

December 19, 2019

Mr. Atsushi Mimura  
Deputy Vice Minister of International Affairs  
Ministry of Finance  
3-1-1- Kasumigaseki, Chiyoda-ku  
Tokyo 100-8940  
Japan

Re: Foreign Exchange and Foreign Trade Act

Dear Mimura-san,

My ICI Global<sup>1</sup> colleagues and I greatly appreciated the opportunity to meet with you and your colleagues at the Ministry of Finance (MOF), as well as representatives from the Financial Services Agency (FSA) and the Ministry of Economy, Trade and Industry (METI), during our recent visit to Tokyo. Our discussion gave us a better understanding of the rationale for the bill amending the Foreign Exchange and Foreign Trade Act (FEFTA) which was adopted by the Diet on November 22 and of your intentions with respect to the implementing provisions and prior notification exemptions that are still being drafted.

We also appreciated the opportunity to convey some of the questions and concerns that these changes have raised for global fund managers. As we discussed, your government has been promoting foreign investment in Japan, and global fund managers generally are very interested in investing in your market. For this reason, we do hope that the implementing provisions and exemptions will be crafted in a manner that addresses Japan's legitimate national security concerns without unduly discouraging foreign investment in Japan.

To this end, we briefly describe below those areas that we hope will be clarified in the anticipated Ministerial Ordinance on prior notification exemptions and other implementing provisions.

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<sup>1</sup> ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$30.8 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

### Asset Managers Should be Within the Scope of the Financial Institution Exemption

The MOF has stated that, as a general matter, investments by a non-government owned entity that is deemed to pose no risk to national security will be exempted from the prior notification requirement and that the exemption will apply to “financial institutions.” Based on our discussion and materials published by the MOF, we understand that asset managers regulated in their home jurisdiction would be considered “financial institutions” and the assets over which they have voting authority are intended to be within scope of the financial institution exemption. We respectfully request that the Ministerial Ordinance make the exemption clear by explicitly including asset managers in the exemptive provision for all listed companies.

### Owners of Assets that Delegate Voting and Investment Authority Should not be Subject to the Prior Notification and Post-Investment Reporting Requirements

We understand that FEFTA currently does not distinguish between foreign financial intermediaries and foreign asset owners (e.g., foreign end investors) and does not clearly specify the conditions under which each entity is within the scope of the prior notification requirement. Applying the prior notification and post-investment reporting requirements to asset owners in circumstances when they have delegated voting and investment authority for their investments is not appropriate or necessary because such asset owners do not control the decision making with respect to those shares and applying the requirements would, in effect, significantly reduce the benefits of the exemption. We therefore respectfully request that the Ministerial Ordinance clearly provide that the owners of assets that delegate voting and investment authority are not within the scope of the prior notification and post-investment reporting requirements. Such exemption should be granted to owners of assets that delegate voting and investment authority regardless of whether or not the owner is a government-owned entity.

### Regulated Funds Should be Within the Scope of the Financial Institution Exemption

Because some regulated funds<sup>2</sup> may retain voting authority, we further request that the Ministerial Ordinance specifically include regulated funds in the financial institution exemption from the prior notification requirement. Regulated funds are comprehensively-regulated investment vehicles that invest according to the fund’s stated investment principles and objective. They are highly unlikely to pose any risk to national security and should, like asset managers, be treated as financial institutions for purposes of the prior notification exemption and post-investment reporting requirements.

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<sup>2</sup> The term “regulated funds” includes US funds, which are comprehensively regulated under the Investment Company Act of 1940 (Investment Company Act), and non-US funds, that are organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors (e.g., funds domiciled in the European Union and qualified under the UCITS Directive (UCITS)).

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Existing Holdings Should not be Subject to the New Rules

We request that MOF specify in the Ministerial Ordinance that the new, lower prior notification requirement does not apply to foreign investor holdings as of the date of the implementation of the new requirements unless and until there is an acquisition of additional shares. Applying the requirements to existing holdings would bring significant disruption and uncertainty to the Japanese market and existing foreign investors.

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Once again, we are most grateful for the opportunity we had to meet with you and your colleagues and we appreciate your consideration of our views and concerns and requests for confirmation. As the MOF prepares the text for the final provisions and exemptions, we would be pleased to be of any assistance or information.

Please contact Jennifer Choi, Chief Counsel, at +1 (202) 326-5876 or [jennifer.choi@ici.org](mailto:jennifer.choi@ici.org); or Eva Mykolenko, Associate Chief Counsel, ICI Global, at +1 (202) 326-5837 or [emykolenko@ici.org](mailto:emykolenko@ici.org) with any questions.

With kindest regards, and very best wishes for the holiday season and in the New Year.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Stevens". The signature is fluid and cursive, with a large initial "P" and a long horizontal stroke at the end.

Paul Schott Stevens  
President & CEO  
Investment Company Institute