

Outline of the Opinion on the Uninvited Solicitation Prohibition in Commodity Futures Transactions

November 2013
The Consumer Commission

Introduction History of Uninvited Solicitation Prohibition in Commodity Futures Transactions

- May 2005: Since many serious consumer damages had occurred over a long period of time, restriction on the solicitation method was introduced (Amendment of the Commodity Exchange Act in 2004)
 - To oblige notification before solicitation and to confirm the customer's intention
 - To prohibit re-solicitation (Prohibition of solicitation to the customer who represented the intention not to make entrustment)
 - To introduce prohibition of solicitation by annoying methods
- June 2006: Supplementary resolution at the House of Councilors' Committee on Financial Affairs
 "If troubles do not decline in the future, we will study the introduction of prohibition of uninvited solicitation."
- January 2011: Introduction of uninvited solicitation prohibition (The Commodity Exchange Act was amended in 2009 and the Commodity Derivatives Act was enacted.)

Considering the actual situations of many reported troubles where damage was caused by transactions against the customer's original intention made through solicitation like a surprise attack or persistent solicitation, uninvited solicitation is prohibited to protect occurrence or an increase of damage to customers, because compliance with the principle of suitability cannot be expected at all in such solicitations.

* Uninvited solicitation

This is a solicitation where an entrepreneur visits or calls an individual customer and solicits for contract conclusion even though that customer has not requested solicitation for contract conclusion.

Current situations of Uninvited Solicitation Prohibition

- Coverage of the current uninvited solicitation prohibition
 There is a difference between commodity transactions and financial transactions at Exchanges.

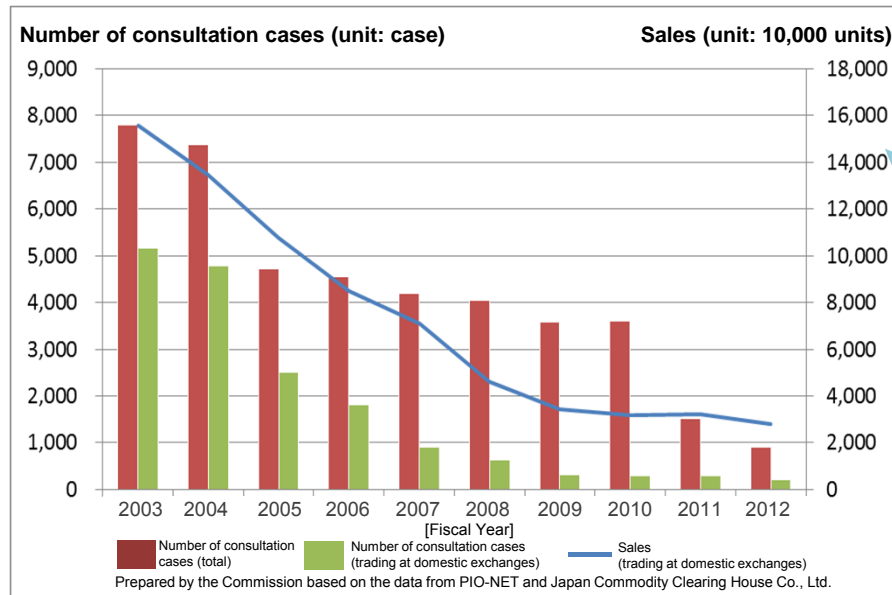
		Transactions in the schemes where loss exceeding initial investment amount is not generated	Other than the following transactions
Commodity futures transactions	Trading at Exchange	-	×
	Off-Exchange (over the counter) trading	×	
Financial derivatives transactions	Trading at Exchange	-	
	Off-Exchange (over the counter) trading	×	

×: Prohibited -: Not covered by prohibition

- Financial Instruments and Exchange Act was amended (enforced by March 2014) toward realization of general exchanges to comprehensively handle securities, financial derivatives and commodities. Commodities shall be now treated as "financial instruments".
- Under the current regulations, certain transactions at general exchange among a part of commodity futures trading at exchange (shaded section in the above table) shall not be subject to uninvited solicitation prohibition as in the case of financial derivatives transactions.
- To continue the current uninvited solicitation prohibition for commodity futures transactions, it is necessary to amend the enforcement order of the Act specifying the scope of prohibition.

Trend of Damage and Necessity to Maintain the Scope of Uninvited Solicitation Prohibition

- Since the introduction of uninvited solicitation prohibition (January 2011), the number of consultation cases has been declining. The effect of the prohibition is observed.
 - Number of consultation cases on commodity futures trading and transition of the sales



However, some entrepreneurs are still conducting solicitation while circumventing the law. Considering that entrepreneurs have such an attitude for sale, it is expected that relaxation of regulation would cause troubles to increase again.

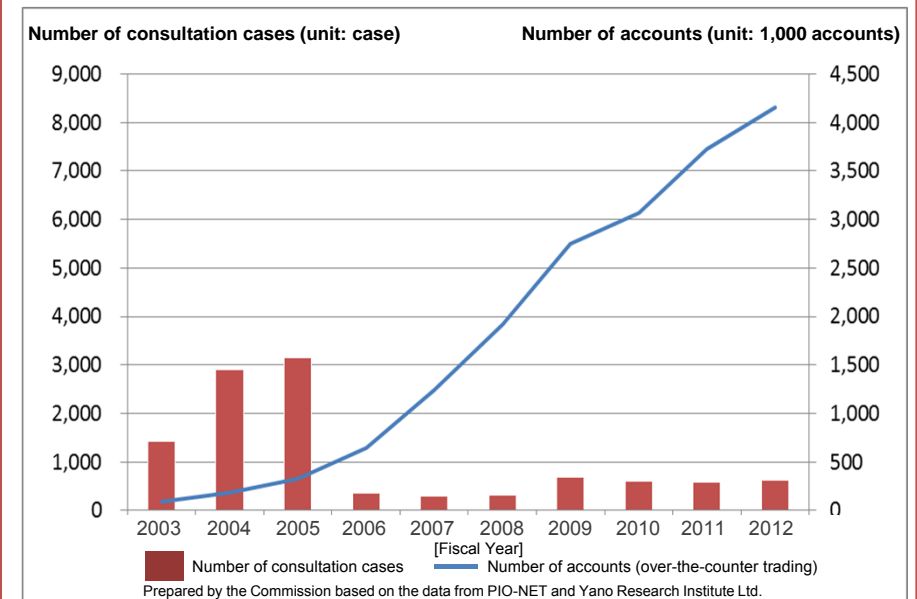
Ex.: Entrepreneur solicits customers for a physical transaction of platinum and then solicits for futures transaction of platinum on the date when it delivers the actual goods to them.
 Entrepreneur solicits customers for trading with a scheme to prevent a loss exceeding the initial investment amount (so-called "smart CX"), which is an exception from uninvited solicitation prohibition, and then solicits the customer who had such trading for general commodity futures transactions a couple of days later.

Relation between Uninvited Solicitation Prohibition and Market Vitalization

It cannot be said that continued prohibition of uninvited solicitation hampers sound development of the market.

- (1) Trading volume of commodity futures transactions had already reached its low point when the uninvited solicitation prohibition was introduced (January 2011), and has not largely declined.
- (2) In retail foreign exchange trading (FX trading), a type of financial derivatives transaction, the number of over-the-counter trading accounts, which are under the uninvited solicitation prohibition, is increasing even after introduction of the uninvited solicitation prohibition (July 2005). ← Change of business model from sales activity with solicitation to Internet transactions has occurred.

- Number of consultation cases on FX trading and change in the number of accounts



Uninvited solicitation prohibition for commodity futures transactions should not be relaxed.