



Japan Regulatory Update

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DT Legal Japan

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JSDA Issues a Proposed Draft of the Guidelines on the Rules of Conduct for its Member/Member Analysts with respect to Preview Meetings

A. BACKGROUND

Based in part on the views set forth in the “Working Group on Corporate Disclosure” paper prepared by the Financial System Council, on July 21, 2016, the Japan Securities Dealers Association (the “**JSDA**”) issued a draft of its proposed guidelines (the “**Guidelines**”) for new rules of conduct applicable to analysts of financial institutions, which are members of the JSDA (“**Members**”, and analysts of such Members, “**Member Analysts**”), in relation to preview meetings with issuers as well as rules regarding the scope of permissible issuer information that a Member/Member Analyst may communicate to investors and the means by which they may do so.

The promulgation of the Guidelines is the JSDA’s response to recent regulatory developments and administrative sanctions in the US and in Japan in connection with the inappropriate distribution of non-public research information to investors (please see our past client alert on this topic¹).

In the Guidelines, the JSDA discusses the propriety of the practice where Member Analysts make inquiries to an issuer regarding certain types of financial information at preview meetings

and provide such information to certain investors. Furthermore, the Guidelines cover the necessity of regulating both the scope and means by which Members/Member Analysts provide certain types of information to investors through methods other than an analyst report (e.g., emails, telephone conversation, etc.).

It is important to note that although the proposed new obligations and restrictions set forth in the Guidelines are only applicable to Members/Member Analysts, even those financial institutions that are not members of the JSDA should be aware of the contents of the Guidelines as it is anticipated that the Guidelines will shape the market practice regarding preview meetings.

B. SUMMARY OF THE GUIDELINES

The Guidelines specifically cover the following two topics: (1) the types of information that a Member Analyst may seek to obtain from an issuer at a preview meeting; and (2) the scope of issuer that a Member/Member Analyst may provide to investors and the methods by which such information may be delivered.

¹ [“Understanding the Obligations of Financial Instruments Business Operators with respect to Corporate Information”](#) - Japan Regulatory Update: June 2, 2016

(1) General Prohibition from Inquiring on Undisclosed Financial Information

The proposed Guidelines generally prohibit a Member Analyst from making inquiries to an issuer regarding:

- (i) information with respect to the performance of the issuer in relation to an accounting period for which financial reports, etc. have not yet been made public by the issuer (a **“Non-Public Accounting Period”**); and
- (ii) certain quantitative information (other than (i) above) with respect to the issuer from which an investor may easily determine certain information with respect to the performance of the issuer regarding a Non-Public Accounting Period.

The JSDA expressly noted that the Guidelines are not intended to prohibit constructive discussions between an issuer and a Member Analyst which are necessary for the purpose of such Member Analyst preparing and issuing an analyst report.

In light of the above, the Guidelines note that a Member Analyst may interview an issuer with respect to information regarding accounting periods for which financial reports have been made public as well as quantitative information which is not related to the performance of the issuer for a Non-Public Accounting Period. Furthermore, separate from any information that may be procured at preview meetings, a Member Analyst is still permitted to receive various types of information from the issuer directly or through the attendance by the Member Analyst at “large

meetings”³ held by the issuer.⁴

(2) Scope of Information that a Member/Member Analyst May Provide Through Methods Other than an Analyst Report

Separate from the imposition of new restrictions on the type of inquiries that a Member Analyst may make to issuers, the proposed Guidelines also set forth certain clarifications on the type of information which may be included in an analyst report prepared by Member Analysts as well as imposing restrictions on the types of information that a Member/Member Analyst may disseminate to investors through means other than an analyst report.

(Communications to Investors through an Analyst Report)

Under the current rules of the JSDA, analyst reports are granted a unique status as a means by which Member/Member Analysts may provide specific information with respect to an issuer to investors.⁵ Under the Guidelines, further clarifications are proposed as to permissible information which may be set forth in an analyst report.

As a general rule, an analyst report may include **“Important Information”** (*jyuyou jyouhou*) which is defined as a broad category of information with respect to an issuer that may have a material impact on the investment decision making process of an investor. It is important to note that even though Corporate Information⁶ is included in the scope of Important Information, a

3 A meeting consisting of a large number of participants which is generally open to the public.

4 Any information received in such manner must be properly maintained by the Member and may only be disclosed in a manner compliant with the Guidelines and applicable rules and regulations of the JSDA.

5 Pursuant to the rules of the JSDA, an analyst report is subject to strict control by the Member/Member Analyst (e.g., a Member must designate a person to be in charge of the examination of analyst report and ensure the independence of the opinions of analysts) as well as subject to certain prohibitions (e.g., a Member is prohibited from making promises to its customers to prepare an analyst report with respect to such customer).

6 **“Corporate Information”** is defined as undisclosed important information with respect to its operation, business or assets of a listed company which may have influence over investment decision of an investor; and undisclosed information with respect to the decision of making or discontinuation of tender offer or sales and purchase of a large number of share certificates, etc. equivalent thereto.

Member/Member Analyst is still restricted from including Corporate Information (or any Important Information that a Member Analyst anticipates will subsequently become Corporate Information) in an analyst report or otherwise communicating such Corporate Information to investors through any other means. However, other types of information that do not amount to Corporate Information, even information with respect to an issuer that has not yet been made public, would fall under the scope of Important Information and may be included by the Member Analyst in an analyst report.

(Communications to Investors through Other Methods)

Historically, there were no specific restrictions on the type of issuer information that a Member/Member Analyst could communicate through methods other than analyst reports.

However, under the proposed Guidelines, new restrictions would be imposed on the scope of information that may be provided by means other than via analyst report as well as imposing new restrictions regarding the types of information that may only be provided to investors through analyst reports.

Firstly, the following types of information may only be provided by a Member/Member Analyst to an investor through an analyst report and not by any other means (e.g. telephone, e-mail, etc.):

- (i) even if not deemed to be Important Information, any information regarding an issuer's performance with respect to a Non-Public Accounting Period; and
- (ii) even if not deemed to be Important Information, any information that may impact the investment decision making of an investor.

Furthermore, where a Member/Member Analyst is seeking to provide issuer information through means other than an analyst report, as a general rule, a Member/Member Analyst may only provide information that: (i) is not inconsistent with an

analyst report already issued by such Member/Member Analyst; and (ii) does not impact the decision making of investors.

To this end, the Guidelines propose creating a six category classification system for the various types of information that a Member/Member Analyst may provide through means other than analyst reports and the Guidelines provide a general scope of the type of information for each category as below:

1. Supplementing the reasoning set forth in an analyst report already issued:
 - ALLOWED if the information is an explanation of the reasoning of analysis or evaluations described in such analyst report and not inconsistent with the contents thereof.
2. Providing further details of the analysis set forth in an analyst report already issued:
 - ALLOWED if the information is a basic data or a commentary to already described analysis or evaluations in such analyst report and not inconsistent with the contents thereof.
3. Providing a long-term analysis or evaluations not described in an analyst report already issued:
 - NOT ALLOWED unless such analysis or evaluations are in line with the scenarios described in such analyst report already issued.
4. Providing analysis on or evaluations for the periods shorter than the rating periods in an analyst report already issued:
 - NOT ALLOWED unless such analysis or evaluations are based on the scenarios described in such analyst report already issued.
5. Providing undisclosed information of an issuer not described in an analyst report already issued:

- NOT ALLOWED if the information obtained from an issuer is not disclosed or publicly known, and is material information prescribed by the JSDA Rules (the Guidelines warn that quantitative and qualitative information regarding the performance of the issuer is likely to be viewed as material information so that such information should not be provided to certain investors selectively).

6. Providing analysis or evaluations of an issuer's information that are different from those described in an analyst report already issued:

- NOT ALLOWED (regardless of such issuer's information is public) until a new analyst report based on such information is issued.

In addition to the general scope described above, the Guidelines provide more detailed examples of information that may be provided by a Member/Member Analyst for each category discussed above.

Please contact the Investment Management Group of DT Legal Japan for further information on the proposed scope of the information.

C. CONCLUSION

The JSDA believes that the Guidelines will contribute to the fairness, integrity and reliability of the market by creating a system by which Member Analysts may appropriately convey their analysis and evaluations to the market without providing an unfair advantage to certain investors while also permitted a constructive dialogue between an issuer and Member Analysts. Through the Guidelines, the JSDA is hopeful that a fair and equitable practice with respect to the disclosure of information will be established among the issuers and investors.

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