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Extension of Filing Deadlines for Disclosure Documents in Response to the COVID-19 Outbreak

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Extension of Filing Deadlines for Disclosure Documents in Response to the COVID-19 OutbreakI. Introduction

In a 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. For those documents that were originally required to be filed between April 20 and September 29, 2020 based on Japanese securities regulations, issuers now can file them by September 30, 2020. This update 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 outbreak crisis.

II. General Rules under the Financial Instruments and Exchange Act

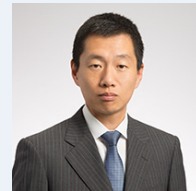
Under the Financial Instruments and Exchange Act (FIEA), certain issuers such as listed companies and companies that have conducted public offerings of their securities are required to file mandatory disclosure documents periodically. Those documents include, among others, annual securities reports, 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 March 31), those in this group generally are 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 end. Thus, for foreign issuers whose fiscal year ends on December 31, their annual securities report filing deadline is the end of June of the following year. As an annual securities report is a disclosure document for investors, naturally it 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 June 30 for many Japanese/non-Japanese issuers.

However, for 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 specifically setting forth the procedures for applying and qualifying 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 approval will be given or denied on a case-by-case basis.

In addition to annual securities reports and other periodic disclosure documents, issuers are required to file extraordinary reports upon the occurrence of certain prescribed material events such as when the issuer's board issues resolutions

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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.

III. The COVID-19 Outbreak and its Impact on Corporate Disclosures

The current COVID-19 outbreak pandemic has caused serious consequences worldwide. In Japan, business activities are heavily restricted especially after a state of emergency declared by Japan's Prime Minister became effective on April 7, 2020 (covering Tokyo and six other prefectures) and then expanded to cover all of Japan's prefectures on April 16. The COVID-19 pandemic raises significant challenges for Japanese issuers, and one foreseeable consequence is difficulties they will face in completing their audited financial statements in time to meet their corporate disclosure filing deadlines. To prepare 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 may not be filed by the prescribed deadlines has increased. A failure to timely make the required filings can result in serious consequences for issuers.

IV. Amendment to the Securities Regulations

Following the state of the emergency declaration on April 7, 2020, the FSA effectuated an ad hoc amendment to the applicable securities regulations to address this issue. This amendment, which was published on April 17, 2020 with immediate effect, acknowledges that the impact of the COVID-19 outbreak constitutes the "compelling reason" required for extension of filing deadlines as explained above. Thus, the necessary approvals for extensions of deadlines were deemed to be given and filing deadlines were extended to September 30, 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 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 April 20 and September 29, 2020 are now all due on September 30, 2020. Contrary to the ordinary extension rules currently in effect, this extension applies to all issuers automatically without the need to fulfill 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, and then the report will be treated as having been filed "without delay."

V. Practical Implications of this 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 that are in the process of preparing their audited financial statements.

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

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On the other hand, from investors' perspectives, they 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 consider carefully 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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