

## *Amendments to the regulations on insider trading*

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The amendments (“Amendments”) to the Financial Instruments and Exchange Act of Japan (“FIEA”) and the relevant Order for the Enforcement of the FIEA and the Cabinet Office Ordinance<sup>1</sup> in relation to the regulations on insider trading are slated to become effective from April 1, 2014. This newsletter briefly outlines and describes the major changes to the regulations on insider trading that will be wrought by the Amendments.

### 1. Outline of Amendments

The major amendments are as follows:

- (A) Prohibition of information conveyance and the solicitation of trade
- (B) Inclusion of J-REIT Securities in the definition of “Listed Securities” subject to regulations on insider trading
- (C) Inclusion of target companies (in the context of a tender offer) and their Officers/Employees<sup>2</sup> within the definition of “Affiliated Persons”<sup>3</sup>
- (D) Expansion of the exempt category in relation to Recipients<sup>4</sup> of tender offer information
- (E) Expansion of the exempt category where the Affiliated Persons and/or the Recipients possess the same Significant Insider Information
- (F) Increase in the administrative monetary penalty (*kacho-kin*) to be imposed on investment management business operators
- (G) Publication of names of individuals involved in insider trading

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<sup>1</sup> The Cabinet Office Ordinance on Restrictions on Securities Transactions, etc.

<sup>2</sup> “Officers/Employees” means directors, corporate auditors, agents, servants, and other employees.

<sup>3</sup> “Affiliated Persons” means (i) Officers/Employees of a Listed Company (in the case of a tender offer, the tender offeror, and hereinafter the same shall follow), its Parent Company or Subsidiary, (ii) persons who are entitled to inspect the financial books and records of a Listed Company (e.g. shareholders), (iii) persons entitled by law to obtain certain information concerning a Listed Company (e.g. government officials), (iv) persons who have entered into or are in negotiations regarding a contract with a Listed Company and (v) Officers/Employees of all those juridical persons described above who obtain Significant Insider Information in the relevant manner described in the FIEA. Note, however, that the definition of “Affiliated Persons” will be amended as stated in Sections 3 and 4 in this newsletter.

<sup>4</sup> Persons who receives Significant Insider Information by Affiliated Persons

## 2. Prohibition of information conveyance and the solicitation of trade

Following the Amendments, a new prohibition against Affiliated Persons will be introduced under which an Affiliated Person will be prohibited from:

- (i) conveying Significant Insider Information to a third party; and
- (ii) recommending to a third party the trading of (such as selling or purchasing) Listed Securities, while privy to knowledge of Significant Insider Information,

prior to the disclosure of such Significant Insider Information. Please note that the commission of the above acts by Recipients is not prohibited.

Both (i) and (ii) are prohibited if the Affiliated Person intends for the third party to make a profit or to avoid the suffering of a loss.

Such conduct, if carried out by an Affiliated Person, will be considered illegal even if the third party does not enter into the prohibited transaction eventually. An Affiliated Person may also be subject to criminal penalties and/or administrative monetary penalties (*kacho-kin*) if the third party actually enters into a transaction involving the trading of Listed Securities.

## 3. Inclusion of J-REIT Securities in the definition of “Listed Securities” subject to regulations on insider trading

Pursuant to the Amendments, securities (including equity securities and debt securities) issued by an investment corporation (formed in accordance with the Act on Investment Trusts and Investment Corporations of Japan) that invests more than 50% of its assets in real estate and is listed on a financial instruments exchange (such as the Tokyo Stock Exchange) (“J-REIT Securities”<sup>5</sup>) will be included within the definition of “Listed Securities” under the FIEA.

Accordingly, asset management companies and sponsors of listed J-REITs will be considered “Affiliated Persons” in any prohibited transaction in connection with J-REIT Securities.

Consistent with the fact that J-REIT Securities will be included within the definition of “Listed Securities” following the Amendments, the definition of “Significant Insider Information” will also be amended going forward to include information relating to the investment corporations and the asset management companies of J-REITs.

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<sup>5</sup> “J-REIT” is the abbreviated form of Japanese Real Estate Investment Trust, whereas its legal form is not a trust but is an investment corporation.

**4. Inclusion of target companies (in the context of a tender offer) and their Officers/Employees within the definition of “Affiliated Persons”**

Prior to the Amendments, a target company and its Officers/Employees in a tender offer were only deemed to be Affiliated Persons insofar as a tender offeror had concluded, or was in negotiations to conclude a contract with the target company in relation to such tender offer.

Following the Amendments, “Affiliated Persons” will also include the target company in a tender offer and the target company’s Officers/Employees, regardless of the whether there is a contract between the tender offeror and the target company with regard to the tender offer.

**5. Expansion of the exempt category for Recipients of tender offer information**

Prior to the Amendments, if an Affiliated Person of a tender offeror conveyed undisclosed information of the launch of the relevant tender offer to third parties, these third parties would have been subject to the regulations on insider trading as Recipients.

Following the Amendments, Recipients who receive information regarding the launch of a tender offer from Affiliated Persons of a tender offeror will not be subject to the regulations on insider trading if in the subsequent tender offers that are launched by such Recipients, proper disclosure of certain required information (i.e. the name of the conveyer, time of the conveyance and other conveyed information with respect to the tender offer) is made on both the public notice for launching tender offers and the relevant tender offer notification.

In addition, Recipients who receive information regarding the launch of a tender offer from Affiliated Persons of a tender offeror will not be subject to the regulations on insider trading if such Recipients purchase Listed Securities more than six (6) months after receipt of said information. Similarly, Affiliated Persons of a tender offeror (other than Officers/Employees of the tender offeror) will no longer fall to be regulated by the regulations on insider trading after six (6) months have elapsed from the time they acquire knowledge of the tender offer.

**6. Expansion of the exempt category where the Affiliated Persons and/or the Recipients possess the same Significant Insider Information**

Pursuant to the Amendments, the exempt category to the regulations on insider trading with respect to “Off-market transactions between Affiliated Persons and/or Recipients where both parties possess the same Significant Insider Information (excluding cases where parties are aware that they are acting with the intention of furthering prohibited future transactions)” will be expanded such that an off-market transaction between a Recipient and a secondary recipient who receives Significant Insider Information from the Recipient (excluding said the above cases) will also be exempt from the “prohibited transactions”.

**7. Increase in the administrative monetary penalty (*kacho-kin*) to be imposed on investment management business operators**

Pursuant to the Amendments, the administrative monetary penalty (*kacho-kin*) to be imposed on investment management business operators that enter into prohibited transactions in the course of the investment management of properties will be three (3) times the amount of the investment management fee that such business operator receives or would have received for the month in which the prohibited transaction was entered into.

**8. Publication of names of individuals involved in insider trading**

Pursuant to the Amendments, the names of the individuals involved in insider trading may be publicized by the regulator as a form of penalty. These names will be disclosed online or in other appropriate ways by the Financial Services Agency, the Securities and Exchange Surveillance Commission or Local Finance Bureau.

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It is important for companies to establish internal rules and to educate its officers and employees with respect to the changes brought about by the Amendments. In particular, attention should be paid to the tightening of regulations with respect to the (A) prohibition of information conveyance and the solicitation of trade and (B) inclusion of J-REIT Securities within the definition of “Listed Securities”. Going forward, care should also be taken to observe the nascent enforcement of the amended regulations by the Securities and Exchange and Surveillance Commission.

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