Outline of Investor Opinions concerning the Current State Surrounding M&A

Focusing on Takeover Defense Measures

August 26, 2008

Tokyo Stock Exchange, Inc.

For Reference Purposes Only

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The opinions introduced in this report are a collection of opinions received by the TSE from investors and the classification and summarization method was based on the judgment of the TSE. Please note, however, that the content of the opinions does not in any manner reflect the opinions of the TSE or its future policies.

I. Introduction

Corporate M&A properly undertaken will increase corporate value and stimulate the restructuring of industry. In addition, it is a method of attracting foreign capital to Japan and it is also expected to have the effect of encouraging global alliance.[1] Increased M&A activity will generally contribute to the vitalization of the Japanese economy and we also expect it to have the desirable effect of promoting direct investments in Japan.[2]

Nevertheless, even in Japan hostile takeovers are no longer novel and against the backdrop of a sense of crisis in the industrial and economic communities over 500 publicly held companies have introduced takeover defense measures.[3] In fact, cases have emerged in which takeover defense measures have been implemented. With respect to this current state of affairs, the smooth development of M&A is being inhibited due to a failure to take root of proper understanding of the rules pertaining to the introduction of defense takeover measures and to a muddled understanding of judicial decisions, etc. and there have been indications that these situation risk becoming a cause obstructing investments from overseas.[4]

At the Tokyo Stock Exchange (hereafter referred to as the "TSE") we have to date taken various measures to protect shareholders and investors such as seeking fuller disclosures as well as stipulating in the code of corporate conduct matters to be respected in relation to the introduction of takeover defense measures.[5] Additionally, as a priority issue for this year, we have called for the preparation of an environment to enhance the corporate governance of listed companies[6] and we have adopted a policy of promoting a broad examination of corporate governance including matters relating to M&A's. There has been a further increase in the voices expressing concern about the recent rise in takeover defense measures[7] and, considering the future impact on practical business accompanying a review of the report concerning takeover defense measures in the Ministry of Economy, Trade and Industry's Corporate Value Study Group[8], we are aware that matters relating to M&A's are issues which we must promptly tackle

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1 "Proposal concerning Fair M&A Rules" (July 7, 2005), Liberal Democratic Party Comprehensive Economic Research Commission, Committee on Corporate Governance.

2 "5 Recommendations Toward the Drastic Expansion of Foreign Direct Investment in Japan" (May 19, 2008), (1) Corporate M&A activities in Japan, Expert Committee on Foreign Direct Investment Promotion.

3 Refer to page 8 of the Reference Materials concerning the state of recent takeover defense measures.

4 "5 Recommendations Toward the Drastic Expansion of Foreign Direct Investment in Japan" (May 19, 2008), (2) Prompt clarification and consolidation of takeover rules, Expert Committee on Foreign Direct Investment Promotion.

5 Refer to page 10 of the Reference Material.

6 "Listing System Improvement FY 2008" (May 27, 2008), Tokyo Stock Exchange. (http://www.tse.or.jp/english/rules/ls-improvements/080527.pdf)

7 White Paper on Corporate Governance in Japan published by ACGA also expresses similar concerns. (http://www.acga-asia.org/public/files/Japan%20WP_%20May2008.pdf)

8 The Corporate Value Study Group sponsored by the Ministry of Economy, Trade and Industry published its corporate value report on May 27, 2005 and, in response, the Ministry of Economy, Trade and Industry and the Ministry of Justice published a "Guideline on Takeover Defense Measures to Secure and Enhance the Corporate Value and the Common Interests of Shareholders" which has come to be widely used as a guideline for listed companies. With the objective of revealing the comprehensive state of takeover defense measures so as to be able to obtain the understanding and agreement of today's shareholders and investors, the Corporate Value Study Group, reflecting on the fact that since the formulation of the above noted guideline over 500 Japanese firms have introduced takeover defense measures, published on June 30 of this year the "Takeover Defense Measures in Light of Recent Environmental Changes" which reflected a variety of opinions from all concerned parties

as a body that establishes a market. Thus, in order to provide a reference for future concrete system enhancements, we have summarized opinions principally concerning M&A's from amongst the survey of opinions of investors undertaken regarding corporate governance generally and we have put together those results in this report.

II. Method of gathering the opinions of investors

In putting together the opinions of investors concerning M&A, the TSE sought the views of investors through the methods noted below.

Firstly, based on individual interviews, these were undertaken at the investors hearing[9] related primarily to M&A held this year on July 22nd and at individual meetings.

In addition, at the TSE we sought opinions from June 26th to July 25th of this year through an investor questionnaire relating to corporate governance generally and we received a total of 41 opinions from domestic and foreign investors (30 from foreign institutional investors, 6 from domestic institutional investors and 5 from domestic individual investors). In this report, we will take up those opinions concerning M&A.

III. Opinions from investors

1. Outline

Among M&A's it is possible to have a variety of modes of M&A's and at the TSE when we sought the opinions of investors we did not restrict ourselves to a particular mode of M&A, but most of the opinions were premised on hostile takeovers, such as takeover defense or cross holdings and third party allotment[10] which have the same effect as a takeover defense. In addition, we also received opinions concerning the need to bolster takeover bid rules arising from problems with takeover defense measures and opinions about merger and third party allotment as one M&A method.

2. Comments from investors

The opinions received in the TSE's hearings and questionnaire with respect to takeover defense measures introduced by listed companies can generally be classified into (i) those assessing the current state of the introduction of these measures, (ii) those concerning the objective of and procedures for the introduction and the governance system following the introduction of measures, (iii) those concerning procedures for the implementation of measures and (iv) other opinions. An outline of these opinions follows below.

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including investors and industry.
http://www.meti.go.jp/english/report/data/080630TakeoverDefenseMeasures.pdf (English version)

9 Refer to http://www.tse.or.jp/english/rules/ls-improvements/summary_investor.pdf for an outline of the minutes of said investors hearing.

10 This is not third party allotment used as a means of a takeover (those with the objective of transfer the right of control), but rather those undertaken with the objective of diluting rights in order to eliminate a hostile bidder.

Concretely, with respect to the opinions received, please refer to page 12 of the materials section.

(1) Assessment concerning the current state of takeover defense measures

With regard to the assessment concerning the current state of takeover defense measures, we received numerous opinions which, to begin with, did not welcome takeover defense measures aside from debating the method of introducing and implementing appropriate takeover defense measures. There were opinions which, having shown data that actually the performance of firms that introduce takeover defense measures is poor, held that it is clear that these measures are not desirable as far as average shareholders and investors are concerned. There were opinions that although takeover defense measures should be used as a tool in negotiations with the acquirer, the situation in Japan gives an impression that implementation of measures is taken for granted for the protection of existing management and companies refuse to negotiate even with a strategic acquirer. We also received opinions which indicated that fundamentally they could find no acceptable reason for a company's need for takeover defense measures. Additionally, we saw comments about the reduced liquidity of the market as a whole from the perspective of the potential for narrowing share selling opportunities and about, by extension, the risk of investors leaving the Japanese market.

On the other hand, we also received opinions which approved of measures when certain conditions were met such as when there is sufficient explanation concerning the takeover defense measures contribution to enhancing long-term shareholder value and when the details of the scheme excludes management arbitrariness since there is a certain significance in takeover defense measures as they provide shareholders with the appropriate amount of time to assess proposals from latent acquirers and existing management.

We received opinions appreciating the recent movement to rescind takeover defense measures or to defer their continuation.

(2) Concerning the introduction of defense measures

Firstly, with respect to the introduction of defense measures, we saw opinions that held that defense measures for the purpose of the self-protection of management or inhibiting accountability to shareholders should not be permitted and that the objectives of the introduction of defense measures should be limited. Concretely, we received opinions which held that the objective should, in the end, be limited to "protecting the rights of minority shareholders" from the perspective of the provision of information to investors and from the perspective of using measures as a means of negotiation to obtain a better price. There were also opinions that held that, although takeover defense measures are applied against abusive acquirers, they should be restricted so that only a "true" abusive acquirer would be subject to the measures so as not to have capital markets distorted.

From the perspective of introduction procedures, numerous opinions held that, with respect to the decision-making process for the introduction of takeover defense measures, a structure enabling companies to make a proper judgment as to whether the defense measures will be in the interest of shareholders is desirable. There were opinions indicating that, as a concrete method of this, consent by shareholders should be required or that the board of directors having

independent directors should make the determination.[11]

Concerning the details of takeover defense measures, numerous comments were received to the effect that respondents do not support takeover defense measures that include a plan to grant cash to an acquirer as these measures could encourage involvement in destructive activities by certain shareholders seeking short-term profits. With respect to this point, it can be said that these opinions are in line with the Corporate Value Study Group's "Takeover Defense Measures in Light of Recent Environmental Changes" (hereafter referred to as the "Corporate Value Study Group's report") published on June 30th of this year.

Additionally, as a comment concerning governance following the introduction of measures, opinions were noted that there is a need for the introduction of independent directors not just limited to the situation in which a judgment is being made concerning the implementation of those measures because takeover defense measures strengthen the position of directors.

(3) Concerning the implementation of measures

With respect to the determination relating to the implementation of takeover defenses, we received opinions that it is indispensable to ensure fairness. Concretely, we received opinion both that the decision-making body should be the board of directors, premised on the existence of independent directors and securing its effectiveness by bolstering the responsibilities of the board of directors, and that it should be the general meeting of shareholders with the appropriate composition of shareholders (premised on no excessive cross holdings). Thus, we were not able to discern a clear direction from an investor's perspective.[12]

Concerning the opinion that held that the decision making body should be the general meeting of shareholders, we also received opinions that this might promote cross shareholdings. We saw a large number of opinions that, with respect to independent committees that numerous companies have adopted as a panel for takeover defense measure, questioned the independence and knowledge of the current committees although a composition of committees that appropriately functions is advisable.

(4) Concerning rules, etc. relating to takeover defense measures

In addition to the above opinions concerning takeover defense measures themselves, we also received opinions concerning rules, etc. relating to takeover defense measures.

Firstly, the Corporate Value Study Group's report exists as a rule directly related to takeover defense measures. In this respect, we received on the one hand opinions similar to what was

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[11] With regard to this point, "Takeover Defense Measures in Light of Recent Environmental Changes" published by the Corporate Value Study Group on June 30 of this year allows the board of directors itself makes a decision on the introduction of defense measures, premised on not having the measures being arbitrarily operated, for the purpose of (i) securing time and information for shareholders to make an appropriate judgment about the pros and cons of the takeover or (ii) securing an opportunity for negotiations between the acquirer and the acquired.

[12] The Corporate Value Study Group's report discusses this point from the perspective of the general principle of shareholder intentions, classifying defense measures into (1) those securing time and information for shareholders to make an appropriate judgment about the pros and cons of the takeover and securing an opportunity for negotiations between the acquirer and the acquired and (2) those implemented as a result of a substantive decision taking into account the details of the takeover proposal for suspension of the takeover.

pointed out in that report to the effect that in relation to decision on the introduction and implementation of takeover defense measures entrusting the decision to the general meeting of shareholders as a matter of form is an "evasion of responsibility" by the directors and does not fulfill their duty of accountability. On the other hand we received opinions basically supporting the principles for the directors' operation of takeover defense measures while also expressing concern with binding power and effectives of that report.

Additionally, from perspective of the current legal system, there were opinions that held that, rather than reviewing and considering directly the method for the introduction of takeover defense measures and measures to prevent abuse, a revision of the TOB regulations (introduction of the 100% bid rule) should be considered to eliminate coercive takeover bids and thereby the need for taking excessive takeover defense measures should be removed and equality of shareholders should be ensured by allowing shareholders to make a simple judgment of whether ultimately to sell shares at the price offered or whether to hold those shares. We also received opinions indicating that we should consider the use of the fairness opinion as a means to address coerciveness and of the U.S. system (subsequent offering period) which is able to provide a continuing opportunity to accept the offer to shareholders who did not accept the offer prior to the conclusion of the takeover bid. Voices were also raised questioning the lack of an obligation of the target company to disclose the fairness opinion.

3. Other opinions received relating to other matters relating to takeover defense measures

In addition to the above opinions we received from investors relating to takeover defense measures, we received opinions that cross holdings, which have an effect similar to takeover defense measures, should require regulation in the same manner as takeover defense measures. We also received opinions which vigorously opposed third party allotment causing substantial dilution for the purpose of defense against takeover.

IV. Conclusion

From the perspective of the protection of investors and to ensure the appropriate market functions, the TSE makes it one of its fundamental policies in the maintenance of the listing system to appropriately deals with the corporate conduct of listed companies. Heretofore, in addition to stipulating in the code of corporate conduct matters to be respected pertaining to the introduction of takeover defense measures and stipulating details of matters to be disclosed, the TSE has stipulated what it believes are required at the time of or after the introduction of takeover defense measures in order to protect the just rights of shareholders and investors.

Under the current Japanese legal system, the TSE does not have negative feeling towards the existence of takeover defense measures across-the-board; however, because the subject of this issue is not firms in general but the rather the takeover defense measures of listed companies, there is a need to focus attention on the capital markets. In this sense, we believe that it is necessary for us to take seriously the fact that this time we received numerous investor comments to the effect that they do not welcome as such the introduction of takeover defense measures. Accordingly, as for the TSE, we would like to inform listed companies of the negative aspects of takeover defense measures which can be imposed on investors in the stock market.

We believe that one of the reasons for these investors opinions is the fact that investors' opportunity to sell their shares is restricted or deprived of by corporate conduct including the introduction of takeover defense measures which give insufficient consideration to the rights of investors and, in circumstances of an actual takeover, countermeasures against hostile takeovers such as the implementation of defense measures and third party allocations, etc. We, the TSE, will, with regard to what can be done anew as a body that establishes a market, promptly and intensively put forward concrete policies from the perspective of the protection of investors and to ensure appropriate market functions.

<Reference Materials>

Analysis of the state of the introduction of takeover defense measures by listed companies

Accompanying the increase in M&A activity, the introduction of takeover defense measures is advancing at firms due to the increased risk of takeovers and, additionally, some disputes pertaining to takeover have led to judicial decisions. Amongst TSE listed companies, approximately 500 companies have, as of the end of July 2008, completed the introduction of takeover defense measures. Most of those firms have takeover defense measures with advanced warning and in Japan this type of takeover defense measure is becoming the norm. As another type, a very small number of companies have introduced trust type rights plans[13], but in any event while there had been cases up to last year where this type of measure had been introduced there has not been a single example of its introduction since the beginning of this year.[14] It is said that many companies have foregone the introduction of the trust type rights plan because, from an expenses perspective, this generally compared to takeover defense measures with advanced warning incurs more costs due to the intervention of a trust bank.

Additionally, on analyzing recent trends[15], with respect to the introduction of takeover defense measures, most have taken the form of going through a resolution of the general meeting of shareholders (refer to diagram 1). On the other hand, with respect to the implementation of those measures, a common pattern is to establish a third party committee in that investigation process (refer to diagram 2) and the percentage of companies is split almost in half where the board of directors will make the judgment in a format which gives maximum deference to the advice of the third party committee and where implementation is pursuant to a resolution of a general meeting of shareholders (refer to diagram 3).

Diagram 1 Introduction Stage

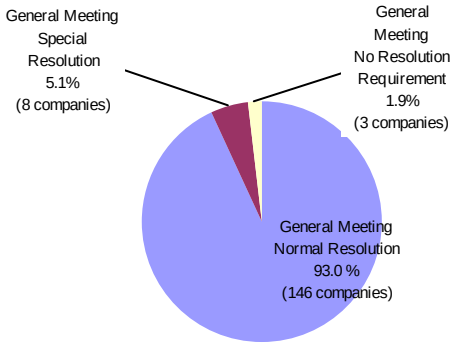


Diagram 2 Establishment of Third Party Committee

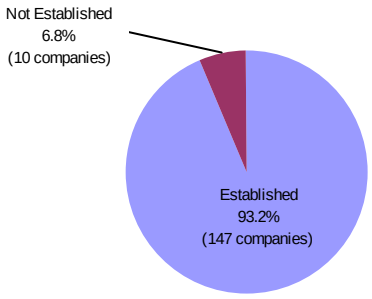
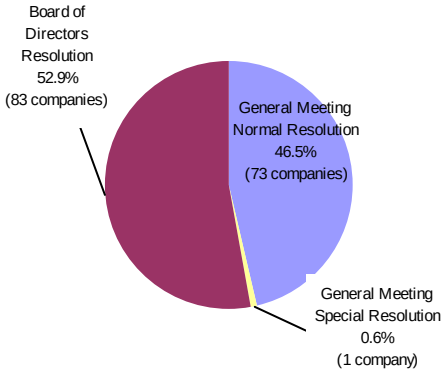


Diagram 3 Implementation Stage



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13 As of July 2008, among companies listed on the TSE there were 7 companies which have introduced trust type rights plans.

14 On the contrary since the beginning of this year 1 company rescinded a trust type rights plan and in its place introduced a takeover defense measures with advanced warning.

15 The subject of the analysis is from among TSE listed companies 157 companies which announced the new introduction of takeover defense measures and scheme changes of previously introduced measures during the period from March 14, 2008 to the last day of July.

While the trend in Japan reflected in the easy introduction of takeover defense measures and in excessive defenses reinforces the strong impression centered mainly among foreign investors about the closed nature of the Japanese market, we can see a movement to rescind the introduced takeover defense measures[16] in consideration of criticism that managers are introducing takeover defense measures in order to protect their own positions.

[16] As of the end of July, 2008 there is a track record of 7 companies from among the listed companies of the TSE which have rescinded takeover defense measures at so-called ordinary times.

The TSE rules relating to takeover defense measures

When introducing takeover defense measures, these measures must be undertaken having sufficiently investigated their appropriateness in light of their legality and corporate value criteria (the state of takeover defense measures that are able to avoid takeovers that damage corporate value without eliminating takeovers that enhance corporate value). In addition to these considerations, the TSE as a body that establishes a market believes that sufficient consideration should be given to takeover defense measures from the perspective of the protection of investors since listed companies are not only the subject of investment of shareholders at the time of the introduction of takeover defense measures but also the subject of investment of a broad class of investors, including latent investors.

From this perspective, at the TSE while taking into account international trends we have prescribed in our listing regulations a code of corporate conduct (Securities Listing Regulation Article 442) and delisting criteria (Securities Listing Regulation Article 601, Paragraph 1, Item 17), etc.[17]

[Code of Corporate Conduct]

In the Code of Corporate Conduct the following items have been prescribed as matters to be respected pertaining to the introduction of takeover defense measures and the TSE may make a public announcement when these matters are not respected (Securities Listing Regulations Article 508, Paragraph 4).

→There have been no cases where a public announcement has been made.

- **Sufficient disclosure[18]**
- **Transparency**
- **Effect on secondary market**
- **Respect for the rights of shareholders**

[Criteria for delisting]

The following items have been prescribed as prescriptions relating to delisting and a stock will be delisted when said conditions are not resolved within 6 months (Securities Listing Regulations Enforcement Rules Article 601, Paragraph 12, Item 1).

→There have been no relevant cases relating to the delisting criteria.

- **Introduction of rights plans under which share warrants nontransferable with the listed shares being allotted to the then shareholders**
- **Introduction of a dead hand type rights plan**
- **Issuance of classified stock with veto (excluding when there is little risk of the shareholders' and investors' rights being impaired)**
- **Change in contents of stock to restrict voting rights concerning important matters**
- **Issuance of stock with large voting rights (only when there is significant risk of the shareholders' and investors' rights being impaired)**

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17 "Takeover defense measures" under the listing system mean measures that are introduced by a listed company, prior to the commencement of a takeover by a person unfavorable to management, without the primary business purposes of fund-raising in order to make the actualization of the takeover of said listed company difficult by issuing new shares or subscription warrants, etc. (Securities Listing Regulation Article 2, Item 80) and are assumed to be takeover defense measures introduced at so-called normal times.

18 With respect to the disclosure items, points for consideration have been published in the Timely Disclosure Guidebook. For example, in addition to detailed disclosures concerning the subject of the judgment on implementation / recession, etc. and the criteria for that judgment, the TSE has requested an easily understandable explanation concerning efforts to increase the reasonableness of takeover defense measures (for example, the decision-making process when introducing measures, the establishment of objective recession conditions such as cancellation of measures at the time of all stock / all cash takeover, the introduction of a system that ensures checking function of independent outside person, terms for periodic review such as sunset terms (terms for periodic reviews at the general meeting of shareholders, etc. of the pros and cons of the introduction of and details of takeover defense measures), election / removal requirements and terms of directors, etc.).

When making the judgment whether to make a public announcement or to take delisting measures, as it is necessary for the TSE to deal with each case flexibly from the perspective of the protection of investors in accordance with the details of, and the state of disclosures for, each individual incident, a comprehensive consideration will be given to the details of, and state of disclosure for, each individual incident. (Guideline III 8 relating to Listing Management, etc.) Accordingly, so that the TSE is able to implement such flexible listing management smoothly, we request that listed companies consult with us in advance of the decision to introduce takeover defense measures and public announcement thereof leaving sufficient time to spare.

As for urgent situations relating to the implementation of takeover defense measures, the TSE has stipulated no particular rules. However, giving consideration to impact, etc. on the secondary market, we have sought (i) when an acquirer has emerged, disclosures concerning information on relating to the acquirer, details relating to the takeover proposal, the company's thoughts about said takeover proposal and future policies to deal with the proposal, and (ii) in the event of the implementation or recession of takeover defense measures, disclosures concerning the background and reasons that led to said decision, future procedures and schedules and the impact on shareholders and investors.

Views of investors received concerning takeover defense measures

1. Opinion Summaries Received from Investors in Response to Listed Company Corporate Governance Questionnaire for Investors[19]

@ An opinion supported by 10 comments or more

○ An opinion supported by 4 - 9 comments

● An opinion supported by 3 comments or less

a. Opinions on the introduction of takeover defensive measures

[Assessment of the current situation concerning above issue]

- Takeover defense measures infringe on the interests of stakeholders. We strongly oppose all takeover defense measures.
- We are concerned about the rapid increase in the introduction of takeover defense measures. These measures are used not to protect the interests of shareholders but rather to protect management at the expense of public shareholders.
- Laws, ordinances and regulations relating to takeovers and disclosures have been revised and fair mechanisms have been built for M&A deals, including new TOB rules. Takeover defense measures are not needed to protect corporate value nor the interests of shareholders.

[Objective of introducing takeover defense measures]

@ The objective of takeover defense measures is not the protection of boards of directors and management who fail to yield results.

○ The objective of takeover defense measures is to support shareholders to obtain a better price as much as possible.

- Takeover defense measures should be carefully designed so that a takeover is undertaken at an appropriate buyout price (in other words, at a price the acquirer can produce a profit and existing shareholders who accept the takeover can be appropriately compensated).

[Procedures for the introduction of takeover defense measures]

@ When introducing takeover defense measures, a thorough explanation should be given to shareholders concerning "how the measures will contribute to an increase in shareholder value", "how the structure is not for the purpose of the self-protection of directors," etc.

@ The consent of shareholders should be obtained when introducing takeover defense measures.

○ Shareholders should be able to review takeover defense measures at the annual ordinary general meeting of shareholders.

- In order to ensure fair procedures, the composition of the board of directors should be made up by a majority of independent outside directors.
- Although takeover defense measures may function to contribute to the interests of

[19] The TSE sought investors' opinions from June 26th to July 25th of this year through questionnaire for investors relating to corporate governance. (http://www.tse.or.jp/english/rules/ls-improvements/questionnaire.pdf)

shareholders, appropriate measures are also required in order to prevent latent abuse. Having independent directors on the board of directors is a fundamental measure.

- According to the report released by the Corporate Value Study Group, it was pointed out, as a evasion of responsibility, that directors tend to consider the approval of shareholders as an "endorsement" concerning the introduction of defense measures obtained at the resolution of the general meeting of shareholders and leave all the decision-making to a third party committee for the implementation of these measures. However, we assume that there is a different degree of interest of listed companies in reflecting recommendations described in the report that has no legally binding force into actual business operations. Therefore, not only judging the legitimacy of Corporation Law, we should also try to establish in-depth "market rules" to introduce a system to utilize market forces and disseminate the globally applicable sense of value through the industry.

- Revisions of guidelines by the Ministry of Economy, Trade and Industry are indispensable in order to impede the adoption of unfair and inappropriate takeover defense measures, or at least, to discourage companies to adopt.

[Details of takeover defense measures]

- The subject of the defense in takeover defense measures should be limited to an "abusive acquirer."

- In order to prevent the abuse of takeover defense measures, structural measures including eligible offer clause, sunset clause and consent by shareholders, etc. are required.

- Takeover defense measures should be made to be in line with proposals by the ISS (Institutional Shareholder Services), including the necessity of a trigger clause.

[Others]

- ○ A takeover proposal is made to the shareholders of listed companies and it is the shareholders that make a decision concerning the proposal. It is the shareholders, and not the management that has an intrinsic conflict of interest, therefore, should make the final decision on any takeover proposal.

- ○ The best defense against takeover proposals is to have a high share price based on business management and capital management supported by shareholders.

- Taking into consideration the recent report released by the Corporate Value Study Group etc., we want the TSE to restrict the policies that allow the self-protection of management.

- Takeover defense measures should be strictly controlled by a committee completely independent from management.

- Ultimately, whether takeover defense measures introduced by a company can protect its shareholders, or just contribute to the self-protection of management by depriving shareholder rights should depend largely on how these measures are composed and introduced in a fair manner. It is worth noting that in many countries takeover defense measures are considered intrinsically unfair.

- The report of the Corporate Value Study Group should be recommended by the TSE in some way.

- We should stop referring to "takeover defense measures" and change the term to "procedures for dealing with a large-scale acquisition of shares."

- When considering the appropriateness of takeover defense measures, it is important to

recognize that TOB is able to serve an important role in increasing company performance. In fact, the possibility of TOB itself helps to increase corporate value by bringing real discipline to management and by forcing management to focus on improving shareholder value. Furthermore, a takeover by a strategic acquirer has the potential of bringing value synergies which increase common interests of shareholders. Therefore, we should not allow a company to inhibit these possibilities by introducing takeover defense measures which are simply for the personal interests of management.

- Takeover defense measures accompanied by handing over monies to an acquirer may encourage certain shareholders to involve in destructive activities by seeking short-term profits. Therefore, supporting this kind of takeover defense measures is not in the interest of shareholders.

b. Opinions on the implementation of takeover defense measures

[Assessment of the current situation concerning above issue]

- ○ We oppose the implementation of takeover defense measures for the purpose of the protection of boards of directors and management with poor performance, because such measures may be abused against public shareholders.
- We strongly oppose all takeover defense measures because they damage the interests of stakeholders.
- Takeover defense measures should be exercised for the benefit of shareholders and must not impede the efficient operations of the market for corporate control.
- It is inappropriate that management holds action to consider a takeover proposal as it delays significantly the execution and completion of the takeover by the acquirer. This action has essentially the same effect as the implementation of defensive measures and deprives a part of or a majority of shareholders, who may approve the takeover, of the opportunity to sell their shares.

[Procedures for the implementation of takeover defense measures]

(Decision-maker of the implementation of takeover defense measures)

- @ The person who makes a decision on the implementation of and procedures for takeover defense measures should be completely independent of management and related companies.
- ○ Objective definitions of “independence” required for the independent/special committee should be provided.
- Independent directors should be able to play an important role in situations such as takeover defenses where the interests of management, the company and shareholders diverge. In order to ensure the fairness of the decision to implement takeover defense measures, outside directors should make up a majority of the board of directors.
- An appropriate representative of shareholders should assess a takeover proposal.
- The decision-maker concerned with implementing takeover defense measures should be a person who has considerable business experience in the related area.
- When TOB is started, a committee made up of independent directors should assess and give advice on the proposal. However, if the committee advises the adoption of poison

pills, the consent of two-thirds of the shareholders should be obtained to implement takeover defense measures.

- Members of the independent/special committee should have a responsibility for the interests of shareholders and, if necessary, hold discussions with shareholders.

- Generally, an independent/special committee acts on behalf of shareholders but does not have any authority to overturn the decision by the board of directors on the implementation of takeover defense measures. Therefore, election of independent/special committee is not enough to protect the interests of shareholders.

- Doubts about the independence of committee members cannot be dispelled because the members who compose the independent/special committee are ultimately appointed by existing managers. Furthermore, there are cases such as where members without sufficient experience and knowledge concerning business and investments have been appointed or where the quality of the committee has been questioned. Thus, we propose the establishment of a committee composed mainly of members of the TSE to ensure a high degree of independence in name and reality.

- Under the circumstances where executive directors have fiduciary duty and legal liability to their company (shareholders), or outside directors are not really independent from management, and the value of outside directors is not generally understood in Japan, we are skeptical about the advantage of having outside directors as a principal decision-maker when implementing takeover defense measures.

- Taking into consideration that cross-shareholdings are increasing, if the implementation of takeover defense measures is approved by majority shareholders who are cross-shareholders, this implementation cannot be fully justified.

- Directors must be responsible to existing shareholders for all decision-making on investments. Official procedures with a high degree of transparency are required.

- TOB rules in the guidelines concerning takeover defense measures by the Ministry of Economy, Trade and Industry and the Ministry of Justice as well as in the Financial Instruments and Exchange Act should be revised to make clear the role and responsibility of the board of directors of a listed company, in order to ensure the fair adoption of takeover defense measures upon takeover proposals to such listed company which has introduced takeover defense measures.

(Information disclosure pertaining to the decision on the implementation of takeover defense measures)

- A high level of accountability and transparency in respect to all shareholders should be required in the process of implementation of takeover defense measures. Especially, it is desirable to have an explanation about the terms and conditions for the implementation of such measures, and why and how such measures will benefit the interests of shareholders in the long-term. In the case of hostile takeover, shareholders should be given the opportunity to receive appropriate information concerning the company's future plans from both existing management and the acquirer.

- In order to implement defense measures, unless the acquirer is a greenmailer, the listed company should give an explanation and information about its theoretical share price that exceeds the TOB price.

- In order to avoid an easy decision on the implementation of defense measures by judging a takeover proposal harmful to the common interest of shareholders, we expect more strict disclosures (for example, managers should disclose their estimated shareholding ratio of

stable shareholders).

(Monies delivered to an acquirer)

- The implementation of takeover defense measures in which monies are handed over to the acquirer should not be implemented due to the risk of harming the interests of public shareholders, such as causing a massive outflow of capital from the company.

[Others]

- While a certain type of defense measure in which the implementation of takeover defense measures are confirmed at the general meeting of shareholders is increasing, we believe there is a major risk that a company introducing defense measures may be tempted to manipulate stable shareholder voting to its own advantage. As persons involved in capital markets, we are extremely concerned that the capital markets can be controlled by stable shareholders, such as cross- shareholders, and that this will damage the soundness of governance and reduce the dynamism of Japanese companies.

2. Summaries of Investor Hearings Proceedings

Date and Time: From 3:30 pm to 5:40 pm, July 22 (Tuesday), 2008

Place: At the conference room of the Tokyo Stock Exchange

Participants: Investors who have a mid- to long-term stance and those who are related thereto (Mr. Yuki Kimura (Pension Fund Association), Mr. Ken Kiyohara Attorney-at-Law (Jones Day), Mr. Shuhei Abe (SPARX Asset Management Co., Ltd.), Mr. Shoichi Miyasaka (SPARX Capital Partners, Co., Ltd.) and two others)

Topic: Opinions from an investor's point of view concerning M&A rules (focusing on takeover defense measures)

Summary of Proceedings:

(Introduction)

- The demand from investors is for companies to maximize the long-term shareholder value, make efficient use of shareholder capital and demonstrate the appropriate disclosure of information and accountability.
- In the future, we believe that the institutionalization of shareholders will progress as it has in the United States. If Japanese companies do not deal seriously face-to-face with shareholders, it is likely that the stock market will stagnate.
- Viewed internationally, the ROE of Japanese companies is considerably low.
- The fact that foreign investors feel suspicious about the corporate governance of Japanese companies is not unrelated to the fall in stock prices.
- When Japanese companies are compared to foreign companies in the same sector, there are cases where Japanese companies achieve significantly higher sales but have lower market value. This makes Japanese companies easy targets of acquisitions by foreign companies. The strategic investors may also pay attention to them.
- In Japan, the larger a company is, the more the company is likely to have profit-earning departments mixed with unprofitable departments, and such situation is entrenched. Currently boards of directors in Japan are extremely closed. If independent outside directors are introduced to boards of directors, these problems may be resolved.
- Although more and more companies are introducing outside directors, there are cases where these outside directors are originally from the parent companies and therefore not independent at all. This makes introduction of outside directors virtually meaningless.

(M&A in general)

- We believe that ensuring fairness and transparency through disclosure is fundamental. However, it is desirable to establish more effective regulations, as there are cases where disclosure regulations alone are not enough to keep fairness and transparency of one-off acts such as mergers, share exchanges, etc.
- There is a need for mechanisms to guarantee a fair bid price at the time of MBO's etc.
- From the perspective of raising corporate value, we consider that institutional investors also need to pay attention to the significance of management continuity.
- Issues such as self-protection of management and impairment of the interest of minority

shareholders are of equal concern, whether the takeover be hostile or friendly.

- It may be necessary to review and revise the regulations of takeover bids. To be more precise, we should look into issues such as the fact that the target company has no disclosure obligation of the fairness opinion; there is plenty of scope for partial bids; regulations concerning takeover bids price are rigid; effectiveness of supervision by regulatory authorities is not clear; and there are activities not covered by these regulations such as market purchases, third-party allotments, etc.

- Notwithstanding that third-party allotments bring about an effect similar to that of a takeover bid, the lack of disclosure regulations similar to those in the case of a take over bid is unbalanced and needed to be solved.

- Practically speaking, a suggestion of delisting possibility forces many investors to respond to a takeover bid, and the "majority of minority approval", which can be a factor to judge fairness, does not function as expected. Therefore, it may be necessary to investigate issues such as the use of fairness opinions as well as measures for shareholders who failed to respond to a takeover bid to have a continuing opportunity to transfer shares, such as a "subsequent offering period" which is allowed under the U.S. takeover bid system.

- It may be necessary to investigate the fairness of "squeeze out" procedures, etc. and the protection of minority shareholders on partial takeover bids.

- With respect to the Corporation Law, it may be necessary to advance further studies to clarify directors' code of conduct (rules concerning duty of care), responsibilities of controlling shareholders, and rules to provide sufficient protections for the right of minority shareholders.

- Problems can also be found in the judicial system. For example, (i) judges are not likely to make a broader judgment from the perspective of the protection of investors, and (ii) it is difficult to collect evidences due to absence of discovery system. Besides, investors are likely to give up their rights due to the lack of class-action suits. Therefore, it may be necessary to establish trading rules to avoid judicial proceedings, until the judicial system becomes able to handle such problems.

(Takeover defense measures)

- The purpose of takeover defense measures should be limited to the protection of minority shareholders.

- Although takeover defense measures should be used as a tool in negotiations, this is not the case in Japan. They become a hindrance to negotiations with a strategic acquirer as well.

- There is a possibility that takeover defense measures will narrow opportunities to sell shares. If many companies are introducing measures without appropriately utilizing them, this will cause a reduction in the market liquidity and make investors leave the Japanese market.

- Regarding how takeover defense measures should be, we can refer to some reports published by the Corporate Value Study Group, the Ministry of Economy, Trade and Industry.

- No investor welcomes takeover defense measures.

- The performance of companies that have introduced takeover defense measures is poor; therefore, the introduction of takeover defense measures is undesirable.

- Although it is difficult to have a positive view of takeover defense measures, there is room for acceptance under certain conditions, e.g., a reasoned and adequate explanation about the

defense measures that will contribute to a long-term increase to shareholder value is given, the concrete details of the defense measures will eliminate management arbitrariness, etc.

- It is a good sign that we see some companies rescind or continuously put off the introduction of takeover defense measures. We welcome this as it is an indication of their confidence in their management strategy. However, as a whole there is increasing trend in companies introducing takeover defense measures.
- The role of independent outside directors is critical in circumstances where there are concerns about conflict of interests between shareholders and management, such as implementation of takeover defense measures.
- The existence of independent outside directors in the board of directors is important, since it is the board that makes a decision on introduction or implementation of takeover defense measures.
- There are cases where we see problems with the composition of the independent committee. Thus, it is desirable to have an in-depth discussion concerning the standards and requirements for the independent committee and to clarify its legal position.
- Independent committees are principally set up in order to make a judgment on the implementation of takeover defense measures; therefore, it is strange that there are cases where a committee does not go into a dialogue with an acquirer at the stage of negotiation. In this case, we consider the function of such independent committee does not work properly.
- Foreign investors have strong concerns over the abuse of takeover defense measures with advance warnings to delay the bid process.
- Looking at the details of Japanese companies' takeover defense measures, the meaning of corporate value is too obscure. We should require companies to disclose EVA (economic value added), etc. to promote changes in the consciousness of management.
- It may be more appropriate to use the expression of "countermeasures for a large scale purchase of a company's shares" rather than "takeover defense measures." The expression of "takeover defense measures" may be interpreted literally as a defense against takeover offers.

(Others)

- Third party allotment in emergencies effectively functions as a takeover defense measure. We should develop certain rules on such allocation.
- Companies normally explain about cross-shareholdings in a conventional way. However, it should be necessary to require them to explain with concrete descriptions. For example, if such cross-shareholdings are for the purpose of strategic alliances, they should show actual figures to explain. Furthermore, it is also necessary to examine carefully whether such cross-shareholdings are really needed to make strategic alliances.
- There is a need for continuous, appropriate information disclosure regarding loans with share warrants.
- For the issuance of classified stocks, such as stocks with non-voting rights, etc., companies should disclose information appropriately and clearly about the objectives, etc. of such issuance.
- It may be necessary to disclose the content of convocation notice of the general meeting of shareholders not only to shareholders but also broadly to investors.

- There is a need for the appropriate disclosure of the results of exercise of voting rights at the general meeting of shareholders.

End