

Compilation of Advanced Responses from NSS Participants**Note to IESBA Members**

This following written responses were provided by the joint IESBA-IAASB National Standard-Setters (NSS) participants to the advanced questions below on listed entities as part of the May 2020 joint IESBA-IAASB NSS virtual session on the Definitions of Listed Entity and Public Interest Entity (PIE) Project. This paper was originally distributed as an agenda paper to all NSS participants for that session.

Definitions of Listed Entity and Public Interest Entity

The IESBA approved a project proposal, Definitions of Listed Entity and Public Interest Entity (PIE project) at its December 2019 meeting. Amongst other things, the PIE project aims to review the definitions of the terms “listed entity” and “PIE” in the IESBA Code, in coordination with the International Auditing and Assurance Standards Board (IAASB), with a view to revising these terms as necessary so they remain relevant and fit for purpose.

The definition of the term “listed entity” in the Code is identical to that in the IAASB standards. The term is defined in the Code as follows:

“An entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body”

The tables below compile the responses provided by IESBA NSS to the following questions circulated for input ahead of the May 2020 NSS session:

1. Is the IESBA Code’s definition of the term “listed entity” adopted in your country or jurisdiction for auditor independence purposes? If not, what definition is used?
2. How is the term “listed entity” or equivalent term applied in your jurisdiction? For instance, which securities markets are scoped in by the term and which securities markets that are open to the public are scoped out by the term?

1. **Is the IESBA Code’s definition of the term “listed entity” (see above) adopted in your country or jurisdiction for auditor independence purposes? If not, what definition is used?**

AUSTRALIA - Accounting Professional and Ethical Standards Board (APESB)

In Australia, APESB issues APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (APES 110), which is based on the IESBA’s International Code of Ethics for Professional Accountants (including International Independence Standards) (IESBA’s Code).

In APES 110, the definition of ‘listed entity’ has been directly adopted as per the definition in the IESBA’s Code.

However, we have included additional information on what is included in the term ‘listed entity’ within the definition of Public Interest Entity in APES 110. This definition includes additional information that a listed entity “...includes a listed entity as defined in Section 9 of the Corporations Act 2001” and other entities that are PIEs in the Australian context.

The relevant definitions relating to the term ‘listed’ from Section 9 of the Corporations Act 2001 are included below for your reference:

- “listed” a company, managed investment scheme or other body is listed if it is included in the official list of a prescribed financial market operated in this jurisdiction.
- “listed corporation” means a body corporate that is included in an official list of a prescribed financial market.
- “listed disclosing entity” has the meaning given by subsection 111AL(1).

In respect of the application of the Auditor Independence requirements for PIEs, APESB in consultation with the Australian regulators (ASIC and APRA) determined that in addition, to Listed Entities, that the following entities would be PIEs in the Australian Context:

- Authorized deposit-taking institutions (ADIs) and authorized non-operating holding companies (NOHCs) regulated by the Australian Prudential Regulatory Authority (APRA) under the Banking Act 1959;
- Authorized insurers and authorized NOHCs regulated by APRA under Section 122 of the Insurance Act 1973;
- Life insurance companies and registered NOHCs regulated by APRA under the Life Insurance Act 1995;
- Private health insurers regulated by APRA under the Private Health Insurance (Prudential Supervision) Act 2015;
- Disclosing entities as defined in Section 111AC of the Corporations Act 2001;
- Registrable superannuation entity (RSE) licensees, and RSEs under their trusteeship that have five or more members, regulated by APRA under the Superannuation Industry (Supervision) Act 1993; and
- Other issuers of debt and equity instruments to the public.

The above definition in effect captures listed entities, banks, insurance companies, and entities that issue debt and equity instruments to the public.

BRAZIL - Federal Accounting Council

Yes, we implemented the IESBA Code in Brazil, therefore we use the definition of “listed entity” for auditor independence purpose established in the Code.

CANADA - Public Trust Committee, CPA Canada

The Canadian provincial bodies of Chartered Professional Accountants have the authority to set ethical requirements for their members in accordance with each provincial Chartered Professional Accountants Act. The provincial bodies collaborate through the CPA Canada Public Trust Committee to set standards that are recommended for adoption in each province. The harmonized Independence Rule 204 does not use the IESBA Code’s definition of the term “listed entity” but rather it uses the following definition:

“**listed entity**” means an entity whose shares, debt or other securities are quoted on, listed on or marketed through a recognized stock exchange or other equivalent body, whether within or outside of Canada, other than an entity that has, in respect of a particular fiscal year, market capitalization and total assets that are each less than \$10,000,000. An entity that becomes a listed entity by virtue of the market capitalization or total assets becoming \$10,000,000 or more in respect of a particular fiscal year shall be considered to be a listed entity thenceforward unless and until the entity ceases to have its shares or debt quoted, listed or marketed in connection with a recognized stock exchange or the entity has remained under the market capitalization or total assets threshold for a period of two years.

In the case of a period in which an entity makes a public offering:

- a) the term “market capitalization” shall be read as referring to the market price of all outstanding listed securities and publicly traded debt measured using the closing price on the day of the public offering; and
- b) the term “total assets” shall be read as referring to the amount of total assets presented on the most recent financial statements prepared in accordance with generally accepted accounting principles included in the public offering document.

GERMANY - Wirtschaftsprüferkammer (WPK)

§ 264d German Commercial Code (HGB) refers to **capital market oriented companies** (§ 264d HGB). Those capital market oriented companies do not include companies traded on second regulated markets (so-called “Freiverkehr”).

§ 319a HGB stipulates independence requirements for PIEs and refers in this context to § 264d HGB (capital market oriented companies) and Art. 2 EU Audit Regulation (No 537/2014). Art. 2 EU Audit Regulation covers listed entities but does not encompass companies traded on second regulated markets either.

HONG KONG - Hong Kong Institute of Certified Public Accountants (HKICPA)

Yes, we have adopted IESBA Code's definition of the term "listed entity" in our HKICPA Code of Ethics for Professional Accountants.

INDIA - Institute of Chartered Accountants of India (ICAI)

ICAI Code of Ethics, 2019 has adopted the same definition of Listed Entity as used in IESBA Code and quoted above.

JAPAN - Financial Services Agency of Japan and the Japanese Institute of Certified Public Accountants

The JICPA Code of Ethics uses the term "listed entity" but it does not set its definition. Instead, the term "listed entity" is defined by other laws.

Please refer to our response to Question 2.

NEW ZEALAND - New Zealand Auditing and Assurance Standards Board of the External Reporting Board (XRB)

No. In New Zealand, a public interest entity is defined as "Any entity that meets the Tier 1 criteria in accordance with XRB A1 Application of the Accounting Standards Framework and is not eligible to report in accordance with the accounting requirements of another tier". In New Zealand, XRB A1 establishes criteria for each tier of financial reporting in New Zealand. Tier 1 criteria include entities that have public accountability or meet size criteria so as to be considered to be large. Examples of entities that are captured in the New Zealand definition include FMC Reporting entities considered to have a higher level of public accountability as determined by the regulator, the Financial Markets Authority, in New Zealand. FMC reporting entities considered to have a higher level of public accountability include:

- Listed issuers
- Equity and debt issuers who make a regulated offer
- Registered banks
- Licensed insurers
- Building societies
- Credit unions, etc....

More information about FMC reporting entities considered to have a higher level of public accountability can be found on the [FMA](#) website.

This definition of a public interest entity also includes large public sector or large not-for-profit entities.

The NZAuASB referred to the application material in paragraph 400.8 of the restructured IESBA Code in establishing this definition.

SOUTH AFRICA - Independent Regulatory Board for Auditors (IRBA)

The IRBA has adopted the IESBA definition of listed entity for auditor independence purposes, without local amendments.

UK - Financial Reporting Council (FRC)

We have adopted IESBA/IAASB definition of listed entity. However, we have added supplementary text to clarify its application for our standards - see the answer to Q2 below.

US - American Institute of Certified Public Accountants (AICPA) Professional Ethics Executive Committee

The AICPA Code of Professional Conduct uses the IESBA definition of listed entity in its definition of "Public interest entity". However, the AICPA Code clarifies that listed entities include entities that are outside of the United States.

Following is the definition:

Public interest entities. All of the following: a. All listed entities, including entities that are outside the United States whose shares, stock, or debt are quoted or listed on a recognized stock exchange or marketed under the regulations of a recognized stock exchange or other equivalent body. b. Any entity for which an audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to an audit of listed entities (for example, requirements of the SEC, the PCAOB, or other similar regulators or standard setters). Members may wish to consider whether additional entities should also be treated as public interest entities because they have a large number and wide range of stakeholders. Factors to be considered may include · the nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders; · size; and · number of employees. Members should refer to the independence regulations of applicable authoritative regulatory bodies when a member performs attest services and is required to be independent of the attest client under such regulations. [Prior reference: paragraph .20 of ET section 100-1]

US - Public Company Accounting Oversight Board (PCAOB)

No. The PCAOB and U.S. Securities and Exchange Commission (SEC or Commission) use the term "issuer", which is the equivalent. The term "issuer" means an issuer (as defined in Section 3 of the Securities Exchange Act of 1934), the securities of which are registered under Section 12 of that Act, or that is required to file reports under Section 15(d) of that Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn. [PCAOB Rule 1001(i)(iii)] The term "issuer" means, in effect, any public company that is required to file reports with the U.S. Securities and Exchange Commission or that has filed a registration statement for a public offering of securities.

For the auditor requirements, when referring to such issuer audit clients and their related entities, the PCAOB and SEC independence rules use the terms audit client and audit client affiliates. Those definitions are copied below. The term audit client (which includes affiliates of the audit client) is primarily used throughout the independence rules except in certain sections (e.g., certain aspects of employment relationships; partner rotation; and audit committee administration rules, which use the term "issuer").

PCAOB Rule (a)(iv) Audit Client

The term "audit client" means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

PCAOB Rule (a)(ii) Affiliate of the Audit Client

The term "affiliate of the audit client" means –

- (1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;
- (2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;
- (3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and
- (4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.

US - Securities and Exchange Commission (SEC)

In our jurisdiction, the SEC's independence rules apply to "issuers". Issuers includes both listed companies (as defined above) plus other entities that are required by our rules to file financial statements with the SEC.

We suggest that IESBA may want to consider a broader definition of PIE, perhaps along the line of the definition used by the IASB in its SME standard (non-SMEs are listed companies plus other companies that have fiduciary responsibility).

2. How is the term “listed entity” or equivalent term applied in your jurisdiction? For instance, which securities markets are scoped in by the term and which securities markets that are open to the public are scoped out by the term?

AUSTRALIA - Accounting Professional and Ethical Standards Board (APESB)	
<p>APESB does not issue any guidance material on what is considered a listed entity and what security markets are scoped in, or out, of this definition.</p> <p>The regulator in Australia, the Australian Securities and Investment Commission (ASIC) has provided a list of the licensed domestic financial markets operating in Australia. The list recognizes the two-tiered regime where a Tier 1 market operator is generally subject to all of the regulatory obligations as a market licensee and a Tier 2 market operator is subject to a tailored subset of these obligations. The authorized markets licensees in Australia are listed below (and are also listed on the ASIC website at: https://asic.gov.au/regulatory-resources/markets/market-structure/licensed-and-exempt-markets/licensed-domestic-financial-markets-operating-in-australia/)</p>	
Tier 1 Licensee	Description of market
ASX Limited (ASX)	Market in securities, derivatives and managed investments. Wholesale and retail participation. National Guarantee Fund and approved compensation arrangements available.
Australian Securities Exchange Limited (Formerly known as the Sydney Futures Exchange Limited)	Market in derivatives. Wholesale and retail participation. Approved compensation arrangements available.
BGC Partners (Australia) Pty Limited	Market in the classes of financial products described in clause 5 of the licence. Wholesale participation.
Bloomberg Tradebook Australia Pty Ltd	Six markets trading in the classes of financial products described in clause 4 of the licence. Wholesale participation.
Chi-X Australia Pty Ltd (Chi-X)	Market in securities and managed investments. Wholesale and retail participation. Approved compensation arrangements available.
FEX Global Pty Ltd	Market in commodity, energy and environmental derivatives. Wholesale and retail participation. Approved compensation arrangements available.
IMB Ltd	Market in IMB Ltd ordinary shares restricted to members by guarantee of IMB Ltd.
Mercari Pty Limited	Market in interest rate derivatives, foreign exchange derivatives, commodity derivatives, energy derivatives and environmental derivatives.

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	Wholesale participation.
National Stock Exchange of Australia Limited	Market in securities, managed investments. Wholesale and retail participation. Approved compensation arrangements available.
Sydney Stock Exchange Limited (SSX) (formerly Asia Pacific Stock Exchange Limited (APX))	Market in securities and managed investment products. Wholesale and retail participation. Approved compensation arrangements available.
Yieldbroker Pty Limited	The markets known as the 'Dealer & client market' and the 'Interdealer market', trading the class of financial products described in clause 5 of the licence. Wholesale participation.
Tier 2 Licensee	Description of market
360 Treasury Systems AG	Market in spot foreign exchange; derivatives that are commodity derivatives, foreign exchange derivatives and interest rate derivatives; loan deposits and money market products; and eligible repo agreement products. Professional Investor participation.
EBS Service Company Limited	Market in spot foreign exchange, foreign exchange derivatives and metals derivatives Professional investor participation.
GFI Australia Pty Limited	Market in bonds and derivatives (commodity, credit, equity, foreign exchange, interest rate and property) Professional investor participation.
ICAP Brokers Pty Limited	Operation of a market in bonds, credit derivatives, interest rate derivatives and foreign exchange derivatives. Professional investor participation
Imperium Markets Pty Limited	A market in fixed income securities. Wholesale participation.
Integral Development Corporation (Europe) Ltd	Market in spot foreign exchange contracts and foreign exchange derivatives that are foreign exchange swaps or foreign exchange forwards Professional investor participation.
Liquidity Cube Pty Ltd	Market in bonds, certificates of deposit, debentures, derivatives that are credit, inflation-linked and interest rate derivatives, foreign exchange contracts and term deposits.
OTCX Trading Limited	Market in equity derivatives, interest rate derivatives and inflation-linked derivatives Professional investor participation.
Refinitiv Transaction Services Pte. Ltd.	Market in foreign exchange contracts and foreign exchange derivatives. Wholesale

	participation.
State Street GlobalLink Asia Pacific Limited	Market in spot foreign exchange contracts and foreign exchange derivatives that are foreign exchange swaps or foreign exchange forwards. Professional investor participation.
Tullett Prebon (Australia) Pty Limited	Operation of a market in bonds, credit derivatives, interest rate derivatives and foreign exchange derivatives. Professional investor participation.

Other information on what ASIC considers to be a financial market in [Section 767A](#) of the *Corporations Act 2001*.

BRAZIL - Federal Accounting Council

Listed entities in Brazil are entities:

- (a) registered in our security exchange commission (*Comissão de Valores Mobiliários - CVM*). These are companies: (i) that have share, stocks or debt quoted or listed on the Brazilian stock exchange, (*Brasil, Bolsa, Balcão - B 3*), (ii) that are registered in CVM but do not have shares, stock or debts listed on B 3.
- (b) Registered in a stock exchange abroad or are marketed under the regulations of a recognized stock exchange or other equivalent body.
- (c) Investment funds that have their quotes negotiated in B 3 or in another stock exchange abroad.

CANADA - Public Trust Committee, CPA Canada

The term is applicable for any recognized stock exchange or other equivalent body within or outside of Canada.

GERMANY - Wirtschaftsprüferkammer (WPK)

See question 1.

HONG KONG - Hong Kong Institute of Certified Public Accountants (HKICPA)

Listed entity includes any entity in which the public can trade shares, stock, debt or listed collective investment schemes on the open market, such as those listed on the Hong Kong Stock Exchange or other equivalent body.

INDIA - Institute of Chartered Accountants of India (ICAI)

Companies Act, 2013 is the Statute governing regulation of Companies in India. Section 2(52) of Companies Act, 2013 defines “listed company” as “a company which has any of its securities listed on any recognized stock exchange;”

Further, the Securities and Exchange Board of India (SEBI) is the regulator of the securities and commodity market in India. Regulation 2(1) (p) of SEBI (Listing Obligations and Disclosure Requirements) , 2015 defines "listed entity" as “an entity which has listed, on a recognized stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognized stock exchange(s)”

JAPAN - Financial Services Agency of Japan and the Japanese Institute of Certified Public Accountants

“Listed entity” in the JICPA Code is an entity which needs to receive audit attestation in accordance with Article 193-2, paragraph (1) and (2) of the Financial Instruments and Exchange Act (excluding one specified by Cabinet Order) and whose securities are listed on a Financial Instruments Exchange (excluding Specified Listed Securities) or traded Over-the-Counter. "Financial Instruments Exchange" is a Financial Instruments Membership Corporation or stock company which operates a Financial Instruments Market after being licensed by the Prime Minister.

Please refer to Note 1(PIEs in the JICPA Code of Ethics) and 2 (relevant laws and regulations) for further information. [See appendix to this document]

NEW ZEALAND- New Zealand Auditing and Assurance Standards Board of the External Reporting Board (XRB)

In New Zealand the term “listed issuer” is defined in the Financial Markets Conduct Act 2013 as:

listed issuer means—

- (a) a person that is a party to a listing agreement with a licensed market operator in relation to a licensed market (and includes a licensed market operator that has financial products quoted on its own licensed market):
- (b) a person to which paragraph (a) previously applied, in respect of any action or event or circumstance to which this Act applied at that time.

SOUTH AFRICA- Independent Regulatory Board for Auditors (IRBA)

In South Africa, the definition of listed entity is applied without any exclusions (i.e. no scoping out). The extended South African definition of Public Interest Entities ([R400.8a SA](#), [R400.8b SA](#) and [R400.8c SA](#)) assists with clarifying any possible confusion in the South African market.

UK - Financial Reporting Council (FRC)

We have added the following explanatory text and footnote to the definition to explain its application for our standards, including the types of markets included:

"This includes any company in which the public can trade shares, stock or debt on the open market, such as those listed on the London Stock Exchange (including those admitted to trading on the Alternative Investment Market), and ISDX Markets. It does not include entities whose quoted or listed shares, stock or debt are in substance not freely transferable or cannot be traded freely by the public or the entity* (e.g. because the listing is a structural requirement for that entity and its shares, stock or debt are not traded, or because the consent of another party is required to trade in the shares, stock or debt)."

"* For the purpose of reporting breaches to the FRC's Audit Quality Review, this definition should not be treated as a breach of the International Code of Ethics (IESBA Code)."

US - American Institute of Certified Public Accountants (AICPA) Professional Ethics Executive Committee

The AICPA does not establish independence standards for listed entities but we do establish independence standards for PIEs other than listed entities.

US - Public Company Accounting Oversight Board (PCAOB)

Issuers include domestic public companies, whether listed on an exchange or not, and foreign private issuers that have either registered, or are in the process of registering, a class of securities with the SEC or are otherwise subject to Commission reporting requirements.

The SEC has broad authority over all aspects of the securities industry. This includes the power to, among other things, register, regulate and oversee the nation's securities organizations, such as the New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options.

US - Securities and Exchange Commission (SEC)

See response above.

Note 1: PIEs in the JICPA Code of Ethics

PIEs in the JICPA Code of Ethics are summarized in the following table.

(1) Large Companies defined by Article 24-2 of the Certified Public Accountants Act	(a) a company with accounting auditors (excluding a stock company for which the amount reported as the stated capital on the balance sheet pertaining to the most recent business year is less than ten billion yen and the total amount of the amounts of liabilities reported on the balance sheet pertaining to the most recent business year is less than one hundred billion yen.)
	(b) a person who needs to receive audit attestation pursuant to the provisions of Article 193-2, paragraph (1) or (2) of the Financial Instruments and Exchange Act (excluding one specified by Cabinet Order)
	➤ (b) includes "Listed entity"
	(c) a bank prescribed in Article 2, paragraph (1) of the Banking Act (Act No. 59 of 1981)
	(d) a long-term credit bank prescribed in Article 2 of the Long-Term Credit Bank Act (Act No. 187 of 1952)
	(e) an insurance company prescribed in Article 2, paragraph (2) of the Insurance Business Act
	(f) a federation of Shinkin banks, the district of which comprises the entire nation
	(g) a federation of labor banks, the district of which comprises the entire nation
	(h) a federation of credit cooperatives, the district of which comprises the entire nation
	(i) the Norinchukin Bank
	(j) an incorporated administrative agency that needs to be audited by an accounting auditor pursuant to the provisions of Article 39, paragraph (1) of the Act on General Rules for Incorporated Administrative Agencies (Act No. 103 of 1999)
	(k) a national university corporation or an inter-university research institute corporation
	(l) a local incorporated administrative agency that needs to be audited by an accounting auditor pursuant to the provisions of Article 35, paragraph (1) of the Local Incorporated Administrative Agency Act (Act No. 118 of 2003)
(2) Entities that are treated as PIE in accordance with paragraph 26 of the JICPA Independence Guideline (entities of certain size and number of employees)	For example, Shinkin Bank over a certain size

Note 2: Relevant laws and regulations

- Certified Public Accountants Act

...

(Special Provisions on Restriction of Services Pertaining to Large Companies)

Article 24-2 When a certified public accountant, their spouse, or a corporation or any other body having a relationship that is categorized by Cabinet Office Order as one that is found to be substantially controlled by the relevant certified public accountant or their spouse continuously receives fees for the services set forth in Article 2, paragraph (2) (limited to those specified by Cabinet Office Order) from a person who falls under any of the following items (hereinafter referred to as a "large company, etc."), the certified public accountant must not provide the services set forth in paragraph (1) of the same Article concerning the financial documents of the relevant large company, etc.:

...

- (ii) a person who needs to receive audit attestation pursuant to the provisions of Article 193-2, paragraph (1) or (2) of the Financial Instruments and Exchange Act (excluding one specified by Cabinet Order);

....

- Order for Enforcement of the Certified Public Accountants Act

...

Article 9

The person to be specified by Cabinet Order as prescribed in Article 24-2, item (ii) of the Act (including when it is applied mutatis mutandis pursuant to Article 16-2, paragraph (6) of the Act) is any of the persons listed in the following items:

- (i) an issuer (meaning an issuer prescribed in Article 2, paragraph (5) of the Financial Instruments and Exchange Act; the same applies in the following item and Article 30, items (iii) and (vi)) who needs to submit a securities report (meaning a securities report prescribed in Article 24, paragraph (1) of the same Act) due to falling under Article 24, paragraph (1), item (iii) or (iv) of the same Act (including when it is applied mutatis mutandis pursuant to Article 27 of the same Act), and satisfies all of the following requirements:
 - (a) the amount of stated capital reported on the balance sheet pertaining to the most recent business year (or the amount of net assets on the issuer's balance sheet in the case of an issuer of securities investment rights, etc. (meaning securities investment rights, etc. prescribed in Article 3, item (iii) of the Financial Instruments and Exchange Act) that is deemed to be securities pursuant to the provisions of Article 2, paragraph (2) of the same Act, or in the case of an issuer of those listed in Article 1, item (ii) or specified by Article 2-8 of the Order for Enforcement of the Financial Instruments and Exchange Act) is less than five hundred million yen, or the amount of net sales reported on the profit and loss statement pertaining to the most recent business year (including other figures specified by Cabinet Office Order as equivalent thereto; hereinafter the same applies in this item) or the amount obtained by dividing by three the total amount of net sales reported in the profit and loss statements pertaining to the business years that ended in the three most recent years, whichever is larger, is less than one billion yen;
 - (b) the total amount of liabilities reported on the balance sheet pertaining to the most recent business year is less than twenty billion yen:
- (ii) an issuer of specified securities prescribed in Article 5, paragraph (1) of the Financial Instruments and Exchange Act (including cases where it

is applied mutatis mutandis pursuant to Article 27 of the same Act) (excluding securities listed in the items under Article 6 of the same Act; hereinafter referred to as "specified securities" in this item), who does not fall under any of the following items:

- (a) an issuer who intends to give notification under the provisions of Article 4, paragraphs (1) through (3) of the Financial Instruments and Exchange Act with regard to securities other than specified securities;
- (b) an issuer who needs to submit a securities report prescribed in Article 24, paragraph (1) of the Financial Instruments and Exchange Act pursuant to the provisions of the same paragraph (including the cases where it is applied mutatis mutandis pursuant to Article 27 of the same Act) with regard to securities other than specified securities.

...

- Financial Instruments and Exchange Act

...

(Definitions)

Article 2

...

(16) The term "Financial Instruments Exchange" as used in this Act means a Financial Instruments Membership Corporation or stock company which operates a Financial Instruments Market after being licensed by the Prime Minister pursuant to Article 80, paragraph (1).

...

(Notification of Public Offering or Secondary Distribution)

Article 4

(1) It is not permitted for a person to conduct a Public Offering of Securities (including Specified Procedures Related to the Issuance of Securities During a Reorganization; the same applies hereinafter in this Chapter and the following Chapter, except in Article 13 and Article 15, paragraphs (2) to (6)) or a Secondary Distribution of Securities (excluding those falling under the category of General Solicitation Involving for Securities Acquired by a Qualified Institutional Investor as defined in the following paragraph or of General Solicitation Involving Securities Acquired by a Professional Investor as defined in paragraph (3), but including Specified Procedures Related to the Delivery of Securities During a Reorganization; hereinafter the same applies in this paragraph) unless the Issuer has filed a notification of the Public Offering or Secondary Distribution of Securities with the Prime Minister; provided, however, that this does not apply to a Public Offering or Secondary Distribution of Securities that falls under one of the following items:

- (i) a Public Offering or Secondary Distribution of Securities in a case specified by Cabinet Order as one in which the other parties thereto have already obtained or can easily obtain information about the particulars set forth in the items of paragraph (1) of the following Article for the relevant Securities;
- (ii) a Public Offering or Secondary Distribution of Securities for which the pertinent Procedures Related to the Issuance of Securities During a Reorganization or Procedures Related to the Delivery of Securities During a Reorganization fall under either of the following cases (excluding a Public Offering or Secondary Distribution as specified in the preceding item):
 - (a) cases not falling under a case in which disclosure has been made with regard to share certificates (including share option certificates and other Securities specified by Cabinet Order) whose issuer is the Reorganization Company; or

- (b) a case in which disclosure has been made with regard to the Securities that will be newly issued in connection with the Procedures Related to the Issuance of Securities During a Reorganization, or a case in which disclosure has been made with regard to previously issued Securities subject to the Procedures Related to the Delivery of Securities During a Reorganization;
 - (iii) a Secondary Distribution of Securities in a case in which disclosure has been made with regard to the Securities (excluding a Secondary Distribution provided for in the preceding two items);
 - (iv) a Secondary Distribution of Securities that have already been issued in a foreign state or of Securities specified by Cabinet Order as being equivalent thereto (limited to those conducted by a Financial Instruments Business Operator, etc.), which satisfies the requirement that information on the trading price of the Securities in Japan can be easily obtained and any other requirements specified by Cabinet Order (excluding a Secondary Distribution provided for in the preceding three items); or
 - (v) a Public Offering or Secondary Distribution of Securities with a total issue value or total distribution value of less than 100 million yen, which is specified by Cabinet Office Order (excluding those specified in the preceding items).
- (2)** It is not permitted for a person to issue a solicitation with a view to delivering existing securities (meaning an Offer to Sell, etc. or Procedures Related to the Delivery of Securities During a Reorganization; the same applies hereinafter) that involves Securities that have been involved in a solicitation with a view to issuing new securities (meaning the Solicitation of Offers to Acquire or the Procedures Related to the Issuance of Securities During a Reorganization; the same applies hereinafter) or a solicitation with a view to delivering existing securities falling under any of the following cases (in the case set forth in item (ii), limited to the Securities acquired by Qualified Institutional Investors that have been excluded from the large number of persons pursuant to Article 2, paragraph (3), item (i), and in the case set forth in item (iv), limited to the Securities acquired by Qualified Institutional Investors that have been excluded from the large number of persons pursuant to paragraph (4), item (i) of that Article), and that involves a Qualified Institutional Investor soliciting persons other than Qualified Institutional Investors (such a solicitation is hereinafter referred to as a "General Solicitation Involving Securities Acquired by a Qualified Institutional Investor"), unless the Issuer of the Securities has filed a notification of the relevant General Solicitation Involving for Securities Acquired by the a Qualified Institutional Investor with the Prime Minister; provided, however, that this does not apply to a case in which disclosure has been made with regard to the Securities, or to a case in which the General Solicitation Involving for Securities Acquired by the Qualified Institutional Investor will be issued for a compelling reason specified by Cabinet Office Order, or otherwise satisfies the requirements specified by Cabinet Office Order:
- (i) the case set forth in Article 2, paragraph (3), item (ii), (a);
 - (ii) the case set forth in Article 2, paragraph (3), item (ii), (c) (but only if it comes to no longer fall under the case set forth in item (i) of that paragraph due to the Qualified Institutional Investors' being excluded from the large number of persons pursuant to that item);
 - (iii) the case set forth in Article 2, paragraph (4), item (ii), (a);
 - (iv) the case set forth in Article 2, paragraph (4), item (ii), (c) (but only if it comes to no longer fall under the case set forth in item (i) of that paragraph due to the Qualified Institutional Investors' being excluded from the large number of persons pursuant to that item);
 - (v) the case set forth in Article 2-2, paragraph (4), item (ii), (a); and
 - (vi) the case set forth in Article 2-2, paragraph (5), item (ii), (a).
- (3)** It is not permitted for a person to issue a solicitation with a view to delivering existing securities that involves Securities falling under any of the following items (excluding Securities falling under any of the items of Article 24, paragraph (1) or Securities specified by Cabinet Order as those which it is found are unlikely to be held by a large number of Professional Investors; hereinafter referred to as the "Securities for Professional Investors"), but that does not involve a Financial Instruments Business Operator, etc. being entrusted to solicit Professional Investors, etc. (with the exception of a solicitation issued to the State, the Bank of Japan, or Qualified Institutional Investors, and also with the

exception of solicitation specified by Cabinet Order; hereinafter referred to as a "General Solicitation Involving Securities Acquired by a Professional Investor"), unless the Issuer of Securities has filed a notification of the relevant General Solicitation Involving Securities Acquired by a Professional Investor with the Prime Minister; provided, however, that this does not apply in a case in which disclosure has been made with regard to the Securities for Professional Investors and in any other case that is specified by Cabinet Office Order as one in which the non-filing of a notification for a General Solicitation Involving Securities Acquired by a Professional Investor does not damage the public interest or result in insufficient investor protection:

- (i) Securities for which the Solicitation of Offers to Acquire fell under the case specified in Article 2, paragraph (3), item (ii), (b) (hereinafter referred to as a "Exclusive Solicitation of Offers to Acquire Targeting Professional Investors");
- (ii) Securities for which the Offer to Sell, etc. was an exclusive Offer to Sell, etc. to Professional Investors;
- (iii) Securities issued by an Issuer of the Securities provided for in either of the preceding two items, which are specified by Cabinet Office Order as being the same class of Securities as those provided for in either of the preceding two items; or
- (iv) Specified Listed Securities and other Securities specified by Cabinet Order as having equivalent distribution statuses thereto.

...

(Submission of Annual Securities Reports)

Article 24

(1) If Securities issued by a company (excluding regulated Securities; hereinafter the same applies in this Article, except in the following items) fall under one of the categories set forth in the following items, the company that is the Issuer of the Securities must submit, for each business year, a report stating the trade name of the company, the financial condition of the corporate group to which the company belongs and the company's own financial condition, other material particulars of the company's business, and other particulars specified by Cabinet Office Order as necessary and appropriate in the public interest or for the protection of investors (hereinafter referred to as an "Annual Securities Report") to the Prime Minister, within three months after the end of that business year (or, if there is a compelling reason that the company cannot submit the document within such period, within a period approved in advance by the Prime Minister pursuant to Cabinet Office Order provisions), for a domestic company, or within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors, for a foreign company, pursuant to Cabinet Office Order provisions; provided however, that this does not apply if the Securities issued by the company fall under the category of Securities specified in item (iii) below (limited to share certificates and other Securities specified by Cabinet Order) and the numbers of holders of the Securities on the last day of that business year and on the last days of each of the business years that began within four years before the day on which the relevant business year began are smaller than the number calculated pursuant to Cabinet Order provisions, and the company receives the acknowledgement of the Prime Minister, pursuant to Cabinet Office Order provisions, as a company whose non-submission of an Annual Securities Report does not damage the public interest or result in insufficient investor protection (limited to a company that has already had five years elapse since the end of the first year of report submission (meaning the business year that includes the day on which the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), the main clause of Article 4, paragraph (3), or the main clause of Article 23-8, paragraph (1) or (2) became applicable to the Public Offering or Secondary Distribution of Securities, and if there are two or more First Years of Report Submission, this means the most recent one); nor does it apply if the Securities issued by the company fall under the category of Securities specified in item (iv) below, and the stated capital is less than 500 million yen (or, if the Securities are Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2), and the amount that is specified by Cabinet Order as the stated capital is less than the amount specified by Cabinet

Order on the last day of that business year) or the number of holders of the Securities on the last day of that business year is smaller than the number specified by Cabinet Order; nor does it apply if the Securities issued by the company fall under the category of Securities specified in item (iii) or (iv) below, and the company receives the acknowledgement of the Prime Minister, pursuant to Cabinet Order provisions, as a company whose non-submission of an Annual Securities Report does not damage the public interest or result in insufficient investor protection:

- (i) Securities listed on a Financial Instruments Exchange (excluding Specified Listed Securities);
- (ii) Securities specified by Cabinet Order as having equivalent distribution statuses to the Securities set forth in the preceding item (excluding Securities specified by Cabinet Order as having equivalent distribution statuses to Specified Listed Securities);
- (iii) Securities to whose Public Offering or Secondary Distribution the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), the main clause of Article 4, paragraph (3), or the main clause of Article 23-8, paragraph (1) or (2) applies (excluding those specified in the preceding two items); or
- (iv) Securities (limited to share certificates, Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2), and other Securities specified by Cabinet Order) that are issued by the company, for which the number of holders on the last day of the relevant business year or on the last day of any of the business years that began within four years before the day on which the relevant business year began is at least the number specified by Cabinet Order (or, for Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2), if the number of holders on the last day of the relevant business year is at least the number specified by Cabinet Order) (excluding Securities specified in the preceding three items).

...

- Order for Enforcement of the Financial Instruments and Exchange Act

...

- (Securities Equivalent to Listed Securities)

Article 3 The Securities specified by Cabinet Order referred to in Article 6, item (ii) of the Act (including as applied mutatis mutandis pursuant to Article 12, Article 23-12, paragraph (1), Article 24, paragraph (7), Article 24-2, paragraph (3) and Article 24-4-2, paragraph (5) of the Act (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1) of the Act), Article 24-4-3, paragraph (2) of the Act (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (2) and Article 24-5-2, paragraph (2) of the Act), Article 24-4-4, paragraph (5), Article 24-4-5, paragraph (2), Article 24-4-7, paragraph (5), Article 24-5, paragraph (6) and Article 24-6, paragraph (3) of the Act, and the cases in which these provisions (excluding Article 24-6, paragraph (3) of the Act) are applied mutatis mutandis pursuant to Article 27 of the Act; hereinafter the same applies in this Article) and the Securities specified by Cabinet Order as those for which the state of distribution referred to in Article 24, paragraph (1), item (ii) of the Act (including as applied mutatis mutandis pursuant to Article 24, paragraph (5) of the Act and as applied mutatis mutandis pursuant to Article 27 of the Act) can be regarded as being equivalent to the Securities set forth in Article 24, paragraph (1), item (i) of the Act are Over-the-Counter Traded Securities and the Authorized Financial Instruments Firms Association specified by Cabinet Order as referred to in Article 6, item (ii) of the Act (including as applied mutatis mutandis pursuant to Article 27 of the Act), Article 24-7, paragraph (4), item (ii) of the Act (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) of the Act and as applied mutatis mutandis pursuant to Article 27 of the Act), Article 25, paragraphs (3) and (5) of the Act (including as applied mutatis mutandis pursuant to Article 27 of the Act), Article 27-30-2, Article 27-30-6, paragraph (1), and Article 27-30-8, paragraph (1) of the Act is an Authorized Financial Instruments Firms Association which registers the Over-the-Counter Traded Securities.

...

(Audit Certification by a Certified Public Accountant or Auditing Firm)

Article 193-2

(1) A balance sheet, profit and loss statement, or any other document related to financial accounting specified by Cabinet Office Order, which is submitted pursuant to the provisions of this Act by a company issuing Securities listed on a Financial Instruments Exchange or any other person specified by Cabinet Order (such an issuing company or person is referred to as the "Specified Issuer" in the following Article; and such a document is referred to as a "documents on financial accounting" in paragraph (4) and the following Article) require an audit certification by a certified public accountant or auditing firm that has no special interest in the company or person; provided, however, that the above does not apply in the following cases:

...

● Order for Enforcement of the Financial Instruments and Exchange Act

...

(Persons Required to Obtain Audit Certification by a Certified Public Accountant)

Article 35

(1) The persons specified by Cabinet Order that are provided for in Article 193-2, paragraph (1) of the Act are the following persons (excluding the issuer of the Securities specified in Article 2, paragraph (1), item (xvii) of the Act which have the nature of the Securities set forth in Article 2, paragraph (1), items (i) to (iii) or item (vi) of the Act):

- (i) a person that seeks to make a notification under the provisions of Article 4, paragraphs (1) to (3) of the Act; and
- (ii) the issuer of the Securities set forth in the items of Article 24, paragraph (1) of the Act (including as applied mutatis mutandis pursuant to Article 27 of the Act).

(2) The Securities specified by Cabinet Order that are provided for in Article 193-2, paragraph (1), item (i) of the Act are as follows:

- (i) the beneficiary securities of a foreign investment trust set forth in Article 2, paragraph (1), item (x) of the Act;
- (ii) the foreign investment securities set forth in Article 2, paragraph (1), item (xi) of the Act;
- (iii) beneficiary securities of beneficiary securities issuing trusts set forth in Article 2, paragraph (1), item (xiv) of the Act (limited to those issued by a foreign person);
- (iv) the Securities set forth in Article 2, paragraph (1), item (xvii) of the Act which have the nature of the Securities set forth in Article 2, paragraph (1), items (iv), (v), (vii) to (ix) or items (xii) to (xvi) of the Act;
- (v) the Securities set forth in Article 2, paragraph (1), item (xviii) of the Act;
- (vi) the Securities set forth in Article 2, paragraph (1), item (xix) or (xx) of the Act (limited to those issued by a foreign person);
- (vii) the instruments or certificates set forth in Article 1, item (i); and
- (viii) the rights set forth in Article 2, paragraph (2), item (ii), (iv) or (vi) of the Act which are regarded as Securities pursuant to the provisions of Article 2, paragraph (2) of the Act.

...

(2) An Internal Control Report that the company issuing Securities listed on a Financial Instruments Exchange or any other person specified by Cabinet Order (referred to as a "Listed Company, etc." in item (iv)) submits pursuant to the provisions of Article 24-4-4 must receive audit certification by a certified public accountant or auditing firm that has no Special Interest in that company or person; provided, however, that this does not apply in the following cases:

...

- Order for Enforcement of the Financial Instruments and Exchange Act

...

(Audit Certification for Internal Control Reports)

Article 35-2 The persons specified by Cabinet Order that are provided for in Article 193-2, paragraph (2) of the Act are the issuers of the Securities set forth in Article 24, paragraph (1), item (i) or (ii) of the Act (including as applied mutatis mutandis pursuant to Article 27 of the Act) (limited to the Securities set forth in the items of Article 4-2-7, paragraph (1)).

...