

## **Guidelines Concerning Listed Company Compliance, etc.** (as of December 30, 2009)

Tokyo Stock Exchange, Inc.

### **I. General Provisions**

#### **(Purpose, etc.)**

1. These guidelines shall prescribe the items necessary for listed company compliance, etc. pursuant to the Securities Listing Regulations (hereinafter referred to as the “Regulations”).
2. As a general rule, business related to listed company compliance, etc. shall be executed in accordance with these guidelines. The Exchange shall make efforts to conduct appropriate business operations as the individual case demands while maintaining a sufficient awareness of the fact that financial instrument exchange markets should facilitate fair and smooth securities trading, etc. and carry out operations to ensure that investors are protected.

#### **(Definitions)**

3. The definitions of terms related to securities listing, etc. used in these guidelines shall be as defined by the Regulations and the Enforcement Rules for the Securities Listing Regulations (hereinafter referred to as the “Enforcement Rules”).

### **II. Examination Related to the Disclosure of Corporate Information**

#### **(Ensuring Appropriate Disclosure of Corporate Information)**

1. Examinations related to the disclosure of corporate information pursuant to the provisions of Chapter 4, Section 2 of the Regulations (hereinafter referred to as “disclosure examination”) shall be carried out with the goal of ensuring that listing companies disclose corporate information appropriately wherever the Exchange deems that an examination is necessary and appropriate for the said goal.
2. Disclosure examinations shall be carried out in light of the following (1) to (5) concerning disclosure of material corporate information:
  - (1) Whether or not the timing of disclosure is appropriate;
  - (2) Whether or not the details of disclosed information are false;
  - (3) Whether or not disclosed information lacks information deemed important for investment decisions;
  - (4) Whether or not disclosed information gives rise to misunderstandings for investment decisions; and
  - (5) Whether or not disclosed information lacks appropriateness of disclosure.

### **III. Examination Pertaining to Ensuring Effectiveness**

#### **(Designation as Security on Alert, etc.)**

1. Designation of Security on Alert pursuant to the provisions of Rule 501, Paragraph 1 of the

Regulations in the cases referenced in the following (1) and (2) shall be made in comprehensive consideration of the matters prescribed in the said cases and any other circumstances:

(1) A case referenced in Rule 501, Paragraph 1, Item 1 of the Regulations

The details, the background, the cause, and the actual state of affairs relating to the event that the Exchange deems likely to fall under Rule 601, Paragraph 1, Item 9-2, Item 11, Item 12, Item 19, or Item 20 of the same paragraph (including cases based on Rules 602 to 604 of the Regulations);

(2) A case referenced in Rule 501, Paragraph 1, Item 2 of the Regulations

Matters prescribed in the following a and b:

a. The details, the background, the cause, and the actual state of affairs relating to the event on which the Exchange requests submission of an improvement report pursuant to the provisions of Rule 502, Paragraph 1 or 2 (including cases where those provisions apply *mutatis mutandis* pursuant to Rule 503, Paragraph 7), or Rule 503, Paragraph 6 of the Regulations; and

b. The state of implementation and operation of improvement measures described in an improvement report submitted pursuant to the provisions of Rule 502, Paragraph 3 of the Regulations (including cases where those provisions apply *mutatis mutandis* pursuant to Rule 503, Paragraph 7)

2. Determination of whether or not an internal management system as prescribed in Rule 501, Paragraph 3 of the Regulations has a problem shall be made in comprehensive consideration of the matters enumerated in the following (1) to (7) and any other circumstances:

(1) The state of the system and implementation of audit concerning business execution by internal audit and audit by auditors;

(2) The state of internal management system such as the organization of the business administration or establishment of internal rules;

(3) The state of administration of corporate information such as facts that have a significant impact on management, and the state of timely disclosure system pertaining to such corporate information;

(4) The state of the system to ensure compliance with the provisions of Chapter 4, Section 4, Sub-section 1 of the Regulations;

(5) The state of development and operation of internal organizations concerning preparation of securities reports and other accounting related matters;

(6) The state of compliance with laws, regulations, etc.; and

(7) The state of compliance with the provisions of Part 2, Chapter 4 of the Regulations after designation as Security on Alert.

**(Request for Improvement Report)**

3. Decision on whether or not to request an improvement report pursuant to the provisions of Rule 502, Paragraph 1 of the Regulations in the cases referenced in the following (1) and (2) shall be made in comprehensive consideration of the matters prescribed in the said cases and any other circumstances:

(1) A case referenced in Rule 502, Paragraph 1, Item 1 of the Regulations

a. Materiality of information made public as timely disclosure, etc., as information relating to investment decisions;

b. The background, the cause, and the actual state of affairs relating to said violation of the provisions of Chapter 4, Section 2 by a listed company; and

- c. The state of past compliance, etc. with the provisions of Chapter 4, Section 2.
- (2) A case referenced in Rule 502, Paragraph 1, Item 2 of the Regulations
  - a. The background, the cause, and the actual state of affairs relating to said violation of the provisions of Chapter 4, Section 4, Sub-section 1 by a listed company; and
  - b. The state of past compliance, etc. with the provisions of Chapter 4, Section 4, Sub-section 1.

**(Measures against Violation of Timely Disclosure Obligations)**

4. In the case of a violation by a listed company of the provisions of Chapter 4, Section 2 of the Regulations, a decision on disclosure pursuant to the provisions of Rule 508, Paragraph 1 of the Regulations, as well as a decision on whether or not to impose the listing agreement violation penalty pursuant to the provisions of Rule 509 of the Regulations, shall be made in comprehensive consideration of the matters enumerated in the following (1) to (3) and any other circumstances.
  - (1) Materiality of information made public as timely disclosure, etc., as information relating to investment decisions;
  - (2) The background, the cause, and the actual state of affairs relating to said violation of the provisions of Chapter 4, Section 2 by a listed company; and
  - (3) The state of implementation measures such as a regulatory action taken by the Exchange in response to said violation.

**(Measures against Violation of Code of Corporate Conduct)**

5. In the case of a violation by a listed company of the provisions of Chapter 4, Section 4, Sub-section 1 of the Regulations, a decision on public announcement pursuant to the provisions of Rule 508, Paragraph 1 of the Regulations, as well as a decision on whether or not to impose the listing agreement violation penalty pursuant to the provisions of Rule 509 of the Regulations, shall be made in comprehensive consideration of (i) the matters prescribed in the classifications enumerated in the following (1) to (8) and (ii) the details, the background, the cause, and the actual state of affairs relating to said violation, as well as the state of implementation of measures such as a regulatory action taken by the Exchange in response to said violation and any other circumstances.
  - (1) The provisions of Rule 432 of the Regulations  
The state of implementation and contents of the proceedings taken prescribed in the provisions of each item of Rule 432 of the Regulations;
  - (2) The provisions of Rule 433 of the Regulations  
The ratio of stock split, etc., the investment unit after completing stock split, etc. and any other circumstances regarding the stock split, etc.;
  - (3) The provisions of Rule 434 of the Regulations  
The exercise terms, the quantity to be issued, the scale of dilution, the contents of the measures taken in relation to the monthly exercise quantities with regard to MSCB, etc.;
  - (3)-2 The provisions of Rule 436-2 of the Regulations  
The status of a person who is reported to the Exchange as being an independent director/auditor by the issuer of a listed domestic stock pursuant to the provisions of Rule 436-2 of the Enforcement Rules when such person falls under any of the following a. to e.;
    - a. A person who executes business of the parent company or fellow subsidiary of said company;

- b. A person for which said company is a major client or a person who executes business for such person, or a major client of said company or a person who executes business for such client;
  - c. A consultant, accounting professional or legal professional (in the case of a group such as a juridical person or association, including persons belonging to such group) who receives a large amount of money or other asset other than remuneration for directorship/auditorship from said company;
  - d. A person who has recently fallen under any of a. to the preceding c.;
  - e. A close relative of a person enumerated in any of the following (a) to (c) (excluding those of insignificance);
    - (a) A person enumerated in a. to the preceding d.;
    - (b) A person who executes business of said company or its subsidiary (including directors who do not execute business or accounting advisors (when any of such accounting advisors is a juridical person, including any member thereof who is in charge of such advisory affairs) in the case where said company designates its outside auditor(s) as an independent auditor(s)); and
    - (c) Persons who have recently fallen under the preceding (b)
- (4) The provisions of Rule 440 of the Regulations  
The contents of takeover defense measures and the state of their disclosure;
- (5) The provisions of Rule 441 of the Regulations  
The state of disclosure of measures to ensure fairness and prevent a conflict of interest described in disclosure regarding public announcement of opinions in relation to a takeover bid or presentation of such opinions to shareholders as defined in Rule 441 of the Regulations;
- (6) The provisions of Rule 442 of the Regulations  
The details, the background, the cause, and the actual state of affairs relating to a violation of the provisions of Rule 442 of the Regulations, as well as the state of development of the information management system required for the prevention of insider trading;
- (7) The provisions of Rule 443 of the Regulations  
The details, the background, the cause, and the actual state of affairs relating to a violation of the provisions of Rule 443 of the Regulations, as well as the state of development of the internal system for the prevention of involvement of anti-social forces; and
- (8) The provisions of Rule 444 of the Regulations  
The state where the function of the secondary market or shareholder rights are undermined.

#### **IV. Examination Pertaining to Delisting**

##### **(Inappropriate Mergers, etc.)**

1. Examination of whether or not a listed company is a substantial surviving company as prescribed in Rule 601, Paragraph 1, Item 9 of the Regulations shall be made in comprehensive consideration of matters enumerated in the following (1) to (5) concerning said listed company (including its corporate group but excluding (3) and (4)):
  - (1) Operating results and financial condition;
  - (2) Composition of officers and the management and organization of the business

- administration (including the locations of business offices);
- (3) Composition of shareholders;
- (4) Trade name or corporate name; and
- (5) Other matters deemed to have potent influence on such listed company.

**(Undermining of Soundness of Transactions with Controlling Shareholder)**

2. Examination of whether or not a transaction falls under a case where the Exchange deems that the soundness of the transaction with the controlling shareholder is severely undermined as prescribed in Rule 601, Paragraph 1, Item 9-2 of the Regulations shall be carried out, where the Exchange deems necessary and appropriate in light of investor protection, in comprehensive consideration of the reasonability of the transaction with the controlling shareholder as prescribed in Rule 601, Paragraph 9, Item 3 of the Regulations and the appropriateness of the transaction terms, and any other circumstances.

**(False Statement or Adverse Opinion, etc.)**

3. Examination of the significance of effects as prescribed in Rule 601, Paragraph 1, Item 11, Sub-item a. of the Regulations shall be carried out in comprehensive consideration of the contents of false statements in securities reports, etc., the background and cause of events, the actual state of affairs and any other circumstances related to false statements.
4. Examination of the significance of effects as prescribed in Rule 601, Paragraph 1, Item 11, Sub-item b. of the Regulations shall be carried out in comprehensive consideration of the contents of an audit report or quarterly review report, how the “adverse opinion”, etc. has come to be stated in such report, and other circumstances.

**(Violation of Listing Agreements, etc.)**

5. Examination of the significance of a violation as prescribed in Rule 601, Paragraph 1, Item 12 of the Regulations shall be carried out in comprehensive consideration of the details of the violation of the listed agreement, the background and cause of said violation, the state of affairs related to this fact, and other circumstances.

**(Unreasonable Restriction on Shareholders' Rights)**

6. Examination of whether or not a listed company falls under a case where the Exchange deems that there is only a small likelihood of infringing interests of shareholders and investors as prescribed in Rule 601, Paragraph 13, Item 3 of the Enforcement Rules shall be carried out in comprehensive consideration of matters enumerated in the following (1) to (4) and other conditions:
  - (1) Business purpose of the company;
  - (2) Purpose of issuing class shares with a veto;
  - (3) Details of shareholders and/or investors rights; and
  - (4) Attributes of persons eligible for allotment.
7. Examination of whether or not a listed company falls under a case where the Exchange deems that there is only a small likelihood of infringing interests of shareholders and investors as prescribed in Rule 601, Paragraph 13, Item 4 of the Enforcement Rules shall be carried out in comprehensive consideration of matters enumerated in the following (1) to (4) and other conditions:
  - (1) Business purpose of the company;
  - (2) Purpose of such alteration;
  - (3) Details of matters which restrict the exercise of voting rights; and

- (4) Conditions for exercising voting rights.
8. Examination of whether or not a listed company falls under cases where the Exchange deems that it is highly likely to infringe interests of shareholders and investors as prescribed in Rule 601, Paragraph 13, Item 5 of the Enforcement Rules shall be carried out in comprehensive consideration of matters enumerated in the following (1) to (4) and other conditions:
- (1) Business purpose of the company;
  - (2) Purpose of issuing such shares;
  - (3) Number of shares to be issued and the number of voting rights pertaining to such shares; and
  - (4) Attributes of persons eligible for allotment and their relationship with such listed company.
9. Examination of whether or not a listed company falls under cases where the Exchange deems that there is only a small likelihood of infringement of interests of shareholders and investors as prescribed in Rule 601, Paragraph 13, Item 6 of the Enforcement Rules shall be carried out in comprehensive consideration of the purpose of the said third-party allotment, attributes of persons eligible for allotment, the state of implementing procedures pertaining to the alteration in the total number of authorized shares, and other conditions.
10. Examination of whether or not a listed company falls under a case where the Exchange deems that it is highly likely to infringe interests of shareholders and investors as prescribed in Rule 601, Paragraph 13, Item 7 of the Enforcement Rules shall be carried out in comprehensive consideration of matters enumerated in the following (1) to (3) and other conditions:
- (1) Number of shareholders who will lose their voting rights;
  - (2) Purpose of the reverse stock split; and
  - (3) Number of shareholders who are cashed out.

**(Involvement of Anti-Social Forces)**

11. Examination of whether or not the actual situation of a listed company falls under a case where the Exchange deems to severely undermine shareholder and investor interests of the market of the said Exchange as prescribed in Rule 601, Paragraph 1, Item 19 of the Regulations shall be carried out in comprehensive consideration of; (i) the details of the fact that the company is subject to involvement of anti-social forces; (ii) the background, and the cause of events relating to the said involvement; (iii) the state of development of the internal system for the prevention of involvement of anti-social forces; (iv) the state of the loss of confidence of investors in the financial instruments market; (v) other matters requiring special consideration related to the case, and (vi) other circumstances.

**(Public Interest and Protection of Investors)**

12. Examination of whether or not the Exchange deems that a listed company falls under cases where delisting is appropriate for the public interest and the protection of investors as prescribed in Rule 601, Paragraph 1, Item 20 of the Regulations shall be carried out in comprehensive consideration of the circumstances of how the case has impaired investors' trust in the financial instruments market, the individual state of affairs specific to said case, and any other circumstances.

## V. Remarks

### **(Provisions Applied Mutatis Mutandis)**

This guideline shall apply mutatis mutandis to examinations pertaining to the appropriateness of disclosure of corporate information, examinations pertaining to ensuring effectiveness, and examinations pertaining to delisting related to listed preferred stocks, etc., listed preferred equity investment securities, listed bonds, listed convertible bonds, listed exchangeable corporate bonds, listed ETF and listed real estate investment trust securities.