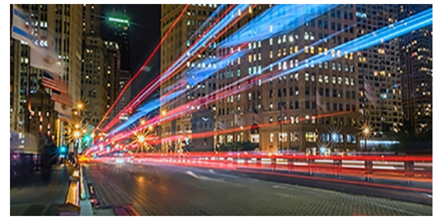

News & Types: Client Advisories

Recent Changes in U.S. Securities Law May Allow More Financing Options for U.S.-Based Subsidiaries

4/6/2021

Practices: Corporate, Finance & Acquisitions

EXECUTIVE SUMMARY

On August 26, 2020, the U.S. Securities and Exchange Commission (SEC) adopted final amendments expanding the definitions of “accredited investor” and “qualified institutional buyer” (QIB) under U.S. securities laws, which amendments became effective on December 8, 2020. Each definition pertains to the eligibility to participate in private capital markets without the issuer filing registration statements. The foregoing expansion could positively impact financing activities of small and medium-scale U.S. subsidiaries of Japanese companies which traditionally have been financing their operations through intercompany debt or capital contributions without outside debt or equity financings.

The new definition of accredited investor has been expanded to now include persons who hold certain professional certifications (including widely held licenses in the securities industry) and “knowledgeable employees” (for example, executive officers, directors, general partners, etc.) of private funds. Further, due to expanded definitions of QIB, certain investment advisers and investment companies, limited liability companies having total assets in excess of $5 million, and any other entities owning investments in excess of $5 million are now accredited investors.

These amendments could present an opportunity for small to mid-sized Japanese-owned subsidiaries to seek outside financing through issuance of convertible notes or preferred stock, thereby reducing the amount of capital required from their parent companies. It is important, however, to properly structure such financings so that the parent companies in Japan do not lose ultimate control of the subsidiaries. If properly utilized, with these amendments, financing through private capital markets may enable smaller and mid-sized Japanese companies to establish and/or operate U.S. subsidiaries with less capital required and some diversification of their risk.

For additional information, please contact a member of Masuda Funai’s Corporate, Finance & Acquisitions Practice Group.