

**MEMO# 32384**

April 13, 2020

# **Comment Letter on the Japanese Foreign Exchange and Foreign Trade Act Draft Rules**

[32384]

April 13, 2020 TO: ICI Members

ICI Global Members SUBJECTS: International/Global RE: Comment Letter on the Japanese Foreign Exchange and Foreign Trade Act Draft Rules

On November 22, 2019, the Japanese National Diet passed an amendment bill to the Foreign Exchange and Foreign Trade Act (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. Rather, the Japanese Ministry of Finance (MOF) was tasked with drafting these provisions following stakeholder engagement, and on March 14th the MOF launched a public consultation on the draft rules and regulations.[\[1\]](#)

The draft rules address certain of the questions/concerns that ICI raised in its December 2019 letter to the MOF on this matter.[\[2\]](#) 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.

However, we still have a few concerns that we request the MOF to address. First, not all regulated funds[\[3\]](#) are within the scope of the Foreign Financial Institution (FFI) exemption, as we had requested in our December 2019 letter. In our comment letter we again advocate for the inclusion of all regulated funds within the definition of FFI. Additionally, we understand 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 request that the list be comprehensive and definitive and (2) 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.

Eva M. Mykolenko  
Associate Chief Counsel - Securities Regulation

## [Attachment](#)

### **endnotes**

[1] 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](https://www.mof.go.jp/english/international_policy/fdi/kanrenshiryou_20200314.pdf).

[2] In mid-December 2019, ICI submitted a letter to the MOF seeking clarification on the application of the provisions of the FEFTA to regulated funds, *available at* <https://www.ici.org/pdf/32121a.pdf>.

[3] The term "regulated funds" includes US funds, which are comprehensively regulated under the Investment Company Act of 1940 (Investment Company Act), and non-US funds, that are organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors, such as funds domiciled in the European Union and qualified under the UCITS Directive (EU Directive 2009/65/EC, as amended), Canadian investment funds subject to National Instrument 81-102, and investment funds subject to the Hong Kong Code on Unit Trusts and Mutual Funds.