Key Takeaways of Strengthened Regulations Requiring Publicly Listed Companies to Make Prior Disclosure of Privately Placed Convertible Instruments

I. Background of Amendments to the Financial Investment Services and Capital Markets Act (the "FSCMA") and the Regulation on the Issuance and Disclosure of Securities (the "Securities Regulation")

Financial Services Commission ("FSC") has been working on improving the soundness of the convertible bonds market and addressing the issues underlying the existing regulations on convertible bonds and related instruments. In this connection, on May 28, 2024, the FSC issued a legislative notice of a proposed amendment to the Regulation on the Issuance and Disclosure of Securities (the "Securities Regulation"). Subsequently, on November 13, 2024, the Securities Regulation was amended to (i) strengthen regulations on disclosures regarding the issuance and circulation of convertible bonds, bonds with warrants and (redeemable) convertible preferred shares, (ii) strengthen the conversion price adjustment (i.e., refixing) mechanism of such securities, and (iii) clarify on the appropriate base date for calculation of conversion prices.

Relatedly, the Financial Investment Services and Capital Markets Act (the "FSCMA") was amended on January 21, 2025 and took effect on July 22, 2025. Such amendment aims to strengthen the disclosure obligation of publicly listed companies, whereby (i) ensuring fairness in the issuance of privately placed convertible instruments, bonds with warrants and exchangeable bonds (collectively, "Privately Placed Convertible Instruments") and (ii) enhancing provision of information to investors. The Enforcement Decree of the FSCMA (amended on April 22, 2025) and the Securities Regulation (announced on May 22, 2025 to be further amended), each subordinate to the FSCMA, (together with the FSCMA, the "Amended Regulations"), took effect on July 22, 2025. Key provisions of the Amended Regulations are summarized as follows:

II. Accelerated Disclosure Time Frame for Issuance of Privately Placed Convertible Instruments

Previously, listed companies and other entities required to submit business reports were obligated to disclose a report on material matters by the following day if the board of directors resolved to issue Privately Placed Convertible Instruments. As a result, the disclosure often came just before the payment due date. This timing made it difficult for shareholders to apply for an order to suspend the issuance under the Korean Commercial Code, even where the issuance violated applicable laws and regulations, due to lack of advance notice.

Indeed, among the Privately Placed Convertible Instruments issued in 2023, 13.6% had disclosure of material information made on the payment due date, or one day prior to the payment due date, while 53.8% had disclosure of material information made within six days prior to the payment due date.

In order to address the ineffectiveness of the disclosure practice and strengthen the protection of general shareholders in connection with the issuance of Privately Placed Convertible Instruments, the Amended Regulations require that listed companies and other entities required to submit business reports which decide to issue Privately Placed Convertible Instruments on or after July 22, 2025 disclose such material information by the earlier of (i) the day following the date of decision of the issuance of Privately Placed Convertible Instruments and (ii) one week prior to the payment due date.

III. Introduction of a New Obligation for Initial Business Report Filing Entities to Disclose the Most Recent Quarterly or Semi-Annual Report

Prior to the Amended Regulations, companies submitting business reports for the first time, such as newly listed companies, had to submit their reports for the immediately preceding fiscal year, within five days of the submission obligation arising (or by the regular submission deadline if such obligation arises during a regular business report submission period).

However, because such companies were not required to disclose quarterly or semi-annual reports for the immediately preceding quarter or half-year period, investors lacked sufficient information on such companies' business or financial status immediately prior to the public listing or issuance of securities. Thus, under the previous regulations, investors may suffer losses if it is revealed several months after the listing of a company that the performance of the newly listed company (in the quarter immediately preceding the listing) falls significantly below its projections presented during the listing process.

In order to strengthen the protection of investors investing in newly listed companies, the Amended Regulations require that companies obligated to submit their business reports for the first time on or after July 22, 2025 disclose quarterly or semi-annual reports for the immediately preceding quarter or half-year period, within five days of the submission obligation arising (or by the regular submission deadline if such obligation arises during a regular submission period to submit a quarterly or semi-annual report), in addition to their business report for the immediately preceding year.

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