



Advanced Disclosure of Insider Transactions in Korea

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To prevent market disruptions caused by significant insider transactions (e.g., a steep fall in stock price following disclosure of a substantial insider sale), the Financial Investment Services and Capital Markets Act ("FSCMA") has been amended in January 2024 to include a new provision requiring an advance disclosure of insider transactions. In the following month, the Financial Services Commission announced detailed rules for this provision in the Enforcement Decree of the Financial Investment Services and Capital Markets Act ("FSCMA Decree") and related regulations thereunder.

Key details include:

- disclosure requirements
- definition of insider
- exempt transactions
- deviation and withdrawal
- calculation of administrative fine

These amendments to the FSCMA Decree are expected to take effect on and from July 24, 2024 (Wednesday), when the amendment to the FSCMA is also scheduled to take effect.

(1) Disclosure Requirements

If a listed company's insider (as described in (2) below) plans to purchase or sell shares of such company or other securities convertible into such shares need to submit and disclose such plan at least 30 days in advance of implementing such plan.

The disclosure needs to include information on the (i) reporting person, (ii) type and expected quantity of securities to be traded, (iii) purpose of the proposed trade, (iv) trading method, (v) expected trading price, and (vi) trading period (up to 30 days). Only one trading plan can be submitted until it reaches the end of its proposed trading period or is withdrawn (see (4) below).

(2) Definition of Insider

A listed company's insiders include its directors, including independent directors, statutory auditor, de-facto director, shareholders who beneficially own 10% or more of the company's issued voting shares and shareholder who, independently or together with other shareholder(s) by contract or otherwise, appointed the company's representative director or a majority of the directors.

The following organizations would not be considered to be insiders—(i) funds/collective investment schemes, (ii) statutory funds/financial institutions and (iii) licensed financial institutions.

(3) Exempt Transactions

No advance disclosure is required for the following trades: (i) trade is for less than KRW 5 billion, (ii) trade is for less than 1% of the total number of the relevant securities, (iii) trade is required by law or suggested by the authority, (iv) trade is done for market making or stabilization, (v) trade is for disposing securities acquired in a private placement, (vi) shares are acquired upon exercise of a stock option or conversion of already-owned securities, (vii) shares are acquired upon subscribing for a new issuance, (viii) shares are sold upon the exercise of appraisal right or in response to a tender offer, (ix) shares are acquired through a tender offer, (x) shares are acquired as dividends or upon inheritance, (xi) trade is made pursuant to an M&A transaction, (xii) trade is made upon exercise of a security right, and (xiii) shares are sold to pay for inheritance/gift taxes.

(4) Deviation and Withdrawal

While trades are required to be carried out in accordance with the disclosed trading plan, the trades may deviate up to 30% from the trading value proposed in the plan if it is necessary in light of market developments.

A disclosed trading plan may be withdrawn if the reporting party is deceased or going through a statutory workout, rehabilitation or bankruptcy proceeding. It may also be withdrawn if the company's listed shares experience a daily volatility of 30% or more or are suspended or delisted.

(5) Calculation of Administrative Fine

For any violation of the rules for trading plan disclosure, an administrative fine may be imposed. The fine will be calculated by multiplying a number between 4/100,000 and 2/10,000 to the listed company's market capitalization (which will be rounded up to the minimum of KRW 100 billion). The maximum fine amount will not exceed KRW 2 billion. No fine may be imposed for a violation if a five-year lapses from the date of such violation.

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