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The Amended Large Shareholding Reporting System in Light of Public Comments and Its Implications for Practice

Sayaka Kano / Chiang, Cheng-Yi / Shogo Toyooka

With regard to “the Act for Partial Revision of the Financial Instruments and Exchange Act (the “FIEA”) and the Act on Investment Trusts and Investment Corporations” (Act No. 32 of 2024), which was passed on May 15, 2024, the Financial Services Agency published the draft Cabinet Order and the draft Cabinet Office Ordinance pertaining to the Large Shareholding Reporting System (the “Draft Orders”) on March 14, 2025, and released the public comment results on July 4, 2025.

Given that the amendments to the FIEA and the Draft Orders (the “Amendments”) represent the most significant changes to the Large Shareholding Reporting System and are expected to materially affect reporting practices, this newsletter aims to provide an overview of the Amendments and their implications.

Under the Amendments, the Draft Orders were promulgated on July 4, 2025 and, with a few exceptions, are set to be implemented on May 1, 2026. At the same time, changes to tender offer regulations are also expected. The outline of these changes and their impact on business practices are explained in a separate newsletter¹.

Note: The article numbers in this newsletter are based on the amended FIEA and Draft Orders.

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Development of provisions regarding the promotion of dialogue between corporations	■ With a view to facilitating collaborative engagement (i.e. dialogue with individual investee corporations in collaboration with other institutional investors with the aim

¹ Available in Japanese 「政省令案の公表を踏まえた公開買付制度の改正による実務への影響(速報)」 https://www.amt-law.com/asset/pdf/bulletins1_pdf/250326.pdf (AMT/NEWSLETTER; March 26, 2025)

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<p>and investors (Changes to and development of the criteria for substantial joint holders; changes to and clarification of the scope of making Material Proposals)</p>	<p>of increasing corporate value over the medium to long term), regarding agreements of joint exercise of voting rights that cause Joint Holding, if all of the following criteria are met, such holders will be excluded from the scope of Joint Holders (Article 27-23, Paragraph 5 of the FIEA; Article 14-6-3 of the Enforcement Order; Article 5-2-2 of the Large Shareholding Cabinet Office Ordinance). However, a Deemed Joint Holder falls within the scope of Joint Holder even if such holder has only entered into agreements that meet the following criteria.</p> <p>(1) Each of the holder and other counterparty holders is a Financial Instruments Business Operator*.</p> <p>* Same as the entities subject to the Special Reporting System, i.e. those engaged in type-I financial instruments business or investment management business, banks, trust companies, insurance companies, The Norinchukin Bank, the Shoko Chukin Bank Limited, and those who conduct a type I financial instruments business, investment management business, banking business, trust business or insurance business in foreign states in accordance with the laws and orders thereof.</p> <p>(2) The purpose of the agreement amongst the joint holders is not to jointly make Material Proposals.</p> <p>(3) The agreement is for each individual exercise of rights against the issuer.</p> <p>Of the above, "agreement for each individual exercise of rights" in (3) is a concept newly established in this Amendments, and all of the following requirements must be met to qualify for this criterion.</p> <ul style="list-style-type: none"> • The agreement is made for each shareholders' meeting or investors' meeting of the issuer. • The proposals subject to the agreement are specifically identified so that they are clearly distinguishable from other proposals. • The agreement must stipulate the approval or disapproval of the relevant proposal, and its content must be that the holder and other holders jointly exercise their voting rights on the relevant proposal. <p>■ A Material Proposal refers to an act that meets all of the following criteria:</p>

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	<p>(1) The act is a “proposal” made to the issuer (or its subsidiary).</p> <p>(2) The content of the proposal must fall under any of the items listed in Article 14-8-2, Paragraph 1 of the Enforcement Order (the “Enumerated Items”).</p> <p>(3) The purpose of the proposal is to materially change or affect the business activities of the issuer.</p> <p>With regard to the Enumerated Items of (2) above, the following changes have been made in this Amendments (Article 14-8-2, Paragraph 1 of the Enforcement Order; Article 16 of the Large Shareholding Cabinet Office Ordinance):</p> <p>(Added)</p> <ul style="list-style-type: none"> • appointment or removal of a representative executive officer • appointment or dismissal of an executive officer of investment corporations • appointment of an officer* <ul style="list-style-type: none"> * An “appointment” of an officer has been added, but this does not include the “dismissal” of an officer. Nevertheless, please note that in cases of a “dismissal” of an officer, subject to the particulars of the proposal, the proposal may fall under “material change to the composition of the officers”. • acquisition by a person other than the issuer, where, as a result of such acquisition, the acquirer together with Deemed Joint Holders will own shares or investment units representing more than 50% of the voting rights (an “Acquisition of Control by a Third Party”) <p>(Deleted)</p> <ul style="list-style-type: none"> • appointment or dismissal of a manager or other important employees • the establishment, changes or abolition of important structures including branch offices <p>In addition, with the aim of clarifying the scope of a Material Proposal, QA36 regarding the Large Shareholding Reporting System states that, with respect to the criterion in (3) above-namely, that “the purpose of the proposal is to materially change or affect the business activities of the issuer”-the following items are deemed to have a relatively high likelihood of having such purpose, and that a</p>

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	<p>categorized approach has been adopted to determine which items are likely / unlikely to fall under criterion (3) of Material Proposal (Response to Public Comment No. 38).</p> <ul style="list-style-type: none"> • appointment/removal of representative directors, representative executive officers, or appointment/dismissal of executive officers • appointment of a specific person (oneself or a person designated by oneself) as an officer • share exchange in which the issuer becomes a wholly owned subsidiary, or absorption-type merger in which the issuer becomes the absorbed company or absorbed corporation • company split in which the issuer’s main business is the subject of succession • transfer, acquisition, suspension, or abolition of business, limited to the transfer, suspension, or abolition of the issuer’s main business • dissolution • filing for commencement of bankruptcy proceedings, rehabilitation proceedings, or corporate reorganization proceedings • Acquisition of Control by a Third Party <p>However, it is stated that, even for matters not listed above, “if a proposal is made in a manner that does not leave the decision of whether to accept or reject the proposal to the autonomous judgment of the issuer’s management, such proposal is considered to be intended to materially change or affect the business activities”. Furthermore, in the responses to Public Comment No. 39 and No. 40, it is interpreted that, as a general rule, merely indicating the possibility of opposing company proposals at a shareholders’ meeting, or suggesting to the company how voting rights should be exercised, does not, by itself, constitute a “proposal made in a manner that does not leave the decision of whether to accept or reject the proposal to the autonomous judgment of the issuer’s management”.</p>
<p>Development of provisions concerning derivative transactions (Changes in the criteria of a holder in relation to derivative</p>	<ul style="list-style-type: none"> ■ A person who holds a long position in derivative transactions concerning Share Certificates (securities issued by a corporation that is the issuer of share certificates, corporate bond certificates with share options, and other securities specified by Cabinet Order that are

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<p>transactions; development of the calculation method of Share Certificates held in relation to derivative transactions)</p>	<p>listed on a financial instruments exchange; the same applies hereinafter) and has any of the following purposes will be deemed to be a holder of the Share Certificate (an “Item 3 Holder”) (Article 27-23, Paragraph 3, Item 3 of the FIEA; Article 14-6 of the Enforcement Order; Response to Public Comment No. 81):</p> <ul style="list-style-type: none"> (1) to acquire Share Certificates from the counterparty to the derivative transaction (2) to make a Material Proposal to the issuer by indicating to the issuer its rights associated with the derivative transaction (3) to affect the exercise of voting rights (limited to those attached to the Share Certificates issued by the relevant issuer) held by the counterparty to the derivative transaction <p>■ Whether any of these purposes are present must be determined substantively based on the specific facts of each individual case. However, as such determinations can be difficult, several interpretations have been provided for clarification.</p> <p>First, with respect to (1) and (2), it is important to note that having the relevant purpose is not limited to cases where there is an agreement with the counterparty to the derivative transaction to conduct the transaction for that purpose; the purpose may be found based solely on the subjective intent of the holder.</p> <ul style="list-style-type: none"> ● As for the specific interpretations of each purpose: <ul style="list-style-type: none"> ➤ Regarding purpose (1), in the response to Public Comment No. 63, it was clarified that even if the holder of a long position has the right to select physical delivery when both cash settlement and physical delivery are available as settlement methods, this does not immediately mean that the holder has the “purpose of acquiring such Share Certificates issued by the issuer from the counterparty to the derivative transaction.” ➤ Regarding purpose (2), as stated in the responses to Public Comments No. 68 through No. 70, as provided in the statute, two elements are required: (i) the purpose of engaging in conduct that constitutes making a Material Proposal, and (ii) indicating rights associated to the derivative transaction in the course of doing so.

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	<ul style="list-style-type: none"> ➤ Regarding purpose (3), as indicated in the response to Public Comment No. 71, if, for example, the purpose is to exercise or refrain from exercising voting rights, or to influence the content of the exercise of voting rights, this would fall under this category. ● (The Timing When the Purpose is Held) With respect to purpose (1), based on the responses to Public Comments No. 60 and No. 61, it appears to be interpreted that a person holding rights related to a derivative transaction is considered to have purpose (1) from the point at which they have, at the latest, decided or planned to settle by physical delivery. However, a clear interpretation has not been provided. Similarly, for purposes (2) and (3), it is possible that the relevant purpose is considered to be held from the time such a decision or plan is made. ● (The Scope of the Long Positions Associated with the Purpose) According to the responses to Public Comments No. 68 and No. 69, regarding purpose (2), even if the holder only indicates rights related to a portion of the Share Certificates associated with the derivative transaction, or does not specify a concrete quantity, insofar as the purpose is to “indicate the holding of rights associated with the derivative transaction” and the person qualifies as a “holder,” the person is generally considered a holder with respect to all Share Certificates associated with the relevant derivative transaction (which is understood to be on a contract-by-contract basis). Similarly, for purposes (1) and (3), it is important to note that the same interpretation as for purpose (2) may be adopted, meaning the person would be considered a holder with respect to all Share Certificates associated with the relevant derivative transaction (on a contract-by-contract basis). If, at the time of acquiring the long position, the person does not have any of purposes (1) through (3), they are not considered a “holder” of the relevant Share Certificate at that time. However, if they subsequently come to have any of purposes (1) through (3), they will be regarded as a “holder” of the relevant Share Certificates from that point onward.

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	<ul style="list-style-type: none"> <li data-bbox="609 210 1418 539">■ If a long position in a cash-settled derivative transaction that has existed since before the effective date of the Amendments falls under Article 27-23, Paragraph 3, Item 3 of the FIEA, and as a result, the shareholding ratio exceeds 5% or increases by 1% or more, the obligation to submit a Large Shareholding Report or a Change Report arises on the effective date (as stipulated in the first part of Article 5 of the Supplementary Provisions of the amended FIEA). <li data-bbox="609 551 1418 792">■ The method for calculating the shareholding ratio when a holder of a derivative long position is deemed a shareholder is prescribed in Article 3-3 of the Large Shareholding Cabinet Office Ordinance. The calculation methods for major types of derivative transactions are as follows: <ul style="list-style-type: none"> <li data-bbox="671 804 1418 920">(1) For derivative transactions where the parties agree to exchange money based on the difference between the actual value and the contracted value: <p style="text-align: center; margin: 10px 0;"> <i>(Amount of money contracted to be exchanged) = (Number of Share Certificates deemed to be held) × (Difference between the contracted value and the actual value)</i> </p> <li data-bbox="671 1189 1418 1476">(2) For derivative transactions where the parties agree to exchange money based on a principal amount determined by the parties, and the amount of money contracted to be exchanged is calculated based on the interest rate of a financial instrument or the rate of change of a financial index during the contract period: <p style="text-align: center; margin: 10px 0;"> <i>(Amount of money contracted to be exchanged) = (Number of Share Certificates deemed to be held) × (Difference between the interest rate or financial index at the start and end of the contract period)</i> </p> <p data-bbox="646 1742 1418 2029">According to the response to Public Comment No. 80, if shares are acquired through physical delivery based on a derivative transaction (e.g., when both cash settlement and physical delivery are available and physical delivery is selected), the person, having the right to claim delivery of the shares at the latest from the time of such selection, is considered a Main Clause Holder of the number of physical</p>

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	<p>shares to be delivered. On the other hand, if a person holds a long position in a derivative transaction and, having a certain purpose, falls under Item 3 Holder, the calculation will be made using the method described above according to the type of derivative transaction.</p>
<p>Revision to the scope of Deemed Joint Holders</p>	<ul style="list-style-type: none"> ■ Previously, a “special relationship” (as defined in Article 27-23, Paragraph 6 of the FIEA), which constitutes Deemed Joint Holders, was limited to cases where there was a certain personal or capital relationship. After the Amendments, the personal relationship criterion has been removed, and certain objective circumstances—such as concurrent officer or financial support—have been added as criteria for a “special relationship”, which constitutes Deemed Joint Holders (as specified in Article 5-3 of the Large Shareholding Cabinet Office Ordinance): <ul style="list-style-type: none"> (Added) <ul style="list-style-type: none"> • a company and its representative, etc. (excluding financial instruments business operators* unless their purpose for holding is to engage in making Material Proposals) • the company and the other company, in cases where a representative, etc. of the company is the representative, etc. of the other company (excluding financial instruments business operators* unless their purpose for holding is to engage in making Material Proposals) <ul style="list-style-type: none"> * Same as the entities subject to the Special Reporting System, i.e. those engaged in type-I financial instruments business or investment management business, banks, trust companies, insurance companies, The Norinchukin Bank, the Shoko Chukin Bank Limited, and those who conduct a type I financial instruments business, investment management business, banking business, trust business or insurance business in foreign states in accordance with the laws and orders thereof. • the fund provider who provides funds for the purpose of acquiring Share Certificates and the fund receiver who receives such funds (in certain cases) • the person who requests to acquire Share Certificates and the person who acquires such Share Certificates accordingly for the purpose of transferring them to

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	<p>the requesting person (in certain cases)</p> <ul style="list-style-type: none"> • the person who requests (excluding instructions based on the investment authority under a discretionary investment contract, etc.) to make a Material Proposal and the person who makes such Material Proposal accordingly <p>(Deleted)</p> <ul style="list-style-type: none"> • spousal relationship <ul style="list-style-type: none"> ■ As a result of this Amendments, new categories of Deemed Joint Holders based on circumstances specific to each holder have been added. Consequently, the scope of Joint Holders may differ depending on which holder is considered as the principal party. In such cases, each holder is required to submit a Large Shareholding Report or a Change Report that covers the Joint Holders from their own perspective, and the content of these reports may vary from one holder to another. ■ When there are Joint Holders, the submission requirements of Change Reports can become particularly burdensome, in cases of changes to the name, address, location, or representative of a holder (including Joint Holders). However, if the details of such changes are made publicly known within Japan through the Internet or other means (e.g., if the information is published on the website of the holder or its group companies), these changes are no longer considered grounds for submitting a Change Report (as provided in Article 9-2, Paragraph 2, Item 2 of the Large Shareholding Cabinet Office Ordinance).
<p>Clarifications to the content of the Large Shareholding Reports, etc. (change to forms)</p>	<ul style="list-style-type: none"> ■ Along with the change in the scope of a holder in relation to derivative transactions, a column titled "Article 27-23, Paragraph 3, Item 3 of the FIEA" has been added to the breakdown of held Share Certificates in Form 1 of the Large Shareholding Cabinet Office Ordinance. ■ The following items b and c have been added to "(10) Purpose of Holding" in the Notes on Description section of Form 1 of the Large Shareholding Cabinet Office Ordinance: <ul style="list-style-type: none"> b In cases where a Material Proposal (excluding the newly added category of "Acquisition of Control by a Third Party" amongst Material Proposals in this Amendments) has actually been made or is planned to be made*, the content thereof (e.g., specific details of the Material Proposal, the timing of, the conditions

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	<p>for, and the purpose of making the Material Proposal) shall be stated as specifically as possible. In cases where there are more than one Material Proposal, all of them shall be described.</p> <p>* According to the responses to Public Comments No. 115 and No. 116, the concept of “planned” is interpreted as follows: “Planned” refers to situations where there is a certain degree of likelihood and specificity that an act will be carried out. E.g., cases where business is being conducted toward the implementation of the act and it is specifically expected that the act will be carried out, or where a person with substantive decision-making authority within the submitting entity has decided to carry out the act.</p> <p>c In cases where a decision (if the person obliged to submit the report is a juridical person, the decision of its executive organ) is made to increase the ownership ratio of Share Certificates by over 5% (excluding acts that do not increase the total number of held Share Certificates, as well as acquisitions of Share Certificates by financial instruments business operators from customers for the purpose of facilitating the circulation of shares—provided that the acquired shares are immediately transferred after acquisition—), the details thereof (e.g., the type, the timing, the price, the quantity, the purpose, the method of the acquisition, and the counterparty) shall be stated as specifically as possible. The same shall apply to cases where a Large Shareholding Report is to be submitted or a Change Report is to be submitted due to an increase in the ownership ratio of Share Certificates, and an act to increase the ownership ratio of Share Certificates by more than 5% (excluding acts that do not increase the total number of held Share Certificates) is planned within 3 months from the day on which the obligation to submit such reports arises. (“Decision or Plan of Buying-up”)</p> <p>According to the responses to Public Comments No. 148 through No. 153, the concepts of “decision” and “plan” are interpreted as follows:</p> <ul style="list-style-type: none"> ● Decision:

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	<p>If the submitter is a juridical person, a “decision” refers to a resolution by the body responsible for executing the corporation’s business. It is interpreted to be made at the latest when the final decision necessary to carry out the act has been made by the relevant decision-making body.</p> <ul style="list-style-type: none"> ● Plan: A “plan” refers to situations where there is a certain degree of likelihood and specificity that the act will be carried out. E.g., cases where business is being conducted toward the implementation of the act and it is specifically expected that the act will be carried out, or where a person with substantive decision-making authority within the submitting entity has decided to carry out the act. <p>It is important to note that the occurrence of a “Plan of Buying-up” (as stipulated in the second sentence of “Purpose of Holding” of (10) c in the Notes on Description section of Form 1 of the Large Shareholding Cabinet Office Ordinance) does not, by itself, trigger an obligation to submit a Change Report. (A “Plan of Buying-up” is only required as an additional disclosure item when submitting a Change Report due to an increase in the shareholding ratio. However, if there is a change to the stated plan, this alone constitutes grounds for submitting a Change Report)</p> <ul style="list-style-type: none"> ■ In “(14) Collateral Agreements Related to the Relevant Share Certificates and Other Significant Contracts” in the Notes on Description section of Form 1 of the Large Shareholding Cabinet Office Ordinance, examples of Significant Contracts have been added or revised as follows: <ul style="list-style-type: none"> a Significant Contracts or arrangements pertaining to the future transfer of Share Certificates, e.g.: <ul style="list-style-type: none"> (a) disposition restriction agreements (b) restrictions on additional purchases (c) subscription rights (d) call options (e) put options b an outline of the derivative transactions in cases where the report submitter falls under Article 27-23, Paragraph 3, Item 3 of the FIEA c the details of the agreement in cases where there is an agreement to jointly exercise voting rights or

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	<p>other rights</p> <p>d an outline of the contract and the purpose of such agreement in cases where the report submitter and the issuer have entered into a contract that includes certain agreements, e.g.:</p> <ul style="list-style-type: none"> (a) an agreement granting the report submitter the right to nominate candidates for officers of the issuer (b) an agreement imposing restrictions on the exercise of voting rights by the submitter (c) an agreement requiring the submitter’s prior consent for matters to be resolved at the issuer’s shareholders’ meetings or board meetings <p>e in cases where Share Certificates are held or co-owned by an operating partner, etc. of an association, partnership, or a similar entity, such a fact</p> <ul style="list-style-type: none"> ■ The following items have been added or amended in the breakdown of held Share Certificates, in Form 1 of the Large Shareholding Cabinet Office Ordinance: <ul style="list-style-type: none"> • “The number of Share Certificates, Depository Receipts for Share Certificates, and Beneficiary Certificates of Share Certificates in Trust that should be added to the number of held potential Share Certificates” • “The number of held potential Share Certificates of the submitter and Joint Holders” • “The number of deductible potential Share Certificates based on rights such as delivery claims existing amongst Joint Holders of the held potential Share Certificates”
Others	<ul style="list-style-type: none"> ■ For shares with acquisition rights or acquisition clauses, the number of Share Certificates with voting rights that can be issued in exchange for such shares is counted as the “Number of Held Share Certificates” (as stipulated in Article 5, Paragraph 1, Item 2 of the Large Shareholding Cabinet Office Ordinance). Additionally, the method for recording non-voting shares with acquisition rights or acquisition clauses in the Large Shareholding Report has been revised (Large Shareholding Reporting System QA 7). If the number of shares to be delivered in exchange for such shares is determined based on market value or similar criteria, the number must be calculated as if the shares were delivered on the date the reporting obligation arises (Article 5, Paragraph 2 of the Large Shareholding Cabinet

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	<p>Office Ordinance). However, if the total Number of Held Share Certificates increases or decreases solely due to fluctuations in market value, such changes are excluded from the obligation to submit a Large Shareholding Report or a Change Report (Article 3, Item 2 and Article 9, Item 2 of the Large Shareholding Cabinet Office Ordinance). On the other hand, if the Number of Held Share Certificates changes due to a transaction, even by a single share, or if any other reason for submitting a Change Report arises, the number of shares to be delivered must be calculated based on the market value as of that day, and the Number of Held Share Certificates must be determined accordingly.</p> <ul style="list-style-type: none"> ■ Cases where financial instruments business operators intend to acquire Share Certificates, resulting in an ownership ratio of Share Certificates exceeding 10% after the acquisition, are added as exclusions from the scope of Share Certificates Subject to Special Rules (Article 13, Item 3 of the Large Shareholding Cabinet Office Ordinance).

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 - Authors:
 - [Sayaka Kano \(sayaka.kano@amt-law.com\)](mailto:sayaka.kano@amt-law.com)
 - [Chiang, Cheng-Yi \(cheng-yi.chiang@amt-law.com\)](mailto:cheng-yi.chiang@amt-law.com)
 - [Shogo Toyooka \(shogo.toyooka@amt-law.com\)](mailto:shogo.toyooka@amt-law.com)

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