

MEASURES TO IMPROVE IMPLEMENTATION OF REPORTING REQUIREMENTS UNDER THE 5% REPORTING RULE

The FSC plans to make revisions to the corporate disclosure form and the practical guidance to ensure that those subject to the reporting requirement under the 5% reporting rule report detailed plans about their investment purpose. For companies and their management, the measures are intended to provide proper information needed to defend their management control, thereby strengthening the fairness and transparency in competition for control over management. For investors, the measures aim to provide better protection by giving them sufficient information about any possibility of change in management control.

OVERVIEW OF THE 5% REPORTING RULE

The 5% reporting rule is a disclosure obligation which requires any person holding 5% or more of a publicly traded company's total outstanding shares to report his/her status of share ownership, changes in shareholdings and the purpose of holding.

※ Requirements under the 5% Reporting Rule

(OVERVIEW) Under the 5% reporting rule, any person (i) who acquires 5% or more of a listed company's shares;* or (ii) whose share ownership changes by 1% or more thereafter; or (iii) whose purpose of holding or other important matters** have been changed are required to report such changes within five days of such change taking place. <Article 147 of the Financial Investment Services and Capital Markets Act (FSCMA)>

* Cumulative holding of share owner and others in special relationship (specially related person + joint owner)

** Formation of a new contract and changes in contracts related to shareholding status (e.g. trust or collateral contracts, etc.)

(SHAREHOLDING PURPOSE) The purposes of holding are classified into three categories: (i) *Management Participation Purpose* (shareholders exercising direct and/or indirect influence over company management); (ii) *General Investment Purpose* (shareholders without intent to influence management but actively engage in shareholder activities); (iii) *Investment-only Purpose* (shareholders exercising only shareholders' rights protected under the law)

The 5% reporting rule was first introduced in 1992 under the former Securities Exchange Act, and the rule was amended with the revision to the Act in 2005 to provide companies and management with reasonable protection against threats of hostile merger and acquisition attempts, making "changes in the purpose of holding" subject to the reporting requirements.

The 5% reporting rule contributes to enhancing fairness and transparency in capital markets by subjecting large shareholders to timely disclosure of information about concentrated shareholding status of listed companies.

CURRENT PRACTICE AND NEED FOR IMPROVEMENT

The current disclosure form requires those subject to reporting requirements under the 5% reporting rule to disclose specific details about their shareholding purpose. However, the result of examining disclosures filed suggests that in practice there are many cases in which such information is provided as a perfunctory reiteration (in an all-inclusive and one-off manner) of the list of examples stated under the “Management Participation Purpose” in the Article 154(1) of the Enforcement Decree of the FSCMA. Such practice fails to provide sufficient information for companies and their management seeking to defend their management control and for investors who are making their investment decisions based on the availability of information about any possibility of change in management control.

MEASURES FOR IMPROVEMENT

Against this backdrop, the FSC has prepared measures to improve the implementation of the 5% reporting rule, after taking into account regulatory examples from overseas and relevant precedents and gathering opinions from various stakeholders¹. Under the improved system, when filing a report under the 5% reporting rule, the purpose of shareholding will be stated more in detail. However, instead of making this requirement as legally binding obligation under a law, authorities will first work to promote improvements in reporting practice by market participants on a voluntary basis. To this end, the FSC plans to revise the disclosure form and the practical guidance and inform changes to market participants.

► AMENDMENT TO DISCLOSURE FORM

- (a) **For shareholders with management participation purpose who have not yet established detailed plans**, they are subject to the reporting requirement under the 5% rule but do not have to provide detailed plans in their reporting, although when such plans are established thereafter, they are required to file a corrective disclosure.
- (b) **For shareholders with management participation purpose and detailed plans in place**, they are required to include detailed plans in their reporting of management participation purpose and should refrain from perfunctory reiteration of the list of examples prescribed by the Enforcement Decree of the FSCMA. If changes in detailed plans take place thereafter, they are required to file a corrective disclosure on such changes.
- (c) **For shareholders whose management participation purpose has become extinct**, they are required to report changes (Article 147(4) of the FSCMA) in their shareholding purpose, for instance, to investment-only purpose.

¹ Korea Listed Companies Association, KOSDAQ Listed Companies Association, Korea Financial Investment Association, National Pension Service, institutional investors, etc.

► AMENDMENT TO PRACTICAL GUIDANCE

Authorities will amend the practical guidance to provide various examples that can be used as references for those filing detailed plans for their shareholding purpose.

EXPECTATION AND FURTHER PLAN

The measures are expected to enhance the transparency and fairness in competition for management control as the provision of more detailed information is made possible for companies and management seeking to defend their control over management, which is more in line with what the 5% reporting rule aims to do. In addition, for investors who are making their investment decisions based on the availability of information about potential changes in management control, the measures will help make available relevant information in a more timely manner.

Authorities plan to revise the corporate disclosure form and implement the revision in the third quarter and make changes to the practical guidance in December this year. Depending on the progress of the changed measures, if deemed necessary, authorities will consider making detailed reporting of shareholding purpose under the 5% reporting rule a legally binding obligation through a revision to the Enforcement Decree of the FSCMA on a medium-to-long term basis.

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