

# **RULES CONCERNING PROPER HANDLING OF PRE-HEARING BY ASSOCIATION MEMBERS**

**(December 1, 2006)**

## **(Purpose)**

**Article 1** The purpose of the Rules Concerning Proper Handling of Pre-Hearing by Association Members (hereinafter referred to as “Rules”) is, when an Association Member conducts a survey of demand from investors for securities under the solicitation prescribed in the provision of Article 166, Paragraph 2, Item 1(a) and Item 9(b) of the Financial Instruments and Exchange Act (hereinafter referred to as “FIEA”) (limited to those related to the securities issued by a Listed Company, etc. prescribed in the provision of Article 163, Paragraph 1 of the FIEA (hereinafter referred to as “Listed Company, etc.”); hereinafter referred to as “Solicitation” except for Article 8, Paragraph 1 and Article 9 hereof), to stipulate matters that are necessary to conduct such survey properly and to prevent insider trading from being induced, thereby contributing to the maintenance of fair transaction of securities.

## **(Definitions)**

**Article 2** The terms set forth in each of the following Items shall have their respective definitions prescribed therein for the purpose of these Rules:

(1) **Corporate Information**

It shall mean the important information on management, business, or property of the Listed Company, etc. that are not publicly disclosed, that may impact on the investment decision by customers, and that is related to the Solicitation;

(2) **Pre-Hearing**

It shall mean a survey on demand from investors for the securities under the Solicitation after providing the Corporate Information (including the survey conducted by a third party to whom the Association Member entrusts such survey or after receiving the Corporate Information from the Association Member);

(3) **Persons Subject to the Pre-Hearing**

It shall mean individual persons who are subject to the Pre-Hearing;

(4) **Restrictions of Trade**

It shall mean no sale and purchase or any other transfer for pay, assignment, or derivative transactions (Derivative Transactions prescribed in the provision of Article 2, Paragraph 20 of the FIEA; the same shall apply hereinafter) of the specified securities, etc. (Specified Securities, etc. prescribed in the provision of Article 163, Paragraph 1 of the FIEA of the Listed Company, etc.; the same shall apply hereinafter) be conducted until the time the Corporate Information or the implementation of the Solicitation is publicly announced, or until the time an Association Member issues a notice of cancellation of the Solicitation after the Pre-Hearing (excluding the case where the transaction is made pursuant to the provisions of Article 166, Paragraph 6, Items 1 to 6 and 8 of the FIEA, or between the persons who receive the Corporate Information outside of the financial instruments exchange market pursuant to the provision of Article 117, Paragraph 1, Item 15 of the Cabinet Office Ordinance on Financial Instruments Business, Etc. (hereinafter referred to as the “FIB Cabinet Office Ordinance”).

(5) **Confidentiality Obligation**

It shall mean that the Corporate Information under the Pre-Hearing should not be provided to a

person other than the Persons Subject to the Pre-Hearing and those prescribed in the provision of Article 117, Paragraph 1, Items 15 (a)(2) and (b)(2) of the FIB Cabinet Office Ordinance.

(6) Overseas Affiliated Company

It shall mean an overseas corporation that is an affiliated company of an Association Member prescribed in the provision of Article 177, Paragraph 6 of the FIB Cabinet Office Ordinance (in case of a Special Member, this provision shall apply by reading the “Financial Instruments Business Operator” as the “Registered Financial Institution”), or an equivalent foreign corporation.

(7) Compliance Section

It shall mean a section that is responsible for conducting the compliance activities prescribed in the provisions of Article 117, Paragraph 1, Item 15(a)(1) and (b)(1) of the FIB Cabinet Office Ordinance.

**(Approval of Pre-Hearing from Compliance Section)**

**Article 3** When and before an Association Member conducts the Pre-Hearing, it must obtain the approval from the Compliance Section on the matters prescribed in the respective Items below:

- (1) The Pre-Hearing is necessary and adequate;
- (2) When entrusting the Pre-Hearing to a third party, a person who belongs to the Overseas Affiliated Company (an individual person on whom the measures prescribed in the provisions of Article 5, Paragraph 1 are taken; the same shall apply hereinafter) shall be appointed as a entrusted party. However, if there is a rational reason to select a person who does not belong to the Overseas Affiliated Company (an individual person on whom the measures prescribed in the same Article, Paragraph 2 are taken; the same shall apply hereinafter) in consideration of the actual conditions of the Pre-Hearing, the selection of such person as a entrusted party shall not be precluded.
- (3) The Persons Subject to the Pre-Hearing shall be selected within a reasonable scope defined by the internal rules of the Association Member;
- (4) Content of the Corporate Information provided to the Persons Subject to the Pre-Hearing shall be within a reasonable scope defined by the internal rules of the Association Member;
- (5) The timing and method of providing the Corporate Information to the Persons Subject to the Pre-Hearing shall be appropriate.

**(Agreement with the Persons Subject to the Survey)**

**Article 4** When an Association Member intends to conduct the Pre-Hearing, the Association Member must explain the matters set forth in the respective Items below to the Persons Subject to the Pre-Hearing, a person who belongs to the Overseas Affiliated Company to which the Association Member entrusts the Pre-Hearing, or a person who does not belong to the Overseas Affiliated Company (hereinafter referred to as “Persons Subject to the Survey”), ensure their understanding, and execute an agreement that includes the matters below:

- (1) Restrictions of Trade applied to the Persons Subject to the Survey and other persons who belong to the same organization or section which the Persons Subject to the Survey belong to and share the Corporate Information with;
- (2) Confidentiality Obligation applied to the Persons Subject to the Survey and other persons who belong to the same organization or section which the Persons Subject to the Survey belong to and share the Corporate Information with;

- (3) The fact that the Pre-Hearing is conducted not to solicit investment but to check the estimated demand;
2. The agreement prescribed in the preceding Paragraph shall be executed in writing every time the Pre-Hearing is conducted. However, an Association Member may execute a comprehensive agreement under the condition that the Association Member confirms the details of the agreement with the Persons Subject to the Survey every time it conducts the Pre-Hearing.
3. Notwithstanding the provisions of the preceding Paragraph, if it is difficult to execute the agreement in writing prescribed in the Paragraph 1 in advance after considering the actual conditions of the Pre-Hearing, an Association Member may take other reasonable alternatives prescribed in its internal rules, such as explaining the matters set forth in each Item of Paragraph 1 to the Persons Subject to the Survey, executing the agreement in non-written form, and later notifying the details of the agreement in writing to the Persons Subject to the Survey.

**(Measures Taken for the Internal Control System of Overseas Affiliated Company)**

**Article 5** When an Association Member entrusts the Pre-Hearing to a person who belongs to the Overseas Affiliated Company, the Association Member shall take either set of measures set forth in the respective Items below:

- (1) An Association Member shall execute an agreement that includes the matters set forth below with the person who belongs to the Overseas Affiliated Company pursuant to the provision of Paragraph 2 or Paragraph 3 of the preceding Articles;
    - (a) The person who belongs to the Overseas Affiliated Company shall execute an agreement that includes the execution of the agreement on Restrictions of Trade and Confidentiality Obligation with the Persons Subject to the Pre-Hearing;
    - (b) The person who belongs to the Overseas Affiliated Company shall prepare a record that includes the name of the person who is in charge of administration of the Pre-Hearing and who actually implements such administration, the name and address of the Persons Subject to the Pre-Hearing, details of the Corporate Information provided to the Persons Subject to the Pre-Hearing, and the date and method of providing the Corporate Information, and retain the record for five years from its preparation;
    - (c) The Persons Subject to the Pre-Hearing shall be selected within a reasonable scope;
    - (d) Content of the Corporate Information provided to the Persons Subject to the Pre-Hearing shall be within a reasonable scope;
    - (e) The timing and method of providing the Corporate Information to the Persons Subject to the Pre-Hearing shall be appropriate.
  - (2) An Association Member shall confirm that the Overseas Affiliated Company establishes a proper internal control system such as preparing internal rules to take the measures set forth in (a) to (e) of the preceding Item.
2. When an Association Member entrusts the Pre-Hearing to a person who does not belong to the Overseas Affiliated Company prescribed in the provision of Article 3, Item 2, the Association Member shall take measures that are equivalent to those prescribed in the preceding Paragraph to such person under the provisions of the internal rules of the Association Member.

**(Retention Etc. of Notice or Record)**

**Article 6** When an Association Member confirms with the Listed Company, etc. that it is determined that the Solicitation is not made after the Pre-Hearing, the Association Member must notify the same to the Persons Subject to the Survey, and retain the record.

2. When an Association Member executes the agreement prescribed in the provision of the preceding Article, Paragraph 1, Item 1, it must receive a copy of the agreement prescribed in the same Item (a) from a person who belongs to the Overseas Affiliated Company, and retain it.
3. When an Association Member obtains consent prescribed in the provision of Article 8, Paragraph 2 from the Listed Company, etc., it must retain the record of such consent.

**(Measures Taken for the Persons Subject to the Survey who Breaches the Agreement)**

**Article 7** When an Association Member discovers a breach of the provisions set forth in Article 4, Paragraph 1, Item 1 or 2 of the agreement executed under the provisions of Article 4, Paragraph 1 by the Persons Subject to the Survey, the Association Member must not conduct the Pre-Hearing to such Persons Subject to the Survey within two years of the date on which the Association Member discovers such breach.

2. When an Association Member discovers that a person who belongs to the Overseas Affiliated Company or a person who does not belong to the Overseas Affiliated Company (hereinafter referred to as “Pre-Hearing Entrusted Party”) does not take the measures prescribed in the provision of Article 5, the Association Member must not entrust the Pre-Hearing to such Pre-Hearing entrusted party or provide the Corporate Information to have such Pre-Hearing party to conduct the Pre-Hearing, within two years from the date on which the Association Member discovers such fact.
3. When the Association receives a report prescribed in the provision of Article 10, Paragraph 1 from an Association Member, the Association shall notify the name of corporation to which the Persons Subject to the Survey belong, as well as the title, name, and address of the Persons to the supervisory authorities such as the Financial Services Agency, the Securities and Exchange Surveillance Entrust, financial instruments exchanges, and foreign financial instruments exchanges, and a self-regulatory body approved by such supervisory authorities.

**(Points to Note)**

**Article 8** Even if an Association Member conducts the Pre-Hearing in compliance with these Rules, it must not make Solicitation of the specified securities, etc. before the filing of Public Offering or Secondary Distribution, which is prohibited under Article 4, Paragraph 1 of the FIEA, and Solicitation with the provision of the Corporate Information which is prohibited under Article 117, Paragraph 1, Item 14 of the FIB Cabinet Office Ordinance.

2. When an Association Member conducts the Pre-Hearing, it shall obtain consent for the Pre-Hearing in advance from the Listed Company, etc. that conducts the Solicitation.

**(Prohibition of Pre-Hearing for Domestic Solicitation except for IPOs)**

**Article 9** In principle, an Association Member shall not conduct the Pre-Hearing in relation to the domestic Public Offering accompanied by the Underwriting prescribed in the provision of Article 2, Paragraph 8, Item 6 of the FIEA (Public Offering prescribed in the provision of Article 2, Paragraph 3 of the FIEA and Solicitation for an underwriter of treasury stocks disposed of by a company prescribed in the provision of Article 199 of the Companies Act, excluding initial public offerings (IPOs) prescribed

in the provision of Article 2, Item 15 of the Rules Concerning Underwriting, Etc., of Securities).

**(Reporting, Etc. to the Association)**

**Article 10** When an Association Member discovers the fact prescribed in the provision of Article 7, Paragraph 1 or 2, the Association Member shall report to the Association the name of the corporation to which the Persons Subject to the Survey belong, as well as title, name, and address of the Persons, along with details of the Corporate Information provided to such Persons Subject to the Survey, and the date and method of providing the Corporate Information.

2. The Association shall request an Association Member to submit to the Association materials such as the record prepared and retained by the Pre-Hearing entrusted party pursuant to the provision of Article 5, Paragraph 1, Item 1(b) or the same Article, Paragraph 2.

**(Establishment of Internal Rules)**

**Article 11** An Association Member who conducts the Pre-Hearing shall fully understand laws and regulations related to the Pre-Hearing, and shall establish internal rules on the internal control such as an approval procedure in a Compliance Section, selection criteria of the Persons Subject to the Survey, agreements on the compliance with Restrictions of Trade and Confidential Obligation, measures taken for the internal control system of Overseas Affiliated Company, etc. record retention, and points to note, and prepare a system to have its officers and employees comply with such rules.

**(Agreement in Electromagnetic Means)**

**Article 12** When an Association Member executes an agreement in writing under Article 4 and Article 5, Paragraph 1, Item 1, and Paragraph 2, it shall use a method using an electronic information processing system or any other method using information technology. In such case, the Association Member may regard the contract to be executed in writing.

2. When an Association Member who executes the contract in a method prescribed in the provision of the preceding Paragraph receives an inquiry on the details of such agreement from the Persons Subject to the Survey, the Association Member must respond with the details of the agreement without delay to the Persons Subject to the Survey, in writing, orally, by telegraph, on the phone, by a method using an electronic information processing system, or any other means.
3. An Association Member may provide the matters that should be described in a document prescribed in the provision of Article 4, Paragraph 3 by a method using an electronic information processing system or any other method using information technology pursuant to the “Rules Concerning Handling of Documents Delivery, Etc. through Electromagnetic Methods” as a substitute for the notice in writing prescribed in the provision of Article 4, Paragraph 3. In such case, the Association Member may regard the notice to be made in writing.

**SUPPLEMENTARY PROVISIONS [Omitted]**

(Note) This amendment comes into effect as of October 1, 2023.

<p>This translation is solely for the convenience of those interested therein, and accordingly all questions that may arise with regard to the meaning of the words or expressions herein shall be dealt with in accordance with the original Japanese text.</p>
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