

Extension of filing deadlines for disclosure documents in response to COVID-19 outbreak

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Introduction

In response to the COVID-19 outbreak, the Financial Services Agency (FSA), the Japanese governmental agency in charge of maintaining the stability of Japan's financial system, announced an extension of the deadlines to file certain mandatory disclosure documents, including annual securities reports. Documents that issuers were originally required to file between 20 April 2020 and 29 September 2020 based on Japanese securities regulations can now be filed by 30 September 2020. This article explains this unprecedented measure taken by the Japanese authority in recognition of issuers' difficulties in preparing their disclosure documents in light of the current COVID-19 crisis.

General rules under Financial Instruments and Exchange Act

Under the Financial Instruments and Exchange Act (FIEA), certain issuers (eg, listed companies and companies that have conducted public offerings of their securities) must file mandatory disclosure documents periodically. These documents include, among others, annual securities reports, quarterly securities reports and semi-annual securities reports. In the case of an annual securities report, for example, a domestic issuer must file the report within three months after the end of its fiscal year.

As the fiscal year for many Japanese companies closes at the end of March (it is reported that the fiscal year for six out of 10 Japanese listed companies closes on 31 March), those in this group are generally required to file their annual securities reports by the end of June. As for foreign issuers, the annual securities report filing deadline is six months after their fiscal year ends. Thus, for foreign issuers whose fiscal year ends on 31 December, their annual securities report filing deadline is the end of June the following year. As an annual securities report is a disclosure document for investors, it naturally includes the filing company's financial statements and auditor's report. This means that issuers must have their financial statements completed and audited by the annual securities report filing deadline, which is 30 June for many Japanese and non-Japanese issuers.

However, in certain exceptional cases, an extension of an issuer's annual securities report filing deadline may be allowed under the FIEA. There are certain provisions in the FIEA that specifically set out the procedures to apply and qualify for an extension. However, in order to be granted an extension, there must be a 'compelling reason' for the requested extension and the issuer must apply to the authority for prior approval, which will be granted or rejected on a case-by-case basis.

In addition to annual securities reports and other periodic disclosure documents, issuers must file extraordinary reports on the occurrence of certain prescribed material events (eg, when the issuer's board issues resolutions addressing M&A transactions or when there is a change in the issuer's CEO). Extraordinary reports must be filed without delay after the relevant events take place.

COVID-19 outbreak and its impact on corporate disclosures

The COVID-19 outbreak has caused serious consequences worldwide. In Japan, business activities are heavily restricted especially after a state of emergency declared by the prime minister became effective on 7 April 2020 (covering Tokyo and six other prefectures) and was then expanded to all of Japan's prefectures on 16 April 2020. The COVID-19 pandemic raises significant challenges for

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Japanese issuers and one foreseeable consequence is the difficulties that they will face in completing their audited financial statements in time to meet their corporate disclosure filing deadlines. Preparing appropriate disclosure documents reflecting the current unstable business environment requires a substantial amount of effort. However, due to the COVID-19 outbreak and state of emergency declaration, many employees and accountants have shifted to working from home. Consequently, preparing financial statements according to standard protocols and schedules has become substantially more difficult and, correspondingly, the risk that annual securities reports cannot be filed by the prescribed deadlines has increased. A failure to make the required filings on time can result in serious consequences for issuers.

Amendment to securities regulations

Following the state of the emergency declaration on 7 April 2020, the FSA effectuated an *ad hoc* amendment to the applicable securities regulations to address this issue. This amendment, which was published on 17 April 2020 with immediate effect, acknowledges that the impact of the COVID-19 outbreak constitutes a 'compelling reason' required for extension of filing deadlines as explained above. Thus, the necessary approvals for extensions of deadlines were deemed to have been given and filing deadlines extended to 30 September 2020. The aim of this amendment, according to the FSA, is to allow issuers and accounting firms sufficient time to prepare and audit financial statements in light of the circumstances resulting from the state of emergency declaration and the COVID-19 outbreak.

With the effectuation of this amendment, certain mandatory periodic disclosure documents including, among others, annual securities reports, quarterly securities reports and semi-annual securities reports that were originally required under the FIEA to be filed between 20 April 2020 and 29 September 2020 are now all due on 30 September 2020. Contrary to the ordinary extension rules currently in effect, this extension applies to all issuers automatically without the need to fulfil any application procedures or provide proof of a 'compelling reason'.

Another type of mandatory disclosure document, namely an extraordinary report, is not covered by this amendment. However, the FSA made it clear that if an issuer cannot prepare its extraordinary report in a timely manner due to the impact of the COVID-19 outbreak, it should file the report as soon as possible after the relevant delay-causing impediment or condition is resolved or abated. The report will then be treated as having been filed 'without delay'.

Practical implications of amendment

With the ongoing spread of COVID-19, many companies are facing serious problems in relation to their businesses. The extension of mandatory disclosure document filing deadlines will undoubtedly alleviate the stress and pressure on issuers in the process of preparing their audited financial statements.

This amendment to the relevant securities regulations applies not only to domestic issuers whose fiscal years end in March 2020 but also to non-Japanese issuers that may already have completed and published their audited financial statements as their fiscal years ended on 31 December 2019. Those non-Japanese issuers subject to FIEA disclosure obligations can also take advantage of this automatic extension of filing deadlines for this year.

On the other hand, investors expect to obtain disclosure documents in a timely manner even during periods of extraordinary circumstances. In these difficult times, the need for timely disclosures is even more important. In addition, even though filings of mandatory disclosure documents can be postponed thanks to this amendment, there may be some impact on funding schedules for those issuers envisaging securities offerings in Japan if they do not file such documents by their original filing deadlines. Therefore, issuers should carefully consider the timing of the filing of those reports, taking into consideration both their capacity to prepare the mandatory disclosure documents and the expectations of investors.

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