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TSE Listing System Improvements for FY08

Comprehensive Improvement Program for the TSE Listing System

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Summary

- TSE published its “Listing System Improvement FY2008” on 27 May, 2008.
- This announcement describes “facilitating enhanced corporate governance of listed companies” as part of the TSE’s basic strategy for FY2008. Specific issues of concern include “issuance of new shares, etc., causing substantial dilution to existing shareholders” and “a situation in which takeover defense measures are introduced in a concerted manner”.
- The TSE is also continuing its follow-up on the Comprehensive Improvement Program for the Listing System 2007. In particular, issues it is considering include establishing a market for professionals, and the proper approach for listing a company that has a special business structure, such as a special-purpose acquisition company.

Introduction

On 27 May, 2008, The Tokyo Stock Exchange (“TSE”) published its “Listing System Improvement FY2008”¹.

Since 2006, under the title of “Comprehensive Improvement Program for the Listing System”², TSE has been conducting (planning) a comprehensive review of its listing system in order to protect and respect shareholders and investors, properly fulfill the functions of the secondary market, and assist listed companies in their efforts to improve corporate value and international competitiveness. The “Comprehensive Improvement Program for the Listing System 2007”³ was then published in April 2007, in accordance with which there have been significant revisions to the listing system, including publishing the basic approach concerning the listing of subsidiaries, reviewing the liquidity criteria, formulating the Corporate Code of Conduct, establishing a Securities on Alert system, and revisions relating to the adoption of the quarterly report system⁴.

The current publication, “Listing System Improvement FY2008” continues this review of the listing system, focusing TSE’s efforts on the following two themes.

- (1) Improving conditions to enhance the corporate governance of listed companies
- (2) Follow-up on the Comprehensive Improvement Program for Listing System 2007

¹Available on the TSE website (<http://www.tse.or.jp/english/rules/lis-improvements/060622.pdf>).

²Available on the TSE website (<http://www.tse.or.jp/english/rules/lis-improvements/060622.pdf>).

³Available on the TSE website (<http://www.tse.or.jp/rules/seibi/2007programjokyo-e.pdf>).

⁴More details on these points are given in other DIR reports, including: “TSE Approach to Listing of Corporate Subsidiaries” (Japanese language report dated 27 Jun, 2007), “New TSE Liquidity Standards” (Japanese language report dated 31 Oct, 2007), “Securities on Alert System” (Japanese language report dated 31 Oct, 2007), “TSE Corporate Code of Conduct” (Japanese language report dated 9 Nov, 2007) “TSE Response to the Adoption of Quarterly Reports” (Japanese language dated 25 Apr, 2008)

1. Improving Conditions to Enhance the Corporate Governance of Listed Companies

For the sound development of the Japanese securities market, the TSE is placing the highest priority on the development of measures concerning the corporate governance of listed companies during the current fiscal year (FY2008).

The TSE lists the following examples of issues requiring solutions that it should be aware of during future deliberations:

- Issuance of new shares, etc., causing substantial dilution to existing shareholders
- Issuance of new shares, etc., through private placement to a third party about whom transparent disclosure is not provided
- Reverse stock splits that deprive many existing shareholders of their shareholders' rights
- Potential problems with respect to independence, such as a situation in which all of the outside directors/auditors of a listed subsidiary have come from the parent company
- A situation in which takeover defense measures are introduced in a concerted manner
- A situation in which takeover defense measures are introduced by an owner company that holds nearly half of voting rights
- Opinions among market participants that voting rights are not properly exercised by shareholders (excluding certain institutional investors)
- Lack of understanding about efforts being made by individual companies towards the improvement of the corporate auditor system and corporate governance

With a focus on these points, the TSE will identify relevant issues and, given the underlying systems and actual situation in Japan, will then formulate remedial measures. In particular, the TSE intends to speedily create a concrete plan with regard to issues concerning the protection of rights of shareholders, especially those of minority shareholders.

It is not exactly clear what is meant by the protection of rights of shareholders, especially those of minority shareholders ("addressing shareholder rights protection issues as a market operator, especially those of minority shareholders" in the TSE translation). However, this is in the context of a reverse stock split and allocation of subscription rights to third parties performed in autumn 2007 in spite of warnings by the TSE⁵.

2. Follow-up on the Comprehensive Improvement Program for Listing System 2007

Concerning the issues remaining from the "Comprehensive Improvement Program for the Listing System 2007" published in April 2007, the plans to continue considering these issues, based on the views of a panel of experts (Advisory Group on Improvements to TSE Listing System).

The items that include practical implementation plans basically follow the "Comprehensive Improvement Program for the Listing System 2007." However, there are also a number of new items. These include, for example, items such as the following.

⁵ See, "TSE Cautions Against Reverse Stock Splits" (dated 31 Mar, 2008).

Area	Item	Implementation plans
Timely disclosure	Request listed companies to disclose certain material corporate information on a consolidated basis	Develop listing system guidelines or make implementation requests by the end of FY08
Classified stocks	Review how to treat listed classified stocks in stock price indexes, etc.	Ongoing consideration
Market for professionals ¹	The TSE will promptly establish a market for professional investors through an alliance with the London Stock Exchange, in accordance with the amendments to the applicable laws.	Develop listing system guidelines or make implementation requests by the end of FY08
Review of market segmentation	If a market for professional investors is established, review and reconsider the classification of Mothers and the First/Second Section market.	Develop listing system guidelines or make implementation requests by the end of FY08
	Consider adopting the Securities on Alert system, in which securities on alert are be classified in a market section separate from the First/Second Section or Mothers.	Ongoing consideration
Review of trading units ²	Clarify the methods for reviewing trading units for a certain period around the time share certificates are dematerialized.	Develop listing system guidelines or make implementation requests by the end of FY08
Ensuring the effectiveness of the listing rules	Given the introduction of the fine system for violations committed by a listed company ³ , consider implementing a comprehensive revision to the current measures to ensure the effectiveness of the listing rules.	Develop listing system guidelines or make implementation requests by the end of FY08
	Consider publishing a guidebook etc. to clarify the approach to delisting criteria, etc.	Ongoing consideration
	Revising examinations of inappropriate mergers, etc. ("backdoor listing")	Ongoing consideration
Delisting criteria	Consider whether it is possible to provide examples for the delisting criteria relating to public interest and investor protection. (Example: A case in which organized crime or violent groups effectively control a listed company.)	Develop listing system guidelines or make implementation requests by the end of FY08
Listing various financial instruments	Consider the proper approach for listing a company that has a special business structure, such as a specialized company that is established for the purpose of acquiring unlisted companies (SPAC).	Ongoing consideration
Others	In order to prevent insider trading, cooperate to smoothly introduce the Insider Information System ⁴ scheduled to start operation in spring 09.	Develop listing system guidelines or make implementation requests by the end of FY08

Notes: 1) A market restricted to trading participants who are professional investors. See "Proposed Revisions to Market for Professionals and Disclosure Regulations" (Japanese language report dated 27 Mar, 2008), and "Revision Bill Concerning the Operation of a Market for Professionals" (Japanese language report dated 10 Apr, 2008), etc.

2) Standardizing on 100 shares as the number of listed company shares constituting a trading unit. The intermediate goal is to consolidate trading units into basic lots composed of 100 shares or 1,000 shares by Apr 2012. See "Trading Units to be standardized at 100 Shares" (Japanese language dated 30 Nov, 2007), etc.

3) A system for levying fines on a listed company that has betrayed the trust of shareholders and investors through breaching its obligations to timely disclosure, infringing the Corporate Code of Conduct, etc. planned for implementation during Jul 2008. See "TSE Adopts System of Fines for Listed Companies" (Japanese language report dated 15 May, 2008).

4) The system, due to be developed by the Japan Securities Dealers Association (JSDA), is designed to collect and manage data on directors and officers of listed companies. Refer, for example, to the press conference by JSDA Chairman Toshio Ando on 20 May, 2008 (Available in Japanese on the JSDA website: <http://www.jsda.or.jp/html/kaiken/pdf/080520.pdf>).