

Regulatory Framework for Sustainability-linked Derivatives: Japan Analysis

EXECUTIVE SUMMARY

Interest in environmental, social and governance (ESG) issues has grown globally, as countries, companies and investors have focused more on this area. The same trend has occurred in Japan.

Sustainability-linked derivatives (SLDs) are not yet a major product in the Japanese market, but they have emerged as one of the tools available to help firms meet their ESG objectives. As SLDs gain increasing attention around the world, and as some SLDs emerge in Japan, it is necessary for users to understand how these instruments fit into existing regulatory regimes.

This whitepaper analyzes two categories of SLDs in the context of the derivatives regulatory framework in Japan. Specifically, it considers:

- Whether SLDs would be classified as ‘over-the-counter (OTC) derivatives transactions’ or ‘OTC commodity derivatives transactions’, and how they are regulated; and
- Compliance issues for market participants to consider when executing SLDs.

INTRODUCTION

The Japanese government is focused on addressing climate change and ESG-related issues. In the financial industry, Japan's Financial Services Agency (JFSA) is the primary regulator, and it has been engaging in various ESG initiatives. For example, the JFSA is strengthening its efforts to promote investment in climate-related financial products and is expanding the local-currency-denominated green bond market through the creation of an ESG data platform, a green bond certification framework and issuance of the Social Bond Guidelines, published in October 2021¹. In July 2022, the JFSA published a discussion paper on its policy for financial institutions' responses to climate change².

In June 2021, following consultations undertaken by the JFSA, the Corporate Governance Code of the Tokyo Stock Exchange was updated to encourage companies to develop sustainability policies and disclosure initiatives based on the Task Force on Climate-related Financial Disclosures (TCFD). For companies listed on the Prime Market of the Tokyo Stock Exchange, the TCFD disclosure obligation is applicable on a comply-or-explain basis³.

Japanese market participants are using various ESG financial products, such as ESG bonds, social bonds and sustainability-linked foreign exchange (FX) transactions. However, there are currently no specific regulations or guidelines published by the JFSA in relation to SLDs.

ISDA's December 2021 whitepaper, *Regulatory Considerations for Sustainability-linked Derivatives*⁴, explored regulatory issues for SLDs in the UK, EU and US. This paper takes the same approach for Japan. The objective is to describe potential regulatory approaches to SLDs and provide market participants with information to develop their own assessments.

Two categories of SLDs are covered in this paper⁵:

- Category 1 SLDs: The key performance indicators (KPIs) that measure compliance with ESG targets and the related impact on cashflows are set out in the OTC derivatives transaction. An example of a Category 1 SLD is an interest rate swap (IRS) that provides additional or reduced payments if particular KPIs are met, or an IRS in which one party agrees to take certain actions (eg, a donation to a charity) if the other party meets certain KPIs; and
- Category 2 SLDs: The KPIs and related cashflows are set out in a separate agreement that references the underlying (generally vanilla) OTC derivatives transactions to set the KPI-linked cashflow. An example of a Category 2 SLD is an agreement to make a payment if a counterparty achieves its KPIs, with the payment calculated as a percentage of the notional amount of unrelated, separately documented derivatives transactions⁶. This KPI-linked payment could also be binary – for example, if the KPI is above a certain target, a specific payment is made. The terms (including pricing) of the underlying OTC derivatives transactions would not generally be affected by the KPIs and cashflows in the separate agreement.

¹ Social Bond Guidelines, Japan Financial Services Agency (JFSA), October 2021, www.fsa.go.jp/en/news/2021/20211026-2en.html

² www.fsa.go.jp/en/news/2022/20220715/20220715.html

³ Revised Corporate Governance Code, Tokyo Stock Exchange, June 2021, www.jpx.co.jp/english/news/1020/20210611-01.html

⁴ Regulatory Considerations for Sustainability-linked Derivatives, December 2021, www.isda.org/2021/12/01/regulatory-considerations-for-sustainability-linked-derivatives/

⁵ There are likely to be other types of SLDs for which different regulatory issues may arise

⁶ For example, a percentage of the net aggregate notional amount of all foreign exchange forwards or swaps between the parties for the same currency pair, or a figure calculated by reference to the volume of all such transactions

In general, this whitepaper focuses on SLDs that are OTC derivatives transactions rather than SLDs that are embedded in other products, such as loans or notes. It explores the regulatory aspects of SLDs, rather than whether a particular party needs to be licensed to trade an SLD. The whitepaper assumes the SLDs have been executed for commercial reasons and does not consider issues such as greenwashing, insider dealing or tying (in terms of anti-competition conduct).

REGULATORY CONSIDERATIONS FOR SLDs: JAPAN ANALYSIS

How OTC Derivatives Are Regulated

In Japan, the primary statutes for regulating OTC derivatives are (depending on the type of underlying asset) the Financial Instruments and Exchange Act (kin'yuu shouhin torihiki hou) (Act No. 25 of 1948, as amended) (FIEA) and the Commodity Derivatives Transaction Act (shouhin sakimono torihiki hou) (Act No. 239 of 1950, as amended) (CDTA). While the CDTA focuses on commodity derivatives, the FIEA covers derivatives referencing various other underlying assets (eg, interest rates, FX, securities, crypto assets, credit, weather, earthquakes).

The scope of OTC derivatives subject to the rules under the FIEA and the CDTA are forwards, swaps, options and other types of transactions (eg, credit default swaps (CDS) and weather derivatives, both of which are regulated under the FIEA). However, labels referring to the transaction type (eg, forwards or options) are not used in the definitions of OTC derivatives transactions in the FIEA or OTC commodity derivatives transactions in the CDTA. Instead, what types of transactions fall within OTC derivatives transactions or OTC commodity derivatives transactions (as applicable) are identified by designating certain contractual factors and the underlying assets.

The key parts of the definition of OTC derivatives transactions under the FIEA (Article 2, paragraph 22) are quoted as follows to explain the definition⁷. For clarity, some of the technical phrases have been intentionally omitted.

- (i) A transaction comprising a purchase and sale in which the parties to the purchase and sale promise to deliver and take delivery of a financial instrument (omitted) and its value at a fixed time in the future, and which the parties may settle by delivering and taking delivery of the difference in values if they sell back or buy back the underlying financial instrument, or if they take some other action that is specified by Cabinet Order;
- (ii) A transaction comprising the parties' promises to pay and receive an amount of money calculated based on the difference between the agreed figure (omitted) and the actual figure (excluding a figure of a financial indicator associated with the financial instruments set forth in those items) or any transaction similar thereto;
- (iii) A transaction comprising the first party's promise to grant the second party the option of effecting one of the following transactions between them by a unilateral manifestation of the second party's intention alone, and the second party's promise to pay the value of that option, or any transaction similar thereto:
 - (a) The purchase and sale of financial instruments, excluding the transactions specified in item (i); or
 - (b) A transaction provided for in the preceding two items or items (v) through (vii);

⁷ The English translation is cited from: www.japaneselawtranslation.go.jp/ja/laws/view/3986

- (iv) A transaction comprising, on one side, the first party's promise to grant the second party the option of effecting a transaction by a unilateral manifestation of the second party's intention alone, in which the parties pay and receive the amount of money calculated based on the difference between the numerical value that they have agreed in advance to use as the agreed figure for the relevant financial indicator if the second party manifests the intention to effect the transaction, and the actual figure of the financial indicator (omitted) at the time the second party manifests that intention, and, on the other side, the second party's promise to pay the value of that option, or any transaction similar thereto;
- (v) A transaction comprising the parties' mutual promise that, for the amount they have set as the principal, the first party will pay money to the second based on the interest rate, etc of an agreed-upon financial instrument (omitted) or based on the rate of change in an agreed-upon financial indicator during the period they have agreed to, and the second party will pay money to the first based on the interest rate, etc of an agreed-upon financial instrument (excluding those set forth in these items) or based on the rate of change in an agreed-upon financial indicator during the period they have agreed to (including transactions in which the parties promise that, in addition to paying such amounts, they will also pay or deliver and receive money or financial instruments (omitted) equivalent to the amount they have set as the principal), or any transaction similar thereto;
- (vi) A transaction comprising the first party's promise to pay money to the second, and the second party's promise to pay money to the first if one of the following causes that the parties have stipulated in advance occurs (including transactions comprising the first party's promise to transfer a financial instrument, the rights connected to a financial instrument, or a monetary claim (omitted), but excluding the transactions set forth in item (ii) to the preceding item), or any transaction similar thereto:
 - (a) A cause involving the credit status of a corporation or other similar cause as specified by Cabinet Order; or
 - (b) A cause on whose occurrence it is impossible or extremely difficult for either party to exert an influence, and which is specified by Cabinet Order as something that may have a material impact on the business activities of the parties or other persons or firms (excluding causes specified in (a));
- (vii) A transaction other than what is set forth in the preceding items, but which has an economic nature similar thereto and is specified by Cabinet Order as a transaction regarding which it is found to be necessary to ensure the public interest or the protection of investors.

The term 'financial instrument' (kin'yuu shouhin) refers to an underlying asset (which is subject to regulations under the FIEA), and the term 'financial indicator' (kin'yuu shihyou) means the price, the rate of a financial instrument or certain other designated numerical data.

Table A summarizes what type of transaction is covered by which item of the quoted definition (ie, (i) to (vii)) and also indicates whether each item includes catch-all wording.

Table A: Transaction Type and Definitions

Item	Transaction Type	Catch-all Wording
(i)	Physically-settled forwards (limited to those that can be settled in cash in certain circumstances) (this category includes a contract for difference (CFD) for which physical settlement is anticipated)	No
(ii)	Cash-settled index forwards (this category includes a CFD for which only cash settlement is anticipated)	Yes
(iii)	Options (limited to those that effect (a) a sale and/or purchase transaction of a financial instrument, or (b) a transaction falling within any of (i), (ii) and (v) to (vii))	Yes
(iv)	Options (limited to those that cause cash settlement based on the market conditions at the time when the option is exercised according to the terms and conditions)	Yes
(v)	Swaps	Yes
(vi)	Credit default swaps, weather/catastrophe derivatives, etc	Yes
(vii)	Other types of transactions designated by the Cabinet Order (as of the date of this paper, no transaction has been designated as such and this paper therefore does not cover this category)	No

For the purposes of this paper, transactions covered by the catch-all wording in Table A are referred to as ‘similar transactions’.

The CDTA also provides its own definition of OTC commodity derivatives transactions (Article 2, paragraph 14 of the CDTA), and the definition is similar to the OTC derivatives transactions under the FIEA (but excluding transaction types equivalent to item (vi)).

Categorization of Category 1 SLDs

Assuming the elements that constitute a derivatives transaction (excluding the KPI components) fall into one of the categories of OTC derivatives transactions under the FIEA or OTC commodity derivatives transactions under the CDTA (for example, an IRS, which falls within Article 2, paragraph 22, item 5 of the FIEA), the inclusion of cashflows linked to KPIs is unlikely to change this characterization. For these transaction types, this paper assumes the KPIs do not represent a financial indicator (*kin'yuu shihyou*) under the FIEA and are specified in line with the KPI guidelines set out in ISDA's September 2021 whitepaper, *Sustainability-linked Derivatives: KPI Guidelines*⁸.

While the KPI elements in a Category 1 SLD would not typically constitute a separate transaction, if any KPI element is relevant to any of the regulated assets and the cashflow under a Category 1 SLD is directly linked to and/or calculated based on the relevant KPI, then the KPI elements might be recognized as a separate OTC derivatives transaction. In these situations, a case-by-case analysis would be required. The discussion on Category 2 SLDs would also be applicable.

Categorization of Category 2 SLDs

Based on the definitions of OTC derivatives transactions under the FIEA or OTC commodity derivatives transactions under the CDTA, Category 2 SLDs are unlikely to fall within scope of regulated OTC derivatives transactions⁹, although scrutiny would still be required.

⁸ Sustainability-linked Derivatives: KPI Guidelines, September 2021, www.isda.org/2021/09/07/sustainability-linked-derivatives-kpi-guidelines/

⁹ If certain Category 2 SLDs do not fall within regulated OTC derivatives transactions, it is necessary to examine whether financial institutions regulated in Japan (eg, banks, financial instruments business operators (FIBOs), insurance companies) can trade such SLDs or act as an intermediary or agent for such SLDs, because such regulated institutions are subject to statutory restrictions over the types of businesses in which they are permitted to engage

Based on the definitions of OTC derivatives transactions under the FIEA or OTC commodity derivatives transactions under the CDTA, the text defining each category of regulated OTC derivatives transactions (ie, the definition other than the language related to similar transactions) anticipates that both parties to a contract make payment/delivery (ie, bilateral agreement (soumu keiyaku)).

Although the definition of regulated OTC derivatives includes similar transactions, because the fundamental nature of the derivatives is the exchange of risk and returns or cashflows, it is not expected that similar transactions would capture something beyond the bilateral nature set out in the definition of regulated OTC derivatives transactions (excluding the language related to the similar transactions).

Furthermore, there have been no suggestions that unilateral agreements (henmu keiyaku) should be included as derivatives transactions subject to the regulations. If a Category 2 SLD is not regarded as a bilateral agreement, then the SLD is unlikely to fall within the scope of regulated OTC derivatives.

In considering whether a Category 2 SLD is a bilateral agreement, it is necessary to focus on the parties to that SLD. If either of the parties to a Category 2 SLD is not a party to an underlying derivatives transaction, then the question of whether it is bilateral should be determined solely based on the SLD.

In contrast, when parties to a Category 2 SLD are also parties to an underlying derivatives transaction, there is a question over how the bilateral nature should be considered. Assuming the underlying OTC derivatives transaction has been (or will be) entered into at arm's length by each party, and that the terms and conditions of the transaction are commercially reasonable, it would be logical to conclude that the issue of whether it is bilateral should be solely based on the SLD. The exception would be if it is determined that a contract for an underlying derivatives transaction and another contract for an SLD constitute a single contract.

Given this, if a Category 2 SLD merely specifies that one party is obliged to make a payment and the other has no payment or performance obligation, then it is not bilateral and is unlikely to fall within the categories of regulated OTC derivatives. This outcome also applies to a donation-type SLD (where one party is obliged to donate to a third party¹⁰ if a KPI is not satisfied), regardless of whether or not the other party to the SLD has any obligation to the first party.

Another example is a Category 2 SLD that involves a payment from one party to another, and the other party may be obliged to make a payment to the first party depending on whether a KPI has been met. This type of Category 2 SLD is bilateral (a bilateral Category 2 SLD). The key factor for analyzing whether it would fall within the categories of regulated OTC derivatives would therefore be whether each KPI is linked to any regulated assets.

Although the KPIs would be determined by the parties, the KPI guidelines set out in ISDA's *Sustainability-linked Derivatives: KPI Guidelines* are a helpful resource.

The guidelines suggest parties should choose KPIs that:

- Are material and strategically significant to the relevant counterparty's business;
- Are consistent with the relevant counterparty's ESG strategy;
- Contain outcomes that are within the relevant counterparty's control;
- Are sufficiently ambitious and do not simply represent business as usual; and
- Address meaningful sustainability issues for that counterparty.

¹⁰ For instance, a non-profit organization engaging in environmental, social and governance (ESG) initiatives

Given these guidelines (especially the third bullet), the KPIs are unlikely to reference a specific financial instrument (kin'yuu shouhin) (including securities, certain monetary claims, currencies and crypto assets), commodity or financial indicator (kin'yuu shihyou) that is calculated based on the price/rate of financial instruments or commodities.

However, the FIEA also specifies that certain numerical data (such as the numerical values associated with the results of meteorological observations or certain statistical surveys) are included within the scope of a financial indicator. Therefore, when parties specify a KPI with reference to certain numerical data, it may be categorized as a financial indicator under the FIEA.

If a KPI is linked to any such financial indicator, it is possible that a bilateral Category 2 SLD referring to this KPI will fall within the scope of OTC derivatives transactions under the FIEA.

Based on the KPI guidelines, a KPI would typically measure whether one party has satisfied its own ESG-related goal. In contrast, the numerical data falling within a financial indicator is objective and not related to an individual person or entity. Numerical data relating to a specific person or entity would therefore be unlikely to constitute a financial indicator¹¹, but a careful examination would be required to determine whether a KPI represents a financial indicator.

Assuming a KPI represents a financial indicator¹², the next question is whether the KPI-linked cashflow under a bilateral Category 2 SLD is variable or digital, which affects whether the bilateral Category 2 SLD falls within the scope of OTC derivatives regulation. If the amount payable by one party to the other under a bilateral Category 2 SLD is calculated based on the KPI (ie, fluctuation in the value of the KPI determines the payment amount), then the bilateral Category 2 SLD would likely be considered an OTC derivatives transaction under the FIEA.

The payout on a typical SLD would be binary (ie, whether payment should be made is determined solely on whether the KPI is higher or lower than an agreed threshold). However, it is still possible that a bilateral Category 2 SLD could fall within the definition of OTC derivatives transactions. This is because binary options linked to an FX rate or stock price are treated as one of the types of OTC derivatives transactions under the FIEA (although it is necessary to assess how a contract for a binary bilateral Category 2 SLD is documented).

In ISDA's *Regulatory Considerations for Sustainability-linked Derivatives* paper, the question of whether Category 2 SLDs could be deemed contracts for difference (CFDs) in the US and UK is considered. In Japan, CFDs are categorized as forwards (see (i) and (ii) of Table A). Therefore, the question of whether a particular Category 2 SLD falls within the category of CFD should be examined.

¹¹ For instance, data on the emission of greenhouse gasses (GHGs) based on a statistical survey could be recognized as a financial indicator if the data satisfies the requirement set out in Article 1-18, item 2 or 3 of the Order for Enforcement of the Financial Instruments and Exchange Act (kin'yuu shouhin torihiki hou sekou rei). If payment by one party to the other under a swap is calculated based on the volume of nationwide GHG emissions and the numerical figure is considered a financial indicator under the FIEA, the swap transaction would be an OTC derivatives transaction under the FIEA. However, nationwide GHG emissions are unlikely to be used as KPIs in SLDs. Instead, one party's GHG emissions may be referenced in a KPI, but these emissions results are unlikely to be recognized as a financial indicator. As set out in this whitepaper, it is theoretically possible that a financial indicator matches an individual person's or entity's own ESG-related goal

¹² At the time of drafting this whitepaper, there were no known examples of this, so this discussion is hypothetical

COMPLIANCE ISSUES IF CATEGORY 1 AND 2 SLDs ARE CONSIDERED OTC DERIVATIVES

There are currently no statutes or guidelines from the JFSA specifically relating to SLDs. Therefore, if an SLD falls within the definition of OTC derivatives transactions under the FIEA or OTC commodity derivatives transactions under the CDTA, the relevant regulations under the FIEA or CDTA would apply in the same way as other regulated OTC derivatives transactions.

Under the FIEA and CDTA, the regulatory requirements for OTC derivatives are applicable to licensed entities – namely, financial instruments business operators (kin'yuu shouhin torihiki gyousya) (FIBOs) or registered financial institutions (touroku kin'yuu kikan) (RFIs) under the FIEA, or commodity derivatives business operators under the CDTA.

As previously stated, if a Category 1 SLD or Category 2 SLD is considered a regulated OTC derivatives transaction, it will fall into scope of the FIEA. The FIEA sets stricter regulations for OTC derivatives transactions compared to those under the CDTA. The following section examines the main regulatory requirements for OTC derivatives transactions under the FIEA.

Risk Management

The FIEA and the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc published by the JFSA¹³ require FIBOs and RFIs to establish proper risk management mechanisms. Those entities would typically need to identify any risks associated with KPI-linked cashflows.

Mandatory Margin

If a Category 1 SLD or Category 2 SLD falls within the definition of OTC derivatives transactions under the FIEA, and the transaction is between two FIBO/RFIs subject to regulatory margin requirements or an FIBO/RFI and non-Japanese entity subject to regulatory margining, then the SLD would have to comply with the regulatory margin framework, as set out in the Cabinet Office Ordinance on Financial Instrument Businesses (kin'yuu shouhin torihiki gyōu tou ni kansuru naikaku furei) (FIB Ordinance)¹⁴. This means the notional amounts of the SLDs would count towards the calculation of the average aggregate notional amount and may be subject to initial and/or variation margin (VM) exchange.

Even if FIBOs or RFIs are not subject to the margin requirements under the FIB Ordinance (ie, they are not a covered entity), they are still required to post and collect VM according to JFSA guidelines. If the SLDs are recognized as OTC derivatives transactions under the FIEA, then they will be included for the calculation of the necessary margin.

¹³ Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc, JFSA, November 2021, www.fsa.go.jp/common/law/guide/kinyushohin_eng.pdf

¹⁴ It covers a non-Japanese entity that is neither a FIBO nor a registered financial institution, but satisfies the conditions provided in Article 123, paragraph 12, item 1(i) and (ro) of the FIB Ordinance

Impact on Underlying Derivatives of Category 2 SLDs Classified as OTC Derivatives

ISDA's *Regulatory Considerations for Sustainability-linked Derivatives* paper explores whether structuring a Category 2 SLD to reference the notional amounts of separate, unrelated derivatives may affect the classification of the underlying transactions – ie, those underlying transactions may lose the benefit of a regulatory exemption for physically settled FX forwards and swaps.

Similar issues do not arise under the Japanese margin regime. The potential characterization of a Category 2 SLD as an OTC derivatives transaction would not affect any underlying transactions because, for Japanese purposes, a Category 2 SLD would be assessed separately from any other related derivatives. Classification of one transaction should therefore not affect the other or result in them being characterized as a single OTC derivatives transaction¹⁵.

Mandatory Clearing

The JFSA designates the type of OTC derivatives transactions subject to mandatory clearing under the FIEA and the Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions (tentou deribatelibu torihiki tou no kisei ni kansuru naikaku furei). Currently, only certain Japanese yen-denominated IRS and CDS referencing iTraxx Japan are designated in the JFSA notice (kokuji)¹⁶.

Given designated transactions are limited to those that are clearable at Japan Securities Clearing Corporation (JSCC), the SLD would be subject to mandatory clearing requirements if all the following conditions are satisfied:

- A Category 1 SLD or Category 2 SLD is recognized as an OTC derivatives transaction under the FIEA;
- Both parties to the SLD are subject to mandatory clearing requirements under the FIEA;
- The SLD satisfies the requirements set out in the JFSA notice; and
- The SLD can be cleared at JSCC.

Mandatory Reporting

If SLDs are considered OTC derivatives transactions under the FIEA, they must be reported to trade repositories when the counterparty is a FIBO or RFI. There is a question over what asset class they should be reported under. The OTC Derivatives Ordinance designates what needs to be reported, but the JFSA has not provided any specific guidance on SLDs. In the absence of guidance, it seems the SLD feature would not affect the original asset class in which the OTC derivatives transaction should be reported. An SLD that is an IRS should therefore still be reported in the interest rate asset class.

¹⁵ Assuming the Category 2 SLD does not amend the terms of those derivatives and the operation of those derivatives is unchanged following entry into the Category 2 SLD

¹⁶ JFSA Notice (kokuji) No. 60 of 2012, as amended

Statutory Explanation Requirements

When a FIBO or an RFI enters into an SLD (considered an OTC derivatives transactions under the FIEA) with a client that is classified as an ordinary investor¹⁷, it is required to provide sufficient explanatory statements.

Given SLDs are relatively new products, if a counterparty is an ordinary investor, a FIBO and an RFI would be required to examine whether the existing explanatory statement formats sufficiently provide transaction terms and the associated risks of the relevant SLDs, among other things.

Bankruptcy/Recovery and Resolution

If one party to an SLD recognized as an OTC derivatives transaction under the FIEA is subject to bankruptcy or insolvency proceedings in Japan, the SLD would be treated equally with other regulated OTC derivatives transactions – the validity and enforceability of the close-out netting of transactions including the SLD would be upheld by a Japanese court, so long as the conditions set out in the relevant legal opinion are duly satisfied. However, market participants should examine whether these SLDs (especially Category 2 SLDs) are covered by the relevant legal opinions.

Another issue is the impact of the Japanese recovery and resolution regime set out in the Deposit Insurance Act (*yokin hoken hou*) (Act No. 34 of 1971, as amended) – in particular, whether SLDs are subject to the statutory temporary stay and the transfer from a troubled financial institution. To the extent an SLD falls within the definition of OTC derivatives transactions under the FIEA, the statutory temporary stay and the transfer regimes would be equally applied. If the relevant agreement is governed by the laws of a non-Japanese jurisdiction, parties are required to incorporate contractual recognition clauses into the agreement, in accordance with JFSA guidelines.

¹⁷ See Articles 34 to 34-4 of the FIEA. The FIEA has the regime of investor classification. Depending on the regulatory status, capital or asset condition, certain types of investors are automatically classified, or may be classified via its application, as a specified investor (*tokutei toushika*), and certain regulatory requirements are exempt for transactions with specified investors. Investors other than specified investors are referred to as ordinary investors

ABOUT ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In

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