in investment advisory services under certain conditions (including comprehensive understanding of the current state of loans and other transactions carried out by such type I financial instruments business operators, and if necessary, installing enhanced conflict of interest management and internal control systems).

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