**Minutes of the 17th Council of Experts Concerning the Follow-Up of Market Restructuring**

**Date:** Monday, August 19, 2024 4:00 - 5:45 p.m.

**Place:** Tokyo Stock Exchange 15F Conference Room

**Attendees:** See member list

**Watanabe, Director, Listing Department, TSE:**

Well, it's time to begin, so I would like to start the 17th Council of Experts Concerning the Follow-up of Market Restructuring.

First, regarding today's attendance, Member Nagami is participating online.

Now, without further ado, let's proceed with the agenda. We will first explain today's agenda.

**Ikeda, Senior Manager, Listing Department, TSE:**

Thank you for your continued cooperation.

We have three agenda items for today's meeting. The first item, as shown in Document 1, concerns "Status Update and Future TSE Initiatives Regarding 'Action to Implement Management that is Conscious of Cost of Capital and Stock Price'." We would like to hear your opinions on the TSE's assessment one year after the request was made, the future direction, and the future initiatives based on the opinions of market participants, including investors.

The second item, as shown in Document 2, is "Revising the Code of Corporate Conduct on MBOs and Subsidiary Conversions." With the recent increase in going-private activities, we are considering whether there are any aspects that need to be revisited. We have been exchanging opinions widely with market participants on this matter as well, so we would like to hear your thoughts on the direction of the review based on these discussions.

The third item, as shown in Document 3, concerns "Status of Companies Subject to Transitional Measures." As the deadline for these measures is approaching, we have conducted interviews with the relevant companies to understand the current situation. We will report on the status and would appreciate any insights you might have.

That concludes today's agenda items.

**Watanabe, Director, Listing Department, TSE:**

Now, without further ado, let's proceed with the explanation of the materials. Since we have many agenda items today, I would like to provide an explanation and gather your opinions on each theme as we go along.

First, let me explain "Status Update and Future TSE Initiatives Regarding 'Action to Implement Management that is Conscious of Cost of Capital and Stock Price'" based on Document 1 you have in front of you.

**Monden, Senior Manager, Listing Department, TSE:**

Let me now explain Document 1.

First, on page four, we have summarized the key points that are frequently discussed with listed companies and market participants, including domestic and international investors, as well as the messages we should be conveying from the perspective of a review of past actions and the direction going forward.

The first point is the current status. While there is movement among many listed companies, particularly in the Prime Market, to start taking action, it will take time for these efforts to actually lead to an increase in corporate value. Currently, we recognize that we are still "in progress" toward achieving reform.

The second point is our long-term vision. We aim to make it "the norm" for TSE-listed companies to engage in management that is conscious of capital costs and stock prices, as well as to work on increasing corporate value through dialogue with investors.

In this regard, the third point is that, as the TSE, we are primarily a market operator. Our focus will be on ensuring that the market functions properly, which means creating an environment where corporate value can be enhanced through dialogue between companies and investors.

The fourth point, which is often brought up by investors, is the need to emphasize the importance of engaging with investors. Particularly in the Prime Market, the expansion of English-language disclosures and other factors will increase the costs and burdens of maintaining a listing. As a result, we anticipate that more companies may choose to go private in the future.

As mentioned in the previous meeting, from the perspective of ensuring that the market functions properly, the TSE respects such decisions and does not place emphasis on the number of listed companies. This has been explicitly stated once again.

The fifth point is that, in addition to the efforts of listed companies, it is also necessary to encourage institutional investors, who engage in dialogue with companies, to approach these discussions with a focus on supporting long-term corporate value enhancement.

Finally, in terms of evaluating future progress, we plan to continuously review the overall progress not only by tracking quantitative indicators like P/B ratio and ROE, including international comparisons as we have done so far, but also by understanding qualitative aspects such as the efforts of listed companies and the evaluations from domestic and international investors.

On page five, Section II covers the action status of companies. Since this section primarily introduces data, I'll just mention the key items: Page six presents the disclosure status as of the end of July; Page 7 shows the disclosure status by industry within the Prime Market; Page 8 summarizes a survey conducted by the Japan Investor Relations Association, which covers the indicators that companies are focusing on and the disclosure mediums they use in relation to the current initiatives; Page 9, a reprint from the previous meeting materials, shows the changes in the distribution of P/B ratio and ROE over the past two years; Page 10 analyzes the trends in the number of companies that have indicated they are "under consideration," broken down by the Prime and Standard Markets; Page 11 provides a summary of the distribution of market capitalization, P/B ratio, and share ownership status for companies that have not yet made disclosures.

The next section, III, covers the results of interviews with investors and others, with a summary on page 13.

After the follow-up meeting in May, we conducted additional opinion exchanges with over 60 entities, including domestic and international institutional investors, as well as securities companies and trust banks that support companies, covering a broad range of stakeholders.

During these discussions, we categorized the companies into three groups based on their response status, specifically: Group 1, Companies autonomously promoting initiatives; Group 2, Companies with room for future improvement; and Group 3, Companies that have not yet disclosed. In the Prime Market, Group 2 is considered the majority, while in the Standard Market, Group 3 is seen as the larger segment.

With these company groups in mind, we gathered opinions on the overall progress, challenges, and potential countermeasures.

Following this, pages 14 to 21 contain the detailed interview results, and page 22 presents the results of a survey on the challenges companies are facing. However, I will skip the explanation of these pages and ask you to proceed directly to page 24.

First, based on the response status of companies so far and the results of the interviews with investors and others, the current issues can be summarized as follows: For Group 2 companies, the goals they set and the efforts they are making are often misaligned with investor expectations, and there is insufficient communication with investors. For Group 3 companies, there is a lack of IR infrastructure in the first place, meaning they are not maintaining the necessary attitude or systems to engage with investors, which is something that a listed company should inherently possess. A contributing factor is the presence of controlling shareholders, which makes these companies less sensitive to market pressures.

Looking ahead, the direction for addressing these issues should be as follows. For Group 1 companies, which are already making effective efforts, it is important to continue supporting them. For Group 2 companies, which form the majority in the Prime Market, it is crucial to implement measures to promote and support their progress.

On the other hand, for Group 3 companies, which are the majority in the Standard Market, it is necessary to encourage them to respond to the requests while also developing the attitude and infrastructure to engage with the market. Additionally, efforts should be made from the perspective of protecting minority shareholders.

Starting from page 25, we have summarized specific action plans based on the results of the interviews with stakeholders.

First, for Group 2 companies, under the initiative “Providing Materials to Address Misalignment of Expectations,” we plan to update the points and examples published in February, which are listed within the dotted-line box. This update will include examples that highlight gaps between company actions and investor expectations, with a target of early November for completion. Additionally, to positively motivate companies, we will introduce changes in market evaluations based on their disclosure status. We will also continue educational activities, such as holding seminars for executives and IR officers of listed companies on managing with an awareness of capital costs and stock prices, as well as on IR activities.

Next, to promote communication with investors, it is important to convey the message that companies should disclose their current initiatives and considerations, even if they are not fully developed, and use dialogue with investors to refine them.

Furthermore, regarding the list of disclosing companies, which is widely used by investors, we plan to make three revisions starting in the new year.

First, to encourage the transition from “under consideration” to “disclosed,” we will set a deadline for how long a company can remain in the “under consideration” status.

Second, we will make it clear on the list when a company has “updated” its disclosure content.

Third, for companies that are actively working on disclosures but are not currently attracting investor attention, we will explore ways to allow them to signal their efforts and make this visible on the list, thereby facilitating dialogue with institutional investors.

Additionally, we believe it is necessary to also send a message to the investor side, as mentioned at the beginning, to encourage their engagement in this process.

On page 26, the focus is on addressing Group 3 companies. The first consideration is to encourage these companies to not only respond to the current requests but also ensure they have the necessary IR functions that a listed company should maintain.

In doing so, we want to avoid simply institutionalizing IR functions in a formalistic way, which could lead to companies responding superficially by just following the rules on the surface. Instead, we aim to explore ways to encourage the establishment of effective IR functions from a practical standpoint, ensuring these functions are truly effective.

From the perspective of protecting minority shareholders, at the end of last year, we made requests to enhance information disclosure based on discussions in the TSE’s “Study Group to Review Minority Shareholder Protection and Other Frameworks of Quasi Controlled Listed Companies.” Moving forward, we plan to conduct a follow-up on the changes in corporate behavior in response to these requests during the study group meetings starting in October.

Finally, on page 27, we present the topics we would like to discuss.

First, regarding the review on page four and the future direction, we would appreciate your feedback, particularly from the perspective of messaging to market participants such as companies and investors, as well as from a marketing standpoint.

We also welcome any thoughts you might have on the evaluation metrics for measuring future progress.

Additionally, for the future direction and specific measures outlined on pages 24 to 26, while some points may be quite detailed, we would like to hear any suggestions or points to keep in mind as we proceed with these measures.

That concludes the explanation of Document 1.

**Watanabe, Director, Listing Department, TSE:**

Now, I would like to invite your opinions and questions. What are your thoughts?

**Kumagai, member:**

Thank you for incorporating my prior comments into Document 1. I have three additional comments I would like to make.

The first point concerns how the “Future Policy” on page four is presented. While I generally agree with the content, I believe it could be even more assertive. For example, instead of simply stating that the TSE “does not focus on the number of listed companies,” you could convey a stronger message by saying that the TSE “pursues the quality of listed companies rather than their quantity.” Such clear-cut keywords would help deliver a more powerful message. Both listed companies and investors, as well as the media, are closely watching the TSE’s next steps, so a strong and strategic message that clearly communicates the TSE’s commitment and direction is expected. The materials rightly point out that maintaining a listing will likely become more costly due to the efforts to create an environment that promotes corporate value enhancement through constructive dialogue between listed companies and investors. I believe this is essential to prepare listed companies for what lies ahead.

In terms of demonstrating this future direction, it is crucial to establish evaluation metrics to measure progress and to ensure that the PDCA (Plan-Do-Check-Act) cycle is rigorously implemented in order to assess the effectiveness of these measures and introduce improvements where necessary. Of course, if we only focus on specific quantitative metrics, there is a risk that companies may pursue improvement in those areas as an end in itself, potentially leading to misguided outcomes. Therefore, it might be worth considering presenting broader, more holistic perspectives as well.

I am a member of the Government Tax Commission, and I would like to mention that one of the central keywords in the current commission is EBPM (Evidence-Based Policy Making). It might be worthwhile for the TSE to evaluate the effectiveness of its past initiatives, especially those that have successfully guided institutional investors and listed companies in the right direction or triggered behavioral changes, from an EBPM perspective through interviews and other means. Additionally, as mentioned, using comparisons with other countries, such as those in Europe and the US, to inform the future direction would also be beneficial.

My second point concerns the approach to addressing the different company groups, as outlined from page 24 onward. I don’t have any issues with the classification of the three company groups, and I agree with the proposed measures. In particular, I believe it would be highly meaningful if we could demonstrate “changes in market evaluation based on disclosure status” not only for large-cap stocks but also for small- and mid-cap stocks.

When discussing with listed companies and institutional investors, it seems that both sides have historically placed too much emphasis on shareholder return enhancement measures. However, I sense that institutional investors are increasingly voicing their expectations for more sustainable shareholder returns driven by growth through investment, rather than one-time boosts, as well as for a reevaluation of business portfolios considering capital costs. If we can communicate these changes in market expectations to listed companies, it could reinforce the importance of appropriately allocating management resources with an awareness of capital costs.

As suggested by the existence of the well-known book Learning from Mistakes (“Shippai no Kenkyū”), showcasing not only good examples but also poor ones can greatly aid companies in understanding. However, when speaking with the representatives of listed companies, I often find that awareness of the existence and usefulness of case studies is low. This highlights the need to further strengthen our communication efforts on this front.

My third point relates to the idea of highlighting companies that seek access from institutional investors. I find this to be a very interesting initiative. However, there is a potential risk that companies that are not actively engaging in IR might participate simply because others are doing so, without genuine commitment. Therefore, some careful planning will be necessary to avoid this scenario.

On the other hand, it is also important for listed companies to understand that expressing a desire to participate in this initiative does not guarantee a meeting with institutional investors. Institutional investors

have their own investment criteria, such as liquidity, and if they do not see positive changes in a company's performance, a meeting may not take place. Nevertheless, I hope that listed companies will approach this initiative with creativity and persistence, even in the face of such challenges.

**Sampei, member:**

Thank you for providing such a comprehensive set of materials for this meeting.

First, regarding my initial point, I agree with the points raised on page four, and I think it's particularly beneficial that the goals have been clarified in the second paragraph.

In the fourth paragraph, as you mentioned earlier, it's good that the TSE has explicitly stated that it does not focus on the number of listed companies. It's important to ensure that this message is consistently conveyed not only in this material but also in other communications.

Regarding the evaluation metrics mentioned in the sixth paragraph, where it says, "including international comparisons," I believe it is crucial to provide international comparison data to show where Japanese listed companies stand. Previously, data such as P/B ratio and ROE have been presented in this way, but since growth potential is also a key consideration, it would be beneficial to compare growth metrics, such as top-line growth and EPS growth, as well.

On page 25, you highlighted the examination of capital allocation policies and pointed out the ratio of cash and deposits. Tracking changes in these aspects could also be important. Additionally, when considering international comparisons, there are various profitability indicators. One commonly used by many overseas investors is the EBITDA margin. Presenting data with this metric could make the analysis clearer and more understandable.

The chart on page 10 showing the trend of companies categorized as "under consideration" is very clear and helpful. There was feedback during the interviews suggesting that the term "under consideration" could be removed. However, when looking at the chart, it's apparent that in the Prime Market, there has been some movement from "under consideration" to actual disclosure, whereas in the Standard Market, unfortunately, the efforts are still in the early stages. From this perspective, the term "under consideration" might still hold significance.

That said, it would be beneficial to clearly define what "under consideration" means. For instance, the "under consideration" status could be limited to companies that are just beginning to engage in these efforts for the first time, and this status could be restricted to a one-year period. Without such a definition, the meaning of "under consideration" could become ambiguous. By clarifying this definition, "under consideration" could actually be interpreted as a sign that the company is, albeit slowly, beginning to take action.

Regarding the future actions outlined on page 24, there was a comment in the interview results suggesting that focusing on Group 2 companies might be more efficient. However, I believe that Group 3 companies are also important for the TSE to address when it comes to improving the overall market environment, so I appreciate that they are included in the plan.

As for the specific measures, I want to thank you for reflecting on the comments made during the preliminary explanation on page 25. Regarding dialogue between outside directors and investors, I think it's better not to limit this to the lead outside director, as doing so could provide an easy way to decline meetings due to scheduling or availability issues. Additionally, I appreciate that you have clarified the focus on the balance sheet and included the suggestion to set a deadline for the "under consideration" status.

Regarding page 26, I'm also following the efforts to enhance information disclosure related to the protection of minority shareholders and group management. Since I haven't yet grasped the overall changes, I'm glad that a follow-up will be organized starting in October.

Last, I reviewed the reference materials from page 28 onward and noted the efforts to support listed companies across Japan. I want to express my gratitude for these activities. At the same time, I'm interested in hearing about the feedback you've received during these engagements, so I would appreciate it if you could share some of that information.

**Ikeda, Senior Manager, Listing Department, TSE:**

Thank you. We've received a lot of feedback during our visits, so I will compile this information and provide a summary of the key points in the materials at a later time.

**Koike, member:**

I have had discussions with our investment team about the changes that have occurred over the past year. Our analysts, engagement officers, and portfolio managers have observed a few key changes.

First, there has been significant progress in the mindset of executives, particularly CEOs and CFOs. We are seeing more discussions around capital cost disclosure and business portfolio management, and discussions are increasingly being driven from the CEO's and CFO's perspective. This has added depth to the conversations. Moving forward, it is crucial that these discussions don't just remain theoretical but translate into execution. This shift toward execution will enhance the efficiency and sophistication of both the stock and capital markets. On the flip side, the challenge lies in whether this culture of turning discussions into execution, such as replacing the business portfolio, can become firmly established.

Second, as institutional investors, we are recognizing that it is our responsibility and mission to enhance the quality of our engagements to the point where we can genuinely support and encourage listed companies, and this is something we are discussing internally. As I mentioned, it's important that we don't just discuss changes in the market and the transformation in top management's mindset, but also take action to help these companies increase their corporate value. This is critical to advance to the next stage.

On the other hand, although I have said that the scope of dialogue should be expanded, bottlenecks have actually emerged as an asset management company, and we face the challenge of whether we will be able to respond practically when more companies wish to engage in dialogue emerge. Balancing the quantity and quality of engagements is our key management issue. We must ensure that increasing the volume of engagement does not compromise its quality, as this could ultimately undermine the development of Japan's stock market and the enhancement of corporate value.

Additionally, it is important for companies to understand that even if they engage in dialogue with investors, it doesn't necessarily mean that investors will buy their stock. The effort may not always yield immediate rewards, and this is something that companies need to be aware of.

One more point—there is still a high percentage of companies that have not yet disclosed their initiatives. So, I wonder if "management that is conscious of cost of capital and stock price" is not being discussed at the board of directors meetings, and what is the purpose of having outside directors?

Monitoring and overseeing management's execution is a major responsibility of outside directors, but if these discussions regarding the request from TSE have been neglected for a year, it might be worth asking why they haven't raised these issues. It might sound harsh, but if outside directors at a company are unable to raise an issue and engage in discussions about enhancing corporate value, it calls into question whether they can make sound decisions when it comes to matters like TOB or MBO. Especially going forward, companies that lack this level of oversight are more likely to become targets for such actions. Therefore, it's crucial to send a strong message that these discussions must be actively pursued and closely monitored.

**Matsumoto, member:**

Looking at page 13, it appears that Group 1—the companies that are actively and effectively responding—includes relatively few companies, though the exact number isn't specified. The request to manage with an awareness of capital costs and stock prices has indeed led to some changes, and stock prices have risen.

However, it's not entirely clear what has driven this increase in stock prices. While the stock price rise might suggest that the reform is working, the chart indicates that the number of companies in Group 1, those making autonomous progress, remains small.

Regarding page four, this page is particularly important because the general public is unlikely to read all of the TSE's materials, so this is where key messages need to be clear. This page contains important statements like "TSE aims to create a market where listed companies working on improving corporate value…is the norm" and "TSE will not focus on the number of listed companies."

However, the opening statement that "the reform is still in progress" is quite broad. "In progress" could describe anything from being halfway done, just getting started, or even already succeeding. It's crucial to clearly communicate what we and the TSE actually think about the current status of the reform. This clarity is important not only for Japan's listed companies but also for the global investor community. In fact, I frequently hear from overseas institutional investors who are keen to understand the TSE's next steps, its thoughts on the current situation, and the state of the reforms. When talking to large domestic listed companies, some feel that the initial pressure has eased. I personally believe that this reform has only just begun, and it's vital to convey this message, especially from the perspective of how we engage with listed companies.

Regarding the protection of minority shareholders on page 26, especially in the context of MBOs, which is the next topic on the agenda, protecting minority shareholders in subordinate listed companies is an extremely important issue for Japan's public capital markets. If this issue isn't properly addressed, other initiatives may fail to function effectively. Therefore, the discussions in the "Study Group to Review Minority Shareholder Protection and Other Frameworks of Quasi Controlled Listed Companies" are crucial, and I am very interested in them. It is essential that we consider the outcomes of these discussions when moving forward with our initiatives.

**Kanda, member:**

I would like to share my thoughts. Reflecting on the progress over the past year, while the number of companies disclosing information is still small, I have the impression that more has started than I initially expected. However, as Mr. Matsumoto pointed out, the number of disclosing companies remains low. I agree with the general direction of the materials, particularly the focus on Group 2 companies with the goal of moving them into Group 1.

Regarding specific points, I have three comments: First, the importance of updates. As mentioned earlier, the importance of updates cannot be overstated. This refers not just to updating case studies but also to encouraging companies to regularly update their disclosure content. It would be beneficial to request annual or periodic updates from companies.

Second, regarding the approach to Group 3 companies, last year's request was structured as an "ask," but I believe we should consider adopting a "comply or explain" approach for Group 3 companies. In other words, if a company chooses not to disclose, it should explain why, even if the explanation is as simple as "It's unnecessary due to the presence of a controlling shareholder." Compared to the current situation, where there is no disclosure at all, this would represent progress.

Last, clarification of "dialogue." The term "dialogue" appears twice on page four, and given that there are 3,200 companies across the Prime and Standard markets, I believe it's unrealistic for all of them to engage in individual engagement with institutional investors. While the content about dialogue in the materials is good, it's essential to clarify what exactly is being asked for under the term "dialogue."

This topic has come up frequently in these meetings, and as we move forward, it's crucial to refine what we mean by "dialogue" on page four. There are many ways to approach dialogue, and it may be helpful to present some options or strategies, such as specific types of dialogue, to guide this process. This will be a significant challenge going forward.

**Uchida, member:**

Thank you for conducting the interviews, summarizing the findings, and preparing the materials.

First, regarding the first point on page four, I am concerned that the materials might give the impression that we are focusing solely on whether disclosures have started. I think it would be better to explicitly mention the issues that have been recognized, such as the fact that many companies are still in the "under consideration" phase or have not yet disclosed at all, and the challenges in the content of initiatives as identified through the interviews with investors. This would provide a clearer context for describing the situation as "in progress."

Additionally, while this is a minor point, in the third section, the phrase "focus on improving the environment to enhance corporate value" might give the impression that we are stepping back from areas we had previously addressed more directly. I believe it would be better to use a more forward-looking expression like "focusing our efforts" or "further intensifying our efforts."

Otherwise, I generally agree with the content. Regarding the evaluation metrics, while P/B ratio has been highlighted, I want to emphasize that from an issuer's perspective, it's not just about P/B ratio—it's also about how they execute their ROE and growth strategies. It's important that the discussion does not become too narrowly focused.

On the other hand, the fact that these metrics have garnered attention is noteworthy, so I have no objections to listing these indicators. The key is to look at various metrics to assess whether companies are truly moving toward realizing their growth strategies.

Regarding pages 24 to 26, I think it's a good approach to consider different strategies for each company group. While some have suggested that there's no need to compromise with Group 3 companies, I believe it's important to ensure that these companies engage seriously with the market.

From a company's perspective, it can be challenging to clearly see the faces of investors, and even if they invest resources in IR, it's difficult to capture the full picture. The latter part of the materials discusses the efforts of the Listed Company Support Group, and I understand that various initiatives are being undertaken.

However, it's crucial not only to convey IR techniques but also to communicate the right attitude toward IR, including to the management team. It's also important to guide the substance of the dialogue between issuers and investors toward something more meaningful and constructive.

Finally, while I understand that there has been a lot of listening to issuers' circumstances, the materials primarily reflect indirect survey results. If we could delve a bit deeper into the actual situations of issuers and present that information at the table, it would likely facilitate a more specific and practical discussion on how to respond.

**Kuronuma, member:**

I would like to share a few points, some of which overlap with the opinions of other members. First, regarding the current situation, it's very disappointing that 56% of companies in the Standard Market have not yet made disclosures. I don't believe we can say that progress has been made under these circumstances.

While it's true that we cannot allocate too many resources to companies in Group 3, it's important to remember that the original requirement for disclosure from listed companies in both the Prime and Standard markets was based on the application of the Corporate Governance Code. This code assumes that companies will properly disclose information to investors. If a company fails to disclose and does not provide an explanation, it could be viewed as a violation of the Corporate Governance Code. In this context, as Kanda mentioned, it is crucial to strongly encourage these non-disclosing companies to provide an explanation.

Regarding future actions, I generally agree with the TSE's proposals. On page 25, I understand that the × marks indicate undesirable examples in the points and case study updates, and I agree with the approach of highlighting such cases.

However, concerning the changes in market evaluation (stock prices) based on disclosure status, I want to note that there may be companies whose stock prices have risen even without making disclosures. Careful consideration is needed here to avoid creating misunderstandings or issues.

I also support the improvements to the list of disclosing companies, including setting deadlines for companies that are "under consideration," clearly indicating companies that have updated their disclosures, and highlighting companies that seek access from institutional investors. These are all useful initiatives, and I strongly encourage you to move forward with them.

Regarding the response to companies that have not yet made disclosures, in addition to requiring an explanation as discussed earlier, I believe the points listed on page 26 are all important. However, while the disclosure of information related to the protection of minority shareholders and group management is crucial, it's primarily a measure to prevent the unfair treatment of minority shareholders. This alone may not necessarily contribute directly to management practices that are conscious of stock prices and capital costs. Therefore, while it's an important issue, I believe it's not sufficient on its own to achieve the broader goal of enhancing corporate value.

**Nagami, member:**

I have three main points to raise. First, regarding page four, which is a crucial summary, I agree with Mr. Matsumoto's comments. Since the reform is described as "in progress," it would be clearer to include specific challenges we intend to address over the next few years and the corresponding actions we plan to take. This would better convey that the momentum for market reform is ongoing.

Second, on page 24, concerning market operation policies and priorities, I believe that from the perspective of maintaining the momentum of reform, the focus should be on Group 2 companies. While Group 3 companies are certainly important, prioritizing Group 2 is more crucial for demonstrating a market that is evolving and changing. This is key from a priority standpoint.

Third, after reviewing this document and the materials on companies subject to transitional measures, I think many people are reconsidering the positioning and operational policies of the Standard Market. The Standard Market has the highest number of companies under transitional measures and a large number of companies in Group 3. Given this context, I believe it's a critical time for the exchange to clearly define and communicate the operational policies for the Standard Market.

**Okina, member:**

I also consider page four to be very important, and I generally agree with the approach presented. The material mentions the importance of understanding qualitative factors in addition to quantitative indicators. Since we're asking companies to focus on long-term value creation, even for those with a low P/B ratio who might not see immediate results, it's crucial that these companies demonstrate their commitment to long-term value creation, such as investments in human capital and intangible assets. These efforts should be qualitatively evaluated as well. In qualitative evaluation, the key lies in determining what exactly should be assessed.

Additionally, on page 10, it is noted that the number of companies newly categorized as "under consideration" has increased, indicating that some gradual changes are occurring even in the Standard Market. However, with many Group 3 companies in the Standard Market, it's important that the TSE actively approaches these companies. Group 2 companies can often leverage investor engagement to drive change, but for Group 3 companies, it's essential that the TSE provides strong support. Encouraging them to provide explanations as discussed earlier is a crucial step, and it's equally important to continue supporting them in addressing IR-related challenges.

Regarding page 25, I agree with the general direction. However, as Mr. Kuronuma mentioned, when it comes to presenting changes in market evaluation (stock prices) based on disclosure status, it's important to ensure that the analysis aligns with the TSE's emphasis on long-term corporate value enhancement. While it's good to show that groups more proactive in disclosure tend to see more positive stock performance overall, we should be cautious. Stock prices can rise in the short term due to factors like dividend increases or share buybacks, which may not necessarily reflect genuine long-term value creation. Therefore, I would like to ask that the analysis focus on how these disclosures contribute to long-term value creation, in line with the TSE's ongoing initiatives.

**Matsumoto, member:**

Given that the TSE's resources are limited, I believe focusing on Group 2 companies in the Prime Market is crucial to achieving effective results. While there are certainly challenges in the Standard Market, its market

capitalization is relatively small. Therefore, in terms of prioritization, it's essential to concentrate on moving Group 2 companies up to Group 1.

Regarding Group 3 companies, instead of providing heavy-handed support, it might be more effective to implement clearer, more decisive measures. For example, categorizing companies that do not disclose information into a distinct category or taking a stronger stance by categorizing them as non-compliant with corporate governance if they do not provide explanations for their lack of disclosure. This way, we can better differentiate the TSE's approach and avoid the inefficiency of trying to address all companies in both the Prime and Standard markets equally. Hearing everyone's perspectives today has reinforced my belief in the importance of such a targeted approach.

**Watanabe, Director, Listing Department, TSE:**

Does the secretariat have any additional comments at this point?

**Ikeda, Senior Manager, Listing Department, TSE:**

Regarding page four, we have received many valuable suggestions from everyone today. Based on the feedback provided, we will make revisions and will consult with you again via email or other means.

**Watanabe, Director, Listing Department, TSE:**

Next, I will provide an explanation based on Document 2 regarding the "Revising the Code of Corporate Conduct on MBOs and Subsidiary Conversions."

**Yamawaki, Manager, Listing Department, TSE:**

I will now explain Document 2, concerning the "Revising the Code of Corporate Conduct on MBOs and Subsidiary Conversions."

First, on page 2, we summarize the discussions from previous meetings and outline today's agenda.

In the previous meetings, there was a suggestion that as MBOs and full acquisitions by controlling shareholders are expected to increase, we need to consider additional measures to ensure the protection of the interests of general shareholders. It was also recommended that before discussing such measures, it is important to clarify the existing challenges in these areas.

In response to these suggestions, the secretariat conducted a broad hearing with various market participants to understand the developments in practice since the establishment of the Fair M&A Guidelines in 2019 and to identify potential issues. Today, we will present the feedback we received and discuss the direction for revising the corporate behavior guidelines.

Additionally, during the last meeting, there was a suggestion that the regulatory framework for MBOs and related transactions in the US could offer valuable insights. We have summarized relevant information on this topic in Appendix 3, so please refer to it as needed during our discussions.

On page three, we have summarized the general feedback we received.

Detailed opinions are included in Appendix 1. From the advisors' side of the target companies, many evaluations mentioned that procedures have advanced in recent years, particularly with respect to the Fair M&A Guidelines. They noted that special committees have started to more consciously consider investor interests, leading to more substantive deliberations.

On the other hand, feedback from investors indicated that there are still cases where concerns remain regarding the fairness of the price or the fairness of the procedures involved.

Additionally, recent media coverage has sometimes focused on whether the purchase price is at or above a P/B ratio of one. However, during the investor interviews, it was pointed out that while there is a structural issue where underperforming management can potentially buy at a lower price due to a decline in stock prices, the fact that the P/B ratio is above one is not in itself a direct indicator of fairness. Therefore, the general consensus was that it should not be subject to regulation. Instead, the focus should be on ensuring that the best possible price is achieved through fair procedures.

In light of these discussions, a broad consensus emerged that it is crucial to further encourage the effective implementation of the procedures outlined in the guidelines.

Additionally, there was feedback suggesting that, as we anticipate more cases of full acquisition and restructuring involving listed companies under the equity method in the future, the protection of minority shareholder interests in such scenarios should also be considered a key issue.

On page four, we have provided an overview of the fair procedures outlined in the Fair M&A Guidelines for your reference.

As you are aware, these guidelines are positioned as best practices, meaning that the specific measures to be taken and the extent to which they are implemented should be considered on a case-by-case basis, depending on the circumstances.

For details on how each of these measures has been implemented in practice, we have summarized the information in Appendix 2, which you can refer to as needed.

On page five, we summarize the opinions of market participants regarding specific measures to ensure fairness.

First, regarding special committees, while there has been some positive evaluation of the progress made, concerns remain about the transparency and effectiveness of the deliberations in certain cases. Many voices suggested that the TSE should further enhance disclosure related to the content of these deliberations. It was recommended that, with reference to the Fair M&A Guidelines, the TSE should clearly outline the key points for consideration and encourage more comprehensive disclosure of the committee's discussions.

In addition to the discussions related to the special committees, there was also significant feedback regarding the second point, which concerns stock valuation reports.

Under the current regulations, obtaining a valuation report is mandatory, but disclosure of the report itself is not required. However, there is a requirement to disclose key assumptions and conditions underlying the valuation in summary form. Despite the publication of the Fair M&A Guidelines, it has been noted that disclosures have not sufficiently progressed, particularly in areas such as the assumptions underlying business plans and the treatment of non-operating assets in cases where these are significant. There were ongoing calls for further improvements in these areas.

Moreover, regarding these underlying assumptions, while some investors expressed expectations for verification by the special committee, others raised concerns about the effectiveness of such verification when conducted by outside directors who are not directly involved in the business operations.

Furthermore, from the perspective of ensuring the independence of the valuation firm, there were continued calls for enhanced disclosure regarding conflicts of interest.

In this context, some investors suggested that the special committee should be required to independently select a financial advisor (FA) and obtain a valuation report. However, concerns were raised that issues of independence could still arise even with an independently selected FA. Additionally, there were doubts about the effectiveness of obtaining multiple valuation reports, particularly since valuation firms typically base their assessments on business plans provided by the company.

Regarding fairness opinions, it was noted that there is no clear legal framework for them in Japan. As a result, there were no significant calls to make fairness opinions mandatory at this stage.

Regarding the third point on market checks, as there is growing interest in indirect market checks, there were calls to enhance disclosures related to the consideration of counterproposals to make these checks more effective.

Last, on the subject of setting a Majority of the Minority (MoM) condition, in the US, it is common for the approval of a MoM, in addition to the special committee's approval, to be a prerequisite for the execution of MBOs and similar transactions. While this condition is highly effective in ensuring fairness, there was widespread caution among stakeholders about making it a mandatory requirement for all MBOs and similar transactions. This cautious stance is due to concerns about the impact such a requirement might have on the feasibility of completing these transactions.

On page six, we outline the topics for discussion, with the first point being the direction for revising the Code of Corporate Conduct.

Specifically, we seek your opinions on whether there is a need to make certain fairness measures, as outlined in the Fair M&A Guidelines, mandatory across the board through listing regulations in order to appropriately protect the interests of general shareholders.

For instance, how do you view the recent progress in fair procedures as evaluated by market participants? Should we consider mandatory measures in comparison with US regulations and practices? Or, given the progress in procedures and the individual nature of each case, should we focus on enhancing the framework of the Fair M&A Guidelines—such as ensuring thorough deliberation by special committees, improving disclosures to help general shareholders assess fairness, and better reflecting the intentions of general shareholders—rather than imposing uniform mandatory requirements?

On page seven, we outline the second set of discussion points related to possible measures to support the framework of the guidelines.

One consideration is to expand the scope of the opinions obtained from the special committee—currently focused on the "opinion that the transaction will not undermine the interests of minority shareholders"—so that it also includes MBOs. This would involve clearly defining the key considerations for the committee and encouraging more detailed disclosures about their deliberations.

Another consideration is that, currently, companies are required to provide necessary and sufficient disclosures when expressing opinions on MBOs. However, we are considering whether further enhancements

could be made, particularly regarding the assumptions underlying stock valuations and the content of deliberations on counterproposals.

Last, we seek your opinions on whether there are situations where it would be necessary to require procedures that confirm the intentions of general shareholders, such as the establishment of a Majority of the Minority condition.

We look forward to hearing your thoughts on these points.

**Watanabe, Director, Listing Department, TSE:**

Now, I would like to open the floor for your opinions and questions. What are your thoughts?

**Kumagai, member:**

First, regarding the direction for revising the Code of Corporate Conduct on page six, I believe we can assess that fair procedures have made progress since the establishment of the Fair M&A Guidelines.

When considering the comparison with US regulations and practices, it's possible to look to the US for inspiration. However, given that corporate law and other legal frameworks differ between Japan and the US, and that in the US case law plays a significant role while in Japan the guidelines are more practical in nature, I believe we need to approach this discussion cautiously.

As for the direction of revising the Code of Corporate Conduct, rather than making the Fair M&A Guidelines uniformly mandatory, I think it's necessary to carefully evaluate the fairness measures based on practical experience.

It may be worth considering mandating the minimum standards already commonly implemented in practice, but it's important to remember that each situation is unique and should be evaluated on a case-by-case basis. I'm also concerned that mandating certain measures could lead to formalistic responses that lack real effectiveness.

The key point is to further promote measures that ensure the appropriate protection of general shareholders' interests, especially in MBOs and full acquisitions by controlling shareholders. Instead of simply making the guidelines mandatory, we could enhance information disclosure by explicitly including the elements that investors consider necessary within the Fair M&A Guidelines. This approach could encourage the target companies to more strongly consider fairness measures.

Enhancing information disclosure would also increase the amount of data available for the market to process. It is extremely important to provide more materials that help determine whether a fair price is being formed and whether fair procedures are being followed.

Next, regarding the specific revisions mentioned on page seven. On point (1), I believe that revising the scope, clarifying the key considerations, and enhancing the disclosure of the special committee's deliberations are appropriate steps. The special committee is expected to operate independently, conducting reviews and making decisions to protect the interests of minority shareholders. By improving disclosure, it will become clearer whether the committee is genuinely considering the perspective of minority shareholders.

On point (2), given the high expectations from market participants for indirect market checks, I believe it is essential to ensure a sufficiently long public tender offer period. This would allow for the verification of whether counterproposals exist, providing critical information about the fairness of the transaction terms. The possibility of a counterproposal being made could also encourage the offering party to present terms that are more favorable than what might be expected in a competing bid.

On point (3), I believe that setting conditions such as the Majority of the Minority should be considered based on the specific circumstances of each case. It is important to take a comprehensive approach to how minority shareholders are treated in each transaction.

Last, in revising the Code of Corporate Conduct, it is crucial to ensure that while we pay careful attention to conflicts of interest, these revisions do not inadvertently hinder MBOs or the process of full acquisitions. Considering the environment surrounding listed companies, where management challenges are becoming increasingly complex, there is a growing need to effectively utilize M&A to achieve sustainable growth. The revisions should ultimately contribute to facilitating M&A that promotes business restructuring and renewal, ensuring that it aids the continuous development and competitiveness of companies.

**Sampei, member:**

Regarding pages six and seven, I'd like to share some thoughts, even if they might be a bit out of order.

First, within the listing regulations, the provisions that companies must comply with under the Code of Corporate Conduct are outlined in Articles 432 to 444. The last of these, Article 444, broadly prohibits "acts that impair the functioning of the secondary market or the rights of shareholders."

I've often wondered whether we could impose fiduciary duties on controlling shareholders, similar to the practice in the US. I've noticed that there isn't currently a regulation where the controlling shareholder is explicitly the subject. However, I believe Article 444 might be interpreted to cover such duties.

That said, directly incorporating fiduciary duties into this article would be challenging without supporting structures. Still, the current wording—prohibiting "acts that impair the rights of shareholders"—opens the door to various interpretations. The "who" behind these acts could refer to multiple parties, including the directors of the target company or the controlling shareholder. I wonder if we could make this clearer by explicitly including these considerations in the regulation.

In the Tokyo District Court's ruling regarding Itochu Corporation's full acquisition of FamilyMart, two key points were highlighted: the lack of fair procedures and the absence of a fair price. These align closely with the elements of "entire fairness" as understood in the US. While Japan doesn't have a fully developed legal framework for this concept, it seems that such thinking is gradually being adopted in Japanese practice.

When considering whether the process was fair and whether the price was fair, it's essential to listen to the minority shareholders' perspectives. If it becomes clear that a significant majority of minority shareholders oppose the MBO, it's an indication that the MBO shouldn't proceed in its current form.

While mandating the MoM condition might be too rigid, using it as a tool for gauging shareholder sentiment can be valuable. If it's determined that there isn't overwhelming opposition, or conversely, if significant opposition is evident, the special committee could take this feedback into account. This could lead them to adjust their approach, possibly shifting the direction of negotiations.

Therefore, instead of using the MoM condition strictly as a decision-making criterion for the MBO, it could be employed as a means of gauging shareholder sentiment. The special committee or board of directors could then use this information to better inform their decisions.

Regarding the table under item (1) on page seven, I find it inconsistent that MBOs are excluded and believe they should indeed be included as a target.

Additionally, the language used in the opinion statement, which currently states that the transaction will "not undermine the interests of minority shareholders," differs from the language used in the Fair M&A Guidelines. On page 19 of the guidelines, under "3.2.1 Function of the Special Committee," it is stated that "the Special Committee is expected to evaluate and decide on an M&A transaction not from the position of a neutral third party vis-à-vis the acquiring party and target company/general shareholders, but rather from a position which aims to promote the interests of both the target company and its general shareholders."

The guidelines clearly emphasize the need for the special committee to advocate for the interests of general shareholders, rather than just ensuring that the transaction is "not undermining the interests" of minority shareholders. There seems to be a gap in the level of emphasis between the current wording and the intent of the Fair M&A Guidelines. I believe that during this review, it's important to fully consider and incorporate the principles of the Fair M&A Guidelines to ensure alignment.

Regarding the disclosure of stock valuation reports, I noticed on page six of Appendix 1 from the interview results that there were concerns raised by multiple participants about cases where valuations were allegedly inflated by exaggerating capital expenditures. It's troubling to think that such blatant manipulation could occur, and it's something that needs to be closely scrutinized. This raises the question of whether the current disclosure of just the "assumptions underlying the valuation" is sufficient to detect such issues.

I believe that we need to actually review the valuation reports themselves to fully understand the situation. There was an opinion mentioned somewhere that having multiple valuation reports might not make much of a difference. However, I think that if there are two valuation reports and they yield different results despite being based on the same underlying information, it would become much easier to identify where and why the differences arose. This would be particularly useful in uncovering discrepancies.

Given this, even if the outside directors on the special committee don't have specific expertise, it's crucial to appoint an independent financial advisor who can examine these differences and verify whether the underlying assumptions are reasonable.

I'm not fully aware of what hurdles exist in disclosing the valuation reports themselves, but I understand that these reports are submitted to the TSE.

**Yamawaki, Manager, Listing Department, TSE:**

While these valuation reports are indeed submitted to the TSE, we do not require them to be publicly available or disclosed in full. Instead, we ask for a summary of the key points to be disclosed.

**Sampei, member:**

I understand that it might be challenging during ongoing negotiations, but it would be beneficial to have a mechanism in place where clearly questionable valuation content can be reviewed later. This could serve as a deterrent against biased or manipulated valuations.

Institutional investors often conduct their own valuations, and they sometimes find significant discrepancies between their results and the valuation reports obtained by the target company. If they can identify exactly where these differences arise and see that certain assumptions are clearly flawed, it would indicate a significant bias in the valuation.

Such transparency would also provide crucial evidence if the matter were to go to court later on.

**Kanda, member:**

I find this issue to be a particularly challenging one, so I was hoping to hear everyone's opinions before sharing my thoughts. That said, I would like to offer some somewhat vague reflections. Fundamentally, I agree with Mr. Sampei, although I might express it a bit differently.

When these issues go to court in Japan, it's typically centered around the provisions of the companies Act, specifically focusing on the valuation of shares during the second stage of the procedure. The overall fairness and integrity of the M&A process tend to be concentrated on this aspect, and it generally isn't contested in other ways.

In cases of hostile takeovers, legal disputes usually revolve around the legality of defensive measures, such as injunctions, and the court's decision is based on this comprehensive assessment. In the case of MBOs, the dispute typically boils down to the price. During the legal process, the case might be settled out of court, or the court may determine a specific valuation. There are also instances where the matter doesn't go to court at all. This approach differs somewhat from that in the US, where the legal landscape and practices can vary significantly.

I also participated in the study group for the 2019 Fair M&A Guidelines, and thanks to the contributions of everyone involved, I believe we developed a strong set of guidelines. In practice, these guidelines, along with the limited number of court cases in Japan, have helped raise the level of measures aimed at ensuring fairness for general and minority shareholders. However, I have reservations about viewing the Fair M&A Guidelines as the final goal.

While it's not always necessary to compare with the US, when we do look at the standards set by US court precedents, the content of the Fair M&A Guidelines appears less stringent. In the US, once the special committee reaches a conclusion, the board of directors cannot overturn it. Additionally, all members of the special committee must be completely free from conflicts of interest. There are also six specific requirements, including the establishment of a Majority of the Minority condition.

These differences suggest that, while the Fair M&A Guidelines have been a significant step forward for Japan, there may still be room for further tightening of the standards to better protect shareholder interests, especially in complex transactions like MBOs.

I agree that Japan and the US don't have to be the same, but it's problematic if Japan's standards are perceived as weaker. When global investors question why Japan's standards are more lenient, it's difficult to provide a satisfactory answer.

In this context, I also find it puzzling why some market participants are not fully supportive of the MoM condition. Perhaps from the perspective of sellers, the appeal lies in the premium and the desire to sell quickly, but this approach overlooks the true corporate value.

Therefore, if the TSE is to set a direction for the future, I believe we should aim higher than the US, not lower. I strongly feel that we should avoid aiming for more lenient standards. That said, I want to reiterate that the

Fair M&A Guidelines are an excellent set of principles and have contributed significantly to improving practices in Japan.

Specifically, regarding point (1) on page seven, I believe that MBOs should indeed be included as a target. As Mr. Sampei mentioned, the expression used at the time the guidelines were formulated, “not undermine the interests,” might pose some issues. While it may be challenging to state outright that a transaction is “fair,” it might be worth considering a refined expression, such as “cannot be considered unfair.” I believe that improving the wording is something worth considering.

In summary, for points (1) through (3), if we are to set any requirements, I suggest an “or” approach similar to the guidelines on third-party allotments—essentially a “comply or explain” framework. For example, we could require the setting of a MoM condition. If a company chooses not to implement this, they should be required to provide a detailed explanation of the alternative measures taken by the special committee, including specifics on how the valuation report was obtained, the results of market checks, and so forth.

However, the standard we seek should be high enough that global investors do not question why Japan’s standards differ from those in the US. While it doesn’t have to be identical to the US, it should at least be on the same level.

The points I’ve raised are, in essence, very much aligned with Mr. Sampei’s views.

**Nagami, member:**

I share the view that significant progress has been made in the processes, and while there are still areas for discussion, such as the Majority of the Minority condition, I believe there have been considerable improvements.

However, the most critical conflict point remains the fairness of the price. Looking at the third page of Appendix 2, which outlines the status of valuation report acquisitions by special committees, one potential action could be to make the acquisition of valuation reports by special committees more mandatory—whether we express this as a principle or a requirement. Strengthening this requirement could be a beneficial step.

As a result, this would also provide protection for the members of the special committee and, from the perspective of safeguarding the company, it seems generally preferable for valuation reports to be obtained.

**Matsumoto, member:**

Looking at page three of Document 2, it mentions that while there has been significant progress in fair procedures according to advisors, investors still have concerns that prices are not fair or that fair procedures are not being fully implemented. The question of what a stock exchange is for is a complex one, but corporate governance reforms have consistently been about making sure reforms are implemented from an investor’s perspective. Especially in this context, where we’re discussing how to protect minority shareholders’ interests, the opinions of investors are crucial.

I’m not saying that the opinions of advisors are not important, but I believe the views of investors should be given much more weight. If we consider what investors are actually thinking, it seems there is a sense of doubt or dissatisfaction. While the process might appear to have advanced due to the Ministry of Economy, Trade, and Industry’s guidelines, there is still a feeling that a fair outcome or fair pricing has not been achieved.

In this situation, what the TSE can do is to use the compliance requirements of the Code of Corporate Conduct to demand certain actions from listed companies. The key aspect here, as highlighted in the Fair M&A Guidelines, seems to be the role of the special committee.

Regarding whether an independent valuation report should be obtained, I understand that there are opinions suggesting it is difficult to obtain or that the company's own valuation report might suffice. However, as the Fair M&A Guidelines state that the special committee should act in the interests of minority shareholders, I believe the decision on whether to obtain a valuation report should also be made from the perspective of protecting minority shareholders' interests.

It's not absolutely necessary that the special committee always obtains its own independent valuation report, but whether it's the company's report or an independent one, the requirement should be that the report is obtained in the interest of minority shareholders. If the special committee chooses to use the company's report, it should bear the responsibility of explaining why they believe that report serves the interests of minority shareholders. Similarly, for the Majority of the Minority condition, while I think it would be better to implement it, I understand there may be various circumstances involved. If the special committee decides not to confirm the intent of the minority shareholders through the MoM condition, they should be required to explain why they chose not to do so.

The most important measure, in my view, is to require the disclosure of the minutes from special committee meetings. From examining various cases, it seems that, often, the explanation provided to the public is just a simple statement, like "no issues from the perspective of minority shareholders," based on the valuation report submitted by the advisor.

However, this approach is insufficient. By requiring the publication of the minutes, we would ensure transparency about what was actually discussed within the special committee and why certain conclusions were reached. For example, the minutes should explain why a valuation report was obtained or not obtained, why the MoM condition was confirmed or not confirmed, and the rationale behind accepting a particular price. This level of transparency would reveal the thought process of the committee and how decisions were made in the interest of minority shareholders.

Regarding page seven, I strongly believe that point (1) should include MBOs as a target, as this is a natural and necessary inclusion.

**Koike, member:**

As Mr. Matsumoto mentioned, opinions can vary significantly depending on whether one is in the position of a financial advisor, an institutional investor, or another role. Incidentally, I was in the former position a few years ago, and now I am in the latter. I would like to share my opinions and thoughts from both perspectives.

The most important thing is to ensure actions are taken that protect minority shareholders' interests, focusing on fair procedures and fair pricing.

Now, while this is somewhat of a broad impression, I previously believed that mandating certain measures was not ideal. Instead, I thought that transactions should be judged based on market principles, as naturally occurring market activities. However, after reviewing Document 1 and Document 2, I've started to think that this perspective might apply mainly to top-tier companies in the Prime Market—those that are proactive in their information disclosure and committed to protecting minority shareholders' interests.

When we look at the reality that over half of the companies in the Standard Market are not disclosing information related to capital costs, I wonder whether we can really trust these companies to take actions that protect minority shareholders' interests. In this regard, while I'm not entirely certain whether we should adopt US-level requirements, as Mr. Kanda suggested, I do believe that providing some form of guidelines is necessary. This would help raise awareness among companies that are not yet fully conscious of their responsibilities, particularly those whose management and directors are not fully dedicated to enhancing corporate value. Providing such guidance could help ensure that they take these responsibilities seriously.

**Kuronuma, member:**

The Fair M&A Guidelines issued by the Ministry of Economy, Trade, and Industry describe best practices, with the ultimate aim of these practices being applied as standards in court. On the other hand, the TSE's Code of Corporate Conduct is designed to outline the actions that listed companies should take, operating under a self-regulatory framework. Therefore, the contexts in which these guidelines are applied are different. Given this, there is merit in incorporating the fairness measures outlined in the Fair M&A Guidelines into the Code of Corporate Conduct, particularly in the sense of making them mandatory.

However, since these transactions involve delisting, there's an issue with ensuring effectiveness—specifically, that even if these guidelines are not followed, the company may still proceed to delist, which limits the enforceability of such guidelines. On the flip side, this also means that we have the opportunity to set ambitious ideals, knowing that the consequences for non-compliance are somewhat mitigated by the nature of the transactions.

From the perspective you mentioned, the reform proposals listed on page seven, particularly points (1) and (2), naturally arise as crucial steps for ensuring the fairness of pricing, and I believe they should definitely be adopted.

Regarding the requirement for obtaining a valuation report, even for listed companies, it's essential because the market price of listed shares reflects only their exchange value, not the intrinsic value per share that shareholders should benefit from. Given that the market price often incorporates a minority discount, obtaining a valuation report becomes extremely important. Therefore, it is highly significant to mandate the acquisition and disclosure of such reports within the Code of Corporate Conduct.

Market checks are also important when feasible, but I believe indirect market checks are often the most that can be realistically achieved. In this context, while the Majority of the Minority condition is often emphasized as a minority shareholder protection measure, I view it as a substitute for a market check in situations where there is a controlling shareholder.

When a company with a controlling shareholder is being taken private, it's unlikely that another party would step in to acquire such a company, making market checks ineffective. However, the MoM condition serves as a substitute for a market check because, if more than half of the minority shareholders can block the transaction, it effectively prevents the privatization deal from proceeding. This is also why, in the US MFW ruling's six points, the MoM condition is required from this perspective. Therefore, in cases where indirect market checks are not feasible, implementing a MoM condition seems particularly meaningful.

**Okina, member:**

I agree with the direction outlined on pages six and seven of Document 2.

Given that outside directors often constitute the special committee, the role of outside directors is particularly crucial. However, I have some doubts about the extent to which the idea of protecting minority shareholders' interests has truly permeated among outside directors.

Additionally, as was mentioned earlier, privatizations are likely to occur not only in Prime Market companies but also in many companies in the Standard Market. There have been past cases, even with large companies, where governance failed, leading to distorted pricing that favored management. Given this, it's important to ensure that various mechanisms are available to prevent such distortions, even if they are provided as options rather than strict requirements.

For example, the ability to appoint an independent financial advisor, obtain a fairness opinion, or confirm the intentions of the Majority of the Minority are all important tools mentioned in the materials. Rather than mandating these actions, it's critical to establish a system that allows for retrospective evaluation of whether such measures were taken. Moreover, considering that the majority of companies still do not have a board where outside directors hold the majority, it's essential to ensure that these mechanisms are effectively utilized. Therefore, I believe it is crucial to review the requirement for obtaining an opinion on "whether the transaction benefits minority shareholders" and to enhance disclosure accordingly.

**Uchida, member:**

I find it challenging to comment on this area since I haven't encountered such situations in practice. However, as mentioned in the materials, as corporate reorganizations become more active in companies under the equity method, there will likely be an increase in cases where, even without being a controlling shareholder, there is significant influence due to personal relationships, such as when board members are dispatched. While it's important not to hinder corporate reorganizations, I believe it's even more crucial to protect the interests of general shareholders. Although it's technically difficult to address these issues, I agree that the Majority of the Minority is an effective tool, and this perspective is essential.

Additionally, it's crucial to support special committees in acting appropriately. While the focus of regulation may typically be on the issuer, it's also important to ensure that the outside directors on the special committee can maintain their independence from the issuer or external acquirers in critical situations. Therefore, it might be necessary to mandate certain measures that ensure the special committee members are adequately supported in maintaining their independence during such situations.

**Sampei, member:**

Earlier, Mr. Matsumoto mentioned that the special committee is key and emphasized the importance of disclosing its minutes. I've also thought about this for some time, but I've never fully organized my thoughts on it. I do recall discussing the disclosure of special committee minutes during the development of the Fair M&A Guidelines, but there were various concerns that left me without a clear conclusion. So, I'd like to share my thoughts, even if they're more about expressing my uncertainties than offering definitive answers.

Even with board meeting minutes, which are required by law, there's a wide range in quality—some only include the conclusions, while others detail the entire discussion process. This variability makes me wonder whether requesting the disclosure of minutes from special committees, which are not statutory bodies, would result in the same inconsistencies. Even if the TSE specifies what should be included, I'm uncertain whether companies will comply adequately.

Moreover, if the special committee consists mainly of outside directors, they may respond responsibly, but when the committee comprises only external experts brought in temporarily, I'm concerned about the level of responsibility they might feel and whether the presence of minutes would significantly influence their actions. There's also the potential for an unintended chilling effect, where the requirement to disclose minutes might cause the committee to act more cautiously than necessary.

I've heard from an advisor about how special committees sometimes operate in practice. For instance, when an independent financial advisor is involved, the committee might defer to whatever the FA recommends, or in cases of competing proposals, they might simply choose the highest offer to avoid having to justify not selecting it. This makes me question how much thought the committee actually puts into its decisions. Given this, I'm conflicted. While I do believe that disclosing the minutes is important, I'm hesitant to say with confidence that it should be done.

**Matsumoto, member:**

In the minutes of regular board meetings, the statements of outside directors must be recorded. Since the special committee is typically centered around outside directors, I thought that proper records could be kept. However, I understand what Mr. Sampei is saying, and I agree that simply making the minutes public may not resolve all issues. Still, I believe it could serve as an important trigger for future improvements.

For instance, if the minutes of special committee meetings were to be made public, it might lead to a situation where being an outside director becomes more challenging, prompting companies to offer proper compensation, and requiring outside directors to take on the role with greater commitment. It might also lead to situations where, in MBOs and similar scenarios, outside directors might feel compelled to hire their own independent FA if they are unsure of their understanding. Additionally, if minutes lacking substance are disclosed, it could prompt external parties to question whether the process is truly adequate.

In the US, directors are subject to fiduciary duties, meaning they are individually responsible for protecting the interests of all shareholders, which serves as a strong check on their actions. However, this is not the case in Japan, and adopting a system similar to the US would require legislative changes, which would take time. Given these circumstances, we need to consider how we can create a system of checks and balances within the current framework and within what the TSE can implement, to ensure we are not lagging behind the US.

While this single round of revisions may not be perfect, I believe that by incorporating the responsibilities of the special committee into the list of matters to be complied with, we can lay the groundwork for further progress in future revisions.

**Sampei, member:**

Thank you, Mr. Matsumoto, for your explanation. This is not an addition to what you said, but there was something I forgot to mention earlier when I talked about Article 444, so I'd like to add it now.

In a previous meeting, we discussed the rule in some foreign markets that prohibits conducting an MBO immediately after disclosing significant negative information. When considering where such a rule might fit within the current listing regulations, I thought that Article 444, which addresses market functions and shareholder rights, might be the appropriate place. It seems to me that if we could incorporate such a rule under Article 444, it would be a beneficial addition.

**Watanabe, Director, Listing Department, TSE:**

Thank you very much. Next, we will provide an explanation based on Document 3 regarding the "Status of Companies Subject to Transitional Measures."

**Isogai, Manager, Listing Department, TSE:**

Let me explain Document 3. On page two, you'll find the latest status of companies under transitional measures. As of the end of March this year, there were 274 companies.

Moving to page three, we've conducted a survey to grasp the current situation of these companies, excluding those that have since been delisted. We targeted 269 companies and received responses from 217 of them.

Starting from page four, we detail the specific content and response status.

First, we asked about the challenges companies face in progressing toward compliance. It was found that three-quarters of the companies perceive some form of challenge. The specific concerns are listed in the table at the bottom right.

On page five, we asked about the contingency plans in case they are unable to comply, such as considering a change in market segment or dual listing with another exchange.

Forty percent of the companies indicated that they are already considering such measures to protect shareholder interests, even if they fail to comply. Another 20% said they would consider these options if they remain non-compliant by the next assessment and enter the final year for improvements. However, 40% of the companies responded that they have no plans to consider such measures at this time.

On page six, we provide more detailed data, including the response status of companies with a significant gap in meeting the standards, as shown in the bottom row.

Page seven outlines our future actions.

First, for companies that have not yet responded, we intend to follow up to confirm their status. Moving forward, we will continue to communicate closely with these companies, ensuring that they are appropriately considering and addressing the necessary actions. This will include conducting regular surveys and holding individual interviews, particularly focused on companies with larger gaps in meeting the criteria.

That concludes my explanation. We will provide updates in future meetings regarding the status of companies that have not yet responded. However, if there are any observations or comments you have at this stage, we would appreciate hearing them. Thank you.

**Watanabe, Director, Listing Department, TSE:**

If there are any comments or questions, we would be happy to hear them now.

(No particular opinions)

Thank you very much. With that, we will conclude today's meeting. Before we close, we'd like to explain the details for the next meeting.

**Ikeda, Senior Manager, Listing Department, TSE:**

Thank you once again for today. Regarding the topic of “Management with an Awareness of Capital Costs and Stock Prices,” as mentioned earlier, we will make revisions to page four based on your feedback and then proceed to finalize and publish the materials. We will also subsequently begin implementing the related measures.

At the next meeting, we plan to continue our discussion on MBOs and privatization, provide an update on companies under transitional measures, and also discuss the Growth Market. We will consult further on the details.

Additionally, we hope to share an update on the discussions from the study group on quasi-controlled listed companies.

**Watanabe, Director, Listing Department, TSE:**

Thank you very much for today’s participation. We look forward to seeing you again at the next meeting.

[END]