

No.	<u>Outline of key comments</u>	<u>Corresponding responses/actions taken by the FSA</u>
1	<p>We request that FSA set out a clear distinction between listed companies and unlisted companies in public offerings with respect to the scope of a meeting between an issuing company and investors prior to public offering that is not subject to solicitation of offers to acquire or offers to sell.</p> <p>We understand that the safe harbor rule has been adopted (applied) for information disclosure which is to be conducted more than one month in advance of the filing of securities registration statement pursuant to Article 2-12(3) of the Guideline for the Disclosure of Corporate Affairs, but since the said Guideline does not draw a distinction between public offerings by listed companies and those by unlisted companies, even the unlisted companies are in fact mandated to limit the number of potential investors (including securities companies) who are allowed to participate in the limited number of meetings (twice or thrice) prior to public offerings, necessitating such potential investors to sign rigorous non-disclosure agreements.</p> <p>For unlisted companies it is rare that inside information on public offerings affects their share prices, and the possibility of unfair trading is low.</p> <p>In the UK, the conduct of a market sounding* prior to public offering is allowed pursuant to Article 11 of the Market Abuse Regulation (MAR). We believe that such rules, once adopted in Japan, would prove to be an efficient regulatory system for companies that aim to go public, thereby contributing to invigoration of Tokyo Capital Market and to strengthening of investor confidence.</p> <p>* A market sounding comprises the communication of</p>	<p>Article 4 of the Financial Instruments and Exchange Act (FIEA*) mandates an issuer of a security to file the Securities Registration Statement with the authorities (the FSA) prior to solicitation of offers to acquire or offers to sell the security. Such an obligation intends to prevent an investor from being forced to make an investment judgment based on uncertain and inappropriate information which was obtained under pressure from the solicitation of offers to acquire the security.</p> <p>* Referral URL of the FIEA translated by the Ministry of Justice: http://www.japaneselawtranslation.go.jp/law/detail/?id=2600&vm=04&re=01</p> <p>In this context, regarding the information disclosure that is to be conducted more than one month in advance of the filing of Securities Registration Statement pursuant to Article 2-12(3) of the Guideline for the Disclosure of Corporate Affairs),</p> <ol style="list-style-type: none"> (1) when there is no reference to public offering or secondary distribution of securities (in the disclosed information), and (2) when reasonable measures are taken to keep the information confidential, preventing the re-transmission of such information within one month in advance of the filing of the Securities Registration Statement, <p>it is interpreted that such information disclosure shall not be deemed as a conduct of solicitation, considering that there is a certain period of time from the first information disclosure until the filing of the securities registration statement , and that investors' interests towards a certain security, once emerged at the time of the first information disclosure, are likely to calm down and would not further grow again after such period of time.</p> <p>A company and/or a securities company shall determine specific ways for information disclosure prior to a public offering (PO) by a listed company and/or an initial public offering (IPO) by an unlisted company pursuant to the aforementioned Act and Guideline, taking into consideration its respective circumstances. However, in either PO or IPO, Article 2-12(3) of the Guideline does not specify the number of potential investors to receive market sounding prior to the public offering, the</p>

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	<p>information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors. (cf. Article 11 of MAR)</p>	<p>frequency of such market sounding, and/or the conclusion of non-disclosure agreements as requirements for determining whether or not such information disclosure falls under solicitation. In short, unlisted companies are not mandated by the Guideline to limit the number of potential investors (including securities companies) who are allowed to participate in the meetings prior to public offerings or the number of such meetings (as indicated in your suggestion).</p> <p>* Referral URL of the Guideline for the Disclosure of Corporate Affairs (available in Japanese): http://www.fsa.go.jp/common/law/kaiji/01.pdf</p>