

March 4, 2024

PROPOSED RULE CHANGES OBLIGATING EX-ANTE DISCLOSURE OF TRADING IN LISTED STOCKS BY MAJOR SHAREHOLDERS ETC. (EFFECTIVE JULY 24, 2024)

In furtherance of the amendments to the Financial Investment Services and Capital Markets Act (the "**FISCMA**") to become effective on July 24, 2024, whereby insiders, such as major shareholders, directors and officers, of a company listed on a market of the Korea Exchange ("**Listco**") will be obligated to publicly disclose in advance any expected trading of any large quantity of its/his/her shares in such listed company, the Financial Services Commission has, on February 29, 2024, issued preliminary notice of rule changes detailing the proposed amendments to the Enforcement Decree of the FISCMA and subordinate regulations (the "**Proposed Rule Changes**"), which will be subject to public comments from February 29, 2024 to April 11, 2024, and after legislative review process and approval from the cabinet meeting, become effective from July 24, 2024 to align with the effective date of the relevant amendments to the FISCMA. Below are major highlights of these proposed amendments:

I. Exemptions from Ex-Ante Disclosure Obligation

A. Exempt Insiders

The expected amendments to the FISCMA obligates insiders, such as major shareholders, directors and officers, of a Listco to, in principle, ex-ante disclose their trade of equity in such Listco that exceed a certain threshold amount (the "**Ex-Ante Disclosure Obligation**").

The proposed amendments to the Enforcement Decree of the FISCMA provide exemptions for (1) certain financial investors (such as pension funds, collective investment vehicles (including funds and special investment purpose companies), banks, insurance companies, specialized credit finance companies, financial investment businesses, venture capital firms and the Korea SMEs and Startups Agency) that have relatively high level of internal control and pose low risk of misusing material nonpublic information, and (2) foreign investors with equivalent status to the aforementioned Korean financial investors, to ensure equal treatment between Korean and foreign investors.

B. Exempt Transactions (Size and Type)

The Proposed Rule Changes provide an exemption from Ex-Ante Disclosure Obligation for a transaction if the volume of transactions in certain specific securities (including equity securities (including preferred stock), convertible bonds, bonds with warrants and depository receipts) of the relevant Listco during the previous six month period, in the aggregate, was equal to less than 1% of the total issued and outstanding shares of such Listco, and the aggregate value of such transactions during the six month period was less than KRW 5 billion.

In addition, exemption from the Ex-Ante Disclosure Obligation has also been provided to certain types of transactions, such as (1) transactions arising out of mandatory statutory requirements, (2) tender offers, (3) acquisitions and disposals due to corporate mergers or spin-offs, (4) acquisition of shares due to exercise of stock options, or rights under equity securities already held, preemptive rights, convertible bonds or bonds with warrants, (5) acquisitions or disposals of securities due to issuance or exercise of rights under exchangeable bonds, (6) acquisitions or disposals due to underwriting

of certain specific securities etc. as part of a public offering, private placement or sale of existing securities, (7) acquisitions due to subscription of certain specific securities etc. as part of a public offering or sale of existing securities, (8) acquisitions of newly issued certain specific securities etc., (9) acquisitions of employee stocks through an employee stock ownership association, (10) acquisitions due to inheritance, and (11) transfers of certain specific securities etc. in accordance with a stock transfer agreement involving a change in largest shareholder.

II. Disclosure Method and Process

The Proposed Rule Changes require insiders (such as major shareholders, directors and officers) to report his/her/its transaction plan at least 30 days prior to the commencement of the trade(s), detailing the expected trading price, number and trading period, etc. of the certain specific securities, etc. that are the subject of the expected transaction. The reported transaction(s) needs to be completed within 30 days from the expected commencement date of the trade(s) disclosed in such transaction plan.

Up to 30% (being the maximum limit authorized under the FISCMA) change to the transaction amount can be made from what had been disclosed in the transaction plan, to allow flexibility in dealing with market conditions.

III. Permitted Grounds for Withdrawal of Transaction Plan

The Proposed Rule Changes allow withdrawal of the transaction plan in the event of inadvertent exigent circumstances, such as death, bankruptcy, delisting, suspension of trading.

Furthermore, the transaction plan may also be withdrawn in the event of extreme market volatility, such as where there is change in price exceeding 30% of the closing price on the trading date immediately prior to the date on which the transaction plan had been disclosed.

IV. Penalty

The expected amendments to the FISCMA state that in the event of a violation of the Ex-Ante Disclosure Obligation, such as failure to disclose the transaction plan, false disclosure, and failure to perform the transactions in accordance with the transaction plan, a penalty surcharge, among other things, of up to KRW 2 billion (0.02% of total market capitalization, but not exceeding KRW 2 billion) may be imposed, and delegates specific details to be determined under the Enforcement Decree. Accordingly, the Proposed Rule Changes proposed the standards for deriving at the different levels of penalty surcharges that may be imposed by taking in account various factors such as market capitalization, transaction amount, and the severity of the violation.

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Please also refer to our earlier BKL Legal Update entitled '[Pre-Disclosure Obligation of Listed Stock Trading By Major Shareholders Etc. \(Effective from July 2024\)](#)' for details regarding the amendments to the FISCMA discussed above. For any inquiry or questions regarding the content of this newsletter, please do not hesitate to contact us.

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