

CY Japan Legal Update

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The Submission to the Diet of Legislation to Amend Financial Instruments and Exchange Act related to the Fair Disclosure Rule

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A bill for the partial amendment of the Financial Instruments and Exchange Act including the introduction of the Fair Disclosure Rule (“FD Rule”) in regard to fair disclosure of information of a listed company (“Amendment Bill”) was decided by the Cabinet on March 3, 2017 and submitted to the Diet on the same day. If the Amendment Bill is enacted in the 2017 ordinary Diet session, the FD Rule is scheduled to be enforced in the spring of 2018.

In light of the fair disclosure rules already introduced in the main markets of Europe and America and Asia, the purpose of the FD Rule, which is one of the pillars of the Amendment Bill, is introducing the same type of rule to Japan and ensuring the impartiality and fairness of the information among investors through the fair disclosure of information by listed companies, etc.

Under the FD Rule, if a listed company or its officer or person in charge of IR, etc. communicates non-public material information to investors or securities analysts, etc., the listed company is required to publish such information on its homepage, etc. (i) at the same time of information communication, if information communication is intentional or (ii) promptly after the information communication becomes known, if the information communication is unintentional.

The main points of FD Rule are as follows:

(1) Provider who communicates material information

The FD Rule applies to communication of material information made by (i) issuers and listed investment corporations of listed corporate bonds, shares, and stock acquisition right certificates, etc. (collectively, “Issuer”), (ii) asset management companies of listed investment corporations and (iii) officers and employees, etc. of the above (i) and (ii) (persons in charge of the IR department involved in providing information as a work duty, “IR Representatives”) ((i), (ii) and (iii) collectively, “Information Provider”).

(2) Recipient who receives material information

The FD Rule applies in the case that information is communicated to financial instruments business operators, financial institutions, rating agencies, investment corporations and other persons determined by cabinet order (persons who receive communication of material information and have a high probability of selling and purchasing listed securities of the Issuer based on that information) (collectively, “Information Recipient”). Therefore, the FD Rule does not apply to information provided to the press and the information provisions in the case that the Information Recipient owes a confidential obligation and an obligation not to use for investment decisions are excluded from the application of the FD Rule.

(3) Material information

In the Amendment Bill, material information subject to the application of the FD Rule (“Material Information”) is defined as “information which may have an extremely material influence on investors' investment decisions and which is undisclosed information on operation, business or properties of such listed company, etc.”

(4) Response required of an Issuer

Under the FD Rule, in the case that the Information Provider in the above (1) communicates Material Information in the above (3) to the Information Recipient in the above (2), the Issuer is required to publish by the method, etc. using the Internet such as posting the Material Information on its homepage (i) at the same time of the communication, if it is known that the information is Material Information at the time of the communication or (ii) if it is not known that the information is Material Information at the time of the communication, promptly after it becomes known the communication was made to the Information Recipient falling under the above (2).

The purpose of the FD Rule is the same as that of the fair disclosure rules in the Europe and America but its practical content, such as scope of the Material Information which is subject to application, might be different from the rules in the Europe and America. So it is necessary to continue to pay proper attention of the content of the Amendment Bill and future trends.

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