

Cabinet Office Order on Disclosure of Material Information under Chapter II-6 of the Financial Instruments and Exchange Act

(Cabinet Office Order No. 54 of December 27, 2017)

Pursuant to the provisions of the Financial Instruments and Exchange Act (Act No. 25 of 1948) and the Order for Enforcement of the Financial Instruments and Exchange Act (Cabinet Order No. 321 of 1965), and for the purpose of the enforcement of that Act and that Order, the Cabinet Office Order on Disclosure of Material Information under Chapter II-6 of the Financial Instruments and Exchange Act is enacted as follows.

(Definitions)

Article 1 (1) In this Cabinet Office Order, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

- (i) securities: the securities prescribed in Article 2, paragraph (1) of the Financial Instruments and Exchange Act (hereinafter referred to as the "Act") and the rights that are deemed to be securities pursuant to paragraph (2) of that Article;
- (ii) options: the options prescribed in Article 2, paragraph (1), item (xix) of the Act;
- (iii) over-the-counter traded securities: the over-the-counter traded securities prescribed in Article 2, paragraph (8), item (x), (c) of the Act;
- (iv) registered financial institution: the registered financial institution prescribed in Article 2, paragraph (11) of the Act;
- (v) registered financial institution business: the registered financial institution business prescribed in Article 33-3, paragraph (1), item (vi), (a) of the Act;
- (vi) tradable securities: the tradable securities prescribed in Article 67-18, item (iv) of the Act; and
- (vii) investment corporation: the investment corporation prescribed in Article 2, paragraph (12) of the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951).

(2) The terms "public offering of securities", "secondary distribution of securities", "financial instruments business", "financial instruments business operator", "authorized financial instruments firms association", "financial instruments exchange", "credit rating services", "credit rating agency", "high-speed trading", and "high-speed trader" as used in this Cabinet Office Order mean the public offering of securities, secondary distribution of securities, financial instruments business, financial instruments business operator, authorized

financial instruments firms association, financial instruments exchange, credit rating services, credit rating agency, high-speed trading, and high-speed trader prescribed in Article 2, paragraphs (3), (4), (8), (9), (13), (16), (35), (36), (41), and (42) of the Act, respectively.

- (3) The terms "listed company, etc.", "asset management company of a listed investment corporation, etc.", "officer, etc.", "business associates", "material information", "listed securities, etc.", and "purchase and sale, etc." as used in this Cabinet Office Order mean the listed company, etc., asset management company of a listed investment corporation, etc., officer, etc., business associates, material information, listed securities, etc., and purchase and sale, etc. prescribed in Article 27-36, paragraph (1) of the Act, respectively.

(Exempted Securities)

Article 2 (1) Those specified by Cabinet Office Order as referred to in Article 14-15, item (i) of the Order for Enforcement of the Financial Instruments and Exchange Act (hereinafter referred to as the "Order" in this Article and Article 10) are the securities set forth in Article 2, paragraph (1), item (v) of the Act which satisfy all of the following requirements:

- (i) there exist assets such as monetary claims to be transferred (including the acquisition) directly or indirectly from the owner to the corporation that was incorporated or is operated for the purpose of issuance of the securities (hereinafter that corporation is referred to as a "special purpose corporation" in the following item) (hereinafter those assets are referred to as "transferred assets" in the following item); and
 - (ii) a special purpose corporation issues the securities and appropriates the money obtained through management, investment, or disposition of the transferred assets in the performance of obligations arising from the securities (including those issued for the refinancing of the securities).
- (2) The real property or any other assets specified by Cabinet Office Order as referred to in Article 14-15, item (ii), (a) of the Order are the real property and other assets prescribed in Article 105, item (i), (f) of the Regulation for Enforcement of the Act on Investment Trusts and Investment Corporations (Order of the Prime Minister's Office No. 129 of 2000).
- (3) That specified by Cabinet Office Order as an investment corporation as referred to in Article 14-15, item (ii), (b) of the Order is an investment corporation wherein the total value of the real property and other assets prescribed in the preceding paragraph accounts for more than 50 percent of the total amount of its assets in the settlement of accounts for the latest business period (meaning the business period prescribed in Article 129, paragraph (2) of the Act on Investment Trusts and Investment Corporations; hereinafter the same applies in this paragraph) or in disclosed information (limited to the case

where there is no latest business period or the settlement of account for the latest business period has not been finalized).

(Acts That Are Not Deemed to Be Purchase and Sale)

Article 3 The acts specified by Cabinet Office Order as referred to in the proviso to Article 27-36, paragraph (1) of the Act are the acts conducted by business associates (limited to business associates in the case where a listed company, etc. or an asset management company of a listed investment corporation, etc., or an officer, etc. of either of these companies, has provided material information (such provision of information means the provision of information prescribed in Article 27-36, paragraph (1) of the Act; the same applies hereinafter, except in Article 10, item (ii), (a)) with regard to its business to the business associates) before the disclosure of the relevant material information, which fall under any of the following items and which, even if conducted by the business associates, have little likelihood of undermining the confidence of investors in the disclosure of information concerning the listed company, etc.:

- (i) acquisition of listed securities, etc. by a person that has acquired an option on the listed securities, etc., by exercising that option, or purchase and sale, exercising of rights, or other act similar thereto that is obviously conducted unrelated to the receiving of the material information;
- (ii) the demand for purchase of shares under Article 116, paragraph (1) of the Companies Act (Act No. 86 of 2005) or an act similar thereto, or an act based on obligations under laws and regulations;
- (iii) an act performed according to a procedure under laws and regulations for the protection of investors in the case where, before that act, a listed company, etc. has reasonable grounds to provide material information to the business associates and has circumstances that make it unable to disclose the material information; or
- (iv) an act of causing the other party to succeed to listed securities, etc. or succeeding to listed securities, etc. by itself through a merger, company split, or transfer or acquisition of all or part of business.

(Business Associates)

Article 4 The financial instruments business operators, registered financial institutions, credit rating agencies, investment corporations, and any other persons specified by Cabinet Office Order as referred to in Article 27-36, paragraph (1), item (i) of the Act are the following persons:

- (i) a financial instruments business operator (excluding an asset management company of a listed investment corporation, etc. in the case where a listed company, etc. which is an investment corporation or its officer, etc. provides material information with regard to its business to the asset management

- company of the listed investment corporation, etc. to which the business pertaining to investment of assets of the listed company, etc. has been entrusted);
- (ii) a registered financial institution;
 - (iii) a credit rating agency and any other person engaged in credit rating services;
 - (iv) investment corporation (in the case where an asset management company of a listed investment corporation, etc. or its officer, etc. provides material information with regard to its business to a listed company, etc. which is an investment corporation which has entrusted the business pertaining to investment of its assets to the asset management company of the listed investment corporation, etc., excluding that investment corporation);
 - (v) a person that continuously receives remuneration by using expert knowledge and skills to make analyses of the values, etc. of securities (meaning the values, etc. of securities prescribed in Article 2, paragraph (8), item (xi), (a) of the Act) or the values, etc. of financial instruments (meaning the values, etc. of financial instruments prescribed in (b) of that item) and to make assessments based on them, providing the contents of the analyses or the assessments to specific investors;
 - (vi) a high-speed trader; and
 - (vii) a corporation incorporated based on foreign laws and regulations that conducts the same type of business as a financial instruments business, a registered financial institution business, a credit rating service, the business prescribed in item (v), or high-speed trading, in a foreign state, or the foreign investment corporation prescribed in Article 2, paragraph (25) of the Act on Investment Trusts and Investment Corporations.

(Necessary Measures for Appropriate Management of Material Information)

Article 5 The measures specified by Cabinet Office Order as referred to in Article 27-36, paragraph (1), item (i) of the Act are appropriate measures taken by any of the persons set forth in the items (excluding item (iv)) of the preceding Article in order to ensure that, if the person receives material information from a listed company, etc. or an asset management company of a listed investment corporation, etc., or an officer, etc. of either of these companies in the process of performing a business other than a financial instruments business, etc. (meaning a financial instruments business, a business of providing information or advice in relation to securities, a registered financial institution business, a credit rating service, the business prescribed in item (v) of the preceding Article, high-speed trading, or the same type of business as any of these businesses conducted in a foreign state by a corporation incorporated based on foreign laws and regulations; hereinafter the

same applies in this Article and the following Article), the material information thus received is not used in conducting a financial instruments business, etc. before the material information is disclosed.

(Person That Is Not Engaged in a Financial Instruments Business)

Article 6 The person specified by Cabinet Office Order as a person that is not engaged in a financial instruments business as referred to in Article 27-36, paragraph (1), item (i) of the Act is a person that engages in a business other than a financial instruments business, etc. and receives material information in the process of performing the business other than a financial instruments business, etc. in any of the entities set forth in the items (excluding item (iv)) of Article 4 for which the measure prescribed in the preceding Article has been taken.

(Person Having High Probability of Effecting the Purchase and Sale of Listed Securities)

Article 7 The persons specified by Cabinet Office Order as referred to in Article 27-36, paragraph (1), item (ii) of the Act are the following persons that receive material information in relation to a business pertaining to public relations aimed at investors of a listed company, etc. (with regard to items (i) through (iii), if the person is a corporation or other organization, including an officer, etc. (limited to a person that has the necessary authority to invest in listed securities, etc. and a person that provides information or advice in relation to securities to the relevant person) of the corporation or other organization):

- (i) a holder of listed securities, etc. pertaining to the listed company, etc. (limited to those issued by the listed company, etc.) (if the person is any of the persons set forth in the items of Article 4, limited to a person that is not engaged in a business pertaining to the financial instruments business prescribed in the preceding Article);
- (ii) a qualified institutional investor as prescribed in Article 2, paragraph (3), item (i) of the Act (if the person is any of the persons set forth in the items of Article 4, limited to a person that is not engaged in a business pertaining to the financial instruments business prescribed in the preceding Article);
- (iii) a corporation or other organization (including one incorporated based on foreign laws and regulations) for which the main purpose is to invest in securities; and
- (iv) an attendee of a meeting of which purpose is to provide specific investors, etc. with information on the operations, business, or assets of a listed company, etc. (limited to the time during which the attendee attends the meeting).

(Cases in Which It Is Difficult to Disclose the Material Information at the Same Time as the Provision of Material Information)

Article 8 The cases specified by Cabinet Office Order as referred to in Article 27-36, paragraph (2) of the Act are cases that fall under either of the following items:

- (i) if an officer, etc. of either a listed company, etc. or an asset management company of a listed investment corporation, etc. has provided material information with regard to its business to a business associate unintentionally; or
- (ii) if a listed company, etc. or an asset management company of a listed investment corporation, etc., or an officer, etc. of either of these companies has provided material information with regard to its business to a business associate without knowing that the recipient was a business associate at the time of providing the information.

(Cases in Which Material Information Cannot Be Disclosed Due to a Compelling Reason)

Article 9 The cases specified by Cabinet Office Order as referred to in the proviso to Article 27-36, paragraph (3) of the Act are the cases referred to in the proviso to paragraph (1) of that Article in which material information cannot be disclosed due to any of the following compelling reasons:

- (i) if the material information received by business associates pertains to any of the following acts which a listed company, etc. or its parent company (meaning the parent company prescribed in Article 8, paragraph (3) of the Regulation on the Terminology, Forms, and Preparation Methods of Financial Statements (Ministry of Finance Order No. 59 of 1963)) or subsidiary company (meaning the subsidiary company prescribed in that paragraph (excluding a special purpose company that is presumed not to be a subsidiary company pursuant to paragraph (7) of that Article); hereinafter the same applies in this item and items (i) and (ii) of the following Article) or an asset management company of a listed investment corporation, etc. conducts or intends to conduct, and the disclosure of the material information is likely to compromise the performance of the act:
 - (a) a merger;
 - (b) a company split;
 - (c) a share exchange;
 - (d) a share transfer;
 - (e) a transfer or acquisition of all or part of business;
 - (f) the tender offer prescribed in Article 27-2, paragraph (1) of the Act or the tender offer prescribed in Article 27-22-2, paragraph (1) of the Act;
 - (g) a transfer or acquisition of shares or equity involving changes in a

subsidiary company (if a subsidiary company of a listed company, etc. conducts or intends to conduct the act, a second-tier subsidiary company (meaning, among the companies that are deemed to be a subsidiary company of the listed company, etc. based on the provisions of Article 8, paragraph (3) of the Regulation on the Terminology, Forms, and Preparation Methods of Financial Statements, a company where the decision-making body is controlled by the aforementioned subsidiary company));

- (h) a petition to commence bankruptcy proceedings, reorganization proceedings, or rehabilitation proceedings; or
- (i) a capital or business alliance or cancellation of a capital or business alliance; or
- (ii) if the material information received by business associates pertains to public offering or secondary distribution of the securities set forth in Article 2, paragraph (1), item (vii), (ix), or (xi) of the Act issued by a listed company, etc. or an act similar thereto, and the disclosure of the material information is likely to compromise the performance of the act.

(Methods of Disclosure of Material Information)

Article 10 A listed company, etc. that intends to disclose material information pursuant to Article 27-36, paragraphs (1) through (3) of the Act must do so by any of the methods set forth in the following items:

- (i) a method whereby a listed company, etc., a subsidiary company of the listed company, etc., or an asset management company of a listed investment corporation, etc. submits the documents prescribed in Article 25, paragraph (1) of the Act (including as applied mutatis mutandis pursuant to Article 27 of the Act) (excluding the documents set forth in item (xi) of that paragraph) containing material information (limited to the case where the documents are made available for public inspection);
- (ii) a method whereby a director, an executive officer, or a corporate officer that is to represent a listed company, etc., a subsidiary company of the listed company, etc., or an asset management company of a listed investment corporation, etc. (including an officer that is to represent the cooperative financial institution prescribed in Article 2, paragraph (1) of the Act on Preferred Equity Investment by Cooperative Structured Financial Institution (Act No. 44 of 1993); hereinafter the same applies in this item) or a person that has been entrusted by the director, executive officer, or corporate officer to disclose material information discloses the material information to journalistic organizations including two or more of the following journalistic organizations (limited to the case where 12 hours have passed from the time of the disclosure to at least two of the following journalistic organizations):

- (a) newspaper publishers engaged in the sale of daily newspapers that collectively report matters on current affairs in Japan in the course of trade, and the communications agencies engaged in the comprehensive transmission of matters on current affairs to those newspaper publishers in the course of trade;
 - (b) newspaper publishers engaged in the sale of daily newspapers that report on general industrial and economic matters in Japan in the course of trade; and
 - (c) Japan Broadcasting Corporation (NHK) and basic broadcasters (meaning the basic broadcasters prescribed in Article 9-4, item (iii) of the Order);
- (iii) a method whereby a listed company, etc. or an asset management company of a listed investment corporation, etc. gives notice, pursuant to the rules of each financial instruments exchange on which the listed company, etc. lists the securities issued thereby (in the case where the securities are over-the-counter traded securities, the rules of each authorized financial instruments firms association that registers those securities and in the case where the securities are tradable securities, the rules of each authorized financial instruments firms association that conducts the designation of those securities as tradable securities; hereinafter the same applies in this item and the following item), of material information to the relevant financial instruments exchange (limited to the case where the material information of which notice was given has been made available for public inspection in Japanese at the relevant financial instruments exchange);
- (iv) a method whereby a listed company, etc. or an asset management company of a listed investment corporation, etc. gives notice, pursuant to the rules of each financial instruments exchange on which the listed company, etc., which issues securities set forth in the items of Article 14-16 of the Order, all of which are securities for professional investors (meaning the securities for professional investors prescribed in Article 4, paragraph (3) of the Act), lists the securities issued thereby, of material information to the relevant financial instruments exchange (limited to the case where the material information of which notice was given has been made available for public inspection in English at the relevant financial instruments exchange); or
- (v) a method whereby a listed company, etc. publishes material information on its website (limited to the case where the material information published on the website is published in a compiled manner, and is made available so as to enable investors to inspect the material information free of charge and easily for at least one year from the time of the publication).

Supplementary Provisions

This Cabinet Office Order comes into effect as of April 1, 2018.