

June 22, 2005

Mr. Jonathan Katz,
Secretary
Securities and Exchange Commission
450 Fifth Street, NW, Washington, DC 20549
U.S.A.

Dear Mr. Katz,

Re: "Proposed Rule Change and Amendment No. 1 and 2 Thereto relating to NASD Rule 2790" (SR-NASD-2004-165)

The Japanese investment fund management companies would like to be able to purchase U.S. IPO securities on behalf of their Japanese investment funds. However, the NASD Rule 2790 imposed stringent restrictions on the exemptions for foreign investment funds. As a result, it is very difficult for Japanese investment funds to purchase U.S. IPO securities. We recommend relaxing the restrictions on the exemptions for foreign investment funds in order to provide Japanese investors with the opportunities to participate in the U.S. IPO market and in order to contribute to its development by expanding the market participants.

The NASD Rule 2790 prohibits NASD members from selling a new issue to any account in which a restricted person has a beneficial interest in principle. Further, under the Rule, the exemption for foreign investment funds requires that no person owning more than 5 % of the shares of the foreign investment fund is a restricted person. As investment funds are sold through distributing companies, it is almost impossible for investment fund management company to know whether any restricted person owns more than 5 % of the investment fund. Distributing companies do not provide investment fund management companies with the information related to omnibus accounts. Therefore, the exemptions for foreign investment funds are impracticable.

We propose that instead of paragraph (c) (6), the NASD uses the conditions in new Investment Advisers Act Rule 203(b)(3)-1(d)(3) to craft the exemption for foreign investment funds. Namely, we suggest that the exemption should define a “foreign investment fund” that has its principal office and place of business outside the U. S., makes a public offering of its securities in a country other than the U. S., is regulated as a public investment company under the laws of the country other than the U. S., and is offered based on the investment advisory skills, ability or expertise of the investment adviser that is regulated in a jurisdiction that is a member of IOSCO.

Yours sincerely,

Yoshiaki Kaneko
Vice Chairman
The Investment Trusts Association, Japan
2-1, Nihonbashi, Kabutocho, Chuo-ku
Tokyo 103-0026, Japan

(For your reference)

The Investment Trusts Association, Japan, is the self-regulatory organization whose membership includes 99 investment fund management companies and 12 securities firms.