



High-Speed Trading Regulations in Japan

– Latest Developments Almost Four Years after their Introduction –

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1. Introduction

In April 2018, as part of the regulation of high frequency trading (“HFT”) in Japan, new regulations on “high-speed trading” (“HST”)¹ (the “HST Regulations”)² were introduced.

This article will provide an overview of the HST Regulations and look at the movements of regulatory authorities since the introduction of such regulations.

2. The HST Registration System Introduced in 2018

From 2016 to 2018, HFT had an increasing presence in the Japanese securities markets. While it has been pointed out that HFT was providing liquidity to the markets or contributing to the reduction of spreads, some raised concerns on its effect from the perspective of market stability and efficiency, fairness among investments, price formation based on medium- to

long-term corporate value, vulnerability of systems, etc.³ However, at that time, the regulatory authorities and exchanges did not have a sufficient understanding of the overall picture of HFT, the trading strategies thereof, risk management status and other matters, and therefore failed to establish effective measures to address the above concerns. In light of these concerns, the HST Regulations were introduced in April 2018 as a system under the FIEA, primarily to understand the actual situation of HFT.

The HST Regulations mainly define the type of trading to be regulated as “high-speed trading” by focusing on its high-speed nature, which is one of HFT’s features. The regulations require those who wish to engage in high-speed trading to register themselves as “high-speed traders,”⁴ and impose certain obligations on “high-speed traders.” The structure of the definition of “high-speed trading” consists of elements of investment decisions that use algorithms and means to shorten the time required for the provision of information for orders to an

1. “High-speed trading” is a statutory concept defined in art. 2, para. 41 of the Financial Instruments and Exchange Act (“FIEA”). The definition of “high-speed trading” focuses on trading speed (the time required for the provision of information for orders in an exchange) and does not include the element of trading frequency. However, this is due to legal and technical reasons and is not intended to exclude high frequency trading orders from the scope of regulation.

2. These regulations include the Order for Enforcement of the FIEA, the Cabinet Office Order on Definitions under Article 2 of the FIEA, and the Cabinet Office Order on Financial Instruments Business.

3. Financial System Council, *Report by the Working Group on Financial Markets under the Financial System Council – Initiatives toward Stable Asset Building and the Development of Institutional Systems related to Markets and Exchanges*, December 22, 2016, 13-14.

4. Financial instruments business operators or registered financial institutions are not required to register themselves as high-speed traders when they engage in high-speed trading, but they are required to file a notification of changes to their existing registration, etc.



exchange.⁵ This is different from an “HFT,”⁶ as described in the European Union’s Markets in Financial Instruments Directive (MiFID) II, and is unique to the FIEA.

The main regulations for high-speed traders are outlined below (FIEA, arts. 66-50 to 66-61):

a. **Obligation to take measures pertaining to system development and risk management**

- Appropriate management and operation of trading systems
- Development, etc., of appropriate business operation systems
- (In the case of a foreign corporation) establishment of a representative or agent in Japan

b. **Obligation to take measures pertaining to the provision of information, etc., to authorities**

- Notification of engagement in high-speed trading and trading strategies
- Preparation and preservation of trading records⁷
- Submission of business reports

While the existing regulatory framework of the FIEA was oriented to requiring securities companies and the like, as gatekeepers of the markets, to fulfill their duty of checking investors, the characteristic of the HST Regulations is that they directly regulate high-speed traders who have the attributes of investors, and impose

on them certain system development obligations as well as other obligations.

Under the HST Regulations, the Financial Services Agency (“FSA”) has supervisory authority over high-speed traders, with the power to revoke registrations or issue orders to improve their business operations, while the Securities and Exchange Surveillance Commission (“SESC”) has inspection authority over them.

In addition, the Tokyo Stock Exchange (“TSE”) has revised its Business Regulations and Brokerage Agreement Standards in response to the introduction of the HST Regulations, and now requires the flagging of trading orders for high-speed trading to indicate the fact that they are high-speed trading and identifying the type of trading strategy thereunder.⁸

3. Status of Operation of the HST Regulations

a. **Guidelines for supervision and application**

The FSA established the “Guidelines for Supervision of High-Speed Traders”⁹ and defined therein the basic framework for the supervision of high-speed traders. High-speed traders are currently being supervised thereunder.

In addition, the FSA’s responses to the public comments received on the specific laws and regulations that constitute the HST Regulations,

5. The definition is primarily based on the location requirement of the facility where the financial instruments exchange or any other operator installs a matching engine (including places adjacent or close to that facility) and the trading environment requirement that a mechanism be set in place to prevent the contention between the transmission of information and any other transmission of information (Cabinet Office Order on Definitions under Article 2 of the FIEA, art. 26, para. 2).

6. This stands for high-frequency algorithmic trading technique.

7. The order forms must be prepared so as to enable the confirmation of the details of the program used for the creation of orders (Cabinet Office Order on Financial Instruments Business, art. 338, para. (7)(i)). The details of the program do not need to be described in the order forms, but, for example, they need to be kept tied to the description of the order forms (Public Comment No. 177). Moreover, it would not be sufficient to just describe the type of the trading strategy in the details, the commands must also be stored in the computer used for each individual order (Public Comment No. 179).

8. Business Regulations (TSE), rule 14, para. 1(7), and Brokerage Agreement Standards (TSE), rule 6, para. 5.

9. <https://www.fsa.go.jp/common/law/guide/hft/03.html>. (The latest version was amended in June 2022.)

10. FSA, Appendix of the “Summary of Public Comments and the FSA’s Response Thereto” to the “Results of the Public Comments on the Draft Cabinet Order/Cabinet Officer Order to Amend the Financial Instruments and Exchange Act in 2017,” December 27, 2017.



which were disclosed at the time of the introduction of such regulations,¹⁰ substantially serve as operational standards for the HST Regulations.

b. Better understanding of the actual situation of high-speed trading by regulatory authorities

The FSA is advancing its understanding of the actual situation of high-speed trading, and since June 2021, has been publishing materials on high frequency trading trends on a quarterly basis (“**FSA Publications**”).¹¹ According to such publications, the number of registered high-speed traders ranged from 50 to 60 in the past three years. The FSA Publications also disclose some of the HFT trends on the TSE¹² observed by the FSA.

In addition, the FSA has published articles on the results of studies made by the staff of the FSA and SESC on high-speed trading.¹³ Although these articles were written by such staff in their individual capacity, they are valuable analyses that use TSE data and will contribute to the better understanding of the actual situation of high-speed trading on the Japanese stock market and the attitude of regulatory authorities thereon.

Apart from the above, the report by the Financial System Council (“**FSC**”) published in June 2021¹⁴ (the “**FSC Report**”) provides an analysis of the trends

among high-speed traders that “*some high-speed traders appear to adopt an investment strategy that takes advantage of the price gap among multiple exchange facilities¹⁵ caused by time lags (‘Latency Arbitrage’).*”¹⁶

c. Exercise of regulatory authority

Based on the FSA Publications, the FSA has never exercised its regulatory authority over high-speed traders, including revocation of any registration or issuance of orders to improve business operations. Furthermore, the SESC has never inspected high-speed traders or recommended the imposition of monetary penalties on high-speed trading due to unfair trading.

d. Recent noteworthy activities of regulatory authorities

(i) Response to Latency Arbitrage

With respect to Latency Arbitrage, the FSC Report referred to the fact that “*when financial instruments business operators, etc., execute customer orders, if the orders are sequentially forwarded to the exchange facility with the best quotations, the predictability will improve regarding which exchange facility the orders will be forwarded to and thus Latency Arbitrage may be easier.*”¹⁷

In response to the above observation, from January 2023, based on the idea that policies and measures

11. <https://www.fsa.go.jp/news/r2/sonota/20210630/20210630.html>.

12. They disclose the trading value ratio of high-speed traders, trading value by trading strategy, ratio of orders and trading value by location, ratio of orders of each type, etc.

13. Ohyama, A., et al., *Characterization of High-Speed Trading*, July 7, 2021, at https://www.fsa.go.jp/frtc/report/honbun/2021/20210707_SR_HFT_Article.pdf (“**Characterization of High-Speed Trading**”) (in Japanese); Ohyama, A., et al., *Current Situation and Impact of Speed Races of High-Frequency Trading (HFT)*, October 25, 2022, at https://www.fsa.go.jp/frtc/report/honbun/2022/20221025_SR_Article_HFT.pdf (in Japanese), etc.

14. *Report of the Task Force to Discuss Optimal Ways to Ensure Best Execution*, the Working Group on Market Systems, FSC, June 2, 2021, 3 (in Japanese) (“**FSC Report on Optimal Ways to Ensure Best Execution**”).

15. Apart from exchanges, these facilities include private trading systems (PTS) and dark pool trading.

16. Page 11 of the said report also refers to the so-called PFOF (Payment For Order Flow), but it states that no case thereof has been confirmed in Japan.

17. FSC Report on Optimal Ways to Ensure Best Execution, 10.



requires the inclusion of a summary of policies and measures that respond to Latency Arbitrage in the best execution policies established by financial instruments business operators or other firms.¹⁸

Such regulation is not part of the HST Regulations, however, it can be said that this shows that regulatory authorities are becoming more sensitive to Latency Arbitrage in high-speed trading.

(ii) Activities surrounding high-speed trading

Based on the materials published by the SESC,¹⁹ during an investigation of a foreign securities company that was conducted from July 1, 2021 to the end of June 2022, the SESC pointed out a problem to the said company, stating that *“the trading and ordering system introduced by the company was developed for its overseas affiliated companies mainly for the purpose of satisfying customer needs (i.e., to prevent their orders from becoming subject to high-speed trading regulations), and thus was suspected of evading regulations under Japanese laws. Nevertheless, the company decided to introduce the said trading and ordering system without verifying its conformity with Japanese laws.”*

It is not clear whether the above comment focused on the malicious intent of the decision to introduce

a system that is suspected of evading regulations, or just implied that some trading orders, which are currently being executed without being flagged as orders that constitute high-speed trading, involve high-speed trading that should be notified to the authorities. Nevertheless, it seems clear that regulatory authorities are at least interested in establishing the boundaries of high-speed trading the actual situation of which should be understood under the HST Regulations.²⁰

4. Future Prospects

Although the HST Regulations are largely characterized by the fact that they make high-speed traders who have the attributes of investors directly subject to regulation by the regulatory authorities; so far, the overt moves by the regulatory authorities appear to have been concentrated on securities companies, who are fiduciaries of high-frequency trading.

As to the future movements of regulatory authorities, it is noteworthy that it remains to be seen whether they will exercise authority directly over high-speed traders, or whether they will strengthen the HST Regulations based on their increasing understanding of the actual situation being covered by such regulations.

18. Cabinet Office Order on Financial Instruments Business, art. 124, para. (2)(i)(c).

19. SESC Office, *Overview of Securities Business Monitoring and Case Studies*, August 2022, at <https://www.fsa.go.jp/sesc/kensa/shitekijirei.html> (in Japanese).

20. The FSA Publications also confirmed that trading orders were executed without setting an identification flag that they were high-speed trading with order servers installed in the co-location area (both the ordering ratio and trading value ratio were several percent). In addition, it was pointed out in the Characterization of High-Speed Trading that not all HST can be completely understood by the acquisition of only trading orders that pursue high speed; it then poses a problem that *“[a]lthough the possibility of unfair trading combined with trading strategies that do not require high speed is subject to monitoring by exchanges and the Securities and Exchange Surveillance Commission (SESC), based on the above, there is still room for efforts to enhance data analysis and expand the scope of data acquisition in order to accurately understand the entire trading by registered HFTers.”*



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