

MEMO# 32362

April 6, 2020

ICI Draft Letter on Japan FEFTA Consultation - Comments Requested by April 8

[32362]

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TO: ICI Global Investing Subcommittee

ICI Global Regulated Funds Committee RE: ICI Draft Letter on Japan FEFTA Consultation - Comments Requested by April 8

Dear Member –

I hope that you and your loved ones are healthy and safe during this difficult time.

As we previously reported, on March 14, the Japanese Ministry of Finance (MOF) launched a public consultation on the draft rules and regulations of the Foreign Exchange and Foreign Trade Act (FEFTA). The draft rules and regulations proposed by the MOF can be found at "e-Gov," the official web portal of the Government of Japan

(<https://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=395122004&Mo de=0>). The MOF has also provided an English language summary of the draft regulations, available at

https://www.mof.go.jp/english/international_policy/fdi/kanrenshiryou_20200314.pdf.

Comments are due to the MOF by the end of Sunday, April 12, 2020, and the MOF intends for the rules to enter into force in May.

As background, on November 22, 2019, the Japanese National Diet passed an amendment bill to the FEFTA to expand the scope of transactions that will be subject to foreign investment review, notably lowering the threshold for requiring approval for the acquisition of shares of restricted companies from the current ten percent to one percent. The details of the requirements and the scope of exemptions for the financial services sector were not included in the bill, but instead are to be specified by the MOF in a Ministerial Ordinance, following stakeholder consultation.

In mid-December 2019, ICI submitted a letter to the MOF seeking clarification on the application of the provisions to regulated funds (<https://www.ici.org/pdf/32121a.pdf>). The

draft rules address certain of the questions/concerns that we raised. In particular, the draft rules provide that (1) asset management companies that are subject to regulation in their home jurisdiction are one of the categories of foreign financial institutions and are therefore able to utilize the blanket exemption, provided they comply with the specified conditions and (2) owners of assets, such as regulated funds, that have delegated investment decision-making authority and voting rights to an investment adviser (asset management company) do not themselves have a reporting obligation.

It appears, however, that not all regulated funds are within the scope of the Foreign Financial Institution (FFI) Exemption, as we had requested. We are therefore again advocating for the inclusion of all regulated funds. Additionally, it has been brought to our attention that (1) the list of designated and core companies that is going to be provided by the MOF may only be for “information purposes,” – we are advocating for a comprehensive and definitive list and (2) that an additional general condition for using the FFI exemption or the general investor exemption may be applied – we are seeking clarity on this point. Finally, we are seeking confirmation that the rules will apply only to regulated actions (i.e. share purchases) taken after the effective date.

The draft letter is attached. ***Please provide your comments to me by the end of Wednesday, April 8, or reach out to me on my mobile number whenever convenient if you’d like to discuss (even if not during regular work hours).***

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

[Attachment](#)