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Comments to Proposals for the implementation of the Financial Instruments and Exchange Act relating to High Speed Trading (“Proposals”)

To whom it may concerns:

The Japan Principal Trading Group (**JPTG**) and Futures Industry Association Japan (**FIAJ**) welcome the opportunity to provide further comments in relation to the Proposals.

We acknowledge the extensive and productive consultation that the Financial Services Agency (**FSA**) has undertaken with a range of participants in the industry. We believe the changes made so far make the proposals more relevant and cost effective in achieving FSA’s regulatory objectives.

We specifically would like to express our gratitude for the current position to accept all registration documents from overseas firms in English, without a requirement for a translation to be provided. This decision eases the compliance burden on High Speed Trading (**HST**) firms.

We would like to comment on the Proposals as follows. Please note that we hereby comment on various points including those which have already been discussed with the FSA, but we nonetheless would like to comment here again for others who were not able to join the discussion. Please accept this approach.

General comments

We believe that for any automated trading regulatory framework, risk controls are fundamental at both the market participant and exchange levels. Therefore, we commend the FSA’s proposal to ensure that participants implement certain pre-trade risk controls, as well as other measures designed to minimize the likelihood of market disruption and “abnormal” orders.

FUTURES INDUSTRY ASSOCIATION JAPAN

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We support the adoption of best practices regarding the development, testing, deployment, monitoring and oversight of automated trading systems. We believe a combination of effective risk management by HST firms, appropriate controls at the exchange level, and an effective regulatory supervision works to minimise the risks in the financial system and increases public confidence in the financial markets.

Specific Comments

Based on the discussions to date, we would like to seek the following additional clarifications.

1. Application for Registration requirements

HST firms have different operating models. This may include:

- Having a separate employment entity from the operating entity
- Having separate operating and booking entities
- Undertaking HST execution by an operating entity on behalf of affiliate companies

We would like to confirm that the aim of the Proposals is not to require separate registration for all entities that are involved in HST. Rather, we understand the Proposals to require registration of such HST firms that meet all relevant criteria. To the extent there is a key HST operating entity within a corporate group of companies, which undertakes the investment decision, such entity would be considered to be the relevant entity for HST registration purposes, and not the passive booking entity or underlying fund (based on individual discussions with the regulators). On the other hand, we understand that different entities within a same group would require registration if traders in both entities execute trades at their discretion.

We would like to confirm that the following information shall not be disclosed to the public and shall be kept private and confidential:

Oath, Business Method Manual, Business Execution Structure, Resumes of relevant officers, Financial Statements, and other commercially sensitive information e.g. volume of transactions, details of trading strategies, trading hours as well as all information on other businesses of the registrant.

2. Designation of Markets

Can the FSA confirm that the Proposals are intended to apply to all products listed on 7 designated market places or are there exceptions?

Can the FSA clarify what the process will be if other exchanges are to be designated in the future?

3. Language Requirements

We again greatly appreciate and thank the FSA for allowing English for the registration application form and attachments if applicants do not have an address in Japan.



Can the FSA confirm that all application documents and attachments as well as all ongoing notifications/reports can be submitted in English, except for the description of items used in the Financial Statements?

4. Trading Strategies

The HST firms generally have a limited number of trading strategies. Often, such trading strategies are implemented in practice via a number of trading algorithms. Changes to strategies are expected to take place infrequently. Conversely, trading algorithms can and do change on a very frequent basis. HST firms do not consider changes to algorithms to represent a change to the firm's trading strategy.

We would like to confirm with the FSA that HST firms can provide registration descriptions, requested statistics and ongoing notification of changes based on changes to the strategies of HST firms. Changes to algorithms, including to their parameters, that do not fundamentally change trading strategies do not require regulatory notification.

The current information requested, especially as part of the annual report, is extensive and very detailed including strategy type, product type, volume, on market versus off market. We believe much of this information can be collected from the exchanges or licensed intermediaries (e.g. brokers) especially when order flagging/categorization is introduced. Therefore, requesting this information from applicants will be duplicative and will be very time consuming for applicant firms to compile. For these reasons we respectfully request the FSA to reconsider to seek a narrower range of information.

5. Financial Information

A large number of HST firms are private companies. As such, they only face limited disclosure obligations in their home jurisdictions.

We also understand and support the requirements for HST firms to prove they have sufficient financial resources to undertake the HST activities in the Japan market.

Would the regulatory objectives be achieved if the HST firms were required to provide financial statements relating to capital, net assets and declarations of solvency?

We also wish to confirm that:

- a) Financial statements prepared in accordance with home jurisdiction accounting standards are acceptable and that statements prepared under Japanese accounting standards are not required
- b) Financial statements will only be required in relation to the applicant entity (and are not required for other affiliated entities)
- c) In the case of an investment manager, the manager may have the option of providing the financial information of the fund engaging in the HST strategy



- d) If P&L information is required to be submitted, it can be submitted at a high level without disclosing detailed expense items such as salary.

6. Governance and Control Functions

It is proposed that applicant firms allocate sufficient personnel to areas including record keeping, risk management and internal audit. We note that many applicant firms may not have a dedicated internal audit function. Therefore, can the FSA confirm it is sufficient for other departments (e.g. Compliance) to undertake the internal audit function or whether this function can be outsourced?

7. Record Keeping

We understand the Financial Instruments and Exchange Act (**FIEA**) imposes certain record keeping obligations on the financial industry.

In relation to HST, record keeping requirements in other jurisdictions generally apply for a period of up to 7 years. As an example, record keeping obligations in other parts of the Asia-Pacific region are 7 years and investment managers registered with the U.S. Securities and Exchange Commission are only required to maintain records for 5 years.

Longer record-keeping requirements demand additional resources, (financial, infrastructure and staff), particularly for firms that trade in multiple markets around the world. Due to the common infrastructure in place within many large corporate groups, these firms would need to amend their systems and maintain all trading records (regardless of location) for 10 years if the 10-year requirement remains.

Can a consistent 7-year record keeping requirement be considered for HST firms, on the basis that such firms are not present in Japan and are not, generally speaking, subject to the longer record-keeping obligations in their local jurisdictions?

Can the FSA explain what is intended by a 'program' (Cabinet Office Ordinance Article 338.7.1) which can be inspected in relation to records and ledgers?

8. Ongoing notification and filing requirements

We respectfully request the FSA to consider allowing a longer period to submit annual reports. The current proposed period of 3 months is shorter compared to other jurisdictions. For example, in Singapore, licensees have 5 months and in Hong Kong licensees have 4 months. The additional time will give affected participants sufficient time to prepare annual reports and minimize the number of time extensions that will need to be applied for and processed by the FSA. We note that a longer



period for reporting is available if it is jurisdictional practice in the home jurisdiction of the registered entity. However, some entities may not have specific reporting obligations in their home jurisdiction to rely on this exception. Therefore, we believe allowing a longer period would be appropriate.

9. Commencing and ceasing HST

Can the FSA provide further detail on when this notification is to be made? Further, does this relate to the trading of new products or does it only apply if a firm starts trading on a new market? To minimize unnecessary administrative burdens, we recommend that this notification should only be made when a firm first applies for registration and then again when they conclude all HST activity. We understand registered firms will be providing updated information to the FSA as part of the annual report process.

10. Other Confirmations

We would further like to confirm the following points:

- a) Where a resume is required to be submitted, a template for the provision of such information will be provided
- b) Where certificates are required to be provided (including residency, criminal and penal sanctions as well as competency), a template for such certificates will be provided
- c) In relation to the appropriate governance and control functions for HST firms, there are no requirements for a particular officer to be employed by the HST firm. Rather, arrangements that are considered appropriate based on the size, complexity and risk profile of the HST firm can be presented as part of the registration process. Specifically, HST firms will be able to utilise control functions provided by affiliate companies.
- d) Internal documents submitted by HST firms as part of the registration process (including internal policies and procedures and financial information) will be kept confidential.
- e) The Proposals do not create a requirement or an expectation that the HST firms will need to be regulated in their local jurisdiction.

We once again would like to thank you for your openness to feedback and we look forward to working with you to ensure effective implementation of these Proposals.

Sincerely yours