

**Report by the “Task Force on Fair Disclosure Rule”
of the “Working Group on Financial Markets”
of the Financial System Council**

—Ensuring fair and timely disclosure of information to investors—

December 7, 2016

List of Members of Task Force on Fair Disclosure Rule

(Titles omitted, in order of the Japanese syllabary)

As of December 7, 2016

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1. Situation surrounding fair disclosure of information by issuers

As rules requiring timely disclosure of information by issuers in Japan, the extraordinary report system under the Financial Instruments and Exchange Act and the timely disclosure system under the rules of the stock exchanges have been established. On the other hand, a Fair Disclosure Rule (hereinafter, the “Rule”) has not been introduced in Japan to ensure that when an issuer provides inside information to a third party before its public disclosure, such information is also be provided to other investors.

Under such circumstances, in the cases of recent administrative dispositions on securities companies that solicited clients for trades by providing them with issuers’ inside information, there has occurred a problem that the issuers provided their non-public earnings information only to the securities analysts of the securities companies.

The Rule has been introduced in Europe, the United States, and major Asian countries: for instance, the United States has a rule in place providing that whenever an issuer discloses material non-public information regarding that issuer or its securities to a specific recipient, the issuer shall make public disclosure of that information, either simultaneously in the case of an intentional disclosure, or promptly in the case of a non-intentional disclosure.

The EU has a principle provision that an issuer shall inform the public of its inside information which directly concerns that issuer as soon as possible, as well as a rule similar to one in the United States for the event that an issuer of securities discloses its inside information to a third party.

(Note) “Material information” and “inside information which directly concerns that issuer”

- According to the guidance of the United States Securities and Exchange Commission (“SEC”), information is “material” if “there is a substantial likelihood that a reasonable shareholder would consider it important in making an investment decision.”
- According to the EU Market Abuse Regulation, “inside information which directly concerns that issuer” is “information of a precise nature, which has not been made public, relating directly or indirectly to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments. ”

2. Purpose of introducing the Rule

Given these circumstances, it is recommended that the Rule be introduced in the Japanese market in order to ensure fair and timely disclosure of

information to investors, including individual and overseas investors, and that all investors are able to conduct transactions with confidence.

At the same time, we believe that the adoption of the Rule has the following positive purposes:

- Developing and clarifying disclosure rules by issuers, which will encourage prompt disclosure of information by issuers and eventually promote dialogues between issuers and investors
- Laying a foundation for more objective and accurate analyses and recommendations by analysts
- Promoting changes in investors' mindset through ensuring a fair timing for disclosure of information by issuers, so that they make more investments from a mid- to long-term perspective, rather than from a short-term perspective based on so-called "big ears information"

It should be noted that these purposes should be fully achieved in formulating and implementing the Rule.

3. Details of the Rule

(1) Scope of information subject to the Rule and its practice and enforcement

i. Scope of information subject to the Rule

Since the Rule is to ensure market confidence in fair and timely disclosure of information, it is appropriate that the Rule covers material information that may influence investment decisions, similar to Europe and the United States.

In considering the scope of material information subject to the Rule, it is desirable that issuers and investors can build up practices through dialogues between them regarding what is material information by enabling, through the implementation of the Rule,

- an issuer to appropriately manage its information based on the Rule; and
- an investor that receives information to judge whether the information provided by the issuer is subject to the Rule or not and to call the issuer's attention if the investor considers that the information is applicable to the Rule.

In this respect, a specific scope of applicable information is to be considered based on the scope of information applicable to the insider trading regulation. Given the recent cases that led to administrative dispositions on securities companies, for instance, earnings information immediately before announcement may be included in material information that may influence investors' investment decisions even if it

has not been approved by the issuer's board yet or does not exceed the minimal standard criteria of the insider trading regulation. This raises an issue as to whether all such information can be excluded from the scope of applicable information.

Therefore, while the scope of information subject to the Rule should basically correspond to the scope of information applicable to the insider trading regulation, the Rule should also cover other non-public information concerning an issuer or its financial instruments, which has a precise nature, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments.

Additionally, information that may have an effect on investment decisions combined with other information, but has no immediate effect on investment decisions in itself (a so-called piece of mosaic information), should be exempt from the Rule. Such information could include one given by issuers at plant tours or business briefings.

ii. Practice and enforcement of the Rule

Ensuring proactive provision of information by issuers is essential in promoting dialogues between issuers and investors—there are many important issues in developing an environment for the purpose.

In the event of violation of the Rule, it is appropriate to secure the effectiveness of the Rule by first encouraging the issuer to make prompt disclosure of the information to the public and, only when the issuer does not take an appropriate action, make an administrative instruction or order.

(2) Scope of information providers subject to the Rule

Since the Rule requires an issuer to provide fair and timely disclosure of information, it is appropriate to confine the scope of information providers applicable to the Rule to those who have a role in and responsibility for providing information in the course of the issuer's business execution.

Specifically, it is appropriate to confine the scope of the Rule to directors of issuers, as well as employees and agents that are assumed to have a business role in conveying information to recipients mentioned in the following paragraphs.

(3) Scope of information recipients subject to the Rule

Given that the Rule is to ensure market confidence in fair and timely disclosure of information by issuers and that the Financial Instruments and Exchange Act is a legislation to regulate those who are engaged in capital

markets, it is appropriate to limit the scope of information recipients applicable to the Rule to the following persons, who are highly likely to be engaged in securities trading.

- Those who trade securities or provide analytical results of financial conditions of issuers to third parties in the course of trade—such as securities companies, investment management business operators, investment advisors, investment corporations, and credit rating agencies—and their directors and employees.
- Those who are expected to trade securities of an issuer based on information obtained from the issuer.

(4) Provision of information that does not require disclosure

It is expected that, in due course of various business activities by issuers, there exist cases where an issuer has to provide its information that is subject to the Rule as part of its legitimate business activity, as seen in fund-raising consultation with a securities company. In such a case, provided that the recipient of the information has an obligation¹ with the issuer

- not to convey the information to third parties (confidentiality obligations); and
- not to use the information for investment decisions,

it is unlikely to harm market confidence. Thus, if a recipient of information is obliged in relation to an issuer to observe the above obligations, it is appropriate not to require the issuer to disclose the information to the public.

In the EU, in the event that an issuer has recognized that the above-mentioned recipient of information violated the confidentiality obligation and conveyed its information to others, the issuer is obliged to disclose the information to the public, since the confidentiality of the information is no longer secured. On the other hand, in such a case, the issuer is not obliged to disclose the information to the public in the United States.

Considering that the Rule is to secure market confidence in fair and timely disclosure of information, in case an issuer provided information to a recipient stated in paragraph (3) without publication owing to the fact that the recipient has a confidentiality obligation and then recognized that the recipient violated the obligation and conveyed the information to other

¹ For instance, for those who have a duty of confidentiality with an issuer under a law or separate agreement, such as banks and securities companies conducting investment banking businesses, it should not be necessary to reach a separate written confidentiality agreement.

persons as defined in paragraph (3) who have no confidentiality obligation, the issuer should be required to disclose the information to the public under the Rule.

(5) Methods to disclose information to the public

With regard to the methods to disclose information to the public, from the viewpoints of facilitating prompt disclosure by issuers and access of individual investors to the information, it is appropriate to allow disclosures on issuers' websites as well as the statutory disclosures (EDINET) and timely disclosures under the rules of stock exchanges (TDnet).

(6) Other

In introducing the Rule, it is important to establish an environment where the Rule's purposes of promoting prompt disclosure of information by issuers and encouraging constructive dialogues between issuers and investors are achieved, through measures including the education of concerned parties on the purposes of the Rule.