

Review of Viewpoints and Operations of Listing Examination for Relisting after MBO

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Tokyo Stock Exchange, Inc.
Japan Exchange Regulation

1. Introduction

When a company that was delisted due to a management buyout (hereinafter "MBO") applies for a relisting of stocks, we conduct additional examinations apart from the regular listing examination. We have hereby decided to review viewpoints and operations of listing examination for relisting after MBO.

Normally, this type of review does not require us to engage in procedures to seek public comment, which is required only in connection with certain amendments to listing rules and regulations. This review only addresses the viewpoints and operations of conducting listing examinations as appropriate for individual cases within the scope of the current listing rules and regulations. There have been more cases of relisting after MBOs in recent years, and such cases of relisting may increase in the near future.¹ Therefore, there is a need to prepare for the possibility that cases will require further consideration in addition to the review we are conducting at this time.

For this reason, we are now soliciting comments on our review of the viewpoints and operations of listing examination for relisting after MBO in accordance with our regular procedures to seek public comment. In this way, we will prepare ourselves for a potential increase in the occurrence of such cases and utilize the knowledge and opinions of market-related parties in future listing examinations.

2. Approach for Relisting after MBO

An MBO turns a listed company into a non-public company through the purchasing of shares from shareholders by corporate managers of the relevant company. The purpose of some MBOs is to take a company off the market once it has ended its role as a listed company. In contrast, other MBOs aimed to enhance corporate value by allowing the managers to flexibly and promptly improve management. Moreover,

¹ There has been a large number of MBOs from 2007 to 2012. If we consider the general investment period of investment funds, we can expect the number of relistings to increase in the future.

MBO is a valuable opportunity for shareholders to sell out its shares at a premium.

In some of the cases where the MBO was aimed at enhancing corporate value through managerial enhancements, the MBO and relisting were bundled into a set, such that consideration could be given to an exit by relisting at the time of the MBO. In Japan, we have witnessed that some companies were relisted after MBO, and we are likely to see more of these cases in the future.

Different from the ordinary take-over bid (TOB), an MBO is a transaction in which there are conflicts of interest between shareholders and corporate managers to whom such shareholders entrust management of the company. It also puts corporate managers in a highly preferable position vis-à-vis the shareholders in terms of information. Therefore, when an MBO is conducted, corporate managers have to appropriately distribute the premium generated by the MBO and ensure rationality of the MBO through fair procedures.² We also require that the corporate managers disclose necessary and sufficient information pursuant to our listing rules.

Where a company is delisted due to an MBO to then be relisted thereafter, disparity between the business plan formulated at the time of MBO and the actual progress after the MBO will come to light. Accordingly, the relationship between the MBO and relisting may be called into question. Also, appropriateness of premium distribution and rationality of the MBO will be questioned once again.

Thus, apart from regular listing examinations, we have been conducting additional examinations to protect investors on a case-by-case basis. These examinations are based on the frame of mind that when a company that had been delisted due to an MBO is relisted, we must still secure trust in the market.

Under these circumstances, there has been an increase in the number of relistings of companies that were delisted due to MBOs in recent years. In light of such a situation, the Advisory Group on Improvements to TSE Listing System discussed whether we should set forth regulations that, as a general rule, prohibit relisting of a company that was delisted due to an MBO for a certain period of time.

However, the discussion led to the conclusion that such uniform regulations would

² For details, see "Guidelines on Increasing Corporate Value and Ensuring Regulatory Compliance in the Context of MBOs" (September 2007) issued by the Ministry of Economy, Trade and Industry of Japan (hereinafter the "MBO Guidelines").

undermine the dynamism of the market; and, therefore it was determined that such regulations will not be imposed. Instead, we have decided to review and implement viewpoints and operations of listing examinations for relisting after MBO as follows.

3. Review of viewpoints and operations of listing examination for relisting after MBO

(1) Viewpoints of listing examinations

(i) Relationship between MBO and relisting

- ✓ Basically, an MBO and relisting are independent. Therefore, there is not necessarily a strong relationship between them.
- In the listing examination, identity and continuity of entities that play a leading role (corporate managers / shareholders) and length of time from the MBO to relisting will be examined.

(ii) Appropriateness of premium distribution and rationality of MBO

- ✓ It is not possible to unambiguously and objectively assess appropriateness of premium distribution and rationality of the MBO. However, if an MBO is implemented based on fair procedures at the time of MBO, which are a premise of shareholders' decision-making, we can safely say that the majority of shareholders have sold shares, being convinced of the conditions of the MBO. In such a case, there will be little necessity to question the appropriateness and rationality of the MBO.
- In the listing examination, we will check, among others, whether the MBO procedures comply with the MBO Guidelines.
- ✓ Even when there is disparity between the business plan at the time of the MBO and the actual progress thereafter, if there is a reasonable explanation about reasons for such disparity at the time of relisting, there will be little necessity to question the appropriateness of premium distribution and rationality of the MBO.
- In the listing examination, we will check, among others, whether the explanation about the disparity between the business plan at the time of the MBO and the actual progress after the MBO is sufficiently persuasive.

(2) Operations of listing examination

In the listing examination, we examine the relisting application from the viewpoints indicated in (1)(i) and (ii) above. In other words, we examine whether the relationship between the MBO and relisting is strong and whether appropriateness of premium distribution and rationality of the MBO are insufficient.

After these examinations, we will determine whether to approve the relisting after MBO from a comprehensive viewpoint, considering the explanation about and disclosure of the corporate governance structure at the time of relisting and the circumstances leading up to said relisting.

4. Type of Comments being Solicited

With respect to "3. Review of viewpoints and operations of listing examination for relisting after MBO", we solicit comments on whether there are any points that require additional consideration or any other points to note in the course of the listing examination.