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Stock-Based Incentive Compensation

Amendment of the Cabinet Office Ordinance on Disclosure of Corporate Affairs concerning Incentive Compensation for Corporate Executives

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On May 17, 2017, Financial Services Agency (FSA) published a bill for amendment of the Cabinet Office Ordinance on Disclosure of Corporate Affairs (the "Disclosure Ordinance") with the purpose of making possible flexible use of incentive compensation for corporate executives. This amendment bill is scheduled to be enforced from around the end of June 2017 (the "2017 Amendment).

The Corporate Governance Code introduced in June 2015 by the Tokyo Stock Exchange recommends the use of compensation and stock compensation linked to the mid to long term company performance and in 2016, certain legislation was passed for restricted stock (stocks with a restriction on transfer for a certain period).

Namely, the amendment of the tax code for the year 2016 clarified that taxation timing for restricted stock will be the termination date for transfer restrictions and prior notification to the tax office required for inclusion in expenses for the company became unnecessary in certain cases.

Furthermore, on August 19, 2016, FSA amended the Disclosure Ordinance and excluded the allotment of restricted stock from the definition of "third-party allotment" and stating "Information specific to third party allotment" in the security registration statement (including outline of the third party, if an individual, name, address, and occupation, the reason for the selection of the third party, and confirmation of the third party having the capital contribution) became unnecessary (the "2016 Amendment"). Note that under the current law, granting of restricted stock is deemed to be a transaction which is the issuing by the company of shares for compensation claims by executives instead of payment in kind and if the total amount of the issue price of the shares is one hundred million yen or more, filing of security registration statement is necessary. The 2016 Amendment was enforced on the same date.

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In the amendment of the tax code for the year 2017, such efforts were further advanced and not only restricted stock, but also certain stock compensation such as performance shares and compensation from phantom stock can be included in the expenses of the company.

The 2017 Amendment, like the 2016 Amendment, excludes such allotment of such shares from the definition of “third party allotment” so that stating of information specific to third party allotment in the security registration statement would not be required

As well, together with the 2017 Amendment, the amendment of Cabinet Office Ordinance on Restrictions on Securities Transactions was published by FSA and under the Financial Instruments and Exchange Act, the purchase of shares accompanying the above stock compensation issuance is excluded from being subject to the filing obligations of the sale report for which filing is required by the financial bureau in the case the corporate executive of a listed company sells or purchases the shares of his or her company. The amendment bill is planned to be enforced after the end of June 2017.

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