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AMCHAM

American Chamber of Commerce in Korea

AMCHAM Special Report

Korea's Financial Hub Agenda

Banking & Securities Edition

About AMCHAM Korea

The American Chamber of Commerce in Korea (AMCHAM Korea) was founded in 1953, with a broad mandate to encourage the development of investment and trade between Korea and the United States.

AMCHAM Korea is the largest foreign chamber in Korea with approximately 800 member companies and affiliates with diverse interests and substantial participation in the Korean economy.

For any inquiries regarding the report, please contact governmentaffairs@amchamkorea.org.

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Report Summary: Key Findings

I. General Issues (Applicable to Both Banks and Securities Companies)

Category	Key Issues	Details & Impact	Recommendations
A. Integration with Global Financial Company Infrastructure	IT Infrastructure – Network Separation **PRIORITY**	Korean network separation mandates impose high costs and impede the Korean operation's ability to adopt new technologies and integrate fully with global IT policies. A restrictive FSS interpretation prevents "unavoidable" business connections to Overseas Affiliates for outsourced IT management. While the recent amendments to the Detailed Enforcement Rules of the EFSR recognize SaaS provided by cloud service providers (CSPs) as exempt from network separation requirements, the practical benefit remains limited due to restrictions tied to the processing of personal information and the continued application of prescriptive control standards.	Ease the network separation requirements for secure networks (e.g., leased lines, internal business terminals) connected to Overseas Affiliates or institutional investors, or recognize the business necessity ("unavoidability") of such connections as exceptions to the requirement. Apply the same approach behind recognition of SaaS-related network separation exception to connections between onshore IT systems and terminals of Overseas Affiliates over secure private or dedicated networks, and clarify the applicable criteria under the Detailed Enforcement Rules of the EFSR and refine the framework based on risk-based criteria for network separation requirements so as to permit exceptions where appropriate alternative data protection controls are in place.
	IT Infrastructure – Cloud & AI	Complex, duplicative reporting requirements for using Cloud services (even for non-core tasks like conference room booking), leading to implementation delays compared to global schedules. The adoption of SaaS and generative AI also requires the burdensome process of regulatory sandbox designation. The recently introduced AI regulatory framework in Korea's financial sector creates practical compliance challenges for foreign financial institutions with limited local operational capacity.	Simplify regulatory approval and reporting requirements for Cloud use, including permitting semi-annual reports for non-core functions and exempting duplicative sandbox designations for previously approved Cloud or SaaS solutions. Issue clear guidance on SaaS security requirements under the amendments to the Detailed Enforcement Rules of the EFSR and streamline procedures for adopting Cloud-based AI solutions that do not process personal information and recognize head office–level AI governance frameworks as satisfying local requirements. Provide supervisory guidance to ensure effective implementation of AI-related measures under the network separation reform roadmap.
B. Alignment with Global Standards and Global Firm Business Models	Update of the Verification Practices under the Real Name Act **PRIORITY**	Despite the application of stringent Customer Due Diligence (CDD) requirements under the Specified Financial Transaction Act, a Korea-specific real-name verification framework remains in place under the Act on Real Name Financial Transactions and Confidentiality. The additional verification requirements imposed on foreign corporate customers are not aligned with international practice and impose disproportionate operational burdens.	Deem compliance with the CDD requirements under the Specified Financial Transaction Act to satisfy the real-name verification obligation under the Act on Real Name Financial Transactions and Confidentiality. Permit financial institutions to implement verification procedures aligned with international standards, provided that such procedures do not undermine the statutory objectives of the Act on Real Name Financial Transactions and Confidentiality and the Specified Financial Transaction Act.

Category	Key Issues	Details & Impact	Recommendations
	Responsibilities Map	The prescriptive responsibility map regime adds substantial human resources deployment and operational burden beyond existing supplemental internal control systems set by global head offices.	Provide flexibility and tailored guidance when applying the regime to foreign financial institutions, considering their global business operations, to avoid unnecessary burden and cost.
	Executive Compensation	Korean regulations impose highly prescriptive requirements (e.g., minimum ratio and deferral period) for performance-based compensation and comprehensive disclosure, forcing global institutions to create separate, expensive local compensation frameworks.	Revise regulations to focus on key principles rather than detailed formulas and allow more flexibility to companies. At a minimum, provide exceptions for foreign shareholder institutions to implement global executive compensation frameworks in Korea.
	Financial Consumer Protection Law	Since the 2023 amendments to the Financial Consumer Protection Act and its Enforcement Decree, door-to-door and telemarketing rules have been tightened, expanding compliance obligations, including sales personnel registration and consumer opt-out systems. Although limited exceptions exist for professional financial consumers, products such as OTC derivatives remain subject to a blanket prohibition on unsolicited sales efforts. For institutions without a domestic branch network that rely on pre-arranged corporate visits or client-requested meetings, these rules constrain legitimate corporate engagement. The same solicitation restrictions applicable to general financial consumers are imposed on sales activities directed at professional financial consumers and corporate clients, despite their sophistication and transaction experience, resulting in disproportionate regulatory burdens.	Adjust the scope of the prohibition on unsolicited sales efforts by distinguishing between individual and corporate customers; permit, in the case of OTC derivatives, a certain level of unsolicited sales efforts based on the customer's profile, transaction purpose, and experience; and allow an exception for sales activities conducted with corporate customers pursuant to prior arrangements or at the customer's explicit request.
	Labor Standards – Flexibility in Working Hours	The deemed working hours system for discretionary work arrangements is available to research analysts but excludes comparable Investment Banking division employees, despite the latter also requiring discretion in performing duties.	Broaden the scope of work eligible for the deemed working hours system to include employees in the Investment Banking divisions of securities firms. Proactively consider disapplying working hour restrictions for high-income employees (similar to US/Japan systems).
	Labor Practices – Majority Labor Union at Labor Management Council (LMC)	Article 6 of the Workers' Participation Act allows the majority labor union to appoint all employee-members of the LMC, which may fail to represent the rights and interests of non-union workers.	Amend the Workers' Participation Act to ensure LMC employee-members represent all employees, including non-union members, even when a majority union exists.
	Risk Hedging Purposes Only OTC Derivative Transactions	Non-resident foreign customers (general investors) are restricted to risk hedging-only OTC derivatives transactions with Korean financial institutions. This restriction is uncommon globally and places Korean institutions at a competitive disadvantage compared to offshore RFIs (Registered Financial Institutions).	Exempt non-resident foreign customers from the risk hedging-only restriction to enable Korean financial institutions to compete on a level playing field with RFIs trading from offshore.

Category	Key Issues	Details & Impact	Recommendations
	Regulatory Treatment of Client Credit Information and Personal Data	Korea's highly prescriptive and local market-focused application of the Personal Information Protection Act and the Credit Information Use and Protection Act creates structural barriers for globally integrated wealth management models. Restrictions on internal data sharing and cross-border data processing increase compliance burdens and operational complexity compared to major financial hubs such as Hong Kong and Singapore, discouraging global financial institutions from expanding wealth management operations in Korea.	Introduce more appropriate, risk-based regulatory treatment based on client sophistication; provide clearer supervisory guidance on permissible internal data sharing and cross-border data processing; review consent purpose limitation requirements in wealth management contexts; and establish a structured public-private dialogue to better align regulatory practices with Korea's financial hub objectives and global standards.
C. Korean Government Bond Trading through iCSD Accounts	Interoperability of Trading and Settlement Infrastructure	Lack of interoperability between Korea's domestic settlement systems and global architectures (like SWIFT/iCSD) creates market fragmentation and operational challenges for cross-border trading, hindering investment.	Establish a task force to enhance the current system in collaboration with iCSD and KSD, allow net settlement, and enable interoperability between BOK-Wire+ and SWIFT.
	Exemption from Withholding Tax on KTBs and MSBs	Tax-exempt foreign investors trading through onshore Korean financial institutions are required to submit documentation, which often leads to tax withholding followed by a burdensome refund process, unlike those trading through a recognized iCSD.	Exempt tax-exempt foreign investors from the documentation requirement for withholding tax exemption when trading through Korean financial institutions, as foreign status can be confirmed via IRC or LEI.
	Post Trade Reporting of OTC Bond Transactions	Korean financial institutions must manually report OTC bond transaction details to KOFIA within 15 minutes of trading, placing a significant operational burden that is expected to grow with increased cross-border trading. Non-resident foreigners trading through iCSDs are exempt.	Relax the relevant regulations, such as changing the reporting deadline to the end of the trading day.
D. Others	Business Delegation Reporting	Global outsourcing agreements handled by a single entity cannot utilize ex-post facto reporting if the activity, though identical, spans multiple Korean financial sectors, due to the lack of a regulatory basis to acknowledge cross-sector delegation reports.	Amend the regulations to allow ex-post facto reporting for identical outsourcing arrangements regardless of the financial sector, provided the activity does not require particular sector-specific consideration; and introduce a function within the supervisory authority's reporting system that allows access to previously reported outsourcing arrangements in order to reduce unnecessary duplicative reporting burdens.
	Education Tax	Imposed only on financial/insurance companies based on revenue (not profit), meaning the tax may be imposed even if the taxpayer incurs net losses or no income from a relevant transaction (e.g., expenses and losses are generally not deducted), with very few exceptions.	Abolish or make the education tax regime more equitable, as imposing a revenue-based tax solely on this sector is considered unreasonable.

II. Sector-Specific Issues: Banks

Category	Key Issues	Details & Impact	Recommendation
A. Capital and Funding of Foreign Bank Branches	Recognition of Head Office Capital **PRIORITY**	The Bank Act only recognizes the foreign bank branch's domestic operating fund (Fund A/B) as capital, severely constraining the limit on credit extension to the same borrower (25% of equity capital).	Amend the Bank Act to recognize all or a significant portion of the head office's capital as the capital of a foreign bank branch.
	Macro-prudential Stability Levy **PRIORITY**	Short-term borrowings from the head office or offshore affiliates – often necessary to maintain higher inventories of Korean government bonds – are included in the non-deposit foreign currency liabilities base for the levy, adversely affecting the competitive position of foreign bank branches against RFIs, despite such intercompany borrowings posing limited liquidity risk.	Exclude short-term borrowings from the head office or offshore affiliates from the macro-prudential stability levy calculation base.
	Scope of Credit Extension Limits	Annex 2 of the Banking Supervision Regulations includes deposits (especially short-term deposits for settlement purposes) as items subject to credit extension limits, inappropriately constraining the settlement and operational activities of global banks.	Apply the exception under the Enforcement Decree to exclude short-term deposits for settlement purposes from the scope of credit extension limits, as they pose extremely limited credit risk.
	Loan-to-Deposit Ratio	Since foreign bank branches rely on head office loans rather than deposits for funding, the loan-to-deposit ratio ceiling acts as a major constraint on loan book expansion and is inconsistent with international standards.	Exempt foreign bank branches from the loan-to-deposit ratio ceiling.
	Bond Issuances by Foreign Bank Branches	Foreign bank branches cannot issue bonds under the Korean Commercial Code, limiting their funding diversification and greater participation in the Korean financial market.	Provide a legal basis in the Bank Act and securities regulations for foreign bank branches to issue both KRW-denominated and foreign currency-denominated bonds.
	Ceiling on Head Office Borrowing by Foreign Bank Branches	Foreign currency borrowing exceeding USD 50 million for over one year requires a report to the Ministry of Economy and Finance, severely constraining business expansion and liquidity for foreign bank branches that rely on head office funding.	Remove or significantly increase the foreign currency borrowing limit for foreign bank branch borrowing from the head office.

Category	Key Issues	Details & Impact	Recommendation
B. Enhancements in Operational Efficiencies	Supporting Documents for Payments and Related Transactions	Supporting documents for overseas remittances/receipts must be submitted for each standardized transaction, undermining efficiency and making it difficult for banks to explain requirements to foreign customers.	Exempt standardized transactions from repeatedly submitting the same supporting documents. Provide case-specific manuals, simplify remittance reason categories, and apply FX-laws with appropriate flexibility.
C. RFI Regime	Relaxation of Foreign Exchange Position Limits **PRIORITY**	Foreign bank branches are subject to FX position limits based on the lower locally calculated equity capital (Fund A/B), placing them at a competitive disadvantage against offshore RFIs, which are not subject to such constraints.	Implement measures to enable foreign bank branches and RFIs to compete on an equal footing, either by revising the equity capital calculation methodology or granting specific exemptions from the limits for foreign bank branches.
	Remittance Verification Procedures	When non-residents settle in KRW via an RFI, the recipient bank finds it difficult to identify the transfer as a "resident/non-resident transaction" requiring verification and BOK reporting, creating compliance risk and hindering KRW settlement through the RFI regime.	Reassign the obligation to verify the payment purpose to the remitting bank (the bank holding the RFI's KRW business purpose account).
	Clarification of the Roles between Banks in Fund Transfers	Investment-Only Account Banks sometimes refuse KRW transfers from Money Exchange Banks (or RFIs) due to information inconsistency, hindering the use of third-party banks for foreign exchange transactions.	Clarify the procedures and required information to facilitate fund transfers between the Investment-Only Account Banks and the Money Exchange Banks in FX transactions via third-party banks.
D. Reassessment of Legacy Requirements	Increase in Cash Pooling Management Limit **PRIORITY**	The current cash pooling limit is capped at USD 50 million, which is too low to allow effective utilization of the cash pooling system by foreign-invested companies.	Raise the cash pooling limit from USD 50 million to USD 100 million.
	Authorization – Approval of MSB Investment Dealing License **PRIORITY**	Foreign bank branches typically hold KTB dealing licenses but are restricted from dealing in MSBs (Monetary Stabilization Bonds), causing confusion and inconvenience for foreign investors who view both securities as having similar sovereign risk exposure.	Consider granting investment dealing business licenses for MSBs to domestic banks, including foreign bank branches, possibly limiting the business scope to transactions exclusively with foreign investors to mitigate conflict with securities firms.
	Exemption or Reduction in Various Levies	Foreign bank branches are mandatorily required to pay contributions to various credit guarantee funds (e.g., Korea Credit Guarantee Fund), despite rarely utilizing loans guaranteed by them. Additionally, the deposit insurance premium rate (0.18%) is high, and foreign currency deposits (which have FX risk) are inappropriately included in the premium base.	Exclude foreign banks from mandatory contributions to credit guarantee funds or apply a lower rate. Reduce the general deposit premium rate and exclude foreign currency-denominated deposits from the premium charge.

III. Sector-Specific Issues: Securities Companies

Category	Key Issues	Details & Impact	Recommendation
A. Licensing Regime	Consistency in the Application of License Requirements **PRIORITY**	Gaps and inconsistencies in applying special exemptions and post-restructuring maintenance requirements remain ambiguous.	Amend or clarify the legal framework to apply exemptions consistently and fairly across different restructuring scenarios and post-restructuring maintenance.
	Major Shareholder Requirements	The ongoing maintenance and add-on license requirement mandate that the head office must not have received a criminal penalty equivalent to a fine of KRW 500 million or more in the last three years. This is excessively strict given global sanction practices, potentially forcing foreign firms to withdraw or to hinder business expansion.	Relax the mandatory threshold for the criminal penalty disqualifying factor (KRW 500 million or more) or provide regulators with a legal basis to exercise discretion to factor in the head office's home jurisdiction sanctions regime.
	Business Model-Based Professional Personnel Requirements	"One-size-fits-all" rules mandate a fixed number of locally based professional personnel (e.g., solicitation staff) regardless of the specialized business model (e.g., proprietary trading), imposing unnecessary costs and barriers to entry.	Flexibly adjust the assessment of minimum personnel requirements to align with the applicant's proposed business activities. Clarify application uncertainties for businesses established prior to 2017.
	Fostering Diverse, Specialized Business Model Market Entrants	Specialized business models face restrictions, such as limiting investment-dealing activities to "market-making only," or applications for investment-dealing licenses by specialized proprietary trading firms are faced with constraints. Firms conducting brokerage without handling client assets are still obliged to install local client asset management/custody systems, imposing unnecessary cost barriers.	Permit the full scope of investment dealing activities feasible under the license category (without conditions like "market-making only") and accept applications for investment dealing licenses by specialized proprietary trading firms. For brokerage models not handling client assets, operate the licensing regime flexibly to require only the necessary infrastructure.
B. Inconsistency with Global Standards	IPO Underwriter Lock-Up and Retention Requirements **PRIORITY**	**30-Day Lock-Up Requirement for Underwriter in Cases of Undersubscription**: The 30-day lock-up applies to securities acquired by underwriters due to undersubscription. This poses difficulties for foreign securities companies, whose primary role is brokerage, and who lack the capital capacity in Korea to hold shares for an extended duration.	Reconsider the interpretive ruling to permit a foreign underwriter to sell the undersubscribed shares to its overseas affiliate post-acquisition, notwithstanding the 30-day lock-up.
		Underwriter Retention Requirement in Cases of Lock-Up Allocation Shortfall: Requirements mandate preferential allocation of institutional investor shares based on lock-up commitments (40% or more). This diverges from global market practice and makes it challenging to attract leading foreign institutional investors, placing a significant burden on foreign underwriters.	Grant exceptions to the new IPO preferential allocation requirements for foreign underwriters of domestic IPOs that allocate shares to foreign investors, aligning with global market practices.

Category	Key Issues	Details & Impact	Recommendation
C. Regulatory Environment	Insider Transaction Pre-disclosure System	The system imposes strict pre-disclosure requirements (30 days prior) and cool-down periods on major shareholders, negatively affecting the block trading market in Korea, unlike voluntary systems in other jurisdictions.	Reconsider the regulatory requirements to achieve the objective of controlling insider trading repercussions without negatively affecting the block trading market.
	DLS Issuer Qualification	Regulations are highly prescriptive, making it difficult to offer a range of Derivative-Linked Securities (DLS) and requiring foreign issuers to meet requirements equivalent to those imposed on Korean dealers. This is contrary to global practice, where DLS are often issued by SPVs or non-licensed entities established by financial institutions.	Amend the issuer qualification requirements to allow Korean institutional investors access to a diverse array of foreign DLS products, complemented by other measures (e.g., guarantee/collateral posting) to ensure investor protection.
	Over-the-counter (OTC) Trading of Listed Securities	Foreign investors are generally restricted to exchange-only trading of listed securities, even for securities not subject to foreign investment limits. This prevents them from using OTC trading (e.g., to source securities to return borrowed shares), unlike Korean investors.	Amend regulations to allow OTC Trading by foreign investors to purchase listed securities for the purpose of returning borrowed securities ("OTC Purchase of Securities to Return Borrowed Securities")
	Enforcement for Breach of Short Selling Requirements **PRIORITY**	Short sale regulatory breaches occurring due to inadvertent error or mistake are not clearly distinguished from intentional illegal naked short sales, leading to overly stringent enforcement and penalties.	Amend the short sale regulatory regime to provide a basis for a more equitable level of sanctions for breaches due to inadvertent error or mistake that do not involve intentional market abuse; and establish a channel for industry consultation in connection with the ongoing rationalization of short-selling regulations and the enhancement of reporting requirements under the Naked Short Selling Detection System (NSDS).
	Naked Short Selling Detection System	Following the introduction of the Naked Short Selling Detection System (NSDS), ongoing dialogue is necessary to clarify uncertainties in the new framework (e.g., precise timing for inventory availability, incorporating recall requests from different time zones).	Establish a task force consisting of regulators (FSC, FSS, KRX) and representatives of foreign financial institutions to convene periodic in-person meetings to promptly discuss and address uncertainties.
	Transparency and Enforcement Proceedings	Foreign financial institutions face challenges in regulatory enforcement due to language barriers and restrictions on attending and presenting views during the meetings of the Capital Market Investigation and Review Committee and the Securities and Futures Commission (SFC).	Provide sufficient time for foreign institutions to review and prepare responses (considering translation needs). Permit representatives to attend Review Committee and SFC meetings and ensure relevant materials are disclosed well in advance to promote a fairer and more transparent enforcement process.

Introduction

Korea is one of Asia's most dynamic economies, home to world-class corporations, a highly educated workforce, and a strong track record of innovation and resilience. In step with its economic presence, Korea's financial markets are important to global financial firms. The Korea Exchange, the primary securities exchange in Korea, is ranked 9th among exchanges globally with a market capitalization of USD 2.53 trillion as of January 2026, according to the World Federation of Exchanges[1]. The Korean banking sector is an important market for foreign banks, particularly for corporates and, increasingly, wealth management, combining systemic stability, digital innovation, and a solid corporate client base.

The Lee Jae-myung administration has set ambitious targets to bolster the Korean capital markets, which include driving the KOSPI to 5,000, addressing the persistent Korea discount in the valuation of Korean corporations, supporting wealth creation for all Koreans, and seeking Korea's inclusion in the Morgan Stanley Capital International Index (the "MSCI") Developed Markets Index. We welcome the government's ambitious initiatives. Achieving these goals will require not only leveraging Korea's inherent strengths but also strategically reshaping the financial sector to foster a more open, flexible, and business-friendly regulatory environment that can attract and sustain foreign capital.

At this critical juncture, Korea's financial sector requires further regulatory reform to harness its full potential and enable the nation to achieve its goals of inclusion in the MSCI Developed Market Index, cementing its position as a global financial market, and becoming an Asian financial hub. AMCHAM has compiled the views of major U.S. banks and securities companies doing business in Korea with a focus on the systemic obstacles they continue to face in Korea. While the market is already home to outstanding domestic and multinational companies, regulatory barriers continue to constrain the ease of doing business for foreign banks and securities firms.

The government recently announced a "Comprehensive Roadmap for Foreign Exchange and Capital Market Measures for Korea's Inclusion in the MSCI Developed Markets Index," where some of our suggestions have been included in the future plans. As concrete policy reforms are expected to follow from this comprehensive roadmap, we hope that our suggestions will be fully reviewed and the industry's views will be considered throughout the implementation process.

AMCHAM remains deeply committed to enhancing Korea's competitiveness and its appeal as a premier regional headquarters location in the Asia Pacific. For several consecutive years, AMCHAM's annual business surveys have ranked Korea as the second most desirable regional hub, trailing only Singapore.

[1] World Federation of Exchanges, January 2026 Market Statistics – Market Capitalization (World Federation of Exchanges, 2026), https://focus.world-exchanges.org/issue/january-2026/market-statistics

To capitalize on this momentum and accelerate foreign direct investment, it is essential to further elevate Korea's standing as a global financial hub. Robust capital inflows are the lifeblood of investment in strategic sectors such as AI, Biotechnology, Content, Defense & Aerospace, and Energy – the core pillars of President Lee Jae-myung administration's economic vision.

We look forward to a productive dialogue with the Korean government regarding the recommendations in this paper, with particular emphasis on the "Priority" items. Through continued collaboration, we are confident that Korea will solidify its foundation as a world-class financial market.

Executive Summary

This paper is divided into three sections, starting with issues faced by both foreign banks and securities companies, followed by sector-specific issues faced by foreign banks and securities companies, respectively.

The central themes recurring throughout this paper can be summarized as follows:

1. *Business model-based adaptive regulation will help advance the global market competitiveness of the Korean financial market*

   Foreign firms in Korea are often subject to Korean regulatory requirements widely divergent from global standards. Applying largely the same Korean framework used to regulate large domestic financial institutions with large retail customer bases burdens the operation of foreign firms that serve predominantly foreign institutional investors and Korean financial and corporate customers. Foreign banks and securities companies respectfully seek a review of how the Real Name Act, Financial Consumer Protection Law, Corporate Governance Act for Financial Companies (Responsibilities Map), and various labor standards should apply to them, with a view towards a practical business-driven and flexible approach when applied to foreign banks and securities companies.

   By fostering greater regulatory flexibility and alignment with international standards, Korea can further raise its ceiling as a truly attractive and competitive market for global financial institutions. Greater participation by foreign financial institutions in the Korean market and opportunities for further investment in Korea would arise if the government and regulatory agencies were to consider a strategic operating model appropriate for foreign financial institutions and exercise more flexibility, so long as it does not adversely affect the Korean market.

2. *Prescriptive regulatory requirements unique to Korea hinder global firms from advancing AI innovation and operating as a seamless global franchise*

   The IT network separation requirement, along with the mandate for regulatory review of Cloud-based services, deters the Korean franchise of global financial institutions from fully integrating in terms of IT infrastructure with the rest of the global franchise. This differentiated treatment for Korean branches and subsidiaries creates inefficiencies and delays for them in accessing new systems and security updates.

   As the adoption of AI and Cloud computing technologies accelerates, the IT infrastructure requirements for financial institutions, not just foreign financial institutions, warrant reassessment to ensure the industry is well-positioned to embrace innovation and adapt to advancements.

3. *Improvements in interoperability between Korea's financial market infrastructure and global systems will support greater market efficiency, facilitate cross-border investment to Korea, and bolster Korea's position as a regional financial hub*

   The misalignment between Korea's domestic trading and settlement infrastructure and global standards is one source of market fragmentation, which hampers seamless cross-border trading and adds complexity to post-trade processes.

   Legacy regulatory standards should be reassessed to allow foreign banks and securities companies — primarily serving the global financial investment community — to be more competitive and increase their investment and commitment in the Korean franchise.

   The foreign investment community applauds the Korean government's Registered Foreign Institutions (RFI) regime and the enabling of the Korean government trading from offshore through International Central Securities Depository (the "iCSD") accounts. Following their enactment, these new initiatives require supportive regulatory and infrastructure reforms that align with global standards to fully unlock their potential. Furthermore, reassessment of regulatory obligations and operational procedures applicable to foreign banks and securities companies in Korea is needed so that these institutions can operate on an equal footing with offshore competitors that are not subject to the same Korean requirements.

4. *Reassessment of market entry barriers and onerous business maintenance requirements to make the Korean financial market more accessible to foreign firms*

   Foreign securities firms continue to be attracted to Korea, and in recent years, businesses with specialized business models have been interested in entering the

Korean market. Greater regulatory flexibility in the licensing regime is needed to facilitate a diverse array of businesses to enter the Korean market. The licensing regime should serve as a catalyst—not a bottleneck—for innovation, diversity, and capital market growth. For instance, prescriptive "one-size-fits-all" licensing requirements regarding infrastructure and personnel present challenges to foreign firms whose business model is very different from that of Korean domestic firms. Existing franchises in Korea face challenges in executing global organizational restructuring involving their Korean entity due to inconsistent exemptions from the qualification standards that apply to restructuring of entities in Korea and lengthy review processes.

In the banking sector, a significant number of foreign banks in the past 10 years have closed their presence in Korea for various reasons. Foreign banks cite high capital requirements as well as onerous prudential standards, both relative to global standards, to operate a bank branch in Korea. Moreover, these requirements constrain the capacity of Korean bank branches to expand their businesses.

5. *Review of regulatory enforcement practices and enhancement in transparency*

Recent regulatory enforcement of short selling by foreign financial institutions has raised significant concerns among the international community about the lack of transparency and enforcement practices that deviate from global market standards.

The foreign investment community wishes for greater transparency of market policies. Public consultations and publication of interpretive guidelines, which bolster institutional confidence and reduce perception of abrupt policy decisions and turns during crises, are cited as helpful to achieve that outcome.

* * * * *

I. General Issues

A. Integration with Global Financial Company Infrastructure

1. IT infrastructure – Network Separation PRIORITY

Most foreign financial institutions mainly target businesses facing domestic and foreign institutional investors and corporations, rather than individuals. They provide institutional investors and corporations with automated services such as transaction history generation (sometimes including remittance services) and direct market access (the "DMA"). In particular, DMA services are provided through leased lines and are blocked from connectivity to external networks.

Moreover, foreign financial institutions delegate the operation and management of IT systems to their global head office or overseas affiliates (the "Overseas Affiliate") and apply the same infrastructure and IT and security policies (the "Policies") adopted globally in order to effectively manage and maintain various security risks. Considering the scope and complexity of the tasks relating to IT resources and cybersecurity that the onshore IT department typically undertakes, it would be difficult for the onshore IT staff to carry out such tasks without considerable delegation to the Overseas Affiliate. To carry out the delegated tasks, the IT systems located in the onshore IT server room must be connected to the terminal of the Overseas Affiliate through a dedicated line.

As certain limited services that foreign financial institutions provide to customers constitute electronic financial business, these institutions are required to fulfill obligations to implement various security measures under the Electronic Financial Supervisory Regulations (the "EFSR"). These security measures include network separation requirements, an obligation that does not exist in other jurisdictions. To comply with the Korean network separation requirements, foreign financial institutions must implement IT infrastructure and policies that are completely different from those that the global head office applies. This Korean requirement not only imposes significant costs, but also impedes the Korean operation's adoption and application of new technologies, given that it limits onshore access to the various IT security measures provided by the global head office.

Regarding the connection of the onshore IT system to the Overseas Affiliate's terminal, the Financial Supervisory Service (the "FSS") issued an interpretive ruling[2] which held that (i) such connection is in violation of the physical network separation requirement under Article 15(1)5 of the EFSR if the terminal of the

[2] FSS No-action Letter, June 10, 2025 (No. 250019).

Overseas Affiliate only has logical network separation applied to it and is connected to multiple foreign affiliates' servers; and (ii) the connection and access between the Overseas Affiliate's terminal and the onshore server for the performance of the outsourced IT system operation and management cannot be deemed to be "unavoidable" for business purposes, and as such it does not avail the exception set out in Article 2-3(2) of the Detailed Enforcement Rules of the EFSR. Due to the FSS's interpretation, foreign financial institutions face difficulties in outsourcing/delegating IT-related tasks in Korea to Overseas Affiliates.

The recent announcement of the proposed amendments to the Detailed Enforcement Rules of the EFSR, recognizing software-as-a-service ("SaaS") provided by Cloud Service Providers (the "CSPs") as eligible for exemption from network separation requirements, is a constructive development in the modernization of Korea's IT regulatory framework. However, as the exemption remains limited where personal identification or credit information is processed and detailed, prescriptive information protection controls continue to apply, the practical impact of the reform may be constrained. Given current global cloud security standards, which emphasize multi-layered and continuously monitored controls rather than strict physical isolation, the continued rigid application of network separation requirements may warrant calibrated reassessment. Such reassessment would better align regulatory requirements with modern cloud architectures and Korea's broader digital transformation objectives in the financial sector.

Recommendations:

- **Easing of the Network Separation Requirement:** We request that the regulations relating to network separation be eased in cases where (i) the onshore IT system is connected to the terminal of the Overseas Affiliate or institutional investors (for the use of DMA services) through secure networks such as leased lines, or (ii) internal business terminals can be designated as non-electronic financial networks as they do not access the information processing system related to electronic financial business. Furthermore, as the network separation framework is not compatible with the operation of global firms, including the use of SaaS, it should be further refined on a risk-based basis, with exceptions permitted where appropriate information protection controls are in place.

- **Exceptions to Network Separation Requirement:** Currently, even where there is a business necessity to connect the onshore IT system with the terminal of the Overseas Affiliate using a secure dedicated line for the delegation of the operation and management of the Korean entity's IT system to the Overseas Affiliate, it does not constitute an exception to the network separation obligation due to the FSS's restrictive interpretation discussed above. In line with the recent initiative to

exempt certain SaaS arrangements from network separation requirements, similar exception treatment should be extended to connections between the onshore IT system and the terminal of the Overseas Affiliate, where such connections are established over secure private networks or dedicated communication lines. To this end, the relevant provisions of the Detailed Enforcement Rules of the EFSR and related interpretive guidance should be refined to provide greater clarity on the applicable criteria and procedural requirements. If such an exception is granted, foreign financial institutions will comply with the alternative information protection controls in lieu of network separation as required under Annex 7 of the Detailed Enforcement Rules of the EFSR to ensure that application of the exception does not heighten IT security risks.

Relevant Regulations:

- Electronic Financial Supervisory Regulations (EFSR), Article 15(1)5
- Detailed Enforcement Rules of the EFSR, Article 2-3(2) and Annex 7

2. IT Infrastructure – Cloud & AI

Most foreign financial institutions use cloud computing services (the “Cloud”) to handle tasks that are not critical to the performance of the core financial businesses for which they received licenses under the Financial Investment Services and Capital Markets Act (the “FSCMA”) (the “Non-core Task”), such as the conference room reservation system or setting up video conferences. Financial institutions are required to report the use of the Cloud to the financial regulators under Article 14-2 of the EFSR. There is also an additional requirement to report the outsourcing of the Cloud to the Financial Services Commission (the “FSC”) for those financial institutions engaged in financial investment business.[3] In addition, due to network separation requirements, the use of SaaS and AI solutions internally by financial institutions remains subject to prior designation by the financial authorities under the financial regulatory sandbox framework.

Despite the fact that the Cloud distributed by the global head office of financial institutions has obtained numerous international cloud security assurance program certifications and is intended to perform Non-core Tasks, due to the complex and often duplicative reporting requirements under the FSCMA and the EFSR, the Korean branch/office of a global financial institution often lags behind the global distribution schedule. In addition, even where a financial institution uses a commercialized Cloud produced by a third party that has already received a

[3] Article 42 of the FSCMA.

financial regulatory sandbox designation, financial institutions must nevertheless obtain a separate financial regulatory sandbox designation for their Cloud use[4].

The adoption of generative AI can provide important opportunities to improve the operating environment, but it requires the development of generative AI at a global level for each company. However, as generative AI operates from the Cloud, Cloud usage procedures and sandbox designation are required in Korea to adopt generative AI. Also, recent AI-related regulations introduced by the FSC and the FSS pose practical implementation challenges for foreign financial institutions with limited local resources.

Recommendations:

As Cloud-based services will only become more prevalent, we request that the regulatory approval and reporting process for the use of the Cloud be simplified. For instance, for the Cloud designed to perform Non-core Tasks, we request that the financial regulators (i) exempt financial institutions from the obligation to report Cloud use each time a new service is subscribed to, and instead have them provide semi-annual reports on the status of outsourcing of data processing services through which the regulators can monitor Cloud usage and (ii) exempt financial institutions from having to apply for a separate financial regulatory sandbox designation where another financial institution has applied for and received the sandbox designation for the same Cloud.

In connection with the recently proposed amendments to the Detailed Enforcement Rules of the EFSR, clear guidance is needed on the applicable security requirements, scope, and procedures for the practical deployment of SaaS by financial institutions. If existing reporting and supervisory approval processes remain largely unchanged, operational challenges may persist in aligning domestic implementation with global technology rollout schedules and enterprise-wide governance frameworks. For the reform to deliver its intended impact, close alignment between the amended framework and implementation practice will be essential.

In addition, we request simplification of the regulatory process required to adopt Cloud-based generative AI, so long as personal information is not processed, and recognition of head office-level AI governance frameworks applied to local branches as meeting domestic AI regulatory requirements.

[4] While the recent proposed amendment of the Detailed Enforcement Rules of the EFSR eases network separation requirements for the use of SaaS, it does not ease network separation requirements for the use of generative AI.

We also request the timely issuance of clear and practical guidance to ensure the effective implementation of the AI-related regulatory measures set out in the FSC's roadmap for network separation reform.

Relevant Regulations:

- Electronic Financial Supervisory Regulations (EFSR), Article 14-2
- Financial Investment Services and Capital Markets Act (FSCMA), Article 42
- Framework Act on the Development of Artificial Intelligence and the Establishment of a Trust-Based AI Ecosystem
- Financial Services Commission Guidelines on the Use of Artificial Intelligence in the Financial Sector
- Financial Supervisory Service Artificial Intelligence Risk Management Framework (AI RMF) for the Financial Sector

B. Alignment with Global Standards and Global Firm Business Models

1. Update of the Verification Practices under the Real Name Act PRIORITY

Under the Act on Real Name Financial Transactions and Confidentiality (the "Real Name Act"), in order to prevent customers from conducting transactions under fictitious or borrowed names, the real name verification system requires customers to use their real names in financial transactions. This involves verifying a person's identity through photo identification, such as an ID card, to ensure transparency in financial transactions.

Financial institutions' operational practices under the Real Name Act follow the Guidelines on Real Name Financial Transactions (the "Guidelines") issued by the Korea Federation of Banks, which apply not only to the banking sector but also to the financial investment sector. The Guidelines set out, in detail, the documentation and procedures required for face-to-face real-name verification by customer type. Failure to obtain any of the specified documents is treated as a procedural violation, and administrative fines may be imposed on the financial institution and responsible personnel on a per-transaction and per-amount basis. However, for corporate customers, the corporation's representative or agent must present identification and undergo cumbersome real-name verification either in person or through remote methods. In this process, the bank must request a power of attorney from the representative or agent representing the corporation or for notarization of documents from corporations, even from jurisdictions that do not have a notarization system. For foreign corporate customers, such real-name verification

is even less practical and serves as a significant procedural hurdle when entering into financial transactions.

Foreign corporate customers continue to face significant practical burdens under the current real-name verification regime. Requirements for local bank staff to obtain powers of attorney and for customers from jurisdictions without notarization systems to provide notarized documents impose substantial procedural obstacles to financial transactions in Korea. Under the recently announced comprehensive foreign exchange and capital market roadmap, aimed at facilitating Korea's inclusion in the MSCI Developed Markets Index, certain easing measures are contemplated for low-risk foreign corporate customers, including exemptions from notarization, waiving of the requirement to have in place domestic-resident proxies, and the introduction of non-face-to-face verification procedures. While these measures are welcomed, further adjustments will be necessary to ensure practical implementation – particularly in enabling practicable non-face-to-face verification procedures, easing verification at the account-opening stage, and permitting asset management companies to satisfy verification requirements on behalf of underlying investors. Continued alignment with international identification standards will be essential to enhance foreign investor access to the Korean market.

Since the enactment of the Act on Reporting and Using Specified Financial Transaction Information (the "Specified Financial Transaction Act"), all Korean financial institutions are required to conduct rigorous customer due diligence (CDD) for corporate customers. Therefore, corporations whose identity is clearly established through these due diligence procedures pose little risk of conducting transactions under pseudonyms or borrowed names. Nevertheless, imposing an additional real name verification process separate from the CDD requirements is uncommon in other global markets and ultimately weakens the competitiveness of Korean financial institutions.[5]

Recommendations:

We respectfully request relaxation of the real name verification requirements under the Real Name Act. In addition, financial institutions should be allowed to adopt, at their discretion, real-name verification procedures aligned with international

[5] In particular, with the introduction of the RFI system, foreign corporate customers are now permitted to engage in foreign exchange transactions as RFIs. Since RFIs are foreign financial institutions not obligated to verify customers' real names, foreign corporate customers are likely to prefer conducting foreign exchange transactions through RFIs, rather than domestic financial institutions. In this changing regulatory environment, the real name verification requirements under the Real Name Act may undermine the competitiveness of Korean financial institutions.

standards, in a manner that does not undermine the objectives of the Real Name Act and the Specified Financial Transaction Act.

- **Domestic corporate customers**: Allow verification either by the business registration document of the corporate customer or allow remote, non-face-to-face methods of real name verification of the identity of a lawful representative or agent through a power of attorney and a person's ID or a certificate of employment issued by the corporate customer.

- **Foreign corporate customers**: Introduce practicable non-face-to-face real-name verification procedures for non-resident corporate customers, ease verification requirements at the account-opening stage, and permit asset management companies to satisfy verification requirements when acting on behalf of underlying investors so as to reduce unnecessary procedural burdens. In the longer term, consideration should be given to: (i) exemption from the real name verification requirements or (ii) deem the real name verification process to be satisfied if the CDD requirements under the Specified Financial Transaction Act are met.[6]

Relevant Regulations:

- Act on Real Name Financial Transactions and Confidentiality ("Real Name Act"), Articles 3(1) and 3(2)
- Enforcement Decree of the Real Name Act, Article 3

2. Responsibilities Map

With the introduction of the responsibilities map regime, responsible officers at financial institutions have become responsible for managing specific aspects of internal control and risk management of the firm as required under the Act on Corporate Governance of Financial Companies (the "Corporate Governance Act").[7] In addition, the Corporate Governance Act imposes overall management responsibility upon the branch manager or affiliate CEO.[8]

[6] Article 3 of the Enforcement Decree of the Real Name Act explicitly prescribes for the necessary identification requirements for foreign individuals who are natural persons as "the name and registration number as stated in the registered alien record (or the name and number as stated in the passport or ID card if an alien registration card has not been issued)." The fact that requirements for corporates are not stipulated could provide the basis for a reasonable interpretation that the real name verification obligation does not apply to foreign corporations under the current laws and regulations.

[7] Article 30-2 of the Corporate Governance Act.

[8] Article 30-4 of the Corporate Governance Act.

While assignment of prescriptive responsibility under the responsibilities map regime can strengthen the effectiveness of internal control systems, it often also increases deployment of substantial human resources and operational burden, especially when foreign financial institutions already have various supplemental internal control systems set by the head office. The additional requirements under the responsibilities map regime often lead to incremental procedures beyond the global standards set by the head office.

Recommendations:

When applying and enforcing the responsibilities map regime, it is crucial to take into account the global business operation of foreign financial institutions and to provide flexibility and tailored guidance to ensure the compliance obligations under the responsibility map regime can be met without unnecessary incremental burden and cost.

Relevant Regulations:

- Act on Corporate Governance of Financial Companies (the "Corporate Governance Act"), Articles 30-2, 30-3, and 30-4

3. Executive Compensation

Article 22 of the Corporate Governance Act and Article 9 of its supervisory regulation impose highly prescriptive requirements on executive compensation and disclosure, in addition to detailing governance structures and procedures for determining such compensation. These regulations are notably more detailed and restrictive than those found in many other jurisdictions, which creates unique challenges for global financial institutions operating in Korea.

- **Overly Prescriptive Requirements:** Korean regulations mandate specific elements such as minimum ratio and deferral period for performance-based compensation, as well as comprehensive disclosure of executive compensation for all officers. This level of detail leaves little room for flexibility or adaptation to company-specific circumstances.

- **Operational Burden for Global Institutions:** Due to these stringent local requirements, international financial institutions must establish separate compensation frameworks and processes for their Korean operations, rather than applying their global standards uniformly. This duplication increases administrative complexity and costs.

Recommendations:

We recommend that the relevant regulations be revised to focus on key principles for executive compensation design, rather than imposing detailed formulas and rigid requirements. Specifically:

- The regulations should outline general principles and objectives—such as transparency, alignment with long-term performance, and effective risk management—while allowing companies the flexibility to determine the specifics of their compensation structures.

- At a minimum, exceptions should be provided for financial institutions with foreign shareholders, permitting them to implement their global executive compensation frameworks in Korea without the need to create separate local standards.

Relevant Regulations:

- Act on Corporate Governance of Financial Companies (the "Corporate Governance Act"), Article 22
- Supervisory Regulations on the Corporate Governance Act, Article 9

4. Financial Consumer Protection Law

Following the July 11, 2023, amendments to the Financial Consumer Protection Act (the "FCPA") and the October 4, 2023, amendments to the FCPA Enforcement Decree, the regulatory framework governing door-to-door and telemarketing sales of financial products has been reinforced. Financial product distributors are required to maintain a register of sales personnel engaged in such activities and establish systems to ensure compliance with consumer opt-out requirements. These measures are intended to curb unsolicited and intrusive solicitation practices and strengthen consumer protection.

Under the amended framework, door-to-door or telemarketing solicitation is permitted only where, prior to solicitation, the consumer is informed of (i) the source of the consumer's contact information and (ii) the type and key terms of the proposed products, and the consumer has expressly indicated an intention to receive such solicitation. In such cases, solicitation may be made to professional financial consumers only with respect to investment products other than over-the-counter ("OTC") derivatives and related investment products; and to general financial consumers only with respect to investment products other than OTC derivatives, related investment products, exchange-traded derivatives, interests in private funds, and high-risk financial investment products.

In practice, however, certain foreign financial institutions without domestic branch networks rely primarily on pre-arranged visits to corporate clients during business hours or meetings conducted at the client's explicit request, including virtual meetings. The application of door-to-door sales restrictions to such activities has materially constrained legitimate corporate banking and capital markets engagement.

Professional financial consumers and many corporate clients generally possess sufficient financial sophistication, risk appetite, and bargaining power, such that the risk of mis-selling is comparatively limited. In addition, OTC derivatives transactions typically arise from bespoke discussions tailored to a client's hedging objectives, making it impracticable to require that the client identify a specific product in advance and formally request solicitation. Given that the door-to-door sales regime was designed to address unsolicited and high-pressure retail sales practices, its uniform application to corporate client engagement does not fully align with the legislative intent of the FCPA.

Recommendations:

For unsolicited sales efforts, (i) amend the current blanket prohibition to reasonably differentiate between individual and corporate customers that is proportionate to the characteristics and sophistication of the customer; (ii) in the case of OTC derivatives, replace the across-the-board prohibition on unsolicited selling efforts with a more tailored approach permitted such activities based on the customer's profile, investment needs, purpose and transaction experience; and (iii) exclude from the scope of the door-to-door and telemarketing restrictions, sales activities towards corporate customers conducted in response to prior arrangements or at the customer's explicit request.

Relevant Regulations:

- Act on the Protection of Financial Consumers (FCPA), Articles 16-2 and 21-2
- Enforcement Decree of the FCPA, Articles 10-2, 16(1)1, and 16-2
- Supervisory Regulations under the FCPA, Article 15(1)
- Sector-Specific Model Standards on Door-to-Door Sales

5. Labor Standards – Flexibility in Working Hours

The deemed working hours system for discretionary work is a system under which an employee is deemed to have worked "the number of hours agreed in writing by the employer and the employee representative." This system is available for types of work that require an employee to exercise a certain level of discretion, both in

how the work is performed and in the allocation of working hours. The deemed working hours system for discretionary work is available only for specific types of work prescribed by the Enforcement Decree of the Labor Standards Act. Companies able to implement this system may exercise a degree of flexibility within the current 52-hour work week framework.

Activities involving consultation, advice, appraisal, or acting on behalf of others under commission or delegation in relation to financial investment analysis and asset management are eligible for the deemed working hours system for discretionary work. "Financial investment analysis" refers to work undertaken by research analysts at securities companies, and "asset management" refers to work conducted by asset management professionals. Employees or executives of a general partner of a private equity fund that meet certain requirements can also be subject to this system based on an interpretive ruling of the Ministry of Employment and Labor.

As a result, research analysts of securities firms are eligible for this system, while employees in the investment banking division who perform comparable duties are not.

Recommendations:

We request that the scope of work eligible for the deemed working hours system for discretionary work under the Enforcement Decree of the Labor Standards Act be broadened to include employees of the investment banking divisions of securities firms, as these employees also require discretion in performing their duties.

Furthermore, we urge the regulators to proactively consider amending relevant laws and regulations to disapply working hour restrictions for employees above a certain income level, similar to the systems adopted by other developed countries such as the U.S. and Japan.

Relevant Regulations:

- Enforcement Decree of the Labor Standards Act, Articles 31 and 58(3)

6. Labor Practices – Majority Labor Union at Labor Management Council

Article 6 of the Act on the Promotion of Employees' Participation and Cooperation (the "Workers' Participation Act") stipulates that the representative of a labor union and a person appointed by such majority labor union shall automatically become employee-members of the Labor Management Council (“LMC”). In practice, all LMC employee-members are members of the majority labor union. Even if there

is a majority labor union, there is a need to ensure that employee-members of the LMC also represent the rights and interests of non-union workers.

Recommendations:

There is a need to amend the Workers' Participation Act to ensure that the employee-members of the LMC represent all employees, including non-union members, even when the majority labor union serves as the employee representative. This would be consistent with the President's policy pledge ("Respect for Labor and Guarantee of Rights 03"), which states that employee representatives should be elected on a pro-rata basis in order to represent the interests of non-regular workers such as contract workers, dispatched workers, and in-house subcontracted workers. Such a measure would ensure different viewpoints are respected in the workplace.

Relevant Regulations:

- Act on the Promotion of Employees' Participation and Cooperation, Article 6

7. Risk Hedging Purposes Only OTC Derivative Transactions

Under the FSCMA, investment dealers can enter into OTC derivatives transactions with general investors where the objective of the transaction is for the general investor to hedge its risk exposures arising from other corporate liabilities.[9] The term "general investor" is understood to include non-resident foreign customers[10] and, therefore, the same risk hedging purpose only trade requirement applies to foreign general investors (*i.e.,* non-professional investors) when entering into OTC derivatives trades with Korean financial institutions.

Such limitations are uncommon in other developed countries. In particular, with the introduction of the Registered Financial Institution ("RFI") regime – which allows offshore foreign financial institutions to directly participate in Korea's foreign exchange market – foreign customers can now trade foreign exchange derivatives with RFIs offshore, rather than through Korean financial institutions. In this context, foreign investors face risk hedging-only transaction restrictions when dealing with Korean financial institutions, whereas no such limitations apply when trading with offshore RFIs. This gap allows foreign customers to engage in a wider range of foreign exchange derivative transactions with RFIs offshore beyond risk-hedging-only transactions. As a result, Korean financial institutions are placed at a competitive disadvantage relative to RFIs.

[9] Article 166-2(1) of the FSCMA and Article 186-2 of the Enforcement Decree of the FSCMA.
[10] Articles 9(5) and 9(6) of the FSCMA and Article 10(3)18 of the Enforcement Decree of the FSCMA.

Recommendations:

Given that the primary objective of the risk hedging-only transactions by general investors is to prevent clients from engaging in OTC derivatives transactions for speculative purposes, there is no clear rationale for imposing the same restrictions on foreign corporate clients. Therefore, we respectfully request that non-resident foreign customers be exempted from the risk hedging-only transactions. This exemption would enable Korean financial institutions to compete on a level playing field with RFIs trading from offshore.

Relevant Regulations:

- Financial Investment Services and Capital Markets Act (FSCMA), Article 166-2 (1)(1)1

8. Regulatory Treatment of Client Credit Information and Personal Data

Industry participants note that Korea's regulatory framework governing client credit information and personal data—while appropriately grounded in strong constitutional, legal, and societal commitments to privacy protection—is applied in a highly prescriptive and locally oriented manner. In particular, the combined application of the Personal Information Protection Act and the Credit Information Use and Protection Act has created structural challenges for the establishment and expansion of globally integrated wealth management business models by global securities companies and investment banks.

Globally, wealth management businesses typically operate through regional or global platforms supporting client management, portfolio construction, risk management, and compliance. In the Korean context, however, strict limitations on internal data sharing and cross-border data processing have increased compliance burdens and operational complexity relative to major financial hubs such as Hong Kong and Singapore. These conditions have limited incentives for global institutions to enter wealth management operations in Korea.

Over time, constraints on the development of an internationally connected onshore wealth management ecosystem may negatively affect the overall competitiveness of Korea's wealth management industry.

Recommendations:

To better align Korea's regulatory environment with global standards and global firm business models, while preserving strong core privacy protections, industry participants recommend that the government consider the following:

- Introduce clearer regulatory differentiation based on client sophistication, allowing more proportionate and risk-based application of data protection and credit information requirements in wealth management activities.
- Provide supervisory guidance or interpretive clarity on permissible internal data sharing and cross-border data processing by licensed financial institutions operating wealth management businesses.
- Review the application of consent and purpose limitation requirements in wealth management-specific contexts to ensure that they do not create unnecessary operational friction where clients have clearly requested and consented to such services.
- Establish a structured public-private dialogue involving financial regulators, data protection authorities, and industry participants to support ongoing alignment with Korea's financial hub objectives and evolving global practices.

Relevant Regulations:

- Personal Information Protection Act
- Credit Information Use and Protection Act

C. Korean Government Bond Trading through iCSD Accounts

1. Interoperability of Trading and Settlement Infrastructure

Despite efforts to improve the trading environment for Korean government bonds, foreign investors trading in Korean government bonds and Korean financial institutions providing foreign exchange solutions through the RFI regime continue to face various operational challenges. Much of this difficulty stems from the lack of interoperability between onshore and global settlement systems. We believe it is essential to develop solutions addressing these practical issues and enhance Korea's financial market infrastructure system for better interoperability with the global architecture that foreign investors utilize.

Recommendations:

We respectfully request the establishment of a task force comprised of relevant institutions and Korean market participants to regularly gather feedback on the challenges faced by Korean financial institutions, with the objective of improving the system.

We recommend revamping the Korean settlement architecture upon careful consideration as follows.

- Enhance the current system in collaboration with the Korea Securities Depository and the international Central Securities Depository (iCSD) to reduce settlement risks involving the Korean government bond settlement system and achieve alignment with global standards.

- Allow for net settlement to accommodate the time zone differences for foreign investors to facilitate the settlement of transactions.

- Allow foreign bank branches to connect to the BOK-Wire+, enabling them to act as RFI agents in the same capacity as Korean commercial banks.

- Enable interoperability between the BOK-Wire+ and SWIFT, the global messaging standard, to facilitate settlement for foreign investors as well as KRW settlement by RFIs from offshore.

2. Exemption from Withholding Tax on KTBs and MSBs

Non-residents or foreign entities without a permanent establishment in Korea ("Tax-Exempt Foreign Investors") are exempt from withholding tax on interest income and capital gains from investing and trading in Korea Treasury Bonds (KTBs) and Monetary Stabilization Bonds (MSBs) pursuant to the Income Tax Law and Corporate Tax Law, as applicable. Tax-Exempt Foreign Investors trading KTBs and MSBs through a recognized international central securities depository are also exempt from the requirement to submit documentation for withholding tax exemption. However, the same exemption does not apply when the Tax-Exempt Foreign Investors trade KTBs and MSBs through an onshore financial institution in Korea, which includes foreign banks and securities companies.

In the case of offshore funds, operational issues often make it difficult to submit the required withholding tax documentation. The Korean financial institution must then withhold tax from the Tax-Exempt Foreign Investor, and such investor must then file for a tax refund. In other markets, it would be unusual for the broker to be obligated to withhold tax; this responsibility typically rests with the custodian, which has a record of all the transaction history information. Moreover, this process creates an additional burden for the broker to collect information to withhold tax, which the beneficiary will ultimately seek to have refunded.

<u>Recommendations:</u>

We request the exemption of Tax-Exempt Foreign Investors from the requirement to submit documents for exemption from withholding tax, regardless of whether they are trading through a recognized iCSD or a Korean financial institution, given that the foreign status of the Tax-Exempt Foreign Investors can be confirmed through the Investment Registration Certificate (IRC) or Legal Entity Identifier (LEI). Maintaining this differential treatment based upon whether the Tax-Exempt Foreign Investors traded KTBs or MSBs through an iCSD from offshore or through an onshore financial institution in Korea will place the latter at a competitive disadvantage to iCSDs.

Relevant Regulations:

- Income Tax Act, Article 119-3(4)
- Corporate Tax Act, Article 93-3(4)

3. Post Trade Reporting of OTC Bond Transactions

Korean financial institutions are required to report the details of OTC bond transactions to the Korea Financial Investment Association ("KOFIA") within 15 minutes of trading.[11] The report is performed manually, placing a significant burden on financial institutions. Moreover, when foreign investors' transactions in KTBs and MSBs increase through the use of the iCSD accounts along with increased cross-border trading between domestic financial institutions and foreign investors, the reporting burden on domestic financial institutions is expected to grow substantially.

Non-resident foreigners trading through the iCSD accounts are exempt from this reporting requirement, resulting in an unjustified disparity between Korean investors and non-resident foreigners.

Recommendations:

We request a relaxation of the relevant regulations, such as changing the reporting deadline to the closing time.

Relevant Regulations:

- Regulations on Financial Investment Business, Article 5-9(2)
- Regulations on Business and Affairs of Financial Investment Companies, Article 7-5(1)

[11] Article 5-9(2) of the Regulations on Financial Investment Business and Article 7-5(1) of the Regulations on Business and Affairs of Financial Investment Companies.

D. Others

1. Business Delegation Reporting

The FSCMA requires a financial investment business entity to file a prior report to the regulator on the outsourcing of its essential business affairs,[12] except in cases where the subject outsourced activity has already been reported by another financial investment business entity in the same industry sector. Where such a precedent report exists, an *ex-post facto* report is allowed.[13]

This requirement applies equally to financial businesses considered non-financial investment business entities, such as banks or insurance companies. Pursuant to the Regulations on Outsourcing of Financial Institutions, the financial regulators only permit *ex-post facto* reporting for the outsourcing where the intended activity to be outsourced is identical to an outsourced activity already reported by another financial institution in the same financial sector.

Most foreign financial institutions enter into a global outsourcing agreement carried out by a single global entity for all its subsidiaries and branches globally. The application of the relevant regulation results in an outcome where a global firm that has two or more entities in Korea engaged in different financial sector businesses is unable to make an *ex-post facto* report, even when the activity intended to be outsourced is identical to the activity previously reported by its affiliate doing business in Korea. Where the outsourcing arrangement is identical to the activity already vetted by the financial regulators, the risk of infringing financial soundness or consumer rights should be low. We understand that the reason for this policy of the regulators is the lack of a regulatory basis to acknowledge identical delegation reports already made across financial sectors.

Recommendations:

We request an amendment of the regulation to allow for *ex-post facto* reporting of outsourcing arrangements identical to arrangements already reported by another entity, regardless of the financial sector, so that the nature of the activity to be outsourced does not require particular consideration and review pertaining to the subject financial sector. In addition, as previously reported, outsourcing arrangements are not currently searchable through the supervisory authority's reporting system; entities may be required to resubmit duplicative reports. We recommend enabling access to previously filed records to avoid unnecessary duplication.

[12] Article 42 (1) of the FSCMA and Article 46 (1) of the Enforcement Decree of the FSCMA.
[13] Article 4-4 (3)1 of Regulations on Financial Investment Business

Relevant Regulations:

- Financial Investment Services and Capital Markets Act (FSCMA), Article 42(1)
- Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA), Article 46(1)
- Regulations on Financial Investment Business, Article 4-4(3)1

2. Education Tax

The Education Tax Act was enacted in December 1981 with a five-year statute of limitations for securing financial resources required for the improvement of school facilities and the welfare of teachers. The statute of limitations was extended by another five years in December 1986, but was converted into a perpetual tax in December 1990, and has been effective to date.

Under the current Education Tax Act, the taxpayers fall into two categories: (i) the taxpayers of individual consumption tax, traffic, energy, and environment tax, and liquor tax, and (ii) financial companies and insurance companies such as banks, insurance, securities, and asset management companies. For the first category, it is a surtax added to individual consumption tax, traffic, energy and environment tax, and liquor tax, which can ultimately be passed on to consumers of the relevant goods. However, for financial companies and insurance companies, it is difficult to pass on to consumers the cost of the education tax, as the tax base is not only interest income and commission income charged to customers, but also dividend income and gains on sale and purchase of securities, foreign exchange, derivatives transactions, and disposal of fixed assets. In other words, the education tax is an additional cost to be borne by the financial companies and insurance companies.

In addition, the tax base for education tax on financial companies and insurance companies is revenue, while only certain items, such as foreign exchange, derivatives transactions, and government bond transactions (to apply from 2026), are exceptionally permitted to be offset against profits and losses. Furthermore, in principle, relevant expenses are not allowed to be deducted. For example, interest expenses and losses from the disposal of securities are not deducted from interest income and gains from the disposal of securities, and thus, education tax may be imposed even if no income is generated from the relevant transaction. Also, education tax may be imposed even if net losses are incurred by the taxpayer because expenses such as labor and Selling, General & Administrative (SG&A) expenses cannot be deducted.

Recommendations:

We believe it is unreasonable (i) to impose the education tax only on financial companies and insurance companies despite the fact that the education tax is intended to secure funds for the nation's education, and (ii) for the education tax to be imposed even when there is no income to the taxpayer due to revenue representing the tax base. Therefore, we hope to abolish or make more equitable the education tax regime.

Relevant Regulations:

- Education Tax Act, Articles 3 and 5
- Enforcement Decree of the Education Tax Act, Article 4(1)(5)

II. Sector-Specific Issues: Banks

A. Capital and Funding of Foreign Bank Branches

1. Recognition of Head Office Capital PRIORITY

Under the Bank Act and the Corporate Income Act Law, various prudential regulations and tax base applied to banks are calculated from a bank's capital. However, in the case of a foreign bank branch, the Bank Act does not recognize the capital of the head office. Rather, the operating fund of a foreign bank branch (Fund A and Fund B) is deemed to be the capital of a foreign bank branch.[14] Regulation based on the operating fund rather than the capital of the bank significantly constrains the business capacity of a foreign bank branch. This result not only limits a foreign bank's business in Korea, but it also limits the development and expansion of the Korean financial market. A bank cannot extend credit to the same borrower in excess of 25% of its equity capital. In the case of a foreign bank branch, the same credit limit per borrower is set from the operating fund held in Korea, resulting in severe restrictions on the loan amount that can be extended to customers.

For reference, in the U.S., the regulation seeks to protect creditors of foreign bank branches by either recognizing the head office's capital of a foreign bank branch or by imposing an obligation to hold assets in excess of a certain amount in the US. Korea has a similar requirement for foreign bank branches to hold assets in size equivalent to the size of the operation fund as a measure to protect creditors. However, this requirement is in addition to recognizing only the branch's operating funds as capital of the bank.[15]

<u>Recommendations:</u>

Considering the necessity to protect Korean creditors when liquidating a bank branch, we suggest that the requirement under the Bank Act for a foreign bank branch to retain a certain amount of assets in Korea be maintained or supplemented. However, we respectfully request that the Bank Act be amended to recognize all or a significant portion of the head office's capital as the capital of a foreign bank branch.

<u>Relevant Regulations:</u>

- Bank Act, Articles 9, 62, and 63
- Enforcement Decree of the Bank Act, Articles 25 and 26

[14] Articles 9 and 63 of the Bank Act and Article 26 of the Enforcement Decree of the Bank Act.

[15] Article 62 of the Bank Act, Article 25 of the Enforcement Decree of the Bank Act.

2. Macro-prudential Stability Levy PRIORITY

The recently implemented regulatory relaxation measures to promote trading in KTBs and MSBs by foreign investors are expected to increase foreign investors' demand for the bonds. To accommodate this increased demand, foreign bank branches will need to maintain a higher inventory balance of Korean government bonds, which, in turn, will increase the need for short-term borrowings from their head offices or offshore affiliates. An increase in short-term borrowings will result in higher macro-prudential stability levies.[16] For foreign bank branches that must compete with RFIs for foreign exchange businesses, the increase in macro-prudential stability levies is expected to adversely affect their competitive position.

We understand that the primary objective of macro-prudential stability levies is to curb excessive short-term foreign currency borrowings by financial institutions such as banks, thereby reducing foreign exchange liquidity risk. However, short-term borrowings by a foreign bank branch from its head office or offshore affiliates are intercompany transactions, where maturity profiles can be easily adjusted. This practical flexibility does not run afoul of the intended purpose of the macro-prudential stability levies, whose aim is to limit short-term foreign currency borrowings.

In addition, an alternative approach to achieve the regulatory purpose of the macro-prudential stability levy would be through a liquidity coverage ratio (LCR) threshold to respond to the short-term liquidity crisis and Net Stable Funding Ratio (NSFR) to finance foreign currencies in the mid- to long-term.

Recommendations:

Short-term borrowings from the head office or offshore affiliates of a foreign bank branch should be excluded from non-deposit foreign currency liabilities, based on which the macro-prudential stability levy is calculated. This adjustment would enable foreign bank branches to increase their business in Korea, including responding more effectively to the rising demand for Korean government bond transactions by foreign investors.

Relevant Regulations:

- Foreign Exchange Transactions Act, Article 11-2
- Enforcement Decree of the Foreign Exchange Transactions Act, Articles 21-2 and 21-3

[16] Article 11-2 of the Foreign Exchange Transactions Act and Article 21-3 of the Enforcement Decree of the Foreign Exchange Transactions Act.

3. Scope of Credit Extension Limits

Under Articles 35 and 35-2 of the Banking Act, the limit on credit extensions to the same borrower or major shareholder is set at 25% of the bank's equity capital. The specific scope of credit extension is defined in Articles 1-3 of the Enforcement Decree, Article 3 of the Banking Supervision Regulations, and Annex 2 to the Banking Supervision Regulations. According to Annex 2, deposits (especially interbank deposits) are also included as items subject to credit extension limits. This means that deposits are subject to these limits regardless of their nature (short-term/long-term, for settlement/investment purposes) or the level of credit risk. While it is reasonable to include long-term deposits since they expose the bank to the counterparty credit risk, short-term deposits for settlement purposes (especially short-term foreign currency deposits for overseas settlements) are not appropriate to be regarded as credit extensions. As a result, even funds that global banks deposit with their head office or affiliates for settlement purposes are captured under the major shareholder credit extension limit. This outcome may excessively constrain the settlement and operational activities of global financial institutions, which is inconsistent with the original intent of credit extension limits (i.e., credit risk diversification).

Recommendations:

Article 1-3(2) of the Enforcement Decree of the Banking Act stipulates that the Financial Services Commission may exclude from the scope of credit extension any transaction that is judged to have a very low possibility of causing losses to the bank, or that, considering the circumstances of the transaction such as its impact on the financial market, is deemed appropriate not to be included. In light of this provision, short-term deposits for settlement purposes (particularly those used for operating payment and settlement systems, including overseas settlements) pose extremely limited actual credit risk to the bank and are generally excluded from credit extension limits internationally. Therefore, it is requested that the exception under Article 1-3(2) of the Enforcement Decree be applied to exclude short-term deposits for settlement purposes from the scope of credit extension.

Relevant Regulations:

- Bank Act, Articles 35 and 35-2
- Enforcement Decree of the Bank Act, Article 1-3
- Supervision Regulations of the Bank Act, Article 3 and Annex 2

4. Loan-to-Deposit Ratio

The loan-to-deposit ratio is a system that restricts a bank's total credit extension to a certain percentage of the total deposit. It is a well-known fact that the government applies the loan-to-deposit ratio limit to Korea, Indonesia, and Saudi Arabia.[17]

In Korea, the loan-to-deposit ratio system was introduced in 2012 to curb household loans. However, in most countries, the loan-to-deposit ratio is used as an auxiliary indicator for determining the soundness of the banking sector as a whole, and is not used as a means of regulating individual banks. Rather, the soundness of banks is supervised through measures such as the liquidity coverage ratio (LCR). In fact, foreign banks rarely raise funds through deposits and instead borrow from the head office to make credit extensions. As the source of funding for credit extension is from head office loans rather than deposits, the loan-to-deposit ratio acts as a major constraint on the expansion of the loan book.

Recommendations:

The loan-to-deposit ratio ceiling disadvantages foreign bank branches that have low local deposit bases. Furthermore, this policy measure is not consistent with international standards. We request that foreign bank branches be exempted from the loan-to-deposit ratio ceiling.

Relevant Regulations:

- Supervision Regulations of the Bank Act, Article 26(1)3

5. Bond Issuances by Foreign Bank Branches

For foreign bank branches, head office loans are the main source of funding rather than deposits. Under various laws, including the Bank Act, the Foreign Exchange Transactions Act, and tax laws, borrowing from the head office is subject to various restrictions and expense charges that render head office loans non-viable as a meaningful source of funding. In addition, since a foreign bank branch is not considered to have a separate legal personality under the Korean Commercial Code, the issuance of bonds by a branch is not legally recognized in Korea. However, in the case of foreign countries, there are cases where a branch of a foreign bank is also allowed to issue bonds. In addition, as a foreign bank branch is deemed to be

[17] https://www.hankyung.com/article/2023071475911

a bank under the Bank Act,[18] consideration should be given to permit foreign bank branches to issue bonds. There are examples in other foreign countries where the issuance of bonds by a foreign branch has been permitted.[19] If foreign bank branches were able to issue bonds, it would allow for greater foreign bank participation in the Korean financial market.

Recommendations:

Diversification of the sources of capital raised by foreign bank branches should promote the internationalization of KRW, such as by the issuance of KRW-denominated bonds by foreign bank branches. Unlike branches of foreign corporations under the Korean Commercial Code, foreign banks are regulated as legally separate entities from the head office under the Bank Act. We request that the Bank Act further provide a legal basis for the issuance of bonds by foreign banks and the regulations on securities issuance provide for the issuance of both KRW-denominated and foreign currency-denominated bonds by foreign bank branches.

Relevant Regulations:

- Bank Act, Articles 33 and 59
- Commercial Code, Article 469

6. Ceiling on Head Office Borrowing by Foreign Bank Branches

Foreign currency borrowing in excess of USD 50 million by a foreign exchange bank from a non-resident for a term exceeding one year requires reporting to the Ministry of Economy and Finance.[20] The purpose of this ceiling is understood to be to prevent a sudden rise in volatility in the foreign exchange market resulting from abrupt withdrawals of foreign currency from the Korean market. However, in the case of foreign bank branches that wish to borrow from the head office for the operation of the Korean branch's business, head office loans of this nature would not cause sudden changes in foreign currency inflow and outflow. To the contrary, permitting head office borrowings by foreign bank branches may serve to supply liquidity when there is a need for capital in Korea. Due to the fixed cap

[18] Article 59 of the Bank Act.

[19] Bank of China New York branch issued CHN Dual-Tranche notes to institutional investors. (https://www.bocusa.com/bank-china-new-york-branch-cnh-dual-tranche-notes-issuance)

[20] Article 2-5 of the Foreign Exchange Transactions Regulation.

on foreign currency borrowing from the head office, business expansion and liquidity for foreign bank branches in Korea are severely constrained.

Regulating head office borrowing by a foreign bank branch in the same manner as foreign currency borrowing by domestic Korean banks does not serve the purpose of the regulation. There could be a view that foreign bank branches may gain a competitive advantage over Korean banks by being permitted to borrow more freely from the head office. However, other prudential standards, such as the thin capitalization rule, serve as countervailing measures to excessive borrowing by banks generally.

Recommendations:

We request that the foreign currency borrowing limit by a foreign exchange bank from non-residents under Article 2-5 of the Foreign Exchange Transactions Regulation be removed or significantly increased for foreign bank branch borrowing from the head office.

Relevant Regulations:

- Foreign Exchange Transactions Regulation, Article 2-5

B. Enhancements in Operational Efficiencies

1. Supporting Documents for Payments and Related Transactions

Under the current foreign exchange regulations, with the exception of certain transactions involving small amounts, supporting documents are required for overseas remittances and receipts for which an *ex-post facto* report must be submitted. Moreover, even for standardized transactions, the same documentation must be submitted for each remittance, undermining the efficiency of foreign exchange settlements.

Due to the structural complexities of Korean regulations, banks encounter challenges in clearly explaining these requirements to foreign customers. This difficulty has increased, particularly with the additional documents now required from customers as a result of strengthened import and export regulations implemented this year. In addition, the roughly 10 different types of payment reasons related to export and imports collected for foreign exchange statistics are overly granular for customers and foreign financial institutions. In particular, outbound remittances are subject to regulations that are considerably stricter than those in other countries, with few exceptions or exemptions available.

Recommendations:

To alleviate the burden of evidentiary documents related to remittances, we respectfully request that the following measures be considered:

- Exempt standardized transactions from the requirement to submit the same supporting documents for the same transaction type by pre-registering the documents in advance.
- Provide case-specific manuals addressing frequently requested supporting documentation.
- Integrate and simplify the selection categories for remittance reasons.
- Apply the foreign exchange laws and regulations with appropriate flexibility and streamline the required supporting documents, taking into account the business characteristics of foreign banks.

Relevant Regulations:

- Foreign Exchange Transactions Act, Articles 2-1(2), 4 and 4-2(1)

C. RFI Regime

1. Relaxation of Foreign Exchange Position Limits PRIORITY

Banks regulated in Korea are subject to foreign exchange position limits, comprised of comprehensive and forward exchange position limits.[21] On the other hand, RFIs are exempt from these foreign exchange position limits.[22] As a result, foreign bank branches in Korea conducting primarily foreign exchange transactions with non-resident clients are subject to a stricter requirement for equity capital[23]—which is the basis for establishing the foreign exchange position limits—in comparison to offshore peers. Unlike prevailing global standards, the equity capital of foreign bank branches in Korea is calculated only based on the branch's "A fund" and "B fund", reserves, and carried-over retained earnings. This results in significantly lower foreign exchange position limits for foreign bank branches,

[21] Article 11-2 of the Foreign Exchange Transactions Act, Article 21-2 of the Enforcement Decree of the Foreign Exchange Transactions Act and Article 2-9 and Article 2-9 (2) of the Foreign Exchange Transactions Regulation.

[22] Article 5-2 of the Guidelines on Foreign Exchange Business of Foreign Financial Institutions provides for foreign exchange position limits but further details are not provided.

[23] Article 2-9-2(4) of the Foreign Exchange Transactions Regulation.

bringing down the permissible volume of foreign exchange transactions. The foreign exchange position limits that foreign bank branches in Korea are subject to place them at a competitive disadvantage for foreign exchange business when compared to offshore RFIs. Consequently, there is concern that many non-resident foreign customers are likely to switch their correspondent banks to RFIs from foreign bank branches operating in Korea.

Recommendations:

We respectfully request that the FSS proactively consider implementing measures to enable foreign bank branches and RFIs to compete on an equal footing. This could be achieved either by revising the methodology for the calculation of equity capital for foreign exchange position limits or by granting exemptions from the application of these limits specifically for foreign bank branches.

Relevant Regulations:

- Foreign Exchange Transactions Act, Articles 2-1(2)(2), 7-15, and 11(2)
- Enforcement Decree of the Foreign Exchange Transactions Act, Article 21(2)
- Foreign Exchange Transactions Regulation, Articles 2-9, 2-9(2), and 2-9(2)(4)
- Guidelines on Foreign Exchange Business of Foreign Financial Institutions, Article 3-3(5)(2)
- Foreign Exchange Guidelines for the Current Account Transactions and Other Transactions of RFI

2. Remittance Verification Procedures

With the introduction of the RFI regime, when a non-resident enters into a KRW-denominated settlement transaction with a resident, the RFI may transfer the non-resident's KRW funds to the resident through the non-resident's KRW business purpose account.[24] Under the current guidelines, in such cases, the recipient bank – *i.e.*, the bank that holds the account where the resident receives the funds – is responsible for reviewing evidentiary documents related to the payment to determine whether the transaction is subject to reporting requirements, and also reports foreign exchange statistics to the Bank of Korea.[25]

However, from the recipient bank's perspective, the funds are not received as foreign currency remittances from overseas, but rather as deposits transferred from the RFI's KRW business purpose account via the BOK-Wire+, essentially

[24] Article 3-3 (5)2 of the Guidelines on Foreign Exchange Business of Foreign Financial Institutions.
[25] Foreign Exchange Guidelines for the Current Account Transactions and Other Transactions of RFI.

resembling routine KRW fund transfers between domestic banks. Therefore, it is difficult for the recipient bank to identify whether the transaction qualifies as a "transaction between a resident and a non-resident" that requires verification of supporting documents and reporting to the BOK for purposes of foreign exchange statistics. This creates a significant risk that the recipient bank may not adequately fulfill these verification and reporting obligations. Due to these practical difficulties, achieving KRW settlement through the RFI regime remains challenging.[26]

On the other hand, if the remitting bank – *i.e.,* the bank holding the KRW business purpose account of the non-resident – handles such remittance requests, it would be easier for the remitting bank to obtain the evidentiary documents for the payment from the RFI and its non-resident customers. This would enable the remitting bank to verify whether the underlying transaction is subject to reporting requirements and to submit the required foreign exchange statistics.

<u>Recommendations:</u>

We respectfully request that the obligation to verify the payment purpose be reassigned to the remitting bank.[27]

3. Clarification of the Roles between Banks in Fund Transfers

With the recent regulatory amendment to allow for foreign exchange transactions through third-party banks and the RFI regime, foreign investors are now able to convert the funds required for investments into KRW through any licensed foreign exchange banks or RFIs (the "Money Exchange Banks"). Previously, foreigners had to channel their foreign exchange transactions through the banks with which they opened their investment-only accounts (the "Investment-Only Account Banks").

However, there have been cases where the Investment-Only Account Banks have refused to accept KRW fund transfers from the Money Exchange Banks into the foreign investor's investment-only accounts, citing insufficient or inconsistent

[26] For example, if a resident borrows KRW-denominated funds from a non-resident, and the non-resident lends these funds through the RFI's business purpose account, the remitting bank holding the KRW business purpose account may immediately transfer the funds to the resident's KRW account. This process could result in the resident borrowing funds without filing a capital transaction report, as required under Article 7-15 of the Foreign Exchange Transactions Regulation.

[27] For reference, Article 2-1-2(2) of the Foreign Exchange Transaction Regulation requires the head of a foreign exchange bank to verify whether payments exceeding USD 5,000 are subject to reporting. As the remitting bank is responsible for processing payments in transactions between non-residents and residents, it can be interpreted that the remitting bank bears the obligation to conduct this verification under the said provision.

information on the investors who have ownership over the funds versus the executing party for the relevant securities transactions. This situation has hindered the utilization of third-party banks and RFIs for foreign exchange transactions, contrary to the intended regulatory purpose of permitting foreign exchange transactions through third-party banks.

Recommendations:

We kindly request that the procedures and information required to facilitate fund transfers between Investment-Only Account Banks and Money Exchange Banks in foreign exchange transactions via third-party banks be clarified.

D. Reassessment of Legacy Requirements

1. Increase in Cash Pooling Management Limit PRIORITY

Under the current foreign exchange law, the cash pooling limit is capped at USD 50 million, which is too low to allow effective utilization of the cash pooling system by foreign-invested companies.

Recommendations:

Although efficient cash pooling has become a common practice globally, foreign companies face difficulties in setting up effective cash pooling arrangements in Korea due to strict foreign exchange regulations. This restriction hampers the entry and operation of foreign-invested companies in Korea. Therefore, we respectfully request that the FSS actively consider raising the cash pooling limit from the current USD 50 million to USD 100 million.

Relevant Regulations:

- Foreign Exchange Transactions Regulation, Article 7-2(6)

2. Authorization - Approval of MSB Investment Dealing License PRIORITY

The iCSD accounts are expected to facilitate trading not only KTBs but also MSBs by foreign investors in the future, resulting in increased trading of MSBs through licensed investment dealers. However, under the current licensing framework, foreign bank branches require an additional investment dealing business license for MSBs because the license to deal in KTBs and MSBs is differentiated. Most

foreign bank branches hold the investment dealing license for KTBs but not for MSBs.

From the perspective of foreign investors, both KTBs and MSBs generate similar exposures to Korean sovereign risk and are thus viewed similarly. However, the fact that foreign bank branches generally hold investment dealing licenses for KTBs and not for MSBs creates confusion and inconvenience in trading MSBs in Korea.

Recommendations:

To actively address foreign investors' demand for trading MSBs, we recommend considering the granting of an investment dealing business license for MSBs to domestic banks, including foreign bank branches. If there are concerns that granting such a license for cross-border bond dealing may infringe on the existing business scope of Korean securities firms, limiting the scope of the license to transactions exclusively with foreign investors would help to some extent to address this concern. Under this arrangement, foreign bank branches could source cross-border bond trades with foreign investors and trade with Korean securities firms, thereby minimizing any conflict with the business interests of Korean securities firms.

3. Exemption or Reduction in Various Levies

Funds contributed to the Korea Credit Guarantee Fund, the Korea Technology Finance Corporation, and the Regional Credit Guarantee Foundation serve the objective of enabling such funds and foundations to guarantee the debts of companies with insufficient security capacity[28], or to guarantee the debts of small enterprises, small business owners, and individuals in the region with insufficient security capacity.[29]

In the case of foreign bank branches, irrespective of whether they extend loans to customers that receive a guarantee from any such fund or foundation, a foreign bank branch is, as a practice, required to pay a certain percentage of the average monthly balance of the loan amount as mandatory contributions.[30]

[28] Article 1 of the Korea Credit Guarantee Fund Act and Article 12(1) of the Korea Technology Finance Corporation Act.

[29] Article 1 of the Regional Credit Guarantee Foundation Act.

[30] Article 6(3) of the Credit Guarantee Fund Act, Article 13(3) of the Korea Technology Finance Corporation Act, and Article 7(3) of the Regional Credit Guarantee Foundation Act.

At the same time, it is rare for a foreign bank branch to extend loans that are guaranteed by the fund or foundation. It would be fair for those financial institutions that lend to SMEs or individuals supported by the fund or foundation to bear the obligation to contribute to the fund as the beneficiaries of the system.

With respect to deposit insurance premiums, the rate applied to foreign bank branches is 0.18%, which is higher than the rate applied in other countries. In addition, deposits denominated in foreign currency are different in nature from general deposits denominated in KRW due to foreign exchange risk, and as long as there is such risk, it would be inappropriate to be subject to deposit protection. Therefore, it would be reasonable to exclude foreign currency-denominated deposits from the application of deposit insurance premiums. As a reference, deposits denominated in foreign currencies are excluded from the scope of deposit insurance premiums in Japan.

Recommendations:

With respect to contributions to the Korea Credit Guarantee Fund, the Korea Technology Credit Guarantee Fund, and the Regional Credit Guarantee Foundation, we respectfully request that the FSS consider excluding foreign banks from the mandatory contributions or at least apply a lower rate for foreign banks than the rate applied to Korean commercial banks.

With respect to deposit premiums, we request that the deposit premium rate be reduced generally and, in particular, that foreign currency-denominated deposits be excluded from the deposit premium charge.

Relevant Regulations:

- Korea Credit Guarantee Fund Act, Articles 1 and 6(3)
- Korea Technology Finance Corporation Act, Articles 12(1) and 13(3)
- Regional Credit Guarantee Foundation Act, Articles 1 and 7(3)
- Depositor Protection Act, Article 30
- Enforcement Decree of the Depositor Protection Act, Article 16-2

III. Sector-Specific Issues: Securities Companies

A. Licensing Regime

1. Consistency in the Application of License Requirements PRIORITY

Foreign financial investment firms have shown continued interest in entering the Korean market, and the regulators have relaxed the licensing regime over the years. Nevertheless, certain aspects of the licensing regime continue to present difficulties for foreign firms in entering the Korean market or in restructuring an existing Korean business entity operating in Korea.

While certain exemptions from the head office qualification requirements apply when a branch changes its head office to an entity within the same group, there remains ambiguity on whether the same exemptions would extend to the ongoing "maintenance requirements" upon completion of the restructuring. One example of a lack of clarity is the application of the requirement that the proposed new head office must not have received a criminal penalty exceeding KRW 500 million in the preceding three years. This "no-sanctions" requirement is exempted when applied to change the head office of an existing branch, but it is unclear if the same exemption would apply to the maintenance requirement once the restructuring is completed.

Additionally, the ongoing maintenance requirement for the head office of a foreign branch (that it must not have received a criminal penalty exceeding KRW 500 million in its home jurisdiction in the last three years) is itself an excessively strict standard.

Recommendations:

To address gaps in the divergent application of the same regulatory exemption to post-restructuring of the entity, we request that the relevant legal framework be amended or clarified through an interpretive ruling so that exemptions can be applied consistently and fairly.

Relevant Regulations:

- Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA), Article 19-4

2. Major Shareholder Requirements (for New Licenses, Add-on Licenses, and License Maintenance)

Among the licensing requirements for conducting financial investment business, the major shareholder requirement for foreign financial companies is prescribed as "There must be no record of a criminal penalty equivalent to a fine or higher in connection with business activities substantially corresponding to financial business in the home country during the past three years."[31]

Additionally, for ongoing license maintenance, it is required that "There must be no record of a criminal penalty equivalent to a fine of KRW 500 million or more in connection with business activities substantially corresponding to financial business in the home country during the past three years."[32] This requirement also applies as a major shareholder qualification requirement when seeking additional financial investment business licenses by entities already doing business in Korea.[33]

Accordingly, if a domestic branch of a foreign financial investment company—holding a financial investment business license in Korea—has a head office that becomes subject to a criminal penalty equivalent to a fine of KRW 500 million or more, it may fail to meet the ongoing license maintenance requirements or become unable to apply for additional financial investment business licenses.

However, it must be considered that criminal justice systems and fine levels vary from country to country, and, in the case of head offices engaged in broad-based financial investment businesses globally, it is generally difficult to regard a fine of KRW 500 million or more as constituting a serious criminal penalty.

Nevertheless, if the requirement on fines of KRW 500 million or more is uniformly applied as a qualification requirement for major shareholders when applying for additional licenses, depending on the respective foreign criminal justice system or fine practices—even in the case of relatively minor matters: (i) a foreign financial investment company operating in Korea may be forced to withdraw or change its head office to an affiliate company to meet the major shareholder requirement, or (ii) it may be unable to expand its business in Korea by obtaining additional licenses.

Recommendations:

[31] Article 12(2)1(na) of the FSCMA, and Article 16(2)1 and Annex 2(4)ra of the Enforcement Decree of the FSCMA.
[32] Article 15(1) of the FSCMA and Article 19(1)2(na) of the Enforcement Decree of the FSCMA.
[33] Article 16(2) of the FSCMA and Article 19-2(2) of the Enforcement Decree of the FSCMA.

When applying the ongoing maintenance and/or additional license requirements for major shareholders of foreign financial companies, we propose that either (i) the monetary threshold for "criminal penalties equivalent to a fine of KRW 500 million or more" be relaxed, or (ii) the financial regulatory authorities be provided with a legal basis to exercise discretion, considering the criminal justice system and sanctions regime of the head office's home jurisdiction.

Relevant Regulations:

- Financial Investment Services and Capital Markets Act (FSCMA), Articles 12(2)(1)(na), 15(1), and 16(2)
- Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA), Articles 16(2)1, 19(1)2(*na*), 19-2(2), and Annex 2(4)(*ra*)

3. Business Model-Based Professional Personnel Requirements

A minimum personnel requirement by license category was first introduced into regulation in March 2017. Foreign financial investment companies have faced difficulties due to the "one-size-fits-all" approach to professional personnel requirements when applying for a financial investment business license. Current regulations mandate a fixed number of locally based professionals by job function, regardless of whether such a function is necessary for the business model of the applicant. For example, firms engaging exclusively in proprietary ETF trading without client solicitation are still required to appoint investment solicitation/advisory staff. This misalignment between mandatory personnel requirements by regulation and the intended business activities imposes unnecessary costs to the business and acts as a barrier to entry of businesses with innovative or specialized business models to the Korean market. Many foreign firms have suggested that personnel requirements should instead be assessed flexibly, relative to the business activities proposed, and that robust regional (*e.g.*, pan-Asian) teams should be recognized in lieu of local hires, where appropriate.

Firms that had a presence in Korea prior to March 2017 have been grandfathered from the minimum personnel requirements. However, it remains unclear whether changes to or removals of license conditions issued prior to March 2017 should trigger a reassessment of the minimum personnel requirements, should the amended license be treated as a "new" license.

Recommendations:

We request an assessment of the minimum personnel requirement applied for any financial business licenses to align it with the evolving nature of financial businesses, since the requirement was adopted in 2017.

We also ask that any uncertainty in the application of this requirement to businesses set up prior to 2017 with license conditions be clarified by an interpretive ruling or a regulatory amendment.

Relevant Regulations:

- Financial Investment Business Regulation, Annex 2

4. Fostering Diverse, Specialized Business Model Market Entrants

Foreign securities firms seeking to enter the Korean market with specialized business models—such as investment dealing activities focused on specific financial investment products—have encountered restrictions that limit their licensed activities to certain limited functions within the particular license category; for example, "market-making only" for a dealing business license applicant. Furthermore, global proprietary trading firms that have obtained the requisite approvals in various jurisdictions to trade in financial investment products for their own account wish to apply for an investment dealing license in Korea. By having these firms trade in Korea under an investment dealing license, it is expected that the effectiveness and transparency of supervision over foreign investors participating in the Korean capital market can be enhanced, and that the risk-management function of the Korean derivatives market can be strengthened. However, as the supervisory authorities have reserved their views on granting licenses to new types of market participants, specialized proprietary trading firms are experiencing difficulties in expanding further into the Korean market.

Additionally, some foreign firms intend to conduct investment brokerage business without accepting or holding client funds or securities—for example, by only introducing or arranging transactions between parties. However, under current requirements, it is unclear as to whether the license requirements under the law or regulatory policy can be met without installing client asset management and custody systems locally, even though such infrastructure is not necessary for pure introductory businesses that do not handle client assets. Such a requirement imposes unnecessary costs and complexity in running a brokerage-only business and is a significant market entry barrier.

Recommendations:

We request that, where a business plan is deemed reasonable and viable, the licensing authorities permit conducting the full scope of investment-dealing activities feasible under the license category without imposing conditions such as "market-making only" for investment-dealing licenses. In addition, we respectfully request that a more favorable and proactive approach be adopted toward investment dealing license applications by global proprietary trading firms that have obtained the requisite approvals in various foreign jurisdictions to trade financial investment products for their own account.

Furthermore, we ask that for brokerage business models that do not involve handling client assets, the licensing regime be operated flexibly to require infrastructure requirements that are aligned with and necessary for the business to be conducted.

B. Inconsistency with Global Standards

1. IPO Underwriter Lock-Up and Retention Requirements PRIORITY

(1) 30-Day Lock-Up Requirement for Underwriter in Cases of Undersubscription

Investment dealers or brokers that act as a lead underwriter in an initial public offering or unlisted public offering of the company whose securities they or their interested party held for two years prior to the initial public offering of the company are subject to a 30-day lock-up.[34]

The FSC issued an interpretive ruling[35] stating that the lock-up applies equally to those securities taken up by the underwriters due to undersubscription of the public offering, and on this basis, the FSS imposes sanctions on underwriters who violate the lock-up.

Where a foreign securities company underwrites an IPO in Korea, it may have to subscribe to some of the shares due to circumstances beyond its control, such as undersubscription. However, since foreign securities firms mainly engage in the brokerage of transactions between domestic investors and offshore affiliates, there is significant difficulty for the foreign securities companies to have the capital in Korea to acquire and hold newly issued shares for a long duration.

Recommendations:

[34] Article 71(7) of the FSCMA, Article 68(5)4(e) of the Enforcement Decree of the FSCMA, Article 4-19(5) of the Financial Investment Business Regulation.
[35] FSC Interpretive Ruling, October 12, 2017 (No. 170265).

The main role of a foreign securities company licensed in Korea as an underwriter in a Korean company's domestic IPO is to attract leading global institutional investors to participate in the IPO through the assistance of their foreign affiliates, who are dealers/brokers. We request that the FSC reconsider its prior interpretive ruling to permit a foreign underwriter that is a foreign securities company licensed in Korea, required to acquire shares in an IPO due to undersubscription, to sell the shares to its offshore affiliate post-acquisition, notwithstanding the 30-day lock-up.

Relevant Regulations:

- Financial Investment Services and Capital Markets Act (FSCMA), Article 71(7)
- Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA), Article 68(5)4(*ma*)
- Financial Investment Business Regulation, Article 4-19(5)

(2) Underwriter Mandatory Retention Requirement in Cases of Lock-Up Allocation Shortfall

In an IPO, 40% or more of the shares that can be allocated to institutional investors must be pre-allocated to those institutional investors with lock-up commitments.[36]

Moreover, institutional investors with longer lock-up commitments are to be granted preferential allocation of the shares depending on the lock-up period.[37]

If the underwriter fails to allocate all of the shares to institutional investors with lock commitments, the underwriter is required to acquire either 1% or KRW 3 billion of notional value of the publicly offered shares and hold such shares for at least 6 months from the date of listing.[38]

This requirement diverges from global market practice. The preferential allocation by lock-up commitments makes it challenging to attract investment from leading foreign institutional investors in Korean domestic IPOs. The obligation imposed on foreign securities firms in Korea to hold a certain minimum amount of securities is a significant burden to the foreign securities companies whose main business is brokerage.

Recommendations:

[36] Article 9(1)7(a) of the Regulations on Securities Underwriting.
[37] Best Practices for Underwriters Part 3 "Demand Forecast for IPO", 5-2.
[38] Article 9(14)3 of the Regulations on Securities Underwriting Business.

Foreign institutional investors participating in Korean IPOs rarely agree to voluntary lock-up commitments and often have an internal approval process, which makes it practically impossible to agree to lock-up commitments. Notwithstanding this challenge, a solid investment track record by foreign institutional investors participating in Korean domestic IPOs has been maintained, as many of the foreign institutional investors have long-established relationships with global investment banks on the group level. However, foreign institutional investors would find it difficult to accept the recently amended requirement for underwriters to preferentially allocate shares to those investors who agree to voluntary lock-up commitments. Furthermore, if the Korean supervisory agencies were to impose regulatory disadvantages on underwriters who fail to comply with the foregoing provisions, such a decision would be contrary to global market practices. We respectfully request that exceptions to the application of the new IPO preferential allocation requirements be granted to foreign underwriters of domestic IPOs that allocate shares to foreign investors in light of global market practices and to ensure that Korean domestic IPOs remain attractive to foreign institutional investors.

Relevant Regulations:

- Regulations on Securities Underwriting Business, Articles 9(1)7(*ga*) and 14

2. Insider Transaction Pre-disclosure System

In 2024, a Pre-disclosure System for Insider Trading was adopted by the Korean government pursuant to which major shareholders who (i) beneficially own 10% or more of the voting shares of a listed company or (ii) exercise *de facto* influence over important management matters of the listed company, are obligated to disclose any share disposition plans 30 days prior to the sale. While other major jurisdictions also have regulations to prevent the use of material non-public information by insiders, such as the 10b5-1 Plan in the US and the Master Plan in the EU, adoption is voluntary on the part of the selling shareholder where it wishes to eliminate any concerns over improper conduct. On the other hand, the Korean system imposes strict requirements on the selling shareholder to make pre-disclosures and also applies a cool-down period. These requirements have negatively affected the block trading market in Korea, which is the medium by which major shareholders' controlling shares are traded.

Recommendations:

We respectfully request that the FSS reconsider the regulatory requirements imposed under the Pre-disclosure System for Insider Trading in a way that addresses the objective of controlling repercussions from insider trading without negatively affecting the block trading market.

Relevant Regulations:

- Financial Investment Services and Capital Markets Act (FSCMA), Article 173-2(1)
- Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA), Articles 200-3(1) and 200-3(2)

3. DLS Issuer Qualification

Currently under the FSCMA, the sale of derivative-linked securities issued by foreign issuers in Korea is very prescriptive, making it difficult to offer a range of investment products to Korean institutional investors. Only derivatives-linked securities issued by a foreign issuer that meets the requirements equivalent to those of a Korean dealer can be sold in Korea. There is no such regulation in other countries, and derivatives-linked securities, by their nature, are rarely issued by the licensed financial institution itself.[39] For various commercial reasons, derivative-linked securities are issued by special-purpose vehicles or other non-licensed dealer entities that are set up by financial institutions.

It is fully understood that the regulations on the sale of foreign derivatives-linked securities in Korea are intended to protect investors, but such investor protection may be put in place through other measures, such as requiring a guarantee or collateral posting by the financial institution that can offer investor protection levels equivalent to the issuance of the subject securities by an investment dealer.

Recommendations:

We request that Korean institutional investors be given the opportunity to access a diverse array of foreign derivative-linked securities offered by foreign institutions in other markets and to have the same investment opportunity as institutional investors in other markets. Amending the issuer qualification requirements under the law and complementing them with other measures that offer the same investor protection level as the issuers could serve to address the concern over issuers' credit standing.

Relevant Regulations:

- Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA), Article 7(4) 5-2

[39] Article 7 (4) 5-2 of the FSCMA.

4. Over-the-counter Trading of Listed Securities

Foreign investors have been allowed to invest directly in the Korean securities market since 1992. However, foreign investors are subject to regulations that are not applicable to Korean investors when investing in Korean securities for several reasons, such as managing foreign ownership limits in companies designated as key industries in Korea and the need to apply separate transaction procedures to foreigners due to their inherently different characteristics.

One of the major examples of the application of additional regulations to foreign investors is the requirement to trade listed securities through the exchange only. Over-the-counter trading ("OTC Trading") of listed securities is permitted only when the need for OTC Trading is recognized in the list of exceptions prescribed by the FSC[40] or when the Governor of the FSS recognizes the need for OTC Trading by foreigners for inevitable circumstances, such as the exercise of rights pertaining to the subject shares.[41]

As a result, foreign investors can be limited from sourcing securities on a timely basis for their transactional needs, as they are not able to utilize OTC Trading as an option. Even though exceptions to engage in OTC Trading can be sought through an application for approval by the FSS, the outcome of the review by the FSS cannot be assumed to be positive until the FSS makes a determination.

If the restrictions on foreign investors' OTC Trading in listed shares have the purpose of monitoring compliance with foreign investment limits of those companies in the government-designated key industrial sector, the restrictions should be managed commensurately. However, as the principle of restricting foreigners from engaging in OTC Trading is uniformly applied to trading in all listed securities—even to those securities that are not subject to foreign investment limits— foreign investors are unable to source securities from OTC Trading to return borrowed securities to their lenders, unlike Korean investors, where OTC Trading is an available option.

Recommendations:

We request that the regulations be amended to allow OTC Trading by foreign investors that have borrowed listed securities so that they can purchase those securities through OTC Trading for the purpose of returning the purchased securities to the lenders ("OTC Purchase of Securities to Return Borrowed Securities"). We suggest amending the regulation in one of the ways listed below.

[40] Article 6-7(1) of the Regulations on Financial Investment Business.

[41] Article 6-7(1) 20 of the Regulations on Financial Investment Business.

- Newly adding OTC Purchase of Securities to Return Borrowed Securities as one of the stipulated pre-approved exceptions by the FSS Governor, permitting OTC Trading by foreign investors under Article 5-4 of the Detailed Regulations on Financial Investment Business.

- Amending and expanding the existing exemption permitting OTC Trading of listed bonds with investment dealers as the counterparty or through the intermediation of an investment broker—under Article 6-7(1) item 11 of the Regulations on Financial Investment Business—to include OTC Trading of shares for the purpose of returning borrowed shares.

Relevant Regulations:

- Regulations on Financial Investment Business, Articles 6-7(1) and 6-7(1) 20
- Detailed Regulations on Financial Investment Business, Article 5-4

C. Regulatory Environment

1. Enforcement for Breach of Short Selling Requirements PRIORITY

Foreign financial institutions that engage in cash short sale trades of Korean listed stocks understand and appreciate the importance of preventing illegal naked short sales in order to preserve the integrity and transparency of stock markets. Moreover, they are of the view that there should be strict monitoring of intentional illegal naked short sales intended to manipulate stock prices or to engage in other market abuse conduct, and imposition of significant penalties on parties that engage in such conduct.

However, they view short sale regulatory breaches that occur due to inadvertent error or mistake should be clearly distinguished from intentional illegal naked short sales and be subject to a much less stringent enforcement process and penalties. The positive impact of short sales on the market, such as promoting liquidity and improving price discovery (by having both positive and negative information promptly reflected in market prices), should also be recognized.

Also, we note that the recently announced MSCI-related initiative includes an item on the rationalization of short-selling regulations. In light of the introduction of measures such as short-selling ID issuance through the supervisory authority and daily transaction and balance reporting via the Korea Exchange's Naked Short Selling Detection System (NSDS), there may be scope to streamline certain existing reporting and compliance requirements. As there does not currently appear to be a formal

process for gathering industry perspectives, we would welcome the establishment of an appropriate channel for industry consultation.

Recommendations:

We request that the short sale regulatory regime be amended to provide the basis for a more equitable level of sanctions for those short sale breaches that occur due to inadvertent error or mistake and do not involve any intentional market abuse. Furthermore, in connection with the ongoing rationalization of short-selling regulations and enhancements to the reporting requirements under the NSDS, we recommend establishing an appropriate channel for industry consultation to ensure that industry perspectives are reflected in the reform process.

Relevant Regulations:

- New short sale regulatory requirements effective from March 31, 2025

2. Naked Short Selling Detection System

Foreign financial institutions have worked closely with the Korean financial regulators on the implementation of new short sale regulatory requirements, which came into force on March 31, 2025, with the lifting of the temporary short sale ban.

With the introduction of the "Naked Short Selling Detection System" by the Korea Exchange, foreign financial institutions are committed to engaging in ongoing dialogue with the Korean regulators to ensure the successful implementation of the new regulatory requirements.

Recommendations:

We request the establishment of a task force, consisting of responsible officers from the FSC, the FSS, and the Korea Exchange, as well as representatives of foreign financial institutions, which would convene periodic in-person meetings to promptly discuss, clarify, and address uncertainties and issues that may arise in connection with the new short sale regulatory framework.

The issues related to the new short sale regulatory framework which foreign financial institutions believe require close consultation with the regulators include, among others, (i) the precise timing for application of short sale regulatory requirements regarding availability of short sellable inventory (pertaining to difference between a parent order sent by investors to their local execution brokers and a child order placed to the exchange

by the local execution brokers) and (ii) proper incorporation into short sellable inventory of recall requests made by external lenders located in different time zones.

<u>Relevant Regulations:</u>

- New short sale regulatory requirements effective from March 31, 2025

3. Transparency and Enforcement Proceedings

Foreign financial institutions make their best efforts to ensure compliance with relevant Korean financial laws and regulations in conducting financial investment business or trading activities in Korea. Where foreign financial institutions are involved in regulatory enforcement proceedings in Korea, they face various challenges due to language barriers and restrictions in attending and presenting their views during the meetings of the Capital Market Investigation and Review Committee (the "Review Committee") and the Securities and Futures Commission (the "SFC").

<u>Recommendations:</u>

Due to language barriers, it takes additional time for foreign financial institutions involved in financial regulatory enforcement proceedings to properly review and understand the requests and questions from the financial regulators, which in most cases are provided only in Korean language. It also takes additional time for foreign financial institutions to prepare and submit their responses, as they first need to prepare responses in English (or other non-Korean languages) and then prepare a Korean version. As such, we request that the financial regulators give due consideration to such challenges and provide foreign financial institutions with sufficient time to review and prepare responses during the regulatory enforcement proceedings.

In addition, we also request that (i) the representatives of foreign financial institutions be permitted to attend both the meetings of the Review Committee and also the SFC so that they are provided with sufficient opportunities to understand the regulators' concerns and positions and fully explain their responses, and (ii) the written materials explaining alleged regulatory breaches in detail and relevant supporting materials be disclosed to the foreign financial institutions, who are the subject of these regulatory proceedings, well in advance of these meetings so that the subject institutions have sufficient time to review them and properly understand the regulators' concerns and allegations. We respectfully submit that these changes would promote a fairer and more transparent enforcement process.

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