

## ■ Purpose of Establishment of FINMAC

### 1. Purpose of Establishment

Following the trend “From Savings to Investment,” the number of complaints and disputes in the financial sector has been increasing in recent years with the expansion of financial transactions, complexity and advancement of financial instruments, and the like.

In this situation, by focusing on the desirable characteristics of alternative dispute resolution (ADR), such as (1) simpler and faster settlement, (2) courteous and flexible settlement based on professional knowledge and experience in accordance with the actual facts, and (3) settlement with due consideration for privacy of the parties concerned, compared with dispute resolution through trials, there is an increasing need for further improvement of the ADR system in the financial sector (including consultation services; hereinafter referred to as the “financial ADR”).

The related bodies, including Japan Securities Dealers Association, are striving to improve financial ADR each year. This time, with respect to Financial Instruments Transactions, in order to establish a system that can provide users with consultation, complaint handling, and dispute settlement services in a more cross-cutting and comprehensive manner, it has been decided to newly establish a non-profit organization as a third-party organization that mainly provides financial ADR services.

This corporate body, which is established mostly with the coordination and cooperation of executives and other related parties of five Financial Instruments Firms Associations, including Japan Securities Dealers Association, (four associations as of April 2011; the same shall apply hereinafter in this Chapter), aims to implement cross-cutting and equalized financial ADR function by integrating the financial ADR services of five associations, and aims to fill in the so-called gaps in the financial ADR system by individually targeting Type II Financial Instruments Business Operators which have not joined in any of the five associations. In addition, the quality of the financial ADR services is secured by obtaining certification under the Financial Instruments and Exchange Act or certification under the ADR Promotion Act in accordance with the contents of the financial ADR services.

\* Of the five associations, the Japan Commodities Fund Association was dissolved at the end of February 2011.

This corporate body, with its head office in Tokyo and a sub-office in Osaka, targeting users and the business operators of a wide variety of financial instruments, provides services related to the financial ADR on a nationwide basis. In particular, in order to respond to consultations and complaints, many advisors who have specialized knowledge on Financial Instruments Transactions are assigned to provide prompt responses. In addition, with respect to mediation, many lawyers (legal professionals) are appointed as Mediators Candidates to provide mediation services in a fair and neutral position with consideration for improvement of the convenience of users at 50 locations, including prefectural capitals, nationwide.

FINMAC will, through these business operations, contribute to the further improvement of investor protection and the sound development of the Financial Instruments Exchange Market.

## **2. Progress Made So Far**

The Japan Securities Dealers Association has been providing consultation and complaint settlement services regarding securities transactions, etc. for many years, and from 1992, started to provide mediation services by lawyers who act as third parties in a fair and neutral position. The Association has been making various efforts, aiming to improve a process from consultation to complaint and dispute settlement, and to settle disputes, etc. in a way that is fair and satisfactory to the parties concerned. As one example, the Association has improved its quality by obtaining a so-called certification under the ADR Promotion Act in June 2008, and enhanced its convenience by increasing the number of locations for mediation to 50 nationwide. In addition, other associations related to Financial Instruments Transactions have been working on and improving consultation, complaint, and dispute settlement services.

With the implementation of the Financial Instruments and Exchange Act in September 2007, it has been decided that, regardless of the business category, the regulations concerning Financial Instruments Transactions are applied in a cross-cutting and integrated manner.

Taking this as an opportunity, five associations related to Financial Instruments Business set up a round-table conference to discuss the role, etc. of the self-regulatory organization regarding Financial Instruments Transactions. As the outcome of the discussion, in the interim summary of issues, “Role of the Financial Instruments Firms Association” (June 2007), the following three points were pointed out as future issues regarding consultation, complaint, and dispute settlement function related to Financial Instruments Transactions: (1) integration of complaint and consultation counters, (2) filling in the gaps with respect to the scope of complaints and disputes to be handled, and (3) equalization of the response level of each association.

Based on this outcome, in January 2008, five associations integrated the complaint and consultation counters and set up a joint call center. Thus, further enhancement and development of such cross-cutting measures were considered an issue.

In the First and Second Joint Task Force Report (December 17, 2008), which was completed by the Financial System Council’s Study Group in December 2008, it was pointed out that it is desirable that the cross-cutting and comprehensive financial ADR be established in the future, and that it is required to ensure the neutrality and fairness, and effectiveness of the financial ADR in order to develop a sense of trust and satisfaction of users in the complaint and dispute settlement services.

In response to these demands, a non-profit organization, which specializes in financial

ADR, was established on August 24, 2009 and started its business operation on February 1, 2010.

### **3. Designated Dispute Resolution Organization under the Financial Instruments and Exchange Act**

Under the bill to partially amend the Financial Instruments and Exchange Act (Act No. 58 of 2009), an alternative dispute resolution system in the financial sector (a so-called financial ADR system) was created to improve user protection. Accordingly, cautious discussions have been repeated on how FINMAC should deal with the financial ADR system.

As a result of the discussion, FINMAC has decided to aim to obtain designation as a Designated Type I Dispute Resolution Organization.

The Financial Instruments Business sector includes the Type I Financial Instruments Business, Type II Financial Instruments Business, Investment Advisory and Agency Business, Investment Management Business, Registered Financial Institution Business, and the like. Above all, there are an overwhelming number of cases of the Type I Financial Instruments Business, which occupies a core and important position in dispute settlement services for the Financial Instruments Business. Therefore, first of all, it has been decided to obtain designation with respect to the Type I Financial Instruments Business.

After the examination required by the Financial Services Agency, FINMAC was designated a Designated Type I Dispute Resolution Organization by the Commissioner of the Financial Services Agency as of February 15, 2011 and started its business operation as a Designated Dispute Resolution Organization on April 1, 2011.