

Rules on Handling of the Case of Delivery Failure and Buy-In



Japan Securities Clearing Corporation

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Rules on Handling of the Case of Delivery Failure and Buy-In
Rules on Handling of the Case of Delivery Failure and Buy-In
(In effect as of July 16, 2010)

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(Article 1 Purpose)

These Rules set forth the matters necessary for the handling of the Case of Delivery Failure in DVP Settlement and the handling of Buy-In in accordance with the provisions of Article 62-3 and Article 63 of the Business Rules.

(Article 2 Prohibition of Causing Delivery Failure)

1 The days designated by JSCC as necessary as prescribed in Paragraph 1 of Article 62-2 of the Business Rules shall be those listed in each of the following Items:

(1) With respect to issues^{*1} that have been delisted from all of the Financial Instruments Exchanges^{*2}, the third day^{*3} following the day immediately preceding the delisting day; provided, however, that among such issue, with respect to Convertible Bonds in the case where the third day falls on the day set forth in Item (2) through Item (4) of Paragraph 3 of Article 64 of the Business Rules, the fourth day following the day immediately preceding the delisting day, and in the case prescribed in A) or B) below, the fifth day following the day immediately preceding the delisting day;

(*1 excluding the case where such issues are listed in other Designated Financial Instruments Markets at the same time)

(*2 limited to those which are Designated Market Operators)

(*3 excluding holidays; the same applies hereinafter for counting the number of days)

A) In the case where the third day following the day immediately preceding the delisting day falls on the day immediately preceding the day prescribed in Item (2) or Item (3) of Paragraph 3 of Article 64 of the Business Rules, and such third day also falls on the day prescribed in Item (4) of the same Paragraph

B) In the case where the third day following the day immediately preceding the delisting day falls on the day prescribed in Item (2) or Item (3) of Paragraph 3 of Article 64 of the Business Rules, and the day immediately following such third day also falls on the day prescribed in Item (4) of the same Paragraph

(2) In the case where a corporation whose stock is listed in a Designated Financial Instruments Market implements a Reverse Split, etc.,^{*1} with respect to the issue subject to such Reverse Split, etc., the day^{*2} immediately preceding the effective date of the relevant Reverse Split, etc.;

(*1 referring to a reverse stock split, and increase in the number of shares constituting a share unit or creation of a provision of share units in its articles of incorporation concurrently with a stock split, and other related matters; the same applies hereinafter in this Item)

(*2 if such day falls on a holiday, it shall be the immediately preceding business day)

(3) With respect to interest-bearing Convertible Bonds, in the case where the day^{*1} prescribed in Item (2) or Item (3) of Paragraph 3 of Article 64 of the Business Rules falls

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(*¹ if such day falls on a holiday, it shall be the immediately preceding business day; the same applies hereinafter)

(*² if such day falls on a holiday, it shall be the immediately preceding business day; the same applies hereinafter)

(4) In addition to the days listed in each of the preceding Items, any days that JSCC deems necessary.

2 The provisions of Item (2) of the preceding Paragraph shall apply *mutatis mutandis* to preferred equity capital contribution securities, investment trust beneficiary securities, investment securities and beneficiary securities of beneficiary securities issuing trusts, respectively.

(Article 3 Payment/Receipt of Delay Compensation)

1 In the Case of Delivery Failure, a Securities Clearing Participant that has made the Delivery Failure*¹ shall pay JSCC, as delay compensation, 0.04 yen per 100 yen of the amount obtained by multiplying the DVP Clearing Price on the day by the quantity of securities pertaining to the Delivery Failure.

(*¹ hereinafter referred to as "Delivering Clearing Participant Involved with the Delivery Failure")

2 In addition to the delay compensation set forth in the preceding Paragraph, in the Case of Delivery Failure with respect to interest-bearing Convertible Bonds occurring on the day immediately preceding the day prescribed in Item (4) of Paragraph 3 of Article 64 of the Business Rules, a Delivering Clearing Participant Involved with the Delivery Failure shall pay JSCC, as delay compensation, 0.04 yen per 100 yen of the amount obtained by multiplying the DVP Clearing Price on the relevant day as prescribed therein by the quantity of securities pertaining to the Delivery Failure.

3 JSCC shall deliver the delay compensation that JSCC received pursuant to the provisions of the preceding two Paragraphs to a receiving Securities Clearing Participant pertaining to the Delivery Failure.*¹

(*¹ hereinafter referred to as "Receiving Clearing Participant Involved in the Delivery Failure")

4 Handling of fractional amounts less than one yen, which is necessary for the payment/receipt of delay compensation pursuant to the provisions of the preceding three Paragraphs, shall be prescribed by JSCC.

(Article 4 Payment of Delay Penalty)

1 A Delivering Clearing Participant Involved with the Delivery Failure shall pay JSCC, as delay penalty, 0.02 yen per 100 yen of the amount obtained by multiplying the day's DVP

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Clearing Price by the quantity of securities pertaining to the Delivery Failure, in the Case of Delivery Failure on a day which comes on or after the fourth day following the original settlement day.

2 In addition to the delay penalty set forth in the preceding Paragraph, in the Case of Delivery Failure with respect to interest-bearing Convertible Bonds on the day immediately preceding the day prescribed in Item (4) of Paragraph 3 of Article 64 of the Business Rules, which also falls four or more days following the original settlement day, a Delivering Clearing Participant Involved with the Delivery Failure shall pay JSCC, as delay penalty, 0.02 yen per 100 yen of the amount obtained by multiplying the DVP Clearing Price on the relevant day as prescribed therein by the quantity of securities pertaining to the Delivery Failure.

3 In addition to the delay penalties prescribed in the preceding two Paragraphs, in the case where settlement is deferred to the immediately following day^{*1} due to Delivery Failure on the day listed in each of the Items of Paragraph 3 of Article 64 of the Business Rules^{*2} with respect to securities other than Convertible Bonds, a Delivering Clearing Participant Involved with the Delivery Failure shall pay JSCC, as special delay penalty for term-end issues, etc., 0.08 yen per 100 yen of the amount obtained by multiplying the DVP Clearing Price of each issue on the day listed in each Item of the same Paragraph or the DVP Clearing Price of each issue on the day which precedes the day listed in each Item of the same Paragraph by two days, whichever is higher, by the quantity of securities pertaining to the Delivery Failure.

(*1 if such day falls on a holiday, it shall be the immediately following business day; the same applies hereinafter)

(*2 if such day falls on a holiday, it shall be the immediately preceding business day; the same applies hereinafter)

4 In addition to the delay penalties prescribed in Paragraph 1 and Paragraph 2, in the case where settlement is deferred to the immediately following day due to Delivery Failure on the day immediately preceding the day listed in Item (2) or Item (3) of Paragraph 3 of Article 64 of the Business Rules with respect to Convertible Bonds,^{*1} a Delivering Clearing Participant Involved with the Delivery Failure shall pay JSCC, as special delay penalty for term-end issues, etc., 0.08 yen per 100 yen of the amount obtained by multiplying the DVP Clearing Price of each issue on the day immediately preceding the day listed in Item (2) or Item (3) of the same Paragraph or the DVP Clearing Price of each issue on the day which precedes the day listed in Item (2) or Item (3) of the same Paragraph by three days,^{*2} whichever is higher,^{*3} by the quantity of Convertible Bonds pertaining to the Delivery Failure; provided, however, that in the case where settlement is made on the day listed in Item (2) or Item (3) of the same Paragraph, the special delay penalty for term-end issues, etc. pertaining to the settled quantity shall be 0.02 yen per 100 yen of the amount obtained by multiplying the Price for Calculating Special Delay Penalty for Term-End Issues, etc. by

the settled quantity.

(*¹ with respect to interest-bearing Convertible Bonds, if the day immediately preceding the day listed in Item (2) or Item (3) of the same Paragraph falls on the day listed in Item (4) of the same Paragraph, the case where settlement is deferred to the second following day due to Delivery Failure on the day which precedes the day listed in Item (2) or Item (3) of the same Paragraph by two days)

(*² in the case where settlement is deferred to the second following day pursuant to the provisions marked with asterisk (*¹) in the first sentence of this Paragraph, by four days)

(*³ hereinafter referred to as “Price for Calculating Special Delay Penalty for Term-End Issues, etc.”)

5 The provisions of Paragraph 4 of the preceding Article shall apply *mutatis mutandis* to the payment of delay penalty pursuant to the provisions of Paragraph 1 and Paragraph 2 and to the payment of a special delay penalty for term-end issues, etc. pursuant to the provisions of the preceding two Paragraphs.

(Article 5 Written Notice regarding Delivery of Dividends or Rights)

1 In the case where settlement is deferred due to Delivery Failure on the day*¹ set forth in Item (1) of Paragraph 3 of Article 64 of the Business Rules, a Delivering Clearing Participant Involved with the Delivery Failure and a Receiving Securities Clearing Participant Involved in the Delivery Failure designated by JSCC shall negotiate the handling of dividends or rights, etc. In such case, the relevant Delivering Clearing Participant Involved with the Delivery Failure shall deliver the prescribed “Written Promise to Deliver Dividends or Rights, etc.” to the relevant Receiving Clearing Participant Involved in the Delivery Failure.

(*¹ if such day falls on a holiday, it shall be the immediate preceding business day)

2 The provisions of the first sentence of the preceding Paragraph shall apply *mutatis mutandis* to the case where the settlement is deferred due to Delivery Failure on the day*¹ set forth in Item (2) and Item (3) of Paragraph 3 of Article 64 of the Business Rules.

(*¹ if such day falls on a holiday, it shall be the immediate preceding business day)

(Article 6 Settlement and Payment of Residual Shares Less than One Trading Unit)

In the case where the “Written Notice regarding Delivery of Dividends or Rights, etc.” is delivered pursuant to the provisions of Paragraph 1 of the preceding Article, with respect to rights to be delivered by the Delivering Clearing Participant Involved with the Delivery Failure corresponding to the shares less than one trading unit*¹, the Delivering Clearing Participant Involved with the Delivery Failure shall pay to the Receiving Clearing Participant Involved in the Delivery Failure the amount obtained by multiplying the purchase price of such Residual Shares Less Than One Trading Unit offered by the issuing company in the

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Rules on Handling of the Case of Delivery Failure and Buy-In case that a purchase request is made, on the day on which such purchase request to such issuing company becomes possible, by the number of such Residual Shares Less Than One Trading Unit; provided, however, that the foregoing shall not apply in the case where the Delivering Clearing Participant Involved with the Delivery Failure and the Receiving Clearing Participant Involved in the Delivery Failure otherwise agree on the handling of rights pertaining to Residual Shares Less Than One Trading Unit.

(*1 hereinafter referred to as "Residual Shares Less Than One Trading Unit")

(Article 7 Accrued interest on Convertible Bonds)

A Delivering Clearing Participant Involved with the Delivery Failure shall not be entitled to claim for accrued interest for the period from the day immediately following an original settlement date against either JSCC or a Receiving Clearing Participant Involved in the Delivery Failure.

(Article 8 Delivery of the Amount Equivalent to Interest)

- 1 In the Case of Delivery Failure with respect to interest-bearing Convertible Bonds on the day immediately preceding the day set forth in Item (4) of Paragraph 3 of Article 64 of the Business Rules, a Delivering Clearing Participant Involved with the Delivery Failure shall pay JSCC the amount obtained by subtracting the amount of money which corresponds to the Unit-Based Accrued Interest on that day and which is also excluded from the Payment Amount for DVP Settlement on that day pursuant to the provisions of Paragraph 4 of Article 50 of the Business Rules, from the total sum of the amount equivalent to the interest pertaining to Securities Failed to be Delivered.
- 2 JSCC shall deliver the money that JSCC received pursuant to the provisions of the preceding Paragraph to a Receiving Clearing Participant Involved in the Delivery Failure.
- 3 The amount of money to be paid/delivered pursuant to the provisions of the preceding two Paragraphs shall be included in the Payment Amount for DVP Settlement on that date.
- 4 Upon computation of the limitation amount on delivery of securities in accordance with the provisions of Article 53 of the Business Rules, if the amount of money to be paid pursuant to the provisions of Paragraph 1 exceeds the amount of money to be received pursuant to the provisions of Paragraph 2, the amount of money to be included in the Payment Amount for DVP Settlement pursuant to the provisions of the preceding Paragraph shall be deducted from the amount*¹ which has been paid to JSCC as the Payment Amount for DVP Settlement*² set forth in Item (2) of Paragraph 1 of Article 53 thereof; and if the amount of money to be received pursuant to the provisions of Paragraph 2 exceeds the amount of money to be paid pursuant to the provisions of Paragraph 1, the amount of money to be included in the Payment Amount for DVP Settlement pursuant to the provisions of the preceding Paragraph shall be added to the amount*³ which has been paid

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Rules on Handling of the Case of Delivery Failure and Buy-In to JSCC as the Payment Amount for DVP Settlement^{*4} set forth in Item (2) of Paragraph 1 of Article 53 thereof.

(*¹ referring to the paid amount after adding the amount of money which is to be included in Payment Amount for DVP Settlement pursuant to the provisions of the preceding Paragraph)

(*² excluding the amount applied pursuant to the provisions of Paragraph 2 of Article 51 of the Business Rules)

(*³ referring to the amount of payment after excluding the amount of money to be included in the Payment Amount for DVP Settlement pursuant to the provisions of the preceding Paragraph)

(*⁴ excluding the amount applied pursuant to the provisions of Paragraph 2 of Article 51 of the Business Rules)

(Article 9) Deleted

(Article 10 Buy-In Request)

If deferment of settlement due to Delivery Failure continues for two days or longer, a Receiving Clearing Participant Involved in the Delivery Failure may submit a request for Buy-In to JSCC with respect to securities pertaining to the relevant Delivery Failure; provided, however, that the Buy-In request shall not be submitted on days listed in each of the following Items:

(1) With respect to issues which fall under the provisions of Item (2)^{*1} or Item (3) of Paragraph 3 of Article 64 of the Business Rules, the date listed in each of the same Items and the day immediately preceding such date;

(*¹ limited to Convertible Bonds)

(2) With respect to issues which have been delisted from all of the Financial Instruments Exchanges^{*1}, on or after the delisting date;

(*¹ limited to those which are Designated Market Operators)

(3) With respect to interest-bearing Convertible Bonds, in the case where the day immediately preceding the date prescribed in Item (2) or Item (3) of Paragraph 3 of Article 64 of the Business Rules falls on the date prescribed in Item (4) of the same Paragraph, the day which precedes the date prescribed in Item (2) or Item (3) of the same Paragraph by two days; and

(4) In addition to those dates listed in each of the preceding Items, dates JSCC deems necessary.

(Article 11 Time of Buy-In Request)

The Buy-In request shall be submitted between 1:30 p.m. and 2:30 p.m.; provided, however, that JSCC may extraordinarily change such time when JSCC deems it necessary.

(Article 12 Expiration of Buy-In Request)

With respect to the Buy-In request which has been submitted by the date listed in Item (2) of Paragraph 1 of Article 2 or the date listed in each Item of Article 10, in the case where the buying/selling of all the failed-to-be-received securities relating to the relevant request have not been completed by Buy-In yet, even on such immediately preceding day, the request pertaining to the relevant yet-completed portion shall have been expired.

(Article 13 Withdrawal of Buy-In Request)

- 1 A Receiving Clearing Participant Involved in the Delivery Failure may withdraw the Buy-In request on or after the fourth day following the date of such Buy-In request. In such case, the requests shall be withdrawn in the order of Buy-In request date beginning with the earliest and the requests submitted on the same date shall be wholly withdrawn.
- 2 Notification to JSCC relating to the withdrawal of Buy-In request in the preceding Paragraph shall be made between 9:00 a.m. and 1:00 p.m.; provided, however, that JSCC may extraordinarily change such time when JSCC deems it necessary.
- 3 Notwithstanding the provisions of Paragraph 1, JSCC may restrict the withdrawal of Buy-In request when JSCC deems it necessary.

(Article 14 Designation of Buying Securities Clearing Participant and Buying Offer on Buying/Selling Constituting Buy-In)

- 1 In the case where a Receiving Clearing Participant Involved in the Delivery Failure has submitted the Buy-In request and where the settlement of that Receiving Clearing Participant Involved in the Delivery Failure is still deferred even after the settlement cutoff time for DVP Settlement on the third day following the request day, JSCC shall designate a Securities Clearing Participant that will make a purchase constituting Buy-In from Securities Clearing Participants which have been the Delivering Clearing Participants Involved with the Delivery Failure at or before the time when the request was submitted. In such case, the designated Securities Clearing Participant shall be deemed to have made an offer constituting Buy-In, on its own account, to purchase the quantity set by JSCC on the day of such designation.
- 2 With respect to the quantity of unconcluded buying/selling where part or all of buying/selling has not been concluded as a result of the Buy-In set forth in the preceding Paragraph, JSCC shall, on a daily basis for a period from the immediately following day until the buying/selling constituting Buy-In pertaining to such quantity has been concluded, designate a Securities Clearing Participant that will make a purchase constituting Buy-In. In such case, the designated Securities Clearing Participant shall be deemed to have made a Buy-in offer, on its own account, to purchase the quantity set by JSCC on the day of such designation; provided, however, that the foregoing shall not apply in the case

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3 Notwithstanding the provisions of the preceding two Paragraphs, JSCC may restrict buying/selling constituting Buy-In when JSCC deems it necessary.

(Article 15 Selling Offer on Buying/Selling Constituting Buy-In)

1 A selling offer against the purchase constituting Buy-In shall be made by a Securities Clearing Participant in accordance with the provisions set forth in each of the following Items.

(1) Time for selling offer:

A selling offer against the purchase constituting Buy-In shall be made to JSCC between 3:30 p.m. and 4:00 p.m. on the day on which the buying/selling constituting Buy-In is executed; provided, however, that JSCC may extraordinarily change such time when JSCC deems it necessary.

(2) Method of selling offer:

Selling offers against the purchase constituting Buy-In shall be made by notifying JSCC in accordance with a method deemed appropriate by JSCC. In such case, a Securities Clearing Participant shall clearly specify to JSCC whether such selling offer is pursuant to commissions by its customers or for its own account.

(3) Units of selling offer quantity:

The units of the selling offer quantity shall be a quantity set by JSCC in accordance with the trading units of the relevant issue in a Designated Financial Instruments Market.

(4) Units of selling offer price:

The units of selling offer price shall be a unit set by JSCC in accordance with the tick size of bids and offers of the relevant issue in a Designated Financial Instruments Market.

(5) Limit on selling offer price:

A selling offer price shall be within the price range between the final price^{*1} in the Designated Financial Instruments Market^{*2} selected according to a specific order of priority on the day on which the buying/selling constituting the Buy-In is executed and the price obtained by adding the amount equivalent to 10 % of it to that final price; provided, however, that JSCC may extraordinarily change such selling offer price range when JSCC deems it necessary.

(^{*1} in the case where a quote prescribed by a Designated Market Operator is posted, it includes the final quote; and if there is no final price^{*1-1} on the day of executing the relevant Buy-in, or on the day preceding by two days or immediately preceding the day listed in each Item^{*1-2} of Paragraph 3 of Article 64 of the Business Rules, the price set by JSCC on a case-by case basis.)

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(*1-1 including the final quote)

(*1-2 excluding Item (4))

(*2 limited to a Financial Instruments Exchange Market)

2 The provisions of Paragraph 3 of Article 11 of the Handling of Business Rules shall apply *mutatis mutandis* to the specific order of priority set forth in Item (5) of the preceding Paragraph. In such case, the phrase "such preceding day" shall be deemed to be "the day on which the buying/selling constituting the Buy-In is executed."

(Article 16 Matching Order and Contract Price on Buying/Selling Constituting Buy-In)

1 With respect to the buying/selling constituting Buy-In, selling offers shall be matched against buying offers in the order from the lowest offer price to the highest offer price. In such case, the matching order of the selling offers at the price for which the quantity of those selling offers exceeds the quantity of buying offers shall be as follows:

(1) Upon a matching, one minimum unit for each Securities Clearing Participant making selling offers shall be matched in priority to the other portion, in order from the Securities Clearing Participant with the largest quantity of selling offers at that price to the Securities Clearing Participant with the smallest quantity thereof*1;

(*1 the order of Securities Clearing Participants with the same quantity of selling offers shall be determined by drawing)

(2) With respect to the quantity after deducting the one minimum unit above, matching shall be conducted by prorating such quantities for each Securities Clearing Participant; provided, however, that any fractional amount less than the minimum unit shall be rounded down; and

(3) With respect to the fractional amount which is rounded down pursuant to the proviso of the preceding Item, the minimum unit shall be matched in order from the Securities Clearing Participant with the largest fractional amount which is rounded down pursuant to the proviso of the preceding Item; provided, however, that for Securities Clearing Participants with the same such quantity, the matching shall be determined by drawing.

2 The contract price for buying/selling constituting Buy-In shall be the highest selling offer price at which buying/selling is concluded pursuant to the provisions of the preceding Paragraph.

3 The order of matching the buying offers constituting Buy-in in the case where the quantity of the corresponding selling offers is less than the quantity of such buying offer shall be set by JSCC.

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Supplementary Provisions

- 1 These Rules shall come into effect on January 14, 2003.
- 2 The convertible bonds or the corporate bonds with stock acquisition rights for which the provisions then in force still remain applicable pursuant to the provisions of Paragraph 1 of Article 7 of the Supplementary Provisions of the Law Partially Amending the Commercial Code, Etc. (Law No. 128 of 2001) shall be treated as Convertible Bonds or corporate bonds with the stock acquisition rights that are not Convertible Bonds, respectively, and these Business Rules shall be applied to them accordingly.

Supplementary Provisions

These revised Rules shall come into effect on April 1, 2003.

Supplementary Provisions

These revised Rules shall come into effect on February 2, 2004.

Supplementary Provisions

These revised Rules shall come into effect on March 9, 2004.

Supplementary Provisions

- 1 These revised Rules shall come into effect on the day set by JSCC.*
- 2 Notwithstanding the revised provisions of Article 2 or Article 10, the provisions heretofore in force shall remain applicable with regard to the issues whose registration is revoked by the Japan Securities Dealers Association and which is not listed on any other Designated Securities Market on the day on which these revised Rules come into effect.

*The date set by JSCC is December 13, 2004.

Supplementary Provisions

These revised Rules shall come into effect on June 10, 2005.

Supplementary Provisions

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These revised Rules shall come into effect on January 30, 2006.

Supplementary Provisions

- 1 These revised Rules shall come into effect on May 1, 2006.
- 2 Notwithstanding the provision of the preceding Paragraph, the provisions heretofore in force shall remain applicable to the issues delisted due to dissolution resulting from the merger for which the provisions theretofore in force still remain applicable pursuant to the provisions of Article 105 of the Laws Concerning the Coordination, Etc. of Associated Laws in Connection with the Enforcement of the Companies Act. (Law No. 87 of 2005).

Supplementary Provisions

These revised Rules shall come into effect on September 30, 2007.

Supplementary Provisions

These revised Rules shall come into effect on November 1, 2007.

Supplementary Provisions

These revised Rules shall come into effect on January 5, 2009.

Supplementary Provisions

- 1 These revised Rules shall come into effect on November 16, 2009.
- 2 The revised provisions of Item (1) and Item (2) of Paragraph 1 of Article 2 shall apply to the handling of settlement of Contracts for Clearing for which obligation is assumed by JSCC on or after the day on which these revised Rules come into effect.
- 3 The revised provisions of Paragraph 3 of Article 4 shall apply to the handling of issues to be settled on or after November 19, 2009.
- 4 Notwithstanding the revised provisions of Article 10, the provisions heretofore in force shall remain applicable with regard to the Buy-In requests pertaining to the issues listed in each of the following Items:
 - (1) Issues with respect to which November 16, 17 or 18, 2009, falls on any of the days listed in each Item of Paragraph 3 of Article 64 of the Business Rules; and
 - (2) Issues which fall under the issue prescribed in Item (3) of Paragraph 1 of Article 10 prior to revision, at the time when these revised Rules come into effect.

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5 The revised provisions of Item (5) of Paragraph 1 of Article 15 shall apply to the selling offers of buying/selling constituting Buy-In pertaining to issues with respect to which a day on or after November 19, 2009, falls under any of the days listed in each Item of Paragraph 3 of Article 64 of the Business Rules.

Supplementary Provisions

These revised Rules shall come into effect on July 16, 2010.

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