

**Financial Services Agency
Disclosure System Working Group Report
~ Expansion of Scope
of English-Language Disclosure System ~**

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Disclosure System Working Group Members

(In order of the Japanese syllabary)

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Introduction

In the New Growth Strategy – Blueprint for Revitalizing Japan, decided by the Cabinet on June 18, 2010, “Financial Strategy” is positioned as one of the seven strategic areas. The strategy states that, “In order to encourage foreign companies to raise capital in Japan’s markets, ...it is necessary to further expand and enhance English language disclosure.” In addition, the Action Plan for the New Growth Strategy (Interim Draft) was published by the Financial Services Agency (FSA) on December 7 for achieving this new growth strategy.¹ This described the “Development of System to Expand the Scope of English-Language Disclosure by Foreign Companies, etc.” as the purpose of “Establishing Japan’s Status as a Main Financial Market in Asia.”

Amidst these moves, the Disclosure System Working Group was set up with the aim of studying from expert and technical viewpoints the expansion of scope of English-language disclosure system and other developments of the disclosure system based on the Financial Instruments and Exchange Act. It first deliberated the “Expansion of Scope of English-Language Disclosure System” three times, starting in November 2010.

This report delivers the results of the study by this Disclosure System Working Group. It is hoped that related parties will advance the appropriate system development.

1. Current English-Language Disclosure System

The current English-language disclosure system was established for ongoing disclosure documents (annual securities reports, semiannual securities

¹ The Action Plan was later finalized and published on December 24, 2010.

reports, etc.) through a revision of the Securities and Exchange Act (currently the Financial Instruments and Exchange Act) in 2005. Specifically, if the Commissioner of the FSA deems that it would not damage the public interest or investor protections, then instead of the ongoing disclosure documents which must be submitted by foreign companies, foreign governments, foreign funds, etc. (referred to hereinafter as “Foreign Companies, etc.”), the issuer is allowed to submit the documents that are disclosed in English in its home country and are similar to these ongoing disclosure documents.

Starting in December 2005, this English-language disclosure system was first applied to annual securities reports and semiannual securities reports for exchange traded funds (Foreign ETFs) linked to foreign stock indexes. Thereafter, in 2008, ongoing disclosure documents (excluding extraordinary reports) which Foreign Companies, etc. must issue were also made subject to this system. However, the English-language disclosure system has been used very little until now.

2. Necessity to Review the English-Language Disclosure System

When looking at the number of listed foreign companies in Japan’s securities markets, the number has continued to decline since its peak in 1991 at 127 companies. In order to achieve the goal of establishing Japan’s status as a main financial market in Asia, it is necessary to reverse this situation. In addition, the presence of foreign companies listed in Japan’s securities markets is regarded as important from the viewpoint of ensuring investment opportunities for Japan’s investors.

It is not appropriate to only look to the disclosure system to see why the number of listed foreign companies is declining. To boost the number of listed foreign companies, multifaceted initiatives by market participants such as financial instruments exchanges, including the initiative to strengthen international competitiveness, are needed. However, as described above, since the current English-language disclosure system is used very little, it seems necessary to properly review this system. Specifically, it is appropriate to

expand the scope of corporate disclosure documents subject to the English-language disclosure system, review the requirement for doing English-language disclosure (conditions of disclosure of information on securities and their issuers, etc.), etc., while paying sufficient attention to investor protection.

3. Background of English-Language Disclosure System Review

The current English-language disclosure system was created in 2005, however, it has never been used sufficiently. The following reasons have been pointed out;

- (a) Foreign Companies, etc., have already prepared securities registration statements^(note 1) in the Japanese language as they are required to file offering disclosure documents at the stage of public offering or secondary distribution of securities. Thereafter, ongoing disclosure documents (annual securities reports, quarterly securities reports, etc.) can be prepared based on the “Issuer Information” sections of securities registration statements. Therefore, there is little need to file annual securities reports, etc. through the English-language disclosure system, which is costly.
- (b) Preparation of supplementary documents submitted with English-language annual securities reports required in the English-language disclosure system is a large burden on Foreign Companies, etc., while there are doubts as to the usefulness to investors of these supplementary documents.

(Note 1) The securities registration statement is comprised of information on the securities (Securities Information) and information on their issuer (Issuer Information).

4. English-Language Disclosure System of Offering Disclosure Documents

Considering the reasons that the English-language disclosure system is not

sufficiently used (3.(a) above), in addition to ongoing disclosure documents, such as annual securities reports currently subject to the English-language disclosure system, it is appropriate to also apply this to offering disclosure documents, such as securities registration statements, and enhance the convenience of the English-language disclosure system as a whole.

Specifically, in order to harmonize with the viewpoint of investor protection, it is appropriate to enable submission of offering disclosure documents through the English-language disclosure system when Issuer Information and Securities Information each meet the following requirements.

(1) Issuer Information

From the viewpoint of delivering accurate Issuer Information to investors, in the case where Issuer Information of Foreign Companies, etc. in English is subject to sufficient evaluation by investors in a foreign market, and where a proper pricing mechanism for those securities to be issued works, in other words where those securities have been exposed to the market, then it is appropriate to make Issuer Information subject to the English-language disclosure system.

Specifically, in the case where securities issued by Foreign Companies, etc. are listed on a foreign financial instruments exchange, or where Foreign Companies, etc. have conducted a public offering or secondary distribution of securities in a foreign market, and where Issuer Information of those Foreign Companies, etc. is already disclosed in English, then Issuer Information for those Foreign Companies, etc. can be considered exposed in the market^(note 2) and it is appropriate to allow such Foreign Companies, etc. to use the English-language disclosure system regarding Issuer Information.

(Note 2) Also it would be appropriate that the English-language disclosure system would be applied in the case in which Foreign Companies, etc. which appropriately disclose Issuer Information in a foreign market perform a public offering or secondary distribution in Japan of securities which have not been disclosed in a foreign country. For example, this would be applicable for Foreign Companies, etc. which list their shares in a foreign country, and do a public offering or secondary

distribution of corporate bonds in Japan.

(a) Scope of Foreign Market

Even in the case where disclosure in a foreign market is conducted in the English language, if that foreign market is not recognized as a market where appropriate disclosures are conducted, then the accuracy of the information involved in the disclosure would not be ensured. Therefore, it is required that only Foreign Companies, etc. which make disclosure in English in a foreign market which has a developed market and a proper disclosure system based on laws and regulations, etc., would become subject to the English-language disclosure system.

In deciding this scope of foreign markets, an important factor would be whether proper disclosure is conducted in a disclosure system based on laws and regulations, etc. Specifically, like in the current foreign securities secondary distribution system, foreign financial instruments exchanges designated by the Commissioner of the FSA^(note 3) could be included in this scope. It is also pointed out that it would be necessary to pay attention to the situation surrounding the disclosure of Japanese companies in foreign markets.

(Note 3) Designation of Foreign Financial Instruments Exchanges for the Foreign Securities Secondary Distribution System

In the current foreign securities secondary distribution system, securities subject to the system are only those listed on a foreign financial instruments exchange designated by the Commissioner of the FSA, considering the situation of disclosure of information on issuers. (Order for Enforcement of the Financial Instruments and Exchange Act, Article 2-12-3, Item.4, (b))

(b) Treatment of so-called Simultaneous Listing

Even for a Foreign Company, etc. which still does not have Issuer Information exposed in a foreign market, in a case where it will simultaneously become listed on a Japanese financial instruments exchange and a foreign financial instruments exchange which uses English as its main language, the English Issuer Information of that

Foreign Company, etc. would undergo a listing examination in Japan and also undergo examination at the foreign financial instruments exchange. In this case, the accuracy of the Issuer Information would be ensured, and thus, it would be appropriate to allow English-language disclosure as it meets the condition where Issuer Information is exposed in a foreign market.

In the same way, where it is not listed on a financial instruments exchange, but will conduct a simultaneous public offering in Japan and in a market in which “Issuer Information” is properly disclosed based on laws and regulations, it could also be treated as meeting the condition “where ‘Issuer Information’ is exposed in a foreign market.”

(c) Treatment in the Case where Issuer Information is Delivered in a Non-English Language in a Foreign Market

In the case where Issuer Information on Foreign Companies, etc. is delivered in a non-English language in a foreign market, it might also be seen that Issuer Information is subject to sufficient evaluation by investors.

However, regarding these points, the following are among the issues pointed out;

- (i) In those cases, information which is used for evaluation by investors” is delivered in a non-English language, and concern about the accuracy of that information translated into English remains.
- (ii) Currently, it is unlikely that there will be many of these cases in which English-language disclosure is prepared only for the Japan market. Therefore, for the time being, it seems sufficient that multiple listing cases as described above be added to this system.

Considering these items pointed out, it is appropriate for the time being to make only cases of English Issuer Information exposed in the market subject to the English-language disclosure system.

(2) Securities Information

Among offering disclosure documents, Securities Information would be important information for the decision-making of investors, and is expected to be important material for fulfilling accountability in the sales of financial instruments business operators. Considering these points, in accordance with the form of securities registration statements as stipulated in the Cabinet Office Ordinance on Disclosure of Corporate Information, etc., it is appropriate to keep the duty to prepare Securities Information in the Japanese language.

(3) Treatment of Foreign Investment Trusts, etc.

For securities corresponding to specified securities such as foreign investment trusts, Fund Information and Managed Assets Information, etc. can be considered to correspond to Issuer Information. Therefore, foreign investment trusts with the information of these items properly disclosed in English in a foreign market could be made subject to the English-language disclosure system.

5. Supplementary Documents

The following are the supplementary documents for ongoing disclosure documents under the current English-language disclosure system.

- (a) Supplementary information prepared in English in principle (in Japanese if the information corresponds to a “Japanese language summary” in (b) below) for information which must be written in Japan’s ongoing disclosure documents, but which is not described in disclosure documents in English in a foreign country.
- (b) A Japanese language summary of important items (in the case of stock certificates, risks of business, etc., analysis of financial status, business results and cash flow situation, and financial statements).
- (c) A comparison table for items which must be described in ongoing disclosure documents in Japan, comparing them to items described in

disclosure documents in English in a foreign country.

(1) Supplementary Information

For English-language disclosure of offering disclosure documents, it is appropriate to continue requiring preparation of documents which state items which must be written in offering disclosure documents in accordance with Japan's forms, but which is not written in company reports, etc. disclosed in foreign countries (supplementary information).

Under the current legal system, in principle, supplementary information can be prepared in English. On the other hand, some parts which correspond to important information required in the "Japanese language summary" described in (2) below must be prepared in the Japanese language. However, it is appropriate to enable preparation of this in English.

(2) Japanese Language Summary

Even in the English-language disclosure of offering disclosure documents, like ongoing disclosure documents, it is appropriate to continue requiring a Japanese language summary of important items.

If the Supplementary Information described in (1) above contains information corresponding to important items required in the Japanese language summary, then it is appropriate to require a Japanese language summary of all important items containing that information.

In addition, as for the "Japanese language summary," there were many opinions seeking preparation of guidelines which will be the standard for the scope of summarized information and degree of summary, etc. Regarding how this can be handled, it is expected that a forum be established for the urgent study of this matter by the FSA and other market participants, and that concrete progress be made.

6. Extraordinary Reports

In order to enhance the convenience of the English-language disclosure

system, it would be appropriate to make extraordinary reports subject to the English-language disclosure system as well.

(1) Submission Reason

The reasons to submit extraordinary reports are stipulated in a Cabinet Office Ordinance. Similarly for extraordinary reports under the English-language disclosure system which correspond to a submission reason stipulated in a Cabinet Office Ordinance, it is appropriate to require submission of extraordinary reports in English without delay.

(2) Format of Extraordinary Report

Information disclosed via an extraordinary report could have material impacts on investment decisions by investors. Therefore, it is important to deliver easily understandable disclosure to investors. For this purpose, among the items written in an extraordinary report, it would be appropriate to file the reasons for submission of an extraordinary report in Japanese, and to write the report's content in English.

7. Treatment of Formats of Disclosure Documents

Even for documents prepared in English, for which their items written in disclosure documents disclosed in a foreign market are rearranged according to the forms of disclosure documents of Japan, it would be appropriate to make them subject to the English-language disclosure system. In this case, the preparation of a comparison table would be unnecessary.