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Revisions to Listing Rules to Facilitate the Enforcement of the Securities on Alert System, etc.

June 17, 2013
Tokyo Stock Exchange, Inc.

I. Purpose

Tokyo Stock Exchange (TSE) introduced the Securities on Alert system in 2007 from the perspective of diversifying means to ensure the effectiveness of the listing rules. When a listed company is found to have violated the listing rules, excluding cases where an immediate delisting is called for to maintain order in the market, a designation as a security on alert serves to alert investors of the violation and also urges the listed company to improve its internal control system, maintaining the company's listing on the condition that it is improved within three years.

To date, there have been 11 listed companies designated as securities on alert. Some companies have been delisted during their period of designation while others have had their designations removed after improving their internal control systems. In this way, the system is having a positive impact in ensuring the effectiveness of the listing rules.

However, despite the designation of an issue as a security on alert being handled in a similar way as a delisting, there is opinion that the purpose of the system is not being properly understood, which has resulted in it being perceived as a means to simply maintain an errant company's listing and giving rise to the possibility that it is not appropriately fulfilling its function of alerting investors. In addition, with regard to reasons for designating an issue as a security on alert, such as false statements in securities reports, on top of the higher risk of companies making corrections to financial statements on their own accord which is being brought about by increasingly fine tuned accounting standards and stringent audits, there have also been cases of speculation on false statements adversely affecting price formation in the secondary market. Furthermore, in discussions at the Business Accounting Council on revisions to auditing standards and standard setting to address risks of fraud in an audit, the desired form of delisting rules (handling of adverse opinions and opinions not expressed) were included as a matter to be considered after it was raised that regulatory measures are required to clarify that the response of the auditor is not directly connected to an immediate delisting. In light of these developments, we will revise the rules from the perspective of enhancing the foreseeability of the handling of the delisting criteria pertaining to false statements, etc. and facilitating the proper understanding of the Securities on Alert system as a means for ensuring the effectiveness of the listing rules.

In light of the partial revision to the matters for attention regarding the disclosure of corporate affairs, etc. (corporate affairs, etc. disclosure guideline), which addresses extension of the deadline for submission of securities reports or quarterly reports, TSE will revise the handling of the

delisting criteria for cases where an application for extension of the submission deadline is approved. In addition, TSE will make necessary revisions to the rules to enhance their effectiveness, such as by modifying the listing agreement violation penalty system, introduced in 2008 as a punitive measure on companies that violate the listing rules, from one that applies a uniform penalty to all cases to one that applies a penalty according to the violation's impact on confidence in the market.

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II. Outline

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1. Clarification of Handling of Delisting Criteria related to False Statements or Adverse Opinions, etc.	① With regard to the delisting criteria for cases related to false statements or adverse opinions, etc., TSE will clarify that in cases where a listed company falls under either of the following a. or b., it shall be delisted when it becomes clear,that, if not delisted immediately, order in the market will be difficult to maintain. a. Where a listed company has made a false statement in its securities report, etc. b. Where the audit report attached to financial statements, etc. contains "adverse opinion" or "opinions are not expressed" of a certified public accountant, etc. (excluding cases caused by an event which is not attributable to the listed company including an act of providence) or the quarterly review report attached to quarterly financial statements, etc. contains "negative conclusion" or "conclusions are not expressed" of a certified public accountant, etc. (in the case of a specified business company, including "opinion that the interim financial statements, etc. do not provide useful information" or "opinions are not expressed") (excluding cases caused by an event which is not attributable to the listed company including an act of providence)	* Currently, cases falling under either a. or b. at left that TSE deems has material impact constitutes a reason for delisting. This revision is made from the perspective of increasing the foreseeability of the rules and clarifies the cases that will be delisted. - "When it becomes clear that, if not delisted immediately, order in the market will be difficult to maintain" is assumed to mean cases that are considered to significantly undermine investor confidence in the financial instruments market of TSE if such company's listing is maintained. For example, this includes cases where the listed company substantially circumvents the listing criteria by making false statements on situations, etc. at the company such as liabilities in excess of assets prior to listing, or where the listed company caused material misjudgments in investment decisions by making false statements in which the most part of its sales were fictitious.
	② Even if a listed company is not delisted based on the above ①, TSE will clarify in the delisting criteria that, when a listed company falls under either of a. or b. of the above ① and falls under any of the following a. to c., it shall be delisted. a. Where the necessity for improvement of the internal management system, etc. to ensure appropriate disclosure of	- TSE determines whether the "necessity for improvement for improvement of the internal management system, etc." is high by conducting a comprehensive consideration of aspects including acts behind the false statement or adverse opinion, etc. (transaction scheme, method, or technique, etc.),

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	financial information is deemed to be high, when it is deemed that such improvement is not likely, b. In the case of a listed company's stock being designated as a security on alert, when it is deemed that improvement of the internal management system, etc. is not expected to be made, or c. In the case of a listed company's stock being designated as a security on alert, when it is deemed that improvement to the internal management system, etc. was not made within the period specified in the following 2. (2).	the level of involvement of company-related persons (whether it was organized, etc.), and the state of development and operation of the internal management system, etc. (whether internal procedures were conducted according to appropriate rules, etc.). - In cases where a listed company has begun to investigate the facts behind the matter and clarifies its policy of examining measures to prevent recurrence (in cases where an amendment report is not submitted, including policies aimed at submitting amendment reports of appropriate content), if there is no circumstance to be deemed that there is a significantly low possibility of implementation of such matters, TSE shall handle it as "such improvement is likely." - "When it is deemed that improvement… is not expected to be made" is assumed to mean cases similar to those described below: i. Cases where the company clarifies to the effect that it will not examine measures to prevent recurrence ii. Cases where there is suspicion that the person who will assume the position to conduct the investigation into the facts behind the matter or examination on how to prevent recurrence was involved in the case in question iii. Cases where TSE deems that the scope or period, etc. subject to the investigation into the facts behind the matter is clearly insufficient for the

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		purpose of illuminating the full extent of the case in question or providing material to consider appropriate measures to prevent recurrence iv. Other cases where TSE deems that there is a significantly low possibility of implementing a policy to conduct an investigation into the facts behind the matter or to prevent recurrence - "When it is deemed that improvement of the internal management system, etc. is not expected to be made" means cases such as when a company fails to conduct concrete acts toward improvement within a reasonable period of time. - TSE will also clarify the delisting criteria that the listed company shall be delisted if a listed company designated as security on alert for reasons other than false statements or adverse opinion, etc. falls under any of ② a. to c. - In cases which fall under either ① a. or b., the examination procedures pertaining to the delisting criteria described in ① and ② shall be conducted in combination with those pertaining to designation as a security on alert.
2. Revisions to Rules for Securities on Alert (1) Expansion of the Scope of Issues	- Where a listed company falls under any of the following a. to c., it shall be designated as a security on alert.	* Currently, after TSE deems that a listed company is likely to fall under the delisting criteria for false

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for Designation	a. For cases falling under the preceding 1. ① a. or b., where TSE deems that, to ensure the appropriateness of disclosure of financial information, the necessity to improve the internal management system, etc. is high. b. For cases in violation of the provisions pertaining to timely disclosure of corporate information, etc., where TSE deems that the necessity to improve the internal management system, etc. is high, or c. For cases in violation of the matters to be observed in the Code of Corporate Conduct, where TSE deems the necessity to improve the internal management system, etc. is high	statements or adverse opinions, etc. or other delisting criteria, a listed company may be considered for designation as a security on alert in cases where TSE deems that it does not fall under such delisting criteria, or in cases where an improvement report is submitted and TSE does not recognize any improvement in the execution of improvement measures and operating conditions in such listed company. This revision allows TSE to designate a listed company as a security on alert regardless of whether it is likely to fall under the delisting criteria for false statements or adverse opinions, etc. and also expands the scope for designation to cases where a listed company falls under either of b. or c. at left.
(2) Shortening of the Period for Improvement of the Internal Management System, etc.	- The period for improvement of the internal management system, etc. shall, as a general rule, be one (1) year.	* Currently, the period for improvement is within three (3) years from designation as a security on alert. This revision is made in consideration of the actual period required by listed companies to improve their internal management systems, etc. and is aimed at encouraging early implementation of measures by listed companies which have issues in their internal management systems, etc. - The following measures will be taken depending on the state and likelihood of improvement after one (1) year elapses from designation as a security on alert (excluding cases which the listed company is delisted due to falling under 1. ② b. above.) i. Where the internal management system, etc. has

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		been improved: Remove designation ii. Where the internal management system, etc. of the listed company has not been improved but is likely to be improved in the future: Extend the period of designation as security on alert by six (6) months, and check the state of improvement within the period. If there is improvement, the designation is removed; if there is no improvement, the listed company shall be delisted. iii. Where the internal management system, etc. has not been improved and is not likely to be improved in the future: Delisting - In examinations pertaining to removal of designation, currently, documents equivalent to Part II of the securities report are required to be submitted as a written confirmation of the internal management system. In future cases, including where "opinions are not expressed" in an audit report due to doubts related to the going concern assumption, where the submission of documents equivalent to Part II of the securities report is deemed unnecessary, it shall be sufficient to submit documents specified by TSE on a case by case basis.
3. Revisions to the Delisting Criteria pertaining to Delay of Submission of	- In the case where a listed company receives approval from the Prime Minister for extension of the period for submission of a securities report or quarterly report, if it does not submit the securities report or quarterly report in question by the eighth (8th) day after the period approved by the Prime Minister	* Currently, the provisions specify that cases where the documents are not submitted within one (1) month after the period prescribed in Article 24, Paragraph 1 of the Act or Article 24-4-7, Paragraph 1 elapses (in cases caused by an event which is not attributable to

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Securities Report or Quarterly Report	elapses, the stocks, etc. issued by such listed company shall be delisted.	the listed company including an act of providence, within three (3) months) constitutes a reason for delisting regardless of whether there is approval pertaining to extension of the submission period. - The same shall apply to cases where a listed company again receives approval on extension from the Prime Minister before the end of an extended period. - In cases where a listed company does not submit the securities report or quarterly report by the end of the period approved by the Prime Minister, TSE may designate the stocks, etc. issued by such listed company as securities to be delisted (confirmation). - A listed company shall be required to disclose in a timely manner cases where it decides to submit an application for approval to the Prime Minister and where it receives approval from the Prime Minister as prescribed in Article 15-2, Paragraph 1 of the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc. or Article 17-15-2, Paragraph 1 of the same ordinance.
4. Revision to Amount of Listing Agreement Violation Penalty	- The amount of listing agreement violation penalty shall be an amount obtained by multiplying the annual listing fee by twenty (20).	* Currently, a uniform amount of 10 million yen is applied to all cases. This revision is made so that the amount is based on the annual listing fee which is applied according to the market division and market capitalization of a listed company. - Annual listing fee does not include TDnet usage fee.
5. Others	- Other necessary revisions will be made.	

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III. Implementation Date (Scheduled)

These rules and regulations will be implemented in August 2013.