

Points to Note Regarding Article 27-36 of the Financial
Instruments and Exchange Act

(Fair Disclosure Rule Guidelines)

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Financial Services Agency

- * These guidelines only show a general interpretation of laws and regulations at present and do not give answers regarding the applicability of laws and regulations to individual cases. It should be kept in mind that the applicability of laws and regulations to individual cases is to be practically determined in light of the purpose of the laws and regulations for each case based on the facts found therein. In addition, it is also necessary to keep in mind that different interpretations may be made when the preconditions are different (including new transaction methods for which cautious considerations are considered necessary from the standpoint of investor protection) or when the relevant laws and regulations are amended.
- * In addition, in implementing the fair disclosure rule, it is considered preferable to accumulate practices through dialogues between listed companies, etc. and investors. In the future, the interpretations shown in these guidelines may change in a constructive manner in the process of such accumulation of practices.
- * These guidelines are not binding on determinations made by investigative authorities and judicial decisions including the application of penal provisions. In addition, these guidelines do not guarantee that the Financial Services Agency (FSA) will make the same interpretations as those shown in these guidelines in the future.
- * It is considered that interpretations and applications of laws and regulations should be made in a practical manner based on the purpose of the relevant laws and regulations, not only with respect to the items dealt with in these guidelines but also in general terms.
- * In these guidelines, “material information” refers to the “undisclosed material information about the operations, business, or assets of the listed company, etc. which has a material influence on investors' investment decisions” as provided in Article 27-36, paragraph (1) of the Act.
In addition, “business associate” refers to the persons set forth in the items of Article 27-36, paragraph (1) of the Act as persons who are assumed to be highly likely to be involved in the purchase and sale, etc. of securities such as financial instruments business operators.

(Explanatory notes)

Act: Financial Instruments and Exchange Act

Cabinet Office Order on Disclosure of Material Information

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- (i) Information exchanged in discussions made between the manager and investors with respect to the medium- to long-term corporate strategy or plan, etc.
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Article 7, item (i) of the Cabinet Office Order on Disclosure of Material Information provides that shareholders who receive material information in relation to a business pertaining to public relations aimed at investors of a listed company, etc. are business associates. Is a listed company, etc. required to disclose material information that the company has provided to its parent company, which is a shareholder of the listed company (re: item (ii))?

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Is it necessary for a listed company, etc. to disclose the information provided in the following cases?

- (i) In the case of providing material information in order to consult with a section engaged in investment banking services in a securities company about matters such as organizational restructuring or fund procurement
- (ii) In the case of providing material information when requesting a credit rating agency to rate bonds, etc.

Re: Article 27-36, paragraph (2) of the Act

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Article 8, item (i) of the Cabinet Office Order on Disclosure of Material Information prescribes a case where an officer, etc. has provided material information to a business associate unintentionally as one of the "cases in which it is difficult to disclose the material information at the same time as the provision of the information" provided in Article 27-36, paragraph (2) of the Act. What specific cases would fall under such cases referred to in Article 8, item (i) of the Cabinet Office Order?

Outline

(Purpose and Significance of the Fair Disclosure Rule)

Q1. What are the purpose and significance of the fair disclosure rule?

A.

The provisions of Article 27-36 of the Act (what is generally called the fair disclosure rule; hereinafter referred to as the “Rule”) have been introduced to ensure fair disclosure of information to investors. In addition, introduction of the Rule is considered to have a positive significance in that it promotes early disclosure of information by issuers and, eventually, dialogues between issuers and investors, as a result of the information disclosure rules for issuers being developed and clarified.

Listed companies, etc. who are subject to the application of the Rule are expected to actively disclose information in light of the purpose and significance of the Rule.

Re: Article 27-36, paragraph (1) of the Act

(Scope of Information Management)

Q2. What kind of information should a listed company, etc. manage as information subject to the application of the Rule?

A.

The Rule is applicable to information of a precise nature which has not been disclosed and which, if it were disclosed, is likely to have a material influence on the value of securities.

With respect to the information management based on the Rule, for example, listed companies, etc. may manage material information by any of the following methods according to their business scales or state of information management.

- (i) Global companies, which are engaged in investor relations (IR) activities by setting their own standard to determine the type of information that may have a material influence on the value of securities bearing in mind the rules of other countries, may manage information using such standard.
- (ii) Companies engaged in IR activities in accordance with the current insider trading regulations, etc. may manage the following information, for the time being:
 - Information subject to the application of the insider trading regulations:

and

- Financial closing information (meaning a financial information of a precise nature relating to annual or quarterly settlement; the same applies in (iii) below), which has a material influence on the value of securities.

(iii) Companies facing difficulties in determining the specific piece of financial closing information which may have a material influence on the value of securities may manage information subject to the application of insider trading regulations and financial closing information of a precise nature which has not been disclosed, as the information subject to the application of the Rule.

Among these three methods, the method described in (ii) above shows the minimum scope of information management.

(Responses to Make When a Business Associate Suggests That the Information Which It Has Received May Fall Under the Category of Material Information.)

Q3. What are the possible responses a listed company, etc. can make, when it provides information in relation to its business to a business associate and the business associate suggests that such information may fall under the category of material information?

A.

When a listed company, etc. provides information in relation to its business to a business associate and the business associate suggests that such information may fall under the category of material information, the listed company, etc. can make the following responses, through dialogues between the two parties:

- (i) When the listed company, etc. agrees to the suggestion that the relevant information falls under the category of material information, the listed company, etc. will promptly disclose the relevant information.
- (ii) When the parties have reached a conclusion that the relevant information does not fall under the category of material information as a result of a dialogue between them, the listed company, etc. will not disclose the relevant information.
- (iii) When the listed company, etc. considers that the relevant information falls under the category of material information but is unsuitable for disclosure, the listed company, etc. will have the relevant business associate bear a duty of confidentiality and the obligation not to effect purchase and sale, etc. of the securities issued by the listed company, etc. until the relevant information

can be disclosed, and will not disclose the relevant information.

(Handling of Discussions on the Future Information of Companies)

Q4. Will the following information be subject to the application of the Rule?

- (i) Information exchanged in discussions made between the manager and investors with respect to the medium- to long-term corporate strategy or plan, etc.
- (ii) Detailed breakdown or supplemental explanations of the pieces of information which have already been disclosed and estimates of economic trends which have served as the basis for the disclosed earnings forecast.
- (iii) Information which may have an effect on investment decisions when combined with other information but which, in itself, has no immediate effect on investment decisions (what is generally called a piece of “mosaic information”).

A.

The Rule is applicable to information of a precise nature which has not been disclosed and which, if it were disclosed, is likely to have a material influence on the value of securities.

The answer to the question of whether or not the pieces of information referred to in the question above are subject to the application of the Rule may be as follows.

- (i) In general, it is considered that information exchanged in constructive discussions made between the manager and investors with respect to the future medium- to long-term corporate strategy or plans, etc. is, in itself, not subject to the application of the Rule. However, it should be kept in mind that, for example, when specific details of the plan concerning operating profits or net profits that are planned to be disclosed as the contents of the medium-term management plan are pieces of information which, in themselves, can be used for making investment decisions and are likely to have a material influence on the value of securities if they were disclosed and when such details of the plan are to be provided to the investors immediately prior to the disclosure of the medium-term management plan, the provision of such pieces of information may constitute provision of material information.
- (ii) In general, it is considered that a detailed breakdown or supplemental

explanations of the pieces of information which have already been disclosed and estimates of economic trends which have served as the basis for the disclosed earnings forecast are, in themselves, not subject to the application of the Rule. However, for example, if such supplemental explanations, etc. contain information on the relation between the company's business performance and contracted forward exchange rate, which is a piece of information that enables one to easily estimate the future changes in the company's business performance by comparing it with the figures of the actual exchange rate in the following period and thus is likely to have a material influence on the values of securities if they are disclosed in themselves, it should be kept in mind that such piece of information may fall under the category of material information.

(iii) Generally, information which may have an effect on investment decisions when combined with other information but which in itself has no immediate effect on investment decisions (what is generally called a piece of "mosaic information"), such as information generally provided at factory tours or sector-by-sector explanatory meetings are, in themselves, considered not to be subject to the application of the Rule.

(Measures Necessary to Properly Manage Material Information)

Q5. Article 5 of the Material Information Disclosure Order provides appropriate measures to be taken by any person in order to ensure that the material information received in the process of performing a business other than a financial instruments business, etc. is not used in conducting a financial instruments business, etc. before the material information becomes disclosed, as the measures necessary to properly manage material information. Specifically, what kind of measures should be taken (re: item (i))?

A.

As one of the appropriate measures to ensure that material information received in the process of performing business other than financial instruments business, etc. is not used in conducting financial instruments business, etc. before the material information becomes disclosed, it is considered necessary to establish internal rules, etc. (meaning internal rules and the equivalent thereto) to ensure that the material information received in the process of performing business other than financial instruments business, etc. is not used in conducting financial instruments business, etc. before the material information becomes disclosed, and to provide training for officers and employees on

compliance with the internal rules or take other measures.

(Handling of Provision of Information to Parent Companies)

Q6. Article 7, item (i) of the Order on Disclosure of Material Information provides that shareholders who receive material information in relation to business pertaining to public relations aimed at investors of a listed company, etc. are business associates. Is a listed company, etc. required to disclose material information that the company has provided to its parent company, which is a shareholder of the listed company (re: item (ii))?

A.

When a listed company, etc. is a subsidiary of another company, there may be cases where the listed company, etc. provides material information to the parent company, etc. for the business management of the corporate group to which the listed company, etc. belongs. Normally, such provision of material information is not conducted “in relation to business pertaining to public relations aimed at investors” and thus is considered to be not subject to the application of the Rule.

(Provision of Material Information to a Section Engaged in Investment Banking Services in a Securities Company)

Q7. Is it necessary for a listed company, etc. to disclose the information provided in the following cases?

(i) In the case of providing material information in order to consult with a section engaged in investment banking services in a securities company about matters such as organizational restructuring or fund procurement

(ii) In the case of providing material information when requesting a credit rating agency to rate bonds, etc.

A.

Even in a case where a listed company, etc. provides material information in a manner subject to the application of the Rule, if the business associate that receives the material information has an obligation under laws, regulations, or contract to the effect that the business associate must not divulge the material information (duty of confidentiality) and must not effect purchase and sale, etc. of the securities issued by the listed company, etc., before the listed company, etc. discloses the material information, it is not necessary for the listed company, etc.

to disclose the material information because non-disclosure of the provided material information is considered unlikely to damage confidence in the market (the proviso to Article 27-36, paragraph (1) of the Act).

The necessity of disclosure of material information is considered to be as follows in the cases referred to in the questions.

(i) An employee belonging to a section engaged in investment banking services in a securities company is prohibited under the Financial Instruments and Exchange Act and related regulations from conducting transactions of securities to which corporate information pertains, based on that information (Article 38, item (viii) of the Act; Article 117, paragraph (1), item (xvi) of the Cabinet Office Order on Financial Instruments Business, etc.). Meanwhile, a securities company is required under the Financial Instruments and Exchange Act and related regulations to implement, in connection with the management of corporate information, measures necessary and appropriate for the prevention of unfair transactions (Article 40, item (ii) of the Act; Article 123, paragraph (1), item (v) of the Cabinet Office Order on Financial Instruments Business, etc.). Rules of the Japan Securities Dealers Association, which have been established in light of such circumstances, provide matters including the following: that a section engaged in investment banking services which is likely to acquire corporate information in the course of business must manage the corporate information so that it is not communicated to other sections that do not need such information for their business, such as through physically isolating such information from other sections; and that internal rules, etc. must be established to the effect that corporate information must not be provided except in certain cases.

Accordingly, with regard to the provision of material information to a section engaged in investment banking services in a securities company which has such management system in place, non-disclosure of the material information by the listed company, etc. is considered unlikely to damage confidence in the market.

(ii) A credit rating agency is required under the Financial Instruments and Exchange Act and related regulations to implement measures to ensure that any information which may come to its attention in the course of the performance of the credit rating business would not be used for any purposes other than the intended purpose and measures to prevent the leakage of secrets concerning such information (Article 66-33, paragraph (1) of the Act; Article 306, paragraph (1), item (xii) of the Cabinet Office Order on Financial Instruments Business, etc.). Given such circumstance, in the case where a listed company, etc. provides material information when requesting a credit rating agency, which implements such measures, to rate bonds, etc., non-disclosure of the material information by the listed company, etc. is considered unlikely to damage

confidence in the market.

Re: Article 27-36, paragraph (2) of the Act

(Cases in Which It Is Difficult to Disclose the Material Information at the Same Time as the Provision of the Information)

Q8. Article 8, item (i) of the Cabinet Office Order on Disclosure of Material Information prescribes a case where an officer, etc. has provided material information to a business associate unintentionally as one of the "cases in which it is difficult to disclose the material information at the same time as the provision of the information" provided in Article 27-36, paragraph (2) of the Act. What specific cases would fall under such cases referred to in Article 8, item (i) of the Cabinet Office Order?

A.

Cases that fall under the cases where "an officer, etc. has provided material information to a business associate unintentionally" referred to in Article 8, item (i) of the Cabinet Office Order on Disclosure of Material Information are, for example, cases where a listed company, etc. had no plan to provide material information to a business associate, but its officer, etc. happens to provide the material information to that business associate in the flow of conversation.

Enacted in April 1, 2018