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The cover features several large, dark green leaf-like shapes scattered across the background, creating a natural, organic feel. The leaves vary in size and orientation, with some pointing upwards and others downwards.

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Capital Markets: Equity

Japan

Nagashima Ohno & Tsunematsu

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Law and Practice

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Contents

1. Equity Markets / Exchanges	p.4	5. Parties to an Equity Offering	p.8
1.1 Main Equity Markets or Exchanges	p.4	5.1 Parties to an Equity Offering	p.8
1.2 Rules and Governance Requirements	p.5	5.2 Role of Advisers for an IPO	p.9
1.3 Indices	p.5	6. Offering Documents	p.9
1.4 Regulatory Bodies Governing the Listing Process	p.5	6.1 The Prospectus or Offering Document	p.9
1.5 Remit of Regulatory Bodies	p.5	6.2 Responsibility and/or Liability for the Content of a Prospectus	p.9
1.6 Applications in the Process of an IPO	p.5	6.3 Content Requirements Differ in the Case of Specialist Companies	p.9
2. Regulatory and Legislative Framework	p.5	6.4 Main Publication, Filing or Delivery Requirements for the Prospectus	p.9
2.1 Key Legislative or Regulatory Instruments for Equity Listings	p.5	6.5 Exemptions to the Requirement to Produce a Prospectus	p.9
2.2 Specific Eligibility Requirements for Issuers Undertake a Primary Listing	p.5	7. Marketing	p.10
2.3 Incorporation or Valid Existence	p.5	7.1 Marketing or Publicity Restrictions in Respect of an Equity Offering	p.10
2.4 Minimum Market Value	p.5	8. Research	p.10
2.5 Minimum Percentage of Shares in a Listed Issuer	p.5	8.1 Liability Issues or Regulatory/Legislative Requirements	p.10
2.6 Historical Accounting or Reporting Requirements	p.6	8.2 “Unconnected” Research Reports	p.10
2.7 Minimum Time Period for Business Operation Prior to Listing	p.7	9. Bookbuilding and Underwriting	p.10
2.8 Corporate Requirements	p.7	9.1 Bookbuilding Process	p.10
2.9 Obligations of Underwriters/Brokers to the Regulators	p.7	9.2 Structure of Underwriting for an Equity Offering	p.10
2.10 Eligibility Requirements for Specialist Companies	p.7	9.3 Stabilisation and Market Manipulation Rules	p.11
2.11 Main Requirements for Issuers to Undertake a Secondary Listing	p.7	9.4 “Block Trades”	p.11
3. Primary Listings	p.7	10. Governing Law	p.11
3.1 Main Steps for a Primary Listing	p.7	10.1 Restrictions Concerning the Use of Foreign Governing Law and/or Jurisdiction	p.11
3.2 Procedures for Companies Incorporated in a Foreign Jurisdiction	p.8	10.2 English or New York Law	p.11
3.3 Foreign Issuers	p.8	10.3 Failure to Recognise Foreign Governing Law and/or Jurisdiction	p.11
3.4 Main Ways of Structuring an IPO	p.8	10.4 Enforcement of Foreign Judgments/ Arbitration Awards	p.11
4. Subsequent Equity Offerings	p.8	10.5 Special Requirements for Enforcement of a Contract, Judgment or Award	p.11
4.1 Structuring Subsequent Equity Offerings	p.8	10.6 Impact of Shareholders Domiciled in a Foreign Jurisdiction	p.11
4.2 Impact on Procedure of Primary or Secondary Listing	p.8	10.7 Regulatory Restrictions on Foreign Entities	p.11
4.3 Procedure if Offering Made Only to Existing Shareholders	p.8		

11. IPO Timetable	p.11
11.1 IPO: Key Milestones	p.11
12. Tax	p.12
12.1 Main Tax Issues When Issuing and Listing Equity Securities	p.12
12.2 Withholding Tax	p.12
12.3 Capital Duties or Transfer Taxes	p.12
12.4 Capital Gains on Disposals of Listed Shares by Non-Residents	p.12
13. Continuing Obligations	p.12
13.1 Main Continuing Obligations for Publicly Listed Companies	p.12
13.2 Application of Obligations to Foreign Incorporated Issuers	p.13
13.3 Penalties for Non-Compliance With Obligations	p.13

Nagashima Ohno & Tsunematsu has an established reputation as a leading Japanese law firm with respect to capital markets transactions. The firm has 16 capital markets partners and approximately 40 associates dedicated to debt and equity work. The key areas of practice in relation to the sector are offerings (including ‘global offerings’), sales and private placements of equity securities and bonds of Japanese corporations, J-REITs and other Japanese funds; hybrid securities of Japanese banks in connection with capital

adequacy regulations (the Basel Accord) and hybrid securities of Japanese corporations; and foreign bonds guaranteed by the Japanese government for Japanese government-related entities and municipalities in international markets. The firm also handles IPOs and listings by Japanese and international corporations, J-REITs and other entities in the Japanese, Asian and other foreign markets; and the establishment and distribution of stock option programmes by Japanese and international corporations.

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1. Equity Markets / Exchanges

1.1 Main Equity Markets or Exchanges

Japan Exchange Group, Inc (“JPX”) operates financial instruments exchange markets as follows:

- First Section;
- Second Section;
- Mothers;
- JASDAQ; and
- the TOKYO PRO Market.

There are several other local (but relatively minor) exchanges in Japan.

The First and Second Sections represent the main boards of the Tokyo Stock Exchange (“TSE”) operated by JPX, where leading large and second-tier Japanese and foreign companies are listed. Especially, the First Section is viewed as the top-ranked market in terms of the size and liquidity, because foreign investors account for a large portion of equity trading.

Mothers offers a trading market for companies with growth potential which aim to be reassigned to the First Section in the near future. Thus, TSE requires applicants to demonstrate a high growth potential. Whether an applicant has growth potential or not shall be assessed and determined by lead underwriters on the basis of its business model or

business environment. As the objective of Mothers is to offer financing opportunities for many companies with growth potential, Mothers has no restrictions on the size or business category of applicants. After successfully listing their stock on Mothers, many have satisfied the criteria for reassignment to the First Section and listed their stocks on the First Section.

JASDAQ is a market characterised by the three concepts of

- reliability,
- innovativeness and
- region and internationalisation.

JASDAQ is split into the “Standard” market for growth companies with a certain size and business performance and the “Growth” market for companies with stronger future growth potential and unique technologies or business models.

TOKYO PRO Market was established based on the “Professional-oriented market system” introduced in an amendment to the Financial Instruments and Exchange Act in 2008. In the TOKYO PRO Market, like a Nomad in the London AIM market, exchange-approved J-Advisers conduct listing examination of prospective companies and offer post-listing support in place of the exchange.

JPX is currently reviewing the current market structure and classification described above in order to incentivise further

listed companies to improve proactively their overall value as a corporation, in addition to attracting further diverse global and domestic investors by providing attractive investment opportunities.

1.2 Rules and Governance Requirements

There are no such segments except for several circumstances where different rules or governance requirements apply as fully described in **13.1 Main Continuing Obligations for Publicly Listed Companies**.

1.3 Indices

TOPIX is a free-float adjusted market capitalisation-weighted index that is calculated based on all the domestic common stocks listed on the TSE First Section. TOPIX shows the measure of current market-capitalisation- assuming that market capitalisation as of the base date (4 January 1968) is 100 points. This is a measure of the overall trend in the stock market, and is used as a benchmark for investment in Japanese stocks.

The Nikkei Stock Average (“Nikkei 225”) is the average index of 225 stocks listed on the First Section of the TSE calculated by a Japanese newspaper publisher, Nikkei Inc. Nikkei 225 is used around the globe as the premier index of Japanese stocks and is very popular with Japanese retail investors particularly.

1.4 Regulatory Bodies Governing the Listing Process

The main regulatory bodies governing the registration process in Japan is the Financial Services Agency (the “FSA”). The listing process at the stock exchange will be handled by the stock exchanges and separately described later.

1.5 Remit of Regulatory Bodies

The FSA is primarily responsible for the administration of these rules, and delegates its powers under Japanese law to each local finance bureau (the “LFB”) of the Ministry of Finance for the registration of disclosure documents, including the Securities Registration Statement (the “SRS”), and to the Securities and Exchange Surveillance Commission for inspections of securities companies, daily market surveillance and investigations of criminal offences.

1.6 Applications in the Process of an IPO

According to the usual practice, an issuer submits a draft SRS to the LFB for review or otherwise consults the LFB in advance (normally one month before the filing date). No fee is payable for registration of the SRS. A foreign issuer is required to appoint a Japanese resident as its attorney-in-fact to file an SRS. A certain procedure is required to prepare for filing for the first time through the Electric Disclosure for Investors’ Network (“EDINET”), which is an electronic filing system similar to EDGAR in the US.

In the case of IPO at the Tokyo PRO Market, a private placement to professional investors will be made without filing an SRS or review by the LFB.

2. Regulatory and Legislative Framework

2.1 Key Legislative or Regulatory Instruments for Equity Listings

The directly relevant legislation on securities offerings is the Financial Instruments and Exchange Law (the “FIEL”) and the Enforcement Order and related Cabinet Orders thereunder.

The FSA has issued guidelines concerning corporate disclosure and certain other matters for the interpretation of the FIEL and related regulations.

2.2 Specific Eligibility Requirements for Issuers Undertake a Primary Listing

There are specific eligibility requirements for issuers wishing to undertake a primary listing on the exchange or exchanges.

2.3 Incorporation or Valid Existence

Within the markets described in **1.1 Main Equity Markets or Exchanges**, the issuer must generally be a stock company. There are several other markets for entities that are not stock companies, such as real estate investment trust corporations.

2.4 Minimum Market Value

There is no regulatory requirement. However, initial listing requirements of JPX are as follows:

Minimum market-capitalisation (expected on the listing day) required as follows:

- First Section: JPY25,000 million or more
- Second Section: JPY2,000 million or more
- Mothers: JPY1,000 million or more
- JASDAQ:
 - (a) “Standard” market: JPY5,000 million or more (or profit during the most recent year are at least JPY100 million)
 - (b) “Growth” market: N/A
- TOKYO PRO Market: N/A

2.5 Minimum Percentage of Shares in a Listed Issuer

There is no regulatory requirement. However, initial listing requirements of JPX about minimum number of tradable shares, etc, are as follows:

First Section:

- (a) The number of tradable shares: 20,000 shares or more;
- (b) the market capitalisation of the tradable shares:

JPY1 billion or more; and

- (c) the number of tradable shares: 35% or more (provided, however, that, in the case of multiple listing or simultaneous listing, the above (a) and either (b) or (c) must be satisfied, and that, in the case of multiple listing of foreign companies, the above (a) must be satisfied).

Second Section:

- (a) The number of tradable shares: 4,000 shares or more;
- (b) the market capitalisation of the tradable shares: JPY1 billion or more; and
- (c) the number of tradable shares: 30% or more (provided, however, that, in the case of multiple listing and simultaneous listing, the above (a) and either (b) or (c) must be satisfied, and that, in the case of multiple listing of foreign companies, the above (a) must be satisfied).

Mothers:

- (a) The number of tradable shares: 2,000 shares or more;
- (b) the market capitalisation of the tradable shares: JPY500 million or more; and
- (c) the number of tradable shares: 25% or more (provided, however, that, in the case of multiple listing or simultaneous listing, the above (a) and either (b) or (c) must be satisfied, and that, in the case of multiple listing of foreign companies, the above (a) must be satisfied).

JASDAQ:

The market capitalisation of the tradable shares: JPY500 million or more. In addition, in the case of foreign companies (excluding cases where the stock, etc. pertaining to the initial listing application is listed on another domestic or foreign financial instruments exchange), public offering or secondary offering at the higher of the number of shares described in the division (a) through (f) mentioned below, or 10% of the number of shares issued expected at the time of listing shall also be implemented during the period from the listing application date to the previous day of the listing date -

- (a) Trading unit comprising 1,000 shares: One million shares
- (b) Trading unit comprising 500 shares: 500,000 shares
- (c) Trading unit comprising 100 shares: 100,000 shares
- (d) Trading unit comprising 50 shares: 50,000 shares
- (e) Trading unit comprising 10 shares: 10,000 shares
- (f) Trading unit comprising 1 share: 1,000 shares
- (g) TOKYO PRO Market: N/A

In regard to the above, “multiple listing” means listing or continuous trading on foreign financial instruments exchange(s), etc, or what is specified as equivalent to this.

Further, in regard to the above, “simultaneous listing” means the expectation of being listed or continuously traded on

a foreign financial instruments exchange, etc, (limited to a foreign financial instruments exchange that the TSE deems appropriate) around the same time of initial listing on the Exchange, or an equivalent state.

2.6 Historical Accounting or Reporting Requirements

The financial statements for each business year and each consolidated accounting year which ended in the last two years must be audited. In addition, quarterly financial statements (if available) for a quarterly accounting period or for a quarterly consolidated accounting period, ending 45 days or more prior to the date of submission of the SRS must be reviewed. Presentation of financial statements made in accordance with certain overseas generally accepted accounting principles (“GAAP”) may be recognised, in which case material differences from Japanese GAAP for such financial statements should be described in the SRS. Before the amendments to the relevant Cabinet order, which took effect on 1 October 2012, an SRS of a foreign corporate issuer must contain financial statements for the most recent five years, among which the most recent two years’ financial statements must be audited. However, after the amendments to the Cabinet order, an SRS of a foreign corporate issuer may contain three years’ financial statements (all of which must be audited by a Certified Public Accountant (“CPA”)) instead of the five years’ financial statements.

Initial listing requirements of JPX are generally the same as above except for the following requirements in each market.

First Section and Second Section:

The audit report attached to financial statements, etc, for each business year and each consolidated accounting year which ended in the last two years (excluding a business year and a consolidated accounting year which ended in the last year) contains an “unqualified opinion” or a “qualified opinion with exceptions” of certified public accountants, etc, and the audit report attached to financial statements, etc, for each business year and each consolidated accounting year which ended in the last year, as well as the quarterly review report attached to quarterly financial statements, etc, for a quarterly accounting period and for a quarterly consolidated accounting period ending 45 or more days prior to the date of submission of the SRS must contain an “unqualified opinion” or an “unqualified conclusion” of certified public accountants, etc.

Mothers and JASDAQ:

The audit report attached to a “Securities Report for Initial Listing Application” (excluding an audit report attached to financial statements, etc, for the business year and the consolidated business year ending in the last year) must contain an “unqualified opinion” or a “qualified opinion with exceptions” of certified public accountants, etc, and the audit report (limited to an audit report attached to financial state-

ments, etc, for the business year and the consolidated business year ended in the last year) and an interim audit report or a quarterly review report attached to a “Securities Report for Initial Listing Application” must contain an “unqualified opinion”, an “opinion that the interim financial statements, etc provide useful information” or an “unqualified conclusion” of certified public accountants, etc.

TOKYO PRO Market

The financial documents required under Specified Securities Information must include audit reports, etc, which shall contain an “unqualified opinion” or “unqualified conclusion”, or an opinion or conclusion equivalent to these, and must satisfy the criteria enumerated in each of the following items:

- The report contains the result of an audit or review conducted in compliance with generally accepted auditing standards, interim auditing standards, or quarterly review standards in Japan or a standard equivalent to these;
- The report contains certification corresponding to audit certification prescribed in Article 193-2 of the FIEL or certification equivalent thereto;
- The report is prepared by an audit firm; and
- The report pertains to the most recent business year or consolidated accounting period.

2.7 Minimum Time Period for Business Operation Prior to Listing

There is no regulatory requirement under the FIEL. However, initial listing requirements of JPX are as follows.

First Section and Second Section:

The business activities have been continuously carried out by setting up a board of directors (meaning an institution corresponding to this in the cases of a foreign company) since a day before the day which is three years prior to the end of a business year immediately prior to the business year containing the initial listing application day.

Mothers:

The applicant has conducted the business activities, setting up a board of directors (meaning an institution corresponding to this in the case of a foreign company) for at least a year before the initial listing application day.

JASDAQ and TOKYO PRO Market:

There is no regulatory requirement.

2.8 Corporate Requirements

Holder of shares must not have pre-emptive rights in the case of listed Japanese companies. Transfer of shares of listed companies may not be restricted.

2.9 Obligations of Underwriters/Brokers to the Regulators

The sponsor’s letter of recommendation prepared by a lead underwriter shall be submitted to the stock exchange at least three business days prior to the listing approval.

2.10 Eligibility Requirements for Specialist Companies

There is no difference in eligibility requirements in the case of specialist companies.

2.11 Main Requirements for Issuers to Undertake a Secondary Listing

Subsets of the listing criteria of multiple listings are different from primary listings. There are several differences, such as minimum number of tradable shares, etc, described in 2.2 **Specific Eligibility Requirements for Issuers Undertaking a Primary Listing.**

3. Primary Listings

3.1 Main Steps for a Primary Listing

First Section, Second Section, Mothers and JASDAQ

Listing of stock is effected on the basis of an application filed by a company issuing the stock (hereinafter referred to as an “applicant”). In the process of an IPO, prior to making an application, preliminary confirmation of the listing application about such matters related to details of public guidance and underwriting examination, relationships with anti-social forces, and examination schedules is done. After that, the company must make an application and answer TSE’s questions about, for example, reason for application for listing, history and business activities, industry conditions, and status of directors and major shareholders. The TSE will examine whether an applicant is eligible for listing on TSE from the perspective of investor protection.

As a result of a listing examination, when an applicant is determined to meet the eligibility for listing, TSE will approve and announce the listing of the applicant. Subsequently, the applicant will be listed through the process of public offering or secondary offering.

An applicant can identify and address potential roadblocks in a listing examination by engaging a consultant before the listing application is filed.

TOKYO PRO Market

An applicant company is required to conclude a “J-Adviser agreement” with one J-Adviser (which is similar to Nomad in the London AIM market). After concluding the agreement, the J-Adviser investigates and confirms whether the applicant company has eligibility for listing on the TOKYO PRO Market. Also, the applicant company prepares documents necessary for the listing application based on advice

and guidance provided by the J-Adviser. These documents contain details on matters including business activities, financial condition and directors. After the J-Adviser completes investigating and confirming the listing eligibility of the applicant company, the J-Adviser emails the “Letter of Intent of Listing Application” to TSE.

After expression of intent, the TSE interviews the J-Adviser to check whether the process of investigation and confirmation of listing eligibility by the J-Adviser was appropriate. All communications with TSE from expression of intent to listing approval are conducted via the supervising J-Adviser. As such, in general, TSE does not directly contact the applicant company. In addition, if the J-Adviser is a securities company, it may undertake solicitation for acquisition or purchases, etc, for specified investors at the time of or after listing as a lead managing securities company.

An applicant company can identify and address potential roadblocks in a listing examination by engaging a J-Adviser before the listing application is filed.

3.2 Procedures for Companies Incorporated in a Foreign Jurisdiction

They do not differ for companies incorporated in a foreign jurisdiction in principle. However, there are several differences, such as minimum number of tradable shares, etc, described in **2.2 Specific Eligibility Requirements for Issuers Undertaking a Primary Listing**.

TSE states that when examining a listing application from a foreign company, it closely considers the legal system and conventions in practice in the applicant’s home country. As such, TSE will address the listing application filed by foreign companies more flexibly than Japanese applicants. In addition, where an initial listing applicant is a foreign company, and the main market of a foreign stock, etc, issued by such initial listing applicant is other than the TSE and, furthermore, where the TSE deems it appropriate in light of listing of securities, timely disclosure of the issuer of listed securities, delisting, the state of the development and operation of the legal system and rules concerning listed securities in such main market, they shall be treated as appropriate for all or part of the examination (the exceptions for overlapping listed companies are those set up in the market of the TSE First and Second Section).

3.3 Foreign Issuers

As of 14 February 2019, four companies list their shares, and one lists depository receipts on JPX.

3.4 Main Ways of Structuring an IPO

Japanese companies usually structure the IPO by offering its shares in Japan to both retail and institutional investors. Large-sized IPOs will often entail global offerings, which include 144A or/and Reg S offerings outside Japan. An IPO

usually includes the sale of shares by existing major shareholders and the issuer often contemplates capital increase simultaneously to raise its own fund.

As the result of an IPO, thresholds, such as the number of tradable shares described in **2.2 Minimum Time Period for Business Operation Prior to Listing**, must be satisfied. However, there is no mandatory retail offer requirement or local offer requirement.

4. Subsequent Equity Offerings

4.1 Structuring Subsequent Equity Offerings

In order to implement a capital increase of a joint stock company in Japan (which is a typical issuer listed in Japan), the board of directors of the company must make a resolution for equity offering which includes the number of offering stock, the payment amount of offering stocks etc, and must submit the SRS. The issuer that has complied with certain conditions, including the continuous disclosure obligation in Japan for one year or more, may utilise the shelf registration and SRS by the reference method under the FIEL, in which case the issuer may incorporate its continuously disclosed documents in the SRS by reference.

4.2 Impact on Procedure of Primary or Secondary Listing

There is generally no difference in the registration process of primary or secondary offerings, however, in principle, if the shelf registration and the SRS by the reference method are available and they become effective on the eighth calendar day from the date of filing, while the SRS in the case of a primary or secondary listing becomes effective on the sixteenth calendar day.

4.3 Procedure if Offering Made Only to Existing Shareholders

In the case of the rights issue of a Japanese listed company, stock acquisitions rights (ie, options to acquire the stock from the issuer) are allotted to existing shareholders without consideration on a pro-rata basis. Shareholders who would like to subscribe for additional shares will exercise the allotted stock acquisition rights and pay for them. For a Japanese listed company, a stock split is normally used rather than a stock dividend.

5. Parties to an Equity Offering

5.1 Parties to an Equity Offering

Securities companies (an investment bank which serve as underwriters), lawyers and certified public accountants and a shareholder service agent are usually appointed.

Securities companies

There are a number of tasks that need to be completed by the securities companies before listing. At the stage of preparation for listing, the securities companies will provide advice to the issuer on capital policy and internal systems, also carry out the examination of the corporate profile of the issuer to determine whether the securities companies can perform the required listing procedures for listing (underwriting examination), and underwrite the public offering and secondary offering. When the securities companies decide to underwrite the public offering and secondary offering, they have to implement a series of tasks according to the offering schedule. Even after the issuer successfully lists their shares on the market, it will assist the issuer in various aspects, including raising secondary funds and investor-relations activities.

Certified public accountants

The certified public accountants (auditing firms) express their audit opinion on the issuer's financial statements to be submitted to LFB/TSE. They will also advise the issuer on its accounting practices and internal management.

Lawyers

In particular, when a global offering is implemented, lawyers prepare the offering circular and conduct the due diligence. Lawyers provide a legal opinion and (in the case of 144A) disclosure letter.

Transfer agent

The transfer agent is an entity which is required to be appointed in order to implement smooth services related to shareholders. Their services include preparation of a shareholders registry, and handling various rights granted to shareholders, including voting rights and dividend payments to shareholders. The issuer is required to outsource services related to shareholders to a transfer agent or to receive preliminary consent to the acceptance of services provided to shareholders from a transfer agent by the date when the listing application is filed.

5.2 Role of Advisers for an IPO

There is no difference but the roles of advisers are more important for an IPO.

6. Offering Documents**6.1 The Prospectus or Offering Document**

A registered prospectus with content that is substantially the same as the SRS must be delivered to investors at or prior to the sale of the securities except for certain limited cases.

An issuer submits a draft SRS to the LFB for review or otherwise consults the LFB in advance (normally two weeks (one

month in the case of an IPO) before the filing date), therefore SRS must be prepared beforehand.

A prospectus shall contain, in a prescribed form, information concerning the securities offered (terms of securities and offering) and the issuer (including a description of its business, affiliated companies, officers and employees, assets, shareholdings, stated capital and financial statements) or, in the case of certain securities such as those relating to investment trusts and securitisation, the investment structure (including a description of the investment structure, investment policy and underlying assets, if any). Foreign corporate issuers are also required to incorporate in the prospectus an outline of the legal system and certain other information of their home jurisdictions. Presentation of financial statements made in accordance with certain overseas generally accepted accounting principles ("GAAP") may be recognised, in which case material differences from Japanese GAAP for such financial statements should be described in the prospectus.

6.2 Responsibility and/or Liability for the Content of a Prospectus

The issuer, directors, executive officers, corporate auditors, certified public accountants, underwriters and selling shareholders (if any) are jointly and severally liable to any person who purchases securities when there is a material misstatement or omission in the prospectus. The issuer is strictly liable for material misstatements or omissions, but the others can avoid liability by proving that they did not know, after due care, of such misstatements or omissions. The FIEL shifts the burden of proof to the defendants for culpability as above and, in the case of the issuer, also for the amount of damages caused by a misstatement or omission with a provision presuming such amount. Similar liability as with the prospectus is imposed on such use of any offering materials other than the prospectus.

6.3 Content Requirements Differ in the Case of Specialist Companies

In principle, there is no difference except for certain limited cases.

6.4 Main Publication, Filing or Delivery Requirements for the Prospectus

The prospectus must be delivered to investors before any commitment to purchase the shares. The prospectus need not necessarily be filed and made available for public inspection under the FIEL.

6.5 Exemptions to the Requirement to Produce a Prospectus

There are several exemptions to the requirement to produce a prospectus. For example, the securities are acquired by or sold to a person set forth in the following, and such person has consented not to be delivered the prospectus (unless the

consenting person requests to be delivered the prospectus by the time it acquires or is sold the securities through the public offering or secondary distribution):

- a person that already holds the same issue of securities as the relevant securities; or
- a person living with the consenting person has already received the prospectus or is reliably expected to receive the prospectus.

7. Marketing

7.1 Marketing or Publicity Restrictions in Respect of an Equity Offering

Publicity under certain circumstances could fall within pre-filing solicitation (“gun-jumping”) or a selling effort that triggers a violation of the FIEL. There was no safe-harbour rule applicable to publication that could be considered as solicitation of certain securities that would otherwise be subject to public offering rules. In general, any acts that attract the interest of investors on certain securities and promote them to purchase or acquire those securities may be considered to be “solicitation”, which is subject to public offering rules. However, under the amendments to the disclosure guidelines issued by the FSA, which took effect on 27 August 2014, the scope of publicity restrictions is clarified to some extent by giving several examples of acts that do not constitute “solicitation”. Under the amended guidelines, a pre-hearing from professional investors or principal shareholders with some conditions (such as a confidentiality agreement), distribution of corporate information at least one month before the filing of SRS without reference to the offering, periodic publication of corporate information in the ordinary course of business without reference to the offering, and certain other acts are prescribed as those examples that do not constitute solicitation.

Underwriters are also, in principle, subject to the same restrictions on pre-filing solicitation and selling efforts.

8. Research

8.1 Liability Issues or Regulatory/Legislative Requirements

Research reports prepared by analysts who belong to the underwriters are normally not considered as marketing materials under the FIEL because analysts are independent from the underwriting side of the investment bank and the research reports are a method of investor education. But there is potentially a risk that the research reports are excessively optimistic and therefore contain untrue statements, which entails liabilities. As to the listed stock in Japan, the Japan Securities Dealers Association (“JSDA”) has issued guidelines to its member securities companies as to the

contents of a research report, establishment of an appropriate and reasonable internal review system and ensuring the independence of analysts. The amended disclosure guidelines, which took effect on 27 August 2014, also clarified an example where securities firms are allowed to issue research reports in the ordinary course of business on the condition that the securities firms have established a Chinese Wall to isolate their researchers from any unpublished information regarding pre-filing solicitation or selling efforts of certain securities.

There is no published case where the liability was actually addressed and pursued with respect to the research report.

8.2 “Unconnected” Research Reports

Analysts from institutions outside the syndicate routinely prepare research reports of listed stock. However, in general, in the case of an IPO, analysts from institutions inside the syndicate advising on an IPO prepare research reports.

Research reports relating to companies which are aiming at an IPO are allowed to be distributed only on or before the corresponding date one month prior to the date which the SRS is to be submitted (“blackout period”). In addition, such research reports may not mention the IPO.

9. Bookbuilding and Underwriting

9.1 Bookbuilding Process

A book-building process is used for equity offerings.

9.2 Structure of Underwriting for an Equity Offering

“Firm commitment” underwriting is commonly used, in which underwriters usually agree jointly and severally to purchase securities from the issuer or selling shareholders for resale to the public at a specified public offering price. The lead manager organises and manages an underwriting syndicate, and executes with the issuer or selling shareholders an underwriting agreement on behalf of the syndicate.

A typical underwriting agreement requires the issuer to represent and warrant certain matters satisfactory to the underwriter and agree to indemnify the underwriters for any liability they may incur under the FIEL because of the SRS or a prospectus containing material misstatements or omissions. In addition, customary conditions precedent, covenants and termination clauses are provided.

Commission and fees are, in general, payable upon a successful closing in the form of the spread between the purchase price from the issuer or the selling shareholders and the resale price to investors.

9.3 Stabilisation and Market Manipulation Rules

While the FIEL prohibits stabilisation and market manipulation in principle, stabilisation is permitted under certain conditions and it is often seen in the case of an equity offering of listed stock.

9.4 “Block Trades”

Block trades are generally exempted from the requirements for equity offering.

10. Governing Law

10.1 Restrictions Concerning the Use of Foreign Governing Law and/or Jurisdiction

Generally speaking, the provision of foreign governing law and/or jurisdiction may be, assuming such provision is legal, valid and binding on the issuer under the foreign governing law and valid and binding on the issuer under the laws in Japan, provided, however, that there are certain exceptions, such as no violation of the overriding mandatory provisions and public policy. For example, the terms and conditions of the stock of a company are usually governed by the law of jurisdiction where the company is incorporated.

10.2 English or New York Law

In the case of overseas offering, English law or New York State law is commonly used to govern an underwriting agreement under the agreement of both parties.

10.3 Failure to Recognise Foreign Governing Law and/or Jurisdiction

As described in **10.1 Restrictions Concerning the Use of Foreign Governing Law and/or Jurisdiction**, the choice of a foreign governing law and/or jurisdiction must not be against the overriding mandatory provisions and public policy.

10.4 Enforcement of Foreign Judgments/ Arbitration Awards

Japanese courts would recognise as a valid judgment any final and conclusive civil judgment for monetary claims (which are limited to those of a purely civil nature and do not include monetary claims in the nature of criminal or administrative sanctions, such as punitive damages, even though they take the form of civil claims) obtained in a foreign court against the issuer by any shareholder or other parties, provided that:

- the jurisdiction of such foreign court is permitted under Japanese laws or treaties;
- the issuer has received service of process necessary for the commencement of the relevant proceedings, otherwise than by public notice or any method comparable thereto, or has appeared before such court;

- such judgment and court proceedings are not repugnant to public policy as applied in Japan,
- there exists reciprocity as to recognition by such court of final judgments obtained in a Japanese court; and
- there is no conflicting Japanese judgment on the subject matter.

Foreign arbitration awards are also generally enforceable except in certain cases where the parties were unable to defend themselves in the arbitral proceedings, provided, however, that court decisions are required.

10.5 Special Requirements for Enforcement of a Contract, Judgment or Award

It is not necessary in order for any of the underwriting or purchase agreements to be enforceable or admissible into evidence in Japan that these agreements be filed or recorded with any court or other authority in Japan.

10.6 Impact of Shareholders Domiciled in a Foreign Jurisdiction

The enforceability will generally not be affected by a shareholder being domiciled in a foreign jurisdiction.

10.7 Regulatory Restrictions on Foreign Entities

If a foreign investor acquires shares of a Japanese company that is listed on a Japanese stock exchange and, as a result of the acquisition, the foreign investor, in combination with any existing holdings, directly or indirectly holds 10% or more of the issued shares of the relevant company, such acquisition constitutes an “inward direct investment” and the foreign investor must in general file a report of the acquisition with the Minister of Finance and any other competent Ministers having jurisdiction over that Japanese company by the fifteenth day of the month immediately following the month to which the date of such acquisition belongs. In limited circumstances, such as where the foreign investor is in a country that is not listed on an exemption schedule in the foreign exchange regulations, a prior notification of the acquisition must be filed with the Minister of Finance and any other competent Ministers, who may then modify or prohibit the proposed acquisition.

11. IPO Timetable

11.1 IPO: Key Milestones

In the case of TSE First Section and Second Section:

On the following dates of the first month:

- 2nd: Submit a listing application to Japan Exchange Regulation (“JPXR”) which is a self-regulatory organisation of JPX group

On the following dates of the fourth month:

- 2nd: Listing approval from JPXR and filing of SRS (filing with the FSA by the applicant);
- 17th: Meeting of the Board of Directors to determine provisional terms and conditions (payment amounts for the purpose of the Companies Act);
- 18th: Filing of Amended Registration Statement (filing with the FSA);
- 26th: Determination of issue prices and underwriting prices;
- 27th: Filing of (Secondary) Amended Registration Statement (filing with the FSA);
- 30th: Date when the registration statements take effect.

On the following dates of the fifth month:

- 6th: Payment date and date when new shares take effect;
- 7th: Listing date.

12. Tax

12.1 Main Tax Issues When Issuing and Listing Equity Securities

The main tax issues for investors concern the withholding tax and the regular income or corporate tax (on a net basis), which are imposed on the dividends payable on the stock. Taxation on investors differs substantially, depending upon the classification of the issuers and the investors for tax purposes (ie, being a Japanese resident or not).

12.2 Withholding Tax

Generally, a non-resident holder of shares of common stock is subject to Japanese income tax collected by way of withholding on dividends, and such tax will be withheld prior to payment of dividends. Stock dividends are subject to 20.315% withholding tax (exempt from filing declaration) or self-assessed separated taxation (income tax and special reconstruction income tax at a rate of 15.315% or residential tax at a rate of 5%).

Even if a foreign investor is subject to withholding tax under domestic tax law, tax treaties entered into between Japan and the country of tax residence of the foreign investor may provide for exemption or a reduced rate with respect to such withholding tax.

12.3 Capital Duties or Transfer Taxes

Upon incorporation of a company or an increase in registered capital, a certain amount of the registration tax is required that is based on the capital amount.

12.4 Capital Gains on Disposals of Listed Shares by Non-Residents

Gains derived from the sale or other disposition of stock outside Japan by a non-resident holder, who is a portfolio

investor, are not, in general, subject to Japanese income tax or corporation tax.

13. Continuing Obligations

13.1 Main Continuing Obligations for Publicly Listed Companies

Reporting (financial or otherwise) obligations

A reporting company (including a company listed in Japan) must file an annual securities report with the LFB within three months (or six months in the case of foreign corporations) of the end of each fiscal year. The information to be included in the securities report is basically identical to the issuer information for the SRS. The reporting company also must file a semi-annual report for the initial six-month period within three months of the end of such period, or if the stock is listed, quarterly reports. Issuers of shares listed on any securities exchange in Japan (other than the market limited to professional investors), in general, are required to file quarterly reports within 45 days of the end of each quarterly fiscal period, except in certain limited cases.

Disclosure requirements in respect of information regarding the issuer

The reporting company must also file an extraordinary report without delay upon the occurrence of a material event, such as an overseas offering of its securities, a change of its parent company or major shareholders, the company's decision to implement a merger, a share-for-share exchange or a corporate split, or a disaster or litigation having a material effect on the company. Issuers of shares listed on any securities exchange in Japan (other than the market limited to professional investors) must also file a certificate by representative directors and the chief financial officer, if any, confirming the lack of untrue statement in the annual or quarterly report and a report regarding the internal control system for financial reporting or other information to be disclosed together with the annual securities report.

Corporate governance requirements

The TSE establishes "The Code of Corporate Conduct" and "the Corporate Governance Code."

Listed non-domestic companies must respect the sense and ethos of the "Corporate Governance Code" and address the enhancement of their corporate governance.

Specific rules apply to transactions post-listing

When a board member or an executive officer (shikko-yaku) of a listed company in Japan bought and sold the equity of the company for less than six months and made a profit, the listed company can request him or her to provide the profit he or she made to the company (ie, short-swing profit rule). For this purpose, when the board member or executive officer of the listed company bought or sold the equity

of the company, he or she must submit the report to the FSA through a financial instruments business operator concerned by the fifteenth day of the next month.

The board member or executive officer of the listed company is prohibited from performing bear position more than the sums of the listed company stocks that he or she holds by using margin trading.

Take-over rules apply to listed companies

The FIEL, in principle, requires that any “off-market” acquisition of shares (with the threshold of 33.33% of total voting rights, in general) issued by a company which is either listed on a Japanese stock exchange or a continuously disclosing company (meaning that it is under an obligation to file securities reports in Japan) (“Offeree”) must be made by way of a tender offer. A tender offer is highly regulated under the FIEL and is required, among others, to be made to all the shareholders by a public notice to purchase the shares on a pro rata basis.

13.2 Application of Obligations to Foreign Incorporated Issuers

A foreign corporation, if it has satisfied certain conditions, is able to file a disclosure document in English disclosed in accordance with the regulations in a foreign jurisdiction instead of a securities report in the Japanese language, when filed with a summary thereof and other supplementary documents in Japanese. This English language disclosure was not available for the purpose of the SRS, but, under the amendments to the FIEL that took effect on 1 April 2012, instead of filing an SRS in Japanese, a foreign corporation, if it has satisfied certain conditions, is able to file a disclo-

sure document concerning the issuer in English disclosed in accordance with the regulations in a foreign jurisdiction, when filed with a summary thereof and other supplementary documents in Japanese as well as information concerning the securities (ie, the terms of securities and offering) in Japanese.

13.3 Penalties for Non-Compliance With Obligations

An issuer who does not comply with the continuing obligations may be subject to criminal proceedings, and, on conviction, imprisonment for up to ten years or a fine of up to JPY700 million, or both and an administrative surcharge.

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