



NCAC NEWS

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Outline of the Financial Instruments and Exchange Law

The Financial Instruments and Exchange Law is a law that has been enacted to ensure the healthy development of the economy and the protection of investors by comprehensively regulating the various financial products in correspondence with the globalization of the market.

Prior to 2006, the law was called the Securities Exchange Law, but since the revision in 2006, laws pertaining to financial investment products such as the Securities Exchange Law and Financial Futures Trading Law have been merged and became the “Financial Instruments and Exchange Law (hereafter, FIE Law)” (established on June 7, 2006, and promulgated on June 14, 2006).

Before the establishment of this law, separate laws were stipulated for each financial product. For instance, securities such as stocks and bonds were regulated under the Securities Exchange Law, and financial futures transactions were regulated under the Financial Futures Trading Law. However, because financial products that fell outside these laws began to appear one after the other and cases began to emerge where investors were incurring damages, it became necessary to establish a new framework law that cross-sectorally and comprehensively covered a wide-range of financial products. As a result, FIE Law was established. Because the FIE Law is based on the Securities Exchange Law, in addition to regulating the obligations and responsibilities of corporations and management, it also incorporates regulations that govern the securities companies and securities exchange that engage in the sales and solicitation of financial products. The main characteristics of FIE Law are as follows:

- (1) A cross-sectoral system that applies to a wide range of financial products has been implemented.

Commodity funds and civil law corporations have now been brought under the umbrella of regulations. Securities companies, financial futures traders and investment advisory companies have been defined as “financial product traders” and are all equally subject to regulations. “Securities brokers” under the Securities Exchange Law have been defined as “financial product brokers” and are subject to regulations under the law.

Depending on the knowledge and experience of the investor, a differentiation has been made on the content of the rules of conduct for business operators such as an obligation for disclosure in writing or the prohibition of uninvited solicitation.

- (2) Take Over Bid (TOB) system and Major Shareholding Report system have been implemented

It has been established that when stocks are rapidly acquired through combined trading on the domestic and foreign market, in the case that ownership ratio of the stocks exceeds one third of the total, the stocks will be subject to TOB. In addition, the tender offer period has been changed and the information disclosed to investors has also been revised. For the Major Shareholding Report system, the exception given to corporate investors in terms of the period for submitting major shareholding reports has been significantly shortened to a maximum of “within three weeks (the trading details must be compiled every two weeks and a report must be submitted within five business days)” from the day the stock was acquired. In addition, it has now become mandatory to submit reports electronically.

(3) The introduction of a quarterly report system

The semi-annual report system for financial information that was stipulated under the Securities Exchange Law has been repealed and a “quarterly report system” that had already been implemented by many listed companies in accordance with the self-imposed rule of the stock exchange has been introduced.

(4) A system has been put into place to reinforce the internal control of financial reports

The system has been implemented due to the recent cases of inappropriately disclosed financial information which has led to a recognition for the need to reinforce the control of financial information within the organization. Listed companies are under the obligation to submit an “Internal Control Report” which evaluates the control within the organization in order to ensure that financial statements are correctly prepared. Companies that submit reports with falsified information for key matters will be subject to a penalty.

(5) Penalties for fraudulent trading have been fortified

In regards to the revisions to penalties and surcharges, it is now mandatory to register and report the representative’s name and company address pertaining to an investment fund, and if deemed necessary financial authorities are authorized to carry out investigations. Penalties have been reinforced for unfair trading such as insider trading and market manipulation. The penalty for insider trading has been increased to five years of imprisonment or a payment of 5 million yen or less.

The protection of individual investors is reinforced through FIE Law which unifies the rules in regards to the sales and solicitation of each of the financial products that have been regulated under different laws. For instance, the extent to which the distributor is responsible for providing consumers with an explanation on the risk of financial products has increased significantly. Accordingly, when selling a product that has the risk of falling below par, it is not sufficient to explain to the customer that “there is a risk of your capital falling below par”. Rather, the distributor must give an explanation that will help the customer understand the mechanism of the product.

FIE Law makes it possible to cross-sectorally unify and regulate the rules regarding the sales and solicitation of financial products. For this reason, it is expected that cases of general investors incurring damages due to fraud through financial products that are not subject to regulations under the law or dubious distributors will be prevented.

As a result of deregulation, many financial products are sold with the consumers as target and the consumers are becoming increasingly interested in investing. It is requested that financial product distributors comply with this law and create a market in which the general investor can participate with a sense of confidence and reassurance.

◇ *Activities of the NCAC*

—Product Testing—

Health Foods that are claimed to be rich in soybean isoflavone

The Food Safety Commission of the Cabinet Office has conducted an evaluation on the safety of food for specified health uses that contain soybean isoflavone. Based on the results, an upper limit has been set (hereafter ULDI : upper limit of daily intake) on the safe daily intake (the daily intake in addition to the daily diet) of soybean isoflavone in the case that it is taken as food for specified health use in addition to the daily diet.

Soybean isoflavone is widely sold in the form of a “health food”, which is considered to hold the same characteristics as food for specified health use. NCAC measured the amount of soybean isoflavone found in health food tablets and capsules that claim to contain a large amount of soybean isoflavone to check if any of the products exceeded ULDI set by the Food Safety Commission and then conducted a survey of business operators. The results were as follows:

- The majority of the brands contained an amount of soybean isoflavone that exceeded ULDI.
- The soybean isoflavone contained in some of the brands was significantly less than the amount indicated on the label.
- There is a considerable difference between the balance of soybean isoflavone, protein and calcium compared to that of soybean food products.
- Although many of the brands did not carry a warning label in regards to the content as specified by the Food Safety Commission, some of the business operators were in the process of considering a change in the labeling.
- Some brands were not properly following the nutrition labeling standard in terms of labeling.

Based on the results above, NCAC issued the following advice to consumers:

- It is best to avoid long-term excessive intake of health foods that claim to contain a high amount of

soybean isoflavone.

- It is best that pregnant women, infants and children not take an intake of soybean isoflavone that is in addition to the daily diet.
- Because the balance of the components in health foods that contain soybean isoflavone differs considerably from that of soybean food products, do not consider the intake of these health foods to be equivalent to that of soybean food products.
- It is recommended that soybean and soybean food products continued to be consumed as usual.

Based on the test results, the following requests have been made to business operators:

- To make changes to ensure that the daily intake of soybean isoflavone does not exceed ULDI.
- To ensure that the labeling and warning on the amount of soybean isoflavone contained and the nutrition labeling are done properly and made easier to understand.

The following requests have been made to the government:

- To issue some kind of guideline for consumers who take health foods.
- To provide thorough instructions in terms of the standards for the amount of soybean isoflavone and nutrition labeling.

The safety of highchairs for infants

Highchairs are used regularly when feeding infants. NCAC receives many consultations in regards to cases where infants have fallen out of it or have toppled over in it. Hence, NCAC has conducted a test to evaluate the safety of highchairs such as by checking the safety and fall-prevention features on them and the existence of gaps where infants may trap their hands or fingers. The results were as follows:

- Some highchairs (the type used at dining table etc.) were not equipped with fall-prevention features such as shoulder belts.
- Some chairs that clamp onto tables (hereafter, table chair) got detached from the table when weight was applied to the sides.
- Some chairs had gaps and holes that could trap fingers and possibly cause injury.
- Formaldehyde was detected from the cushions on some of the products.
- Some products did not have the labeling that is required under the Household Goods Quality Labeling Law.

Based on the results above, NCAC issued the following advice to consumers:

- To make sure that the product you buy is equipped with shoulder belts or hip/waist belt, and use them effectively.
- To check the products carefully before purchase, as some products had gaps that could cause the hands and fingers of infants to become trapped or protrusions that could poke an infant's body in a fall.
- Parents or guardians should watch over their infants carefully as a hazardous situation could arise from children getting out of their seat and standing up or kicking the table.
- To carefully inspect the table onto which the table chair will be attached to and to make sure that the legs of the infant in the table chair do not reach other chairs .

Based on the results, the following requests have been made to business operators:

- To equip the highchairs with features that will prevent falls.
- To make alterations on some table chairs that got detached from the table when the weight was applied to the sides.
- To make alterations on the gaps that pose the threat of trapping the hands and fingers of infants and on parts that could be accidentally swallowed or cause injury to infants.
- To make improvements on some cushion covers from which formaldehyde was detected.
- To ensure that the labels are affixed to the chairs as stipulated under the Household Goods Quality Labeling Law.

In regards to the chairs that did not have the affixed labels as stipulated by the Household Goods Quality Labeling Law, NCAC has requested the government to issue instructions to manufacturers.

—Surveys and Studies—

Consumer troubles concerning funeral services

<Summary>

The number of consultations received through PIO-NET (Practical living Information Online-NETwork) concerning funeral services is growing. The main cause can be attributed to the diversification in funeral

arrangements that have come with the changes in lifestyle. At the same time, there have been a large number of consultations that are believed to be problems arising from the side of the business operators such as the dubious charging of fees or a lack of explanation.

According to the investigative report issued by the Fair Trade Commission, "Because of the nature of funerals, the bereaved family and persons concerned enter into contracts without understanding the details of the service or the fees". In light of this situation, NCAC has provided information in order to prevent the occurrence of troubles in the future. The information is summarized below:

<From the consultation data>

- The number of consultations is on the rise and has grown up to 342 cases in 2005.
- The male-female ratio of those who have entered into contracts is 4:6. By age groups, a large number of consultations have been received from those between the ages of 40-60.
- The average contract amount is about 1.07 million yen. Most of the consultations received concerned funerals that were in the two price ranges of "under 500,000 yen" and "1 million yen and over, up to 5 million yen and under".
- Approximately 80% of the consulters had made a lump-sum cash payment.
- Approximately 80% of the funerals had been held at the premise or funeral hall of the contracted business operator, and approximately 10% were home funerals where the funeral service provider visited the home to hold services.
- 80% of the consultations concerned the contract or cancellation of contract.

<The causes for the rising number of consultations>

- In terms of the scale and equipment to be used for a funeral service, most funeral service providers determine a funeral course that corresponds to the budget and wishes of the customer. However, there is no time during the funeral for the bereaved family to judge whether or not the services included in the course have been performed.
- Although the funeral industry is regulated by the Ministry of Economy, Trade and Industry, running a business does not require any official licensing nor is it notifiable. It is particularly notable that there are many small-scale businesses and that many of them are not members of any industry group.

<The description of the problems>

- The bereaved family receives an explanation on the complicated details of the service at a time when they are faced with a sudden death and do not have the time nor are they in a state of mind to compare funeral service providers.
- Despite the fact that the circumstances of the contracting party require the provision of an explanation that is much more in-depth than under normal circumstances, there have been cases in which the funeral service provider is believed to have not provided a sufficient explanation.
- Because there are no model stipulations or guidelines issued by an industry group, there is no clear basis upon which to find a solution when trouble arises.

<Advice to consumers>

Based on the data and consultation cases, NCAC has issued the following advice.

(Advice for the individual)

- Make it clear what kind of funeral you want while you are still alive.
- Do some research on costs and forms of funerals by going through industry groups.
- Carefully discuss your own funeral arrangements with your family.
- Notify your family if you are a member of a ceremonial cooperation mutual aid society.

(Advice for the family)

- Enter into a contract only after you have verified the estimated amount and the type of service to be provided and have a full understanding of the contract.
- Do not hesitate to ask the funeral service provider about the fees that will be necessary in addition to the estimated amount before the completion of the funeral.
- When in need, ask a friend you trust or a close relative for help.

*Consumer trouble regarding overseas commodity futures trading and
overseas commodity futures option trading*

<Summary>

Consultations regarding commodity futures trading are not limited to the domestic market, but the troubles are also becoming noticeable in the overseas market. In particular, there have been a large number of cases in which consulting parties have suffered serious monetary damage due to the troubles with

“overseas commodity futures trading” and “overseas commodity futures option trading”, for which legal restrictions are slack. In light of this situation, NCAC has provided information in order to prevent the occurrence of troubles in the future. The information is summarized below:

<From the consultation data>

- The average number of consultations received from 2000 to 2004 was approximately 70 cases. In 2005, the number of consultations regarding “non-regulated overseas futures trading (a type that includes overseas futures option trading)” climbed up to 175 cases.
- In looking at the characteristics of the contracting parties of “regulated overseas futures trading”, the male-female ratio is 8:2, and over 50% are in their 20' s.
- On the other hand, the situation is reversed for “non-regulated overseas futures trading” in which the contracting parties have a male-female ratio of 3:7. In terms of ages as well, over 60% are in their 60' s and 70' s or over.
- When comparing the average amount already paid out by contracting parties, approximately 3.5 million yen has been paid out for “regulated overseas futures trading” in comparison to the high figure of approximately 7.7 million yen which has been paid out for “non-regulated overseas futures trading”.

<The background and the problematic points behind the high number of consultations>

- There are many cases in which young people and the elderly who have no knowledge, experience or the excess funds for trading, lose a substantial amount of money due to the additional margins and other payments.
- There have been cases in which elderly victims have invested all of the living expenses they had been saving in preparation for old age.
- There have been more than a few cases in which young victims have borrowed funds from various money lending companies and had fallen into multiple debt.
- Many victims had been called upon by the business operator and subjected to direct solicitation and there have been more than a few cases in which the victim was pushed into or forced to enter into a contract.
- The business operator does not provide sufficient explanation in regards to the risks of futures trading.
- Many of the consulting parties were solicited with the promise of a definite profit or promises that no money would be lost.
- There have been cases in which the business operator had repeatedly engaged in trading without consulting the contractor in order to earn commission.
- There have been cases in which business operators would not willingly comply to consumers who made requests to stop trading because of ballooning losses.
- Because regulations for foreign exchange margin trading have become tougher after many troubles had occurred, there has been an increase in business operators soliciting overseas commodity futures trading which is slack in regulations and easy to develop into a business.

<Advice to consumers>

Based on the data and consultation cases, NCAC has issued the following advice:

- Consumers who have no knowledge or experience in regards to the mechanism of futures trading should never become involved.
- Consumers need to be fully aware of the extremely high risk in this type of trading.
- If you have no interest in trading, you should firmly decline any solicitations.
- Once you refuse, do not take any more calls from the business operator.
- Even if you unwillingly entered into a contract, you have 14 days from the date of the contract to cancel. However, if you signed the contract at the office of the business operator, the contract cannot be cancelled.
- Contact the local consumer center if you encounter any problems.

The high number of secondary victimization cases due to the selling of wasteland

<Summary>

“Wasteland selling” is a business where a falsified explanation is given in order to sell mountains, forests and wasteland that have no property or practical value at a price that is many times more than its current value. This wasteland selling method became a social problem from the 1970's to the 1980's.

Based on the number of consultations regarding the wasteland selling received through PIO-NET, there has been a sharp increase since 2004. In particular, “secondary victimization*” accounts for approximately 80% of the total number of consultations.

*This refers to owners of land purchased through the wasteland selling who incur monetary losses for the second time when they are pushed into entering into contracts by real estate developers who tell them

that “the land cannot be sold without carrying out surveying and development” or “it is necessary to take out advertisements in order to sell the land at a high price”.

In view of the fact that the number of consultation cases are increasing once again, NCAC has provided the following information in order to prevent the occurrence of troubles in the future. The information is summarized below:

<From the consultation data>

- Looking at the characteristics of the contracting parties, it shows that the percentage of females is slightly higher.
- The average age of the consulters are in their 60' s and 70' s and account for 60% of the total number of consultations. This is judged to be due to the fact that a high number of land purchasers bought the land when there was a boom in the wasteland selling 20 years ago.
- Most of the consulters, over 60%, entered into contracts when solicited through direct selling. The next highest method was through mail order followed by telephone solicitation sales.
- The average contract sum was 1.74 million yen which is quite hefty. The sum for over 10% of the cases was over 5 million yen.
- Many of the consultations regarding secondary victimization involved “measurement services” and “construction for development” . In addition, there have been cases where consulters traded in their currently owned wasteland only to be pushed into buying a new piece of wasteland.

<Advice to consumers>

- Do not believe the sales talk of real estate developers without questioning.
- Excluding certain cities, the land prices continue to fall on average nationwide, and there is almost no chance that land purchased through the wasteland selling could be sold at a high price. Accordingly, it is crucial that you verify whether or not measurements, development or advertisements are truly necessary in order to sell your piece of land.
- When solicited by a real estate developer, do not decide on your own. Consult with your family and/or friends that you trust, or the local consumer center.
- If you are approached through direct selling, the cooling off period applies to the contract for measurements.
- If meeting the certain conditions, the cooling off period applies even to transactions concerning land.
- Even if the cooling off period has expired, contact the local consumer center immediately as there are cases in which cancellation is possible depending on the content of the contract and on circumstances.

The National Consumer Affairs Center of Japan is an independent administrative agency for consumer protection affiliated to the Cabinet Office. The main activities are consumer education, consumer consultation, research and product testing.

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