Summary of Investor Hearings Proceedings

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

2. **Place**: At the conference room of the Tokyo Stock Exchange

3. **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)

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

5. **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

(The Listing Department of the TSE is responsible for the content of this summary.)

Inquiries

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