

Japan Regulatory Update

Japan

DT Legal Japan

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Introduction of the Japan FSA Market Entry System

Historically, a frequent concern of the registration process for applicants seeking to be registered as a financial instruments business operator in Japan was the extended period of time often required to complete the process. Depending on the specific registration being sought, in certain cases, it could take over a year for an applicant to complete the registration process and many foreign financial institutions have viewed this length of time as a barrier from entering the Japan market.

In part to address this concern, on April 1, 2017, the Financial Services Agency of Japan (the “**Japan FSA**”) commenced the operation of the “Financial Market Entry Consultation Desk” (the “**Market Entry System**”).¹ The stated purpose of the Market Entry System is to provide advice and support to foreign financial business operators (e.g., asset management firms) which plan to establish a business in Japan and seek to register with the Japan FSA to engage in a financial instruments business.

On August 4, 2017, the Japan FSA announced the completion of its first registration through the Market Entry System. The applicant was the Japan affiliate of a UK asset management company (the “**First Applicant**”) and the Japan FSA indicated that the First Applicant had completed its registration to engage in a Type 2 Financial Instruments Business, Investment Management Business, and Investment Advisory

and Agency Business in approximately twelve (12) weeks from the date of the first meeting.

Due to the short period of time that was required to complete the various registrations by the First Applicant, there is a great deal of interest among industry participants and experts regarding this new Market Entry System. While there appears to be only a limited amount of information available, our team has had discussions with the Japan FSA on various aspects of this new system and in this Client Alert, we will provide a brief summary of the Market Entry System.

A. Eligibility Criteria.

As of this time, there is no objective criteria as to the type of applicants which may seek to utilize the Market Entry System. However, as the primary purpose of this system is to further develop the investment management industry of Tokyo by supporting new market participants entering into Japan, we understand that this system is intended for applicants that do not currently have a Japan presence and are seeking to acquire a financial instruments dealer registration in conjunction with establishing a Japan office.² With respect to Japan offices of foreign financial institutions which are already registered with the Japan FSA, we understand that the Market Entry System may generally not be available to amend their existing registration.

¹ The Market Entry System is a collaborative effort among the Japan FSA, the Tokyo Metropolitan Government and the Kanto Local Financial Bureau.

² It may also be possible for the Japan office of an offshore entity to apply for the Market Entry System if such Japan office is not currently registered as a financial instruments business operator. One factor in determining eligibility is whether the applicant already has an existing relationship with the Japan regulators. However, if the Japan office is an unregistered entity, it should not have an assigned officer at the Japan regulator and therefore should be able to use the Market Entry System.

It is also important to note that the Market Entry System does not appear to be tailored exclusively for institutional applicants. While institutional applicants may have a greater efficiency in using this system due to generally having greater available resources, start up entities may also seek to use the Market Entry System.

B. Registrations and the Application Process.

Applicants may seek to utilize the Market Entry System to acquire any of the financial instruments business operator registrations under the Financial Instruments and Exchange Act of Japan. In other words, while the First Applicant did not seek the Type 1 Financial Instruments Business registration, it is possible to apply for such registration using the Market Entry System. However, the Market Entry System does not cover the application process in regards to any self-regulatory body (e.g. Japan Investment Advisors Association, Type 2 Dealers Association, etc.) which an applicant may be required to join in connection with its registration as a financial instruments business operator.

Turning to the application process itself, it is important to state that the actual process for applicants using the Market Entry System is identical to the process used by applicants under the traditional application system. Specifically, the various requirements (e.g. personnel, capital requirements, etc.) and the application documents are exactly the same. Instead, with respect to those applicants utilizing the Market Entry System, the officers of the Japan FSA will provide guidance to such applicants regarding the application process and assist such applicants in liaising with the Kanto Local Finance Bureau.³

C. Conclusion.

While in the case of the First Applicant, it managed to acquire its various financial business registrations in an exceptionally short time, applicants should be cautious as there is no assurance that a similar result may be attained for all applicants. However, based on our discussions to date with the Japan FSA, we do believe that there will be a significant reduction in the application time for those using the Market Entry System – even if such reduction is not as significant as in the case of the First Applicant. Furthermore, it is our understanding that, ultimately, the time that may be required for an applicant to complete a registration using the Market Entry

System will vary on a case by case basis depending on various factors (e.g. the readiness of the applicant, the proposed business model, the state of the submitted documents, etc.).

In conclusion, we do not believe that there are any disadvantages in the Market Entry System in comparison to the traditional application system and the former represents an extremely attractive option for those entities which are seeking to enter the Japan market and register as a financial instruments business operator.

As we anticipate that the Market Entry System will continue to attract a great deal of interest, DT Legal Japan is liaising closely with the Japan FSA regarding this new regime. Please feel free to contact us if you have any interests regarding the Market Entry System and the Investment Management Group of DT Legal Japan is happy to assist you in applying for a financial instruments business registration through the Market Entry System.

Please do not hesitate to contact us if you did not receive this Client Alert and you would like to be placed on the mailing list for Japan regulatory updates issued by DT Legal Japan's Investment Management Group.

³ Applicants seeking to register as a financial instruments business operator must apply to the Kanto Local Financial Bureau, which is the government sub-agency of the Ministry of Finance that is responsible for the handling of financial instruments business operator applications.

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