



Unification of Quarterly Corporate Disclosures: Latest FSA Report

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In a report published on June 13, 2022 (“**Previous Report**”), the Financial System Council of the Financial Services Agency (FSA) (the “**Council**”) proposed to (i) partially abolish mandatory quarterly reports (more specifically, reports on Q1 and Q3) required under the Financial Instruments and Exchange Act (the “**FIEA**”), and (ii) integrate them into quarterly earnings reports (*kessan-tanshin*) (“**QERs**”) separately required pursuant to stock exchanges rules (“**Exchange Rules**”). Subsequently, on December 27, 2022, in a report published (the “**New Report**”),¹ the Council considered a possible simplification or “unification” of the two existing corporate quarterly reporting requirements (the “**Unification**”).

1. The Two Reporting Requirements

Under the FIEA, certain companies (mostly listed companies) are required to submit quarterly reports (“**FIEA Quarterly Reports**”) as part of ongoing financial disclosures, and to make information related mostly to their business performance available to investors in a timely manner (FIEA, Art. 24-4-7).

On the other hand, the Exchange Rules of the Tokyo Stock Exchange require that listed companies disclose a certain range of information on a quarterly basis (Securities Listing Regulations, Rule 404). In fact, it has been an established practice for listed companies to disclose their QERs consisting of summarized financial details and accompanying materials pursuant to such Exchange Rules.

2. Previous Report

Considering how the above-mentioned two quarterly reporting procedures should be refined, the Previous Report suggested a discontinuation of FIEA Quarterly Reports with respect to Q1 and Q3 and making QERs under the Exchange Rules the only procedure required on a quarterly basis. In this regard, the Council found QERs to be more appropriate reporting procedures to be preserved based on the then-current circumstances, where, for example, FIEA Quarterly Reports were being disclosed later than QERs, and QERs were being disclosed voluntarily by more companies. In addition, the Council recommended that discussions on the Unification, including matters such as whether QERs should remain mandatory, should continue.

3. The New Report

¹ FSA website (https://www.fsa.go.jp/singi/singi_kinyu/tosin/20221227.html)

The New Report analyzes (a) whether QERs should remain mandatory, (b) the matters to be disclosed through QERs, and (c) possible measures to guard against false statements in QERs.

(a) Whether QERs Should Remain Mandatory

The Previous Report left for further discussion the issue of whether QERs should remain mandatory (or whether to make them optional), based on the understanding that mandatory disclosures might impose too heavy a burden on some companies, and that some foreign stock exchanges require quarterly reporting only on a conditional basis. The Previous Report also pointed out that mandatory quarterly disclosures in and of themselves might not be the best ways to secure sufficient disclosure of information to investors. Rather, that purpose could be better fostered through ensuring timely disclosure by way of creating conditions that might motivate companies to more actively disclose their information.

In the New Report, however, the Council concluded that QERs should remain mandatory for the time being, because (a) timely disclosures have not been submitted as widely as expected, (b) making QERs optional could lead to a possible decline in the information disclosed by companies, which would likely affect global investment, and (c) unlike European companies which are subject to optional quarterly disclosures, companies in Japan generally do not publish annual securities reports well ahead of their shareholders' meeting. Based on the foregoing, the New Report further pointed out that the discussion about the possibility of making QERs optional should continue by taking into account various factors, such as ensuring timely disclosures, shifts in companies' attitude toward disclosure of their information and a spectrum of opinion on whether "periodic" disclosures like QERs could naturally be replaced with enhanced "timely" disclosures despite the difference in their nature.

With regard to (a) above, the Previous Report pointed out that the rule-based approach adopted by the Japanese market, under which matters to be disclosed and their level of importance are specified by each stock exchange through their "sub-rules" (*saisoku*), could be one of the reasons that led companies to be more reluctant toward disclosure. For example, it was reported that some companies were reluctant to disclose certain information when such information (which could be important in terms of making decisions on investments) was not specifically required to be disclosed by the above-mentioned sub-rules, or when their financial status was too unclear to determine the applicability of such sub-rules.

(b) Matters Subject to Disclosure Through QERs

It was once considered that the matters reported in QERs should be streamlined to ensure swifter reporting. On the other hand, considering that the Unification would retain QERs as the only quarterly reporting procedure, it may be necessary to augment reportable matters to sufficiently cover the abolished Q1 and Q3 FIEA Quarterly Reports. In the Previous Report, it was left as one of the issues to be further discussed whether and how the matters to be disclosed through QERs should be broadened in order to effectively achieve the Unification.

In the New Report, although some of the Council members who favored swift reporting or were concerned about increasing a burden on companies suggested that there was no need to broaden matters to be disclosed through QERs, the Council concluded that, as part of preparation for the Unification, some increase, including disclosure of information in respect of certain matters that are subject to investors' particular attention (for example, segment reporting and information about cash flow), should be implemented with respect to such matters, while, at the same time, maintaining the basic rule of ensuring swift reporting on a best-possible basis. The New Report based this conclusion in consideration of the fact that (a) the streamlining of QERs was being discussed on the assumption that QERs were, in practice, followed by more detailed FIEA Quarterly Reports, and (b) part of the information stated in FIEA Quarterly Reports, including the notes, helped investors make decisions on their investments. With regard to the implementation of such augmented reporting, the New Report suggested that stock exchanges should focus on how to put such conclusion into practice.

(c) Possible Forms of Enforcement Against False Statements in QERs

One of the issues suggested for further discussion in the Previous Report was how to guard against false statements in QERs.

Based on the nature of QERs as documents to be disclosed in connection with securities exchanges, the New Report named stock exchanges as entities playing a leading role in ensuring proper enforcement against false statements in QERs. While some members would prefer to have enforcement of false statements in QERs based on public laws and/or regulations in order to ensure the reliability and accuracy of disclosed information, the New Report concluded that such legal enforcement would not be necessary, considering that, even after the abolition of FIEA Quarterly Reports, semi-annual reports and annual securities reports would remain subject to legal enforcement, and that the number of cases in which penalties were levied solely due to false statements in QERs was extremely small.²

End

² Enforcement under the Exchange Rules includes submission of improvement reports and improvement status reports, public announcement of non-compliance and levying penalties for the violation of listing agreements (Securities Listing Regulations, Rules 504.1(1), 505.1, 508.1(1) and 509).