

Private Placements and Other Exempt Offerings: Overview (Japan)

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A Practice Note providing an overview of private placements, private secondary distributions, and other securities offerings that are exempt from the registration and prospectus requirements under the securities laws of Japan. This Note explains why companies conduct exempt offerings in Japan. It also examines registration and prospectus exemptions commonly used by issuers and investors who wish to sell equity or debt securities in exempt offerings.

A public offering or secondary distribution of securities in Japan generally requires registration with a Local Finance Bureau (LFB) or Local Finance Branch Bureau (LFBB), and a prospectus that satisfies the requirements of the [Financial Instruments and Exchange Act \(Act No. 25 of 13 April 1948\)](#) (FIEA) and its regulations, unless one or more exemptions are available. This Note provides an overview of securities offerings that are excluded from the definition of public offering or secondary distribution and are exempt from the registration and prospectus requirements.

Merits of Excluded Offerings

Exemptions from the registration and prospectus requirements are important for an issuer of securities to:

- Save the time and cost of preparing these formal disclosure documents.
- Avoid making its information public.
- Avoid penalties or liabilities.

If a securities registration statement, prospectus or other disclosure document contains any untrue statement of a material fact, or omits to state any material fact required to be stated in it or necessary to make the statements in it not misleading, the issuer or a person who uses a prospectus to offer securities can be subject to criminal penalties, administrative monetary penalties or civil liabilities.

Registration and Prospectus Requirements

Registration Requirements

The FIEA requires registration for any public offering of newly issued securities or secondary distribution of securities. No solicitation for a public offering or secondary distribution of securities can take place before the issuer files a registration statement with a Director General of an LFB or LFBB, unless an exemption applies (Article 4(1), FIEA).

Once a securities registration statement is filed, solicitation for subscriptions or purchases of securities can begin. However, investors can only acquire the securities after the securities registration statement becomes effective (Article 15(1), FIEA). A

securities registration statement becomes automatically effective 15 days from the day of filing. The LFB or LFBB can shorten or extend this period (Article 8, FIEA).

The form, contents and attachments of a securities registration statement are stipulated by a Cabinet Office Ordinance. A securities registration statement by a corporate issuer must include information concerning the securities, the issuing company, and other specified information as necessary and appropriate for the public interest or investor protection (Article 5(1), FIEA).

After filing a securities registration statement, the issuer is subject to continuous disclosure requirements, and must submit annual securities reports, semiannual securities reports and extraordinary reports (Article 24(1), and Articles 24-5(1) and (4), FIEA).

Prospectus Requirements

If an issuer must file a securities registration statement in connection with a public offering or secondary distribution, the issuer must also prepare a prospectus (Article 13(1), FIEA) unless an exemption applies. A prospectus must state the same matters as stated in the securities registration statement, and certain additional matters such as a statement to the effect that the securities registration statement has become effective (Article 13(2), FIEA).

An issuer must deliver a prospectus before, or at the time when, subscribers acquire the securities (Article 15(2), FIEA). For certain types of securities, part of the prospectus can be delivered only to those subscribers who request the delivery, while the other part must be delivered to all subscribers.

For further information on the registration and prospectus requirements, see [Practice Note, Securities Regulatory Framework: Overview \(Japan\): Registration and Prospectus Requirements](#).

Registration and Prospectus Exemptions

The following laws and regulations contain exemptions from the registration and prospectus requirements:

- The FIEA.
- The Order for Enforcement of the Financial Instruments and Exchange Act (Cabinet Order No. 321 of 30 September 1965) (Enforcement Order).
- Cabinet Office Ordinance on Definitions under Article 2 of the Financial Instruments and Exchange Act (Ministry of Finance Ordinance No. 14 of 3 March 1993) (Definition Ordinance).
- Cabinet Office Ordinance on Disclosure of Corporate Affairs (Ministry of Finance Ordinance No. 5 of 30 January 1973) (Disclosure Ordinance).
- Cabinet Office Ordinance on Disclosure of Information on Specified Securities (Ministry of Finance Ordinance No. 22 of 3 March 1993) (Specified Securities Ordinance).
- Cabinet Office Ordinance on Disclosure of Information on Issuers of Foreign Government Bonds (Ministry of Finance Ordinance No. 26 of 27 April 1972) (Foreign Bonds Ordinance).

Types of Securities

The FIEA defines two types of securities, Paragraph 1 Securities and Paragraph 2 Securities. Paragraph 1 Securities generally have higher liquidity than Paragraph 2 Securities. Different exemptions from the registration and prospectus requirements are available to these two types of securities.

Paragraph 1 Securities are listed in Article 2(1) of the FIEA, and include:

- Share certificates, share option certificates, and certain other equity instruments.
- Bond certificates, government and municipal bond certificates, debentures, and certain other debt instruments.
- Beneficiary certificates of investment trusts and certain other trusts.
- Negotiable certificates of deposit (CD) issued by foreign corporations.

The rights represented by any of the securities or instruments listed in Article 2(1) of the FIEA are deemed to be securities even if certificates are not issued for them.

Paragraph 2 Securities are listed in Article 2(2) of the FIEA, and include:

- Beneficial rights of certain trusts.
- Membership rights of limited liability companies (*godokaisha*), certain general partnership companies (*gomeikaisha*), and certain limited partnership companies (*goshikaisha*).
- Rights based on certain partnership agreements (subject to certain exclusions).

Paragraph 2 Securities also include rights issued by a foreign person or trust that are similar to the rights listed above.

However, if any rights listed in Article 2(2) of the FIEA are electronically recorded and can be electronically transferred, they are called "electronically recorded transferable rights" and regarded as Paragraph 1 Securities rather than Paragraph 2 Securities.

Exemptions Based on Type of Securities

The FIEA exempts certain types of securities from the registration and prospectus requirements. Examples of exempted securities include:

- Certain Paragraph 1 Securities, including:
 - government and municipal bonds; and
 - bonds guaranteed by the government.
- Paragraph 2 Securities, provided the issuer does not use more than half of the proceeds for investing in securities).

(Article 3, FIEA; Articles 2-8 to 2-11, Enforcement Order.)

Exclusions Based on Type of Transactions

The registration and prospectus requirements under the FIEA apply to public offerings of newly issued securities or secondary distributions of already issued securities. Certain private transactions are excluded from these types of transactions, and therefore the registration and prospectus requirements do not apply. Specifically:

- Private placements are excluded from public offerings of newly issued securities (Article 2(3), FIEA; Articles 1-4 to 1-7-2, Enforcement Order; Articles 11 to 13, Definition Ordinance).
- Private secondary distributions are excluded from secondary distributions of already issued securities (Article 2(4), FIEA; Articles 1-7-4 to 1-8-5, Enforcement Order; Articles 13-4 to 13-7, Definition Ordinance).

Whether a transaction qualifies as an excluded private placement or private secondary distribution depends in part on the type of securities involved. Therefore, there are four categories in of private placements and private secondary distribution as follows:

- Private placements of Paragraph 1 Securities.
- Private placements of Paragraph 2 Securities.
- Private secondary distributions of Paragraph 1 Securities.
- Private secondary distributions of Paragraph 2 Securities.

For further information on these private exclusions, see [Private Placements](#) and [Private Secondary Distributions](#).

In addition, certain transactions that are not private secondary distributions are also excluded from secondary distributions, based on the parties involved, trading venue, overseas origin of the securities, and other factors. For more information, see [Other Transactions Excluded from Secondary Distributions](#).

Exemptions Available to Certain Public Offerings and Secondary Distributions

For certain public offerings and secondary distributions, there are also exemptions from:

- The obligation to file a securities registration statement (Article 4(1), FIEA; Article 2-12 to 2-12-3, Enforcement Order) (see [Registration Exemptions](#)).
- The prospectus requirements (Articles 13(1) and Article 15(2), FIEA; Articles 11-4 and 11-5, Disclosure Ordinance; Articles 14 and 14-2, Specified Securities Ordinance; Article 8-4, Foreign Bonds Ordinance) (see [Prospectus Exemptions](#)).

Private Placements

Private Placements of Paragraph 1 Securities

Three types of transactions involving newly issued Paragraph 1 Securities qualify as private placements and therefore are excluded from public offerings:

- Solicitation only for qualified institutional investors (Article 2(3)(ii)(a), FIEA).

- Solicitation only for specified investors (Article 2(3)(ii)(b), FIEA).
- Solicitation for a small number of investors (Article 2(3)(ii)(c), FIEA).

An issuer cannot use more than one of these private placement exemptions at the same time. For example, if an issuer offers securities to qualified institutional investors relying on the first exemption, it cannot simultaneously offer the same type of securities to specified investors relying on the second exemption, or any other investors relying on the third exemption. Share option certificates are treated as the same type of securities as the underlying share certificates that are to be acquired, subscribed for, or converted through the exercise of the rights indicated on the share option certificates.

Solicitation only for Qualified Institutional Investors

The requirements for this exclusion vary depending on the specific type of securities, but in general are that:

- Solicitations for acquisition are made only to qualified institutional investors (regardless of their number).
- Securities with similar rights to the solicited securities (in the case of shares and certain other equity securities) or of the same type as the solicited securities (in case of the other securities) are not subject to the obligation to file securities reports.
- The transfer of solicited securities from the person who acquired them to any person other than a qualified institutional investor is restricted.

An issuer must file a securities report if one of the following circumstances occurs:

- The securities are listed on any financial instruments exchange.
- The issuer has filed a securities registration statement.
- The securities are held by 1,000 or more persons.

Qualified institutional investors are defined in Article 2(3)(i) of the FIEA, and Article 10 of the Definition Ordinance. Examples include:

- Banks, insurance companies, certain financial instruments business operators and certain other financial institutions.
- Investment corporations and investment limited partnerships.
- Certain governmental financial institutions and pension funds.
- A legal person or an individual that has JPY1 billion or more of securities, and has notified the Commissioner of the Financial Services Agency.
- A person (excluding an individual) that engages in certain specified financial business activities in a foreign state under the laws and regulations of a foreign state, and that has notified the Commissioner of the Financial Services Agency that, at the time of the notification, it meets the specified minimum threshold of stated capital, or contribution or total funds.

- A foreign national government, foreign governmental organization, foreign regional government, foreign central bank, or an international organization of which Japan is a member state, that has made a notification to the Commissioner of the Financial Services Agency.

Solicitation only for Specified Investors

The requirements of exclusion for a solicitation only for specified investors vary depending on the specific type of security, but in general are that:

- Any solicitation must be made only to specified investors.
- If a solicitation is made to persons other than the Government of Japan, the Bank of Japan, or qualified institutional investors, it must be made by a financial instruments business operator or registered financial institution, either on behalf of its client or itself.
- Securities of the same type as the solicited securities are not subject to the obligation to file securities reports.
- A transfer of the solicited securities from the person who acquired them to any other person other than a specified investor is restricted.

Specified Investors are defined in Article 2(31) of the FIEA and Article 23(1) of the Definition Ordinance. They include:

- Qualified institutional investors.
- The Government of Japan.
- The Bank of Japan.
- A company that is an issuer of share certificates listed on a financial instruments exchange.
- A joint stock company whose capital is expected to be JPY500 million or more.
- A corporation that is a financial instruments business operator or a notifier of special business for qualified institutional investors.
- A foreign corporation.

To conduct a solicitation only for specified investors, the issuer must provide the information stipulated in the Cabinet Office Ordinance on the Provision and Publication of Information on Securities (Cabinet Office Ordinance No. 78 of 5 December 2008) (Securities Information Ordinance). The issuer must make this information regarding the relevant securities and the relevant issuer (specified securities information) clear to investors and counterparties of the solicitation, or make it public in advance (Article 27-31(1), FIEA). An issuer must also provide the information concerning the issuer (issuer information) specified by the Securities Information Ordinance to the owners of the securities, or disclose it publicly in accordance with the rules of a stock exchange or the Japan Securities Dealers Association, at least once a year (Article 27-32(1), FIEA).

Solicitation for a Small Number of Investors

The requirements for this exclusion, which vary depending on the specific type of securities, are generally that:

- The number of persons to whom acquisitions are solicited must be no more than 49.

- Securities of the same type as the solicited securities are not subject to the obligation to file a securities report.
- If securities are not equity-related securities (such as shares of stock), a transfer of solicited securities from the person who acquired them to any other person is prohibited, except for a transfer of all securities acquired by the person to one other person in a single transaction.
- Securities of the same type are not securities for specified investors (defined in Article 4(3) of the FIEA).

To calculate the total number of persons solicited, the number of persons solicited for the same type of securities during the three months before this solicitation are aggregated. The number of qualified institutional investors is excluded from the calculation if the solicited securities are, as specified by the Enforcement Order and the Definition Ordinance, not likely to be transferred from the person who acquires them to any other person other than a qualified institutional investor.

Private Placements of Paragraph 2 Securities

Only one type of transaction involving newly issued Paragraph 2 Securities qualifies as a private placement and is therefore excluded from public offerings. This is a transaction that will not result in the securities being owned by 500 or more persons who respond to the solicitation (Article 2(3)(iii), FIEA; Article 1-7-2, Enforcement Order). Unlike for Paragraph 1 Securities, the determination of a solicitation of Paragraph 2 Securities as a public offering is based by the number of holders of the securities who accept the solicitation, not the number of persons to whom the solicitation was made.

Private Secondary Distributions

A private secondary distribution is excluded from being a secondary distribution of already issued securities. The requirements of private secondary distributions closely correspond to the requirements of private placements of newly issued shares.

Solicitations only for qualified institutional investors and solicitations only for specified investors are excluded from secondary distribution of Paragraph 1 Securities under almost the same requirements as private placements (Article 2(4)(ii)(a) and (b), FIEA).

There is also an exclusion corresponding to solicitations for a small number of investors of newly issued shares. However, for sales of overseas-issued securities without transfer restriction that are not excluded from the secondary distribution (see [Other Transactions Excluded from Secondary Distributions](#)), some additional requirements must also be satisfied (Article 2(4)(ii)(c), FIEA; Article 1-8-4, Enforcement Order). The total number of holders of each issue of overseas-issued securities without transfer restriction cannot exceed 1,000, and financial instruments business operators or registered financial institutions must report the number of persons who currently own these securities to an authorized financial instruments firms association.

In addition, sales of Paragraph 2 securities are excluded from secondary distribution under the same requirements as private placements of Paragraph 2 Securities. That is, a distribution that will not result in the securities being owned by 500 or more persons who respond to the solicitation constitutes a private secondary distribution. (Article 2(4)(iii), FIEA; Article 1-8-5, Enforcement Order.)

Notice of Private Placements and Private Secondary Distributions

Persons conducting a private placement, or a private secondary distribution must notify the persons solicited of the matters specified in a Cabinet Office Ordinance unless an exemption applies (Article 23-13, FIEA). The information to be notified varies depending on the specific type of security, but includes:

- A statement to the effect that no securities registration statement has been filed in connection with the solicitation for the issuance of the securities.
- Details of the restrictions on resale (if applicable).
- A statement to the effect that the securities solicited fall, or will fall, under the category of securities for specified investors (in the case of solicitations only for specified investors).
- If issuer information has been made public, this fact and the method of publication (in the case of solicitations only for specified investors).

Other Transactions Excluded from Secondary Distributions

Under Article 1-7-3 of the Enforcement Order, some types of transactions are also excluded from the definition of a secondary distribution of securities, even though they are not private secondary distributions. As such, the registration and prospectus requirements do not apply to these transactions.

Exclusion Based on Parties to Sale and Purchase

Certain exclusions are determined by the parties to the sale and purchase. A sale and purchase of securities is excluded from the definition of a secondary distribution if:

- The securities are not subject to restrictions on transfer by private placement or private secondary distribution, and are owned by persons other than:
 - the issuer of the securities;
 - an officer, incorporator or other equivalent person of a corporation that is the issuer;
 - a major shareholder who owns at least 10% of the voting rights of the issuer, or, if the major shareholder is a corporation, an officer, incorporator or other equivalent person of the major shareholder;
 - a subsidiary of the issuer, or an officer or incorporator of the subsidiary, or other equivalent person; or
 - a financial instruments business operator or registered financial institution.

(Article 1-7-3(7), Enforcement Order.)

- The securities are not subject to restrictions on transfer by private placement or private secondary distribution, and both the seller and purchaser are any of the following persons (unless both seller and purchaser are financial instruments business operators or registered financial institutions):
 - the issuer of the securities;
 - an officer, incorporator or other equivalent person of a corporation that is the issuer;
 - a major shareholder who owns at least 10% of the voting rights of the issuer, or, if the major shareholder is a corporation, an officer, incorporator or other equivalent person of the major shareholder;
 - a subsidiary of the issuer, or an officer or incorporator of the subsidiary, or other equivalent person; or

- a financial instruments business operator or registered financial institution.

(Article 1-7-3(8), Enforcement Order.)

- The securities are sold by a financial instruments business operator, registered financial institution or specified investor to another financial instruments business operator, registered financial institution or specified investor. Block trades are conducted relying on this exclusion. The requirements for this exclusion are that:
 - the securities are listed on a financial instruments market;
 - the sales are not conducted in a financial instruments market; and
 - the sales are conducted to facilitate fair price formation and distribution of the securities at an appropriate price based on the trading price of the securities on an exchange financial instruments market and taking into account the trading conditions.

(Article 1-7-3(4), Enforcement Order.)

Exclusions Based on Venue of Sale and Purchase

Certain exclusions focus on the venue of the sale and purchase:

- Sales and purchases of securities made in a financial instruments market (Article 1-7-3(1), Enforcement Order).
- Sales and purchases of securities made in an over-the-counter securities market (Article 67(2), FIEA; Article 1-7-3(2), Enforcement Order).
- Sales and purchases of securities made in a proprietary trading system (PTS) (Article 1-7-3(3), Enforcement Order).

Exclusion of Overseas-Issued Securities Without Transfer Restriction

Certain exclusions relate to sales of securities that have been issued in a foreign country and are not subject to restrictions on transfer by private placement or private secondary distribution (overseas-issued securities without transfer restriction). These sales and purchases are excluded if either:

- The sales:
 - are made by a foreign securities firm under Article 58-2 of the FIEA; and
 - are made to a financial instruments business operator, registered financial institution, or qualified institutional investor.

Article 1-7-3(5), Enforcement Order.)

- The sales satisfy the following requirements:

- they are made by a financial instruments business operator, registered financial institution, or qualified institutional investor that has acquired overseas-issued securities without transfer restriction;
- they are made to another financial instruments business operator, registered financial institution, or qualified institutional investor;
- the purchaser purchases the securities for the purpose of having another person acquire the securities;
- the seller or the purchaser is a member of an authorized financial instruments firms association designated by the Commissioner of the Financial Services Agency; and
- the seller (or the purchaser if the seller is not a member of an authorized financial instruments firms association) reports the issue and number of the securities and other matters specified by the Definition Ordinance to the authorized financial instruments firms association (Article 13-3(1), Definition Ordinance).

(Article 1-7-3(6), Enforcement Order.)

Other Exclusions

The following sales and purchases are also excluded from secondary distribution:

- Purchases and sales with repurchase or resale conditions that satisfy the following requirements:
 - the securities are those prescribed in Article 13-3(2) of the Definition Ordinance, such as government bonds, municipal bonds, corporate bonds (excluding bonds with stock acquisition rights), and investment corporation bonds; and
 - the repurchase or resale price, and the date of repurchase or resale, are predetermined.

(Article 1-7-3(9), Enforcement Order.)

- Sales of securities to the issuer or a person who intends to sell the securities to the issuer (including a person who intends to sell the securities to that person) (Article 1-7-3(10), Enforcement Order).
- Securities transactions in a financial instruments market or foreign financial instruments market in which a financial instruments business operator or registered financial institution acts as an intermediary for customers (Article 1-7-3(11), Enforcement Order).

Registration Exemptions

Even if a transaction constitutes a public offering or secondary distribution, there are exemptions from the obligation to file a securities registration statement (Article 4(1), FIEA). The exemptions include:

- Solicitation to officers or employees.
- Secondary distribution of already disclosed securities.
- Secondary distribution of foreign securities.

- Total value of less than JPY100 million.

Solicitation to Officers or Employees

Solicitation by a company to certain of its officers or employees, or those of its wholly-owned subsidiary, that meets other requirements specified by the Enforcement Order is exempted from the obligation to file a securities registration statement (Article 4(1)(i), FIEA; Article 2-12, Enforcement Order; Article 2(1), Disclosure Ordinance).

Secondary Distribution of Already Disclosed Securities

Secondary distribution of securities for which disclosure has already been made is exempted from the obligation to file a securities registration statement (Article 4(1)(3), FIEA).

Disclosure has already been made if, for example:

- The issuer has filed a securities registration statement for a previous public offering or secondary distribution of the same type of securities and the securities registration statement has become effective.
- The issuer has filed an annual securities report.

(Article 4(7), FIEA; Article 6, Disclosure Ordinance; Article 7, Specified Securities Ordinance; Article 3-2, Foreign Bonds Ordinance.)

Even under this exemption, prospectus requirements still apply. The issuer must file a securities notice with an LFB or LFBB before the solicitation for secondary distribution, if it (or its subsidiary, major shareholder, officer, incorporator, underwriter or other person specified by a Cabinet Office Ordinance) conducts the secondary distribution (Article 4(6), FIEA). This securities notice contains much less information than a securities registration statement, and a securities notice is not subject to public inspection, unlike a securities registration statement.

Secondary Distribution of Foreign Securities

Secondary distribution of already issued foreign securities by financial instruments business operators or registered financial institutions is exempted from the obligation to file a securities registration statement (Article 4(1)(iv), FIEA; Articles 2-12-2 and 2-12-3, Enforcement Order).

Foreign securities under this exemption are either:

- Securities issued in a foreign country.
- Securities issued in Japan but no solicitation is made in Japan at the time of their issuance.

The requirements for this exemption differ for each type of security, but generally:

- Information on trading prices must be easily obtainable in Japan through the internet or other methods.
- The securities must be listed on a designated foreign securities exchange or continuously traded in a foreign country.

- Information on the issuer must be publicly available and easily obtainable in Japan via the internet or other methods.

A financial instruments business operator or registered financial institution that sells securities relying on this exemption must, before or at the time of the sale, in principle, provide to the counterparty, or publicly announce, the information stipulated in the Securities Information Ordinance concerning the relevant securities and the issuer (foreign securities information) (Article 27-32-2(1), FIEA). In addition, the financial instruments business operator or registered financial institution must provide or publicly announce foreign securities information upon request from a person who has acquired securities through this exempted secondary distribution, or when a fact that materially affects investors' investment decisions occurs (Article 27-32-2(2), FIEA).

Total Value Less Than JPY100 Million

Public offerings or secondary distributions with a total issue value or total distribution value of less than JPY100 million are exempted from the obligation to file a securities registration statement (Article 4(1)(v), FIEA).

For the purpose of determining the total value, the value of issues or sales made during the period of one year preceding this offering, or the offerings made concurrently with this offering, are aggregated with the amount of this offering (Article 2(5), Disclosure Ordinance; Article 2, Specified Securities Ordinance; Article 1-2, Foreign Bonds Ordinance).

The issuer must file a securities notice with an LFB or LFBB before the solicitation for public offering or secondary distribution, unless the total value of issuance or sales is less than JPY10 million (Article 4(6), FIEA).

Prospectus Exemptions

An issuer of securities must prepare a prospectus for a public offering or secondary distribution, unless an exemption applies. The same applies to an issuer of securities whose secondary distribution is exempt from the obligation to file a securities registration statement because disclosure has already been made for the securities (see [Secondary Distribution of Already Disclosed Securities](#)), unless an exemption applies. (Article 13(1), FIEA.)

Unless an exemption applies, an issuer, a person that conducts a secondary distribution of securities, or a securities related business operator must deliver a prospectus if they cause to be acquired, or sell, through a public offering or secondary distribution, either:

- Securities for which a registration statement has been filed.
- Securities for which disclosure has already been made and therefore the obligation to file a securities registration statement is exempted.

(Article 15(2), FIEA.)

Rights Offering

An exemption from the obligation to prepare and deliver a prospectus applies to rights offerings without consideration (Article 13(1) and Article 15(2)(iii), FIEA). The requirements for this exemption are:

- The rights offering is conducted by way of gratuitous allotment of share option rights (allotment without consideration) as provided for in Article 277 of the Companies Act.

- The share option certificates are listed on a financial instruments exchange or are scheduled to be listed without delay after issuance.
- A statement to the effect that the securities registration statement has been submitted, and other items stipulated by a Cabinet Office Ordinance, are published after the submission without delay in a daily newspaper.

Qualified Institutional Investors

A prospectus does not need to be delivered to qualified institutional investors that do not request it (Article 15(2)(i), FIEA).

Persons Expected to Have Knowledge

There is no requirement to deliver a prospectus to the following persons if they have given their consent not to receive that prospectus:

- Persons who already hold the same issue as the securities concerned.
- Persons who live with others who have received the prospectus or are expected to receive it.

(Article 15(2)(ii), FIEA.)

Secondary Distribution of Already Disclosed Securities

Some secondary distributions of already disclosed securities (see [Secondary Distribution of Already Disclosed Securities](#)) are exempt, including:

- Secondary distribution where the total distribution value is less than JPY100 million (Article 13(1), FIEA).
- Secondary distribution made by a person other than the issuer, its subsidiary, major shareholder, officer, incorporator, underwriter or other person specified by a Cabinet Office Ordinance, without any stabilization transaction involved (Article 11-4(2), Disclosure Ordinance; Article 14(2), Specified Securities Ordinance; Article 8-4(2), Foreign Bonds Ordinance).

Examples of Registration and Prospectus Exclusions/Exemptions Used in Equity Offerings

Commonly used exclusions from public offering or secondary distribution and exemptions from the registration and prospectus requirements for equity offerings in Japan are:

- Private companies issue their shares relying on a private placement exclusion, especially solicitation for a small number of investors.

- Listed companies issue their shares other than those listed on a stock exchange relying on a private placement exclusion, especially solicitation for a small number of investors.
- Major shareholders or other related person of the issuer sell shares of a listed company outside a financial instruments exchange to facilitate fair price formation and the distribution of these shares, relying on the exclusion from the secondary distribution (Article 1-7-3(4), Enforcement Order).
- Major shareholders or other related persons of the issuer sell shares of a listed company to a financial instruments business operator or other related person of the issuer, relying on the exclusion from the secondary distribution (Article 1-7-3(7), Enforcement Order).
- Solicitation for interests in investment funds, which are Paragraph 2 securities, is made relying on the private placement exclusion (Article 2(3)(3), FIEA).

Examples of Registration and Prospectus Exclusions/Exemptions Used in Debt Offerings

A common scenario in which exclusions from public offering or secondary distribution and exemptions from the registration and prospectus requirements are used for debt offerings in Japan is where companies issue their bonds relying on solicitation for a small number of investors.

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