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To: Research Division, International Bureau, Ministry of Finance, Japan

Comment on the Draft Rules and Regulations of the Foreign Exchange and Foreign Trade Act

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Dear Sir or Madam

Please find enclosed our response to the Government of Japan on behalf of the Alternative Investment Management Association ("**AIMA**"). This follows on our emailed written submission in December 2019 which was delivered in person in January 2020.

AIMA is the global representative of the alternative investment industry, with around 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$2 trillion in assets. AIMA also incorporates the Alternative Credit Council (ACC) which represent fund managers focused in the private credit and direct lending space. The ACC currently represents members that manage US$400 billion of private credit assets globally.

We thank you in advance for your consideration of our submission and are happy to provide further information or engage in further dialogue which would be helpful to this purpose.

Respectfully submitted,

Kher Sheng Lee
Managing Director
Co-Head of APAC
Deputy Global Head of Government Affairs

Specific Comments

AIMA would like to respectfully submit the following comments and questions with respect to various regulations and orders proposed on March 14, 2020 (collectively or individually, the "Proposed Regulation") to implement the recent amendments (the "Amendments") to the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949, as amended) (the "FEFTA").

Rules/regulations	**Comments**	**Reason**
"Blanket Exemption" for foreign financial institutions • **Requirements regarding discretionary investment management as it relates to "management of shares by mandate pursuant to a discretionary investment management agreement or other agreement" and "voting rights exercisable pursuant to a discretionary investment management agreement or other agreement" under Article 26(2)(iii)(iv) of the FEFTA.**		
Cabinet Order regarding Inward Foreign Investments, etc. (Cabinet Order No. 261 of 1980) ("Cabinet Order") Articles 3-2(2)(iii)(*i*), 2(7), 2(9), 2(16)(iii)	Under the proposed Cabinet Order, the Blanket Exemption covers shares or voting rights acquired or managed by qualified foreign financial institutions. However, the proposed definitions and requirements of "discretionary investment management agreement or other agreement" used to define the scope of such exempt transactions and activities generally require that the underlying investor having absolutely no ability to exercise or direct the exercise of voting rights and other shareholders' rights. The scope of "discretionary investment management" should be expanded to allow the underlying investor to retain the right to direct how voting is made and to provide instructions to the manager as to how voting rights should be exercised in limited circumstances where national security concerns are not implicated (i.e., circumstances other than the those involving nomination of a Board member, disposition of a business or a subsidiary within the designated sectors or access to Non-Public Technology Information).	One of the core rights that an investor receives when acquiring shares in a public company is the right to vote shares in favor or against the election of directors, approval of director compensations or important transactions that may have a significant impact on that shareholders' interests including matters such as M&A transactions. The voting of shares is the primary way in which a shareholder can express their appreciation or disapproval of the actions of the management of a company. Voting of shares is the major "signal" to management concerning the satisfaction of capital providers with the performance of management each fiscal year. Regulations limiting the ability of shareholders to exercise this right should be drafted as narrowly as possible and the availability of an exemption from prior notifications should not be conditioned on the non-exercise of ***any*** voting rights. Investors should be able to exercise their

		right to vote by instructing an asset manager in all circumstances other than voting on those specific matters that are prohibited under the Blanket Exemption.
"Blanket Exemption" for foreign financial institutions • **Scope of transactions and activities covered by the Blanket Exemption – proprietary trading/customer account trading**		
Cabinet Order Articles 3-2(2)(iii)(*i*)	Under the proposed Cabinet Order, the scope of the Blanket Exemption includes certain transactions and activities of the Inward Foreign Investments engaged in "as business" by qualified foreign financial institutions. The scope of such transactions and activities should include qualified foreign financial institutions' proprietary trading activities as many foreign investors had understood that all such activities would be covered. Please confirm that the scope of trading by qualified financial institutions with which the Blanket Exemption can be used generally covers broad proprietary trading activities of those financial institutions (trading by those financial institutions as principal).	To clarify the scope of the Blanket Exemption. Proprietary trading by investment banks, family offices, personal investment companies and similar "private" sources of capital not delegated to a separate manager constitute an important source of capital to Japanese public companies.
"Blanket Exemption" for foreign financial institutions • **Scope of qualified financial institutions – United States exempt reporting advisers**		
Cabinet Order Articles 3-2(2)(iii)(*i*) Order regarding Inward Foreign Direct Investments, etc. (Order No.1 of 1980 issued by multiple Ministries) ("FDI Order") Article 3-2(3)(iv).	The definition of a financial institution eligible for exemption from prior notification under this Section appears to require that such institution is "licensed" as a financial intermediary in the foreign jurisdiction. The definition appears to anticipate that the financial intermediary will have received such license from a foreign regulator in a formal registration procedure. However, certain managers in foreign jurisdictions operate under "exemptions" from formal license application proceeding with the regulator. Rather, these firms, while exempt from obtaining a "license" are required to report periodically to regulators in their home jurisdiction regarding their activities for investors and to comply with various limitations on the scope of their discretionary investment activities and the manner in which they may offer their services (in many cases compliance with these restrictions may be more onerous than would be the case where a "license" is granted in another jurisdiction.	Among the most significant investors in Japanese public equity securities are United States and other jurisdictions' managers that may be exempt from obtaining formal license registration to engage in their investment management activities (based on their client sophistication, number of clients, etc.) but are "regulated in the market". That is, their conduct and scope of business is defined by (a) the scope and conditions of the exemption under which they operate and (b) the types of regulatory filings they are required to make with relevant

	These firms are considered to be "regulated in the market" and it has been assumed that such firms would also be eligible for the "financial institution" exemption under this definition. Please confirm. For example, so-called "exempt reporting advisers" in the United States are investment managers that are not officially registered as "Advisers" under the Investment Advisers Act of 1940 of the United States (the "Advisers Act"), however are relying on certain specific exemptions thereunder, requirements of which include filing of designated forms called Form ADVs pursuant to the Advisers Act and regulations thereunder. These Form ADVs submitted by exempt reporting advisers are posted by the Securities Exchange Commission of the United States (the "SEC") on its website, thereby these exempt reporting advisers being recognized as advisers relying on these specific exemptions by the SEC, the regulatory authority equivalent to the Financial Services Agency of Japan; as such, such exemptions are benefits for which one applies pursuant to laws and regulations, and therefore consistent with the definition of "Permission, Approval, etc." as defined in Article 2(iii) of the Administrative Procedure Act.	regulators of the jurisdictions in which they operate. A good example of this are managers that are not required to obtain licenses under the Advisers Act but must file a "Form ADV" with the SEC and must comply with detailed regulations, including reporting, in connection with their investment operations. These firms are, accordingly, viewed as being "regulated in the market" even without having to seek a registration or license from their regulator. AIMA believes that it was intended for the financial institutions exemption in the FDI Order to apply to these firms as well in order to ensure that they could avoid the burdensome task of filing prior notifications under FEFTA. Unfortunately, under the current drafting of the FDI Order this treatment is not sufficiently clear and AIMA's members seek clarification and confirmation on this point. We believe this is consistent with the intent of the Proposed Regulation which specifically permits managers relying on Special Business Activities for Qualified Institutional Investors and etc. under Article 63 of the Financial Instruments and Exchange Act.
Prohibited activities under the "Blanket Exemption" and "General Exemption" • **Scope of prohibited activities and timing of a PN-CA notification**		
Order Designating Standards by which an Inward Foreign Direct Investment, etc. Does Not Fall Under Inward Foreign Direct	Where an investor operates under Blanket Exemption to acquire a greater than 1% interest in a Japanese public corporation, that investor need not make a filing provided that the investor does not engage in any of the specifically listed activities under the proposed FDI Standards Order and Specified Acquisition Standards Order, i.e., in the case of the Blanket Exemption, (a) acceptance of a Board member; (b) submission of a	It is not uncommon for an investor in Japanese public corporation to make a greater than 1% investment in a Japanese corporation on the expectation that the companies' business will be managed on the basis of good corporate governance and in the

Investments, etc. Relevant to National Security ("FDI Standards Order") Articles 2, 3 Order Designating Standards by which a Specified Acquisition Does Not Fall Under Specified Acquisitions Relevant to National Security ("Specified Acquisition Standards Order") Articles 2, 3	proposal to dispose a business or a subsidiary within the designated sectors; and (c) access to, or certain activities related to, Confidential Technology Information, and in the case of the General Exemption, prohibited activities (a)(b)(c), or, prohibited activities (a)(b)(c) and (d) attendance of an investment committee meeting, and (e) submission of a written proposal along with a request for a response with a deadline, depending on whether the investee company includes a business within Core Sectors or not (collectively, "Prohibited Activities"). 1. Please confirm that any activities and actions other than the applicable Prohibited Activities specifically listed under the Article 2 of each of the proposed FDI Standards Order and Specified Acquisition Standards Order will not be in any way impacted. For example, activities that do not amount to submission of a formal proposal, e.g., discussions with the investee company about underperforming businesses within the designated sectors should not be restricted in any manner. 2. Many investors are uncertain at what point the requirement for making a PN-CA filing is triggered. Please confirm that a PN-CA filing is not required until, e.g., in the case of (a), immediately before the investor (or its related person) officially accept the office; in the case of (b), the investor officially submits formal written demand to the public company to include an agenda item at an Annual General Meeting of Shareholders ("AGM") covering the actions in (b); and, in the case of (c), the investor officially submits a proposal (in other words, prior consultation is permitted). Confirmation of the stage at which a notification filing is required would be greatly appreciated by foreign investors and is essential to reduce the burden on Stewardship Code responsibilities created by the new regulations. 3. Please provide examples of "compelling reasons" listed as review standards of a PN-CA filing.	interests of shareholders and other stakeholders. As owners of the company, the investors have a responsibility to their own shareholders (or retail or institutional investors where a manager is concerned) under Japan's Stewardship Code to actively engage with company management where they believe these interests are not being served well by existing management. Thus, an investor may initially invest passively only to discover later than management is performing poorly or making unwise or reckless decisions for the company. In these cases, the investor may need to take action to replace Board members or seek to have the Company dispose of an inefficient business to improve the performance of the public company as a whole. Under the Proposed Regulations, before initiating such a proposal officially to shareholders, the investor may be required to file a prior notification but in many cases such a notification would be meaningless because the relevant issues between the investor and the corporation have not been developed and so it is difficult to report "what is to be proposed". Most investors assume that mere preliminary discussions with management of Japanese corporations suggesting the possibility of proposing actions that might become Prohibited Activities (and the filing of a notification) do not require a filing. Thus, an investor may suggest to, and discuss with, management that the investor is considering taking such actions if necessary, to seek a change in

		management direction at the Corporation without the need to make a notification filing before such discussions. Further, clarification as to the government's review standards for a PN-CA filing is needed to provide greater predictability and allow advance planning by investors while engaging in their Stewardship Code related responsibilities.
Certification required for sovereign wealth funds and government investment entities to rely on the "General Exemption" • **Requirements and procedures for certification**		
Cabinet Order Article 3-2 (1)	Sovereign wealth funds and similar government investment entities (including quasi-governmental public and private pension funds) (collusively, "Government Related Funds") are excepted from the "General Exemption" eligibility generally, provided, however, they may seek "certification" to rely on the "General Exemption". However, the Proposed Regulation do not specify the details of the methods for obtaining such certification and there are no set time frames in which a determination of such certified status will be granted. Please provide additional guidance with respect to the proposed certification process including requirements, processes and review period.	The Proposed Regulations do not make clear the procedures pursuant to which Government Related Funds can seek required certification. In addition, there is no guidance in respect of the types of information that may need to be provided to obtain certification nor are there any object constraints on the circumstances in which such status may be denied. The proposed regulations should include both a procedure, a timetable and standards for the granting of certification to Government Related Funds.
Frequency of post-transaction reporting of trading activities relying on the "Blanket Exemption" • **Frequency of post-transaction reporting**		
FDI Order Exhibit 3 Paragraphs5 and 6, Forms 11 and 11-2	The Proposed Regulation appears to require an eligible foreign financial institution relying on the Blanket Exemption to submit a per-transaction post-transaction report (Form 11 or 11-2) when it engages in a "Foreign Direct Investment" (acquisition of shares or voting rights) which results in 10% of more of share/voting rights by the foreign financial institution. Forms 11 and 11-2 should provide an option to submit a monthly aggregate report covering all of the Foreign	A per-transaction report is not practicable in case of frequent trading activities engaged by foreign financial institutions. Given that the foreign financial institution continues to rely on the Blanket Exemption and, importantly, satisfy the requirements thereunder, there should be an option to submit a monthly aggregate report

	Direct Investment activities of the reporting month in lieu of per-transaction reports.	covering all of the Foreign Direct Investment activities of the reporting month, in lieu of per-transaction reports.
Transition Measures • **Confirmation on how the transition measures work**		
Ministry of Finance explanation material (updated on March 25, 2020), p. 13.	Please confirm that: • The Amendments will apply to any new ***acquisition (purchase)*** of shares or voting rights which (a) takes effect on the next day after the expiry of the 30-day transition period or thereafter and (b) results in 1% or more of shares/voting rights of the investee company becoming held by the foreign investor. In other words, the Amendments will not have any impacts on any ***sale (disposition)*** of shares or voting rights which (c) takes effect following the expiry of the 30-day transition period, but (d) still results in the foreign investor holding 1% or more of shares/voting rights of the investee company, no advance notification or post reporting is required when an investor disposes of a "grandfathered" position in a public company through normal market trading. • More generally, any shares of voting rights that are already held by a foreign investor at the expiry of the 30-day transition period will be "grandfathered" and will not be subject to the notification or reporting requirement under the Amendments so long as the foreign investor does not engage in a new (additional) ***acquisition (purchase)*** of shares or voting rights or other type of reviewable transactions or activities under the Amendments.	To clarify how the Amendments will actually come into effect. Disposition (sales) of existing positions in Japanese public companies that are "grandfathered" under the transitional measures should not trigger the need for any prior or post-facto filing as such action has no impact on any Japanese "national security interest" and, if anything, reduces any such concern. To require filings in the context of dispositions (sales) of grandfathered positions imposes an unnecessary burden on investors.