

Summary Outline of Discussion Points

Introduction

- 1. Threat of hostile takeovers and why defensive measures are necessary**
- 2. Establishment of “fair and reasonable rules to enhance corporate value” in Japan**
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- 4. Standard of the reasonableness: What is the right standard to judge the reasonableness of defensive measures?**
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March 2005

METI: Corporate Value Study Group

Introduction

- In light of the dramatic dissolution of cross-shareholdings in Japan and the gradually increasing threat of hostile takeovers, the Corporate Value Study Group (Chairman: Professor Hideki Kanda, Tokyo University Law Faculty) has been discussing ways to establish proper hostile takeover defensive measures (corporate value protection measures) in Japan. Since September of 2004, the Study Group has had eight group sessions.
 - (*) The introduction of the “triangular merger” under the new Corporate Law, which is designed to facilitate friendly mergers between foreign and domestic companies, was not the reason for the formation of the Study Group.
- In addition, the Study Group has held discussions with a number of senior corporate executives, institutional investors and Western experts and conducted in-depth research and analysis of Western style defensive measures, including their background, U.S. case law and the current trends.
- Throughout the discussions, the Study Group has focused on four basic principles: (i) enhancement of corporate value, (ii) equal footing with global standards, (iii) no discrimination between foreign and domestic companies, and (iv) offering increased options for shareholders and management. The purpose of releasing this Summary Outline of Discussion Points is to begin developing a framework for fair and reasonable hostile takeover defensive measures that would enhance corporate and shareholder value based on Western measures that are accepted as a global standard.
- Corporate Value Study Group hopes and expects that the public release of this Summary Outline of Discussion Points will stimulate discussions among various interested parties regarding the establishment of proper hostile takeover defensive measures. Ultimately, the goal would be for the Japanese Government to quickly develop “Guidelines for Hostile Takeover Defensive Measures (Corporate Value Protection Measures)” and to review the related legal frameworks including the Corporate Law, relevant rules and regulations and the Securities Law in Japan.

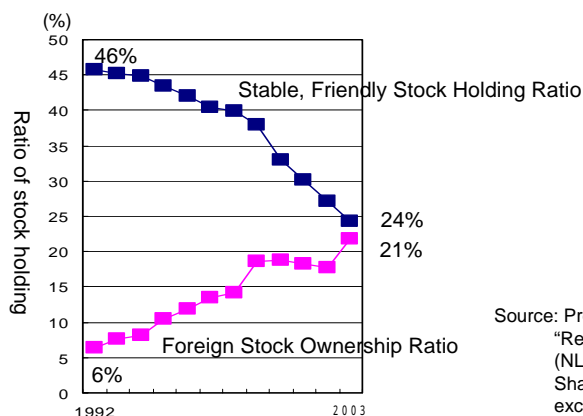
Corporate Value Study Group Members

Chairman	Hideki Kanda	Professor, University of Tokyo Graduate School of Law and Politics
	Toshio Adachi	Director, Group General Manager of Tokyo Branch, Sharp Corporation
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	Masakazu Kubota	Director of Economic Policy Bureau, Japan Business Federation
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	Motoyoshi Nishikawa	Chief Legal Counsel, Nippon Steel Corporation
	Takashi Hata	Managing Officer, Toyota Motor Corporation
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1. Threat of hostile takeovers and why defensive measures are necessary

Threat of hostile takeovers

- Dissolution of cross-shareholdings and dramatic increase of foreign ownership of Japanese companies have increased concern over hostile takeovers



Source: Prepared by METI based on the data from "Research on Cross-Shareholdings in 2003" (NLI Research Institute) and "FY2004 Shareownership Survey" (All domestic stock exchanges)

- The gap between market capitalization of global majors and Japanese majors amplifies the concern

Gap between market capitalization of U.S. and Japanese companies (as of Aug 2004)

(Total market capitalization)

· U.S. companies : Japanese companies = 4 : 1

(Major companies)

· Pfizer	\$300bn	vs.	Takeda	\$40bn
· P&G	\$150bn	vs.	Kao	\$20bn
· Wal-Mart	\$240bn	vs.	Seven Eleven	\$30bn
· Microsoft	\$330bn	vs.	Canon	\$50bn

Desire of Japanese corporations for proper defensive measures which can replace traditional cross-holdings

Need for hostile takeover defensive measures

- Under current Japanese regulations, the outcome of hostile takeovers (often conducted through TOB) can be determined in less than three weeks
- Accordingly, Japanese companies, once under attack, have to react hastily and without a proper mechanism

Case study: Steel Partners Japan, a U.S. investment fund, hostile TOB for Sotoh

< Sotoh – Prior to hostile approach >

- Manufactures and processes textiles
- Had no debt and approx. JPY20bn liquid assets
- Stock price: JPY898, Market capitalization: JPY10bn (right before TOB)

Spring 2003 SPJ makes friendly proposal to the management of Sotoh regarding going private transaction with the management staying on post-acquisition

Rejection of SPJ's proposal by Sotoh

- SPJ launches hostile TOB for Sotoh (Dec 19, 2003)
 - Offer price: JPY1,150; % of shares to be sought: 33.4%
- NIF (fund affiliated with Daiwa Securities), as a white knight, launches a counter, recommended TOB for Sotoh at superior price
- SPJ raises offer price to JPY1,550 and changes percentage of shares sought to 100%
- NIF withdraws its proposal
- Sotoh announces plan to raise its dividend from JPY13 to JPY200; its stock price surges to JPY2,000 and SPJ's TOB is unsuccessful (Feb 16, 2004)

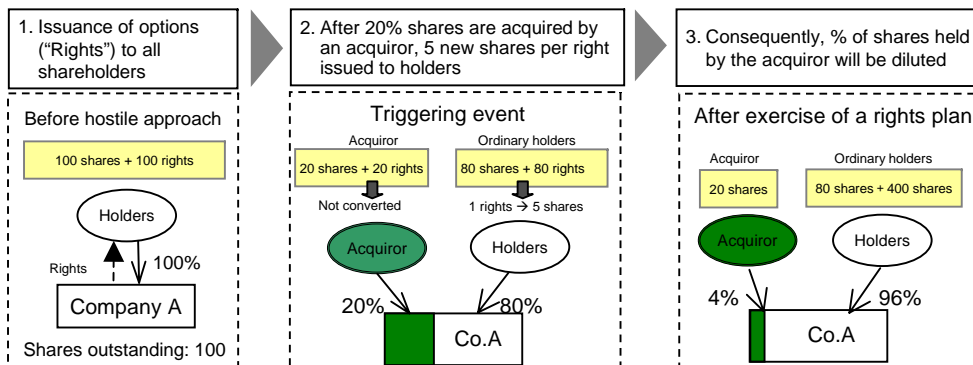
- Estimated cash outflow of approximately JPY 3bn (about 20% of Sotoh's retained earnings)
- Estimated profit by SPJ through increase of Sotoh's stock price and dividend increase of approximately JPY 2bn
- SPJ sells its entire position in Sotoh and realizes capital gains during 2004

- On the other hand, in the U.S., there are various defensive measures that give a target company the time and leverage to negotiate with hostile suitors

(1-A.) Summary Mechanism of Selected Western Defensive Measures

Shareholder Rights Plan

A mechanism to dilute the percentage of shares held by an acquiror through issuance of new shares to all existing holders except the acquiror in the event that the acquiror purchases a certain percentage of shares of a company.



Purpose of rights plan

- Acquiror cannot accumulate shares in a target company without negotiating with management
- Shareholders are afforded enough time and opportunity to compare a hostile offer with the current management's plan
- Through a proxy contest, the outcome can be determined within 2 years even if the management of target never redeems rights
- Rights plans generally enhance shareholder value
e.g., Oracle's hostile tender offer for PeopleSoft (2004): final tender offer price of \$26.50, up 60% from original \$16.00
- Adoptions of rights plans before an actual threat of hostile takeover generally do not cause negative share price reaction

Position of institutional investors

- Most institutional investors agree that a rights plan could improve shareholder value if there are mechanisms to prevent abuses of the plan, such as 1) shareholder approval, 2) three year sunset provision, 3) three year TIDE (Three-year Independent Directors Examination) provision

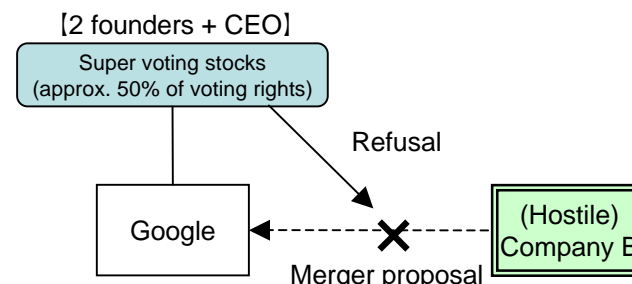
Adoption status

- 60% of U.S. companies have adopted a rights plan including Yahoo, Goldman Sachs, Motorola
- Purpose is to enhance shareholder value
[Yahoo Press Release] The Rights Plan is designed to deter coercive takeover tactics, including the accumulation of shares in the open market or through private transactions and to prevent an acquiror from gaining control of Yahoo without offering a fair and adequate price and terms to all of Yahoo's stockholders

Dual Class Capitalization

A mechanism to have different classes of common stock such as super voting stock (shares that have multiple voting rights) or golden shares

Example: Google - Super Voting Stock



Purpose

- An acquiror cannot gain control or change directors without negotiating with founders/controlling shareholder

Position of institutional investors

- Institutional investors tend to oppose the mechanism as it has a strong deterrent effect on acquisition proposals

Adoption status

- The mechanism is generally adopted by companies which meet one of the following criteria
 1. Founder with strong management skills to manage for long-term value creation (e.g., Google)
 2. In the media sector (e.g., NY Times, Dow Jones)
 3. Government-owned or semi-government-owned, with golden shares (e.g., National Grid (a power transmission company in UK), INPEX Corporation (a core company in oil development industry in Japan))

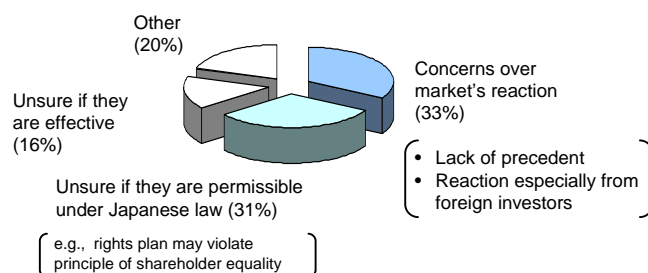
2. Establishment of “fair and reasonable rules to enhance corporate value” in Japan

Establishment of defensive measures in Japan

Due primarily to the lack of precedents and experience, Japanese companies have been reluctant to adopt defensive measures out of fear that:

- Adoption of defensive measures may cause negative share price reaction
- Adoption of defensive measures may not be permissible under Japanese law

Reasons for not adopting defensive measures
(Source: METI, September 2004)



Problems attributable to “the lack of precedents and experience”

- No consensus on what constitutes a fair and reasonable defensive measure
- Concern over excessive defensive measures
- Risk that defensive measures may be used to entrench corporate management
- Risk that corporations in takeover contexts may have to sacrifice valid long-term strategy in pursuit of short-term value maximization

The formation in September 2004 of the Corporate Value Study Group (Chairman: Mr. Hideki Kanda, Professor, University of Tokyo). Through discussions with various experts including MoJ, preliminary conclusions have been reached.

Three main points

- **Introduction of new Corporate Law [planned for April 2006]**
 - Western style defensive measures, which are already possible under the existing legal framework, will become more effectively available
- **Amendment of related rules and regulations (disclosure requirements for defensive measures) [May 2005]**
 - Establishment of proper disclosure requirements as one of the conditions for reasonable defensive measures
- **Guidelines for Corporate Value Protection Measures [May 2005]**
 - METI and MoJ to jointly establish guidelines for hostile takeover defensive measures that prevent excessive defense and enhance corporate value

Four principles:

- Enhancement of corporate value
- Equal footing with global standards
- No discrimination between foreign and domestic companies, and
- Offering increased options for shareholders and management

By adopting Western style defensive measures, Japanese management will have more time and increased leverage to negotiate with hostile suitors

3. Legal framework: Is it possible to adopt Western style defensive measures in Japan?

~ Already possible; will become more effective under the new Corporate Law ~

Western style defensive measures (those adopted before hostile approach and triggered in takeover contexts) within the framework of the current Japanese legal system and new Corporate Law

- “Most Western style defensive measures, if applied properly, are permissible in Japan” - Ministry of Justice
 - Rights plans are possible through the use of Shinkabu Yoyakuken (warrant to subscribe for new shares)
 - Issuance of Shinkabu Yoyakuken which can be exercised by shareholders other than an acquiror is permissible (Ministry of Justice)
 - Golden shares and super voting stock are possible through the use of different classes of common stock
- “They will become more effective under the new Corporate Law”- Ministry of Justice

	< Current Law >	< New Law >
➢ Shinkabu Yoyakuken (rights plan)	Mandatory conversion not possible	Possible
➢ Mandatory convertible equity (quasi-rights plan)	Unanimous consent of shareholders required	Adoption possible through 2/3 shareholder approval
➢ Golden shares	Impossible to impose transfer restrictions	Possible
➢ Supermajority voting requirements (e.g., mergers)	Unclear whether it is possible	Possible (clarified)

Properly structured defensive measures (those adopted before a hostile approach and triggered in takeover contexts such as rights plans), if applied reasonably in takeover contexts, do not necessarily violate “the principle of shareholder equality”

- Strict interpretation of the “principle of shareholder equality” may have the effect of imposing inflexible restrictions on corporate management to the detriment of the best interests of all shareholders

It is necessary to establish proper disclosure rules for relevant defensive measures

- It is necessary to establish disclosure rules for relevant defensive measures that allow shareholders to make appropriate investment decisions depending on the defensive measures. These rules also make it possible for an acquiror to respond appropriately to the adopted defensive measures and provide a basis for “fair” negotiations with the current management on an “informed” basis
- The disclosure rules for the use of Shinkabu Yoyakuken (warrant to subscribe for new shares) as a defensive measure should be established.
 - It is necessary to establish disclosure rules, such as “disclosure in the operating report shall be required in the event of 1) any issuance of Shinkabu Yoyakuken (warrant to subscribe for new shares) which restricts shareholders who have acquired a certain percentage of voting rights (including rights distributed to shareholders as a board authorized dividend), 2) any board decision to issue such Shinkabu Yoyakuken as of a specific point in time in the future, or 3) the adoption of any other defensive measures”
- It is also necessary to review the Securities Law and the disclosure rules of Stock Exchanges

To protect the interests of investors, it is also necessary to review Securities Law and related rules and regulations regarding TOB rules

Although it is possible to adopt Western style defensive measures under the existing Corporate Law, it is necessary to establish proper disclosure rules and to review the new Corporate Law and Securities Law to enhance the effectiveness of defensive measures

4. Standard of the reasonableness: What is the right standard to judge the reasonableness of defensive measures?

~ The ultimate test is whether or not the defensive measures enhance corporate value ~

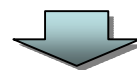
Standard

Principle of shareholder equality: Properly structured defensive measures (those adopted before a hostile approach and triggered in takeover contexts), if reasonably applied in takeover contexts, do not necessarily violate the principle of shareholder equality

- Strict interpretation of the “principle of shareholder equality” may have an effect of imposing inflexible restrictions on corporate management to the detriment of the best interests of all shareholders

Rule of primary purpose in issuing new shares: Properly structured defensive measures (those adopted before a hostile approach and triggered after approach is made), if reasonably applied in takeover contexts, do not necessarily represent unfair issuance of shares

- Unfair issuance of new shares or warrants to subscribe for new shares (Shinkabu Yoyakuken) could be subject to injunction (Commercial Code 280-10)
- Whether a particular issuance of new shares is fair or not is determined based on its purpose: Is the target’s management acting in its own interest rather than in the interests of the company or its shareholders? The Japanese courts have held that so long as the issuance of new shares is for valid business/financing purposes with a legitimate use of proceeds, the issuance is not illegal.
- The issuance of warrants to subscribe for new shares (Shinkabu Yoyakuken) does not constitute a financing (e.g., incentive stock option). Accordingly, to judge the fairness of a warrant issuance, one must establish a different standard from the valid financing purpose.
- Even if there is no valid financing purpose, reasonable defensive measures should be permissible so long as they are in response to a hostile offer that poses a threat to corporate value and the defensive measures taken are proportionate in relation to the threat



In judging the reasonableness of defensive measures, it is important to demonstrate that a threat to corporate value exists and that the defensive measures adopted are not excessive but instead proportionate to the threat (“Corporate Value Standard”)

- Reasonable defensive measures must satisfy the following: (i) there exists a threat to corporate value, (ii) the defensive measures adopted are not excessive, and (iii) the decision to adopt (or apply) the defensive measures is taken by the board in an “independent” manner
- The above three tests are interrelated and the degree of independence necessary could be determined by the reasonableness of defensive measures and the degree of threat posed
- Implication of applying unreasonable defensive measures: if defensive measures are excessive in relation to the threat, the board could be in breach of its fiduciary duties and could be subject to legal liabilities such as compensation for damages.

5. Features to enhance the reasonableness: What are the necessary features to enhance the reasonableness of defensive measures?

~ Framework to link defensive measures to enhancement of corporate value ~

Features

- In order to avoid excessive defensive measures, it is important to preserve a mechanism for shareholders to ultimately voice their opinions
- Specifically, the following must be considered:
 - In takeover contexts (i.e., after an actual hostile approach), it is often not practical for the target's board to seek shareholder approval
 - Therefore, it is important to consider the following factors in order to demonstrate that the defensive measures taken are not for the purpose of entrenching the management but rather in the best interests of the company and its shareholders
- (1) Basic structure of defensive measures (basic requirement to preserve the avenue for a proxy contest)
 - Even if the target's board maintains defensive measures, it is necessary to preserve the avenue for a proxy contest
 - Ability to conduct a proxy contest is the basic minimum requirement to ensure that the defensive measures are in fact in the best interest of the shareholders to enhance corporate value
- (2) Additional features to enhance the reasonableness
 - Assuming that the above basic requirement is satisfied and in order to enhance the reasonableness of the target board's decision to maintain the defensive measures, the following (1)(2)(3) factors should be considered in a dialogue between the board and shareholders. In addition, (1)(2)(3) can be mixed and matched to enhance the reasonableness
 - It is possible for a board to authorize the adoption of (but not actually adopt) defensive measures in the future if an acquiror purchases a certain percentage of the shares of a company
 - 1. Third party check
 - Participation of third parties who do not have a conflict of interest in the board's decision-making process to either maintain or redeem defensive measures in takeover contexts
 - 2. "Chewable pill"
 - To provide a mechanism to automatically redeem the defensive measures in the event of a "qualified offer" that is likely to enhance corporate value with adequate disclosure. The success of the offer will be determined not by the board, but in the TOB by the shareholders
 - 3. Shareholder approval
 - To seek shareholder approval at the time of adoption of the defensive measures (including an explanation as to how the measures may be applied or redeemed in takeover contexts). Sunset provision (e.g., the defensive measures will require shareholder approval every 3 years to continue) could further enhance the reasonableness

Basic structure of defensive measures:

Basic requirement to preserve an avenue for a proxy contest so as to allow shareholders to have the ultimate say

To preserve the avenue for a proxy contest so as to allow shareholders to have the ultimate say

- Ability to conduct a proxy contest is a basic minimum requirement. Accordingly, a “Dead Hand Pill” will not be allowed. Even if the target’s board maintains defensive measures, shareholders are the ultimate referee. (Note: This is a basic mechanism based on the U.S.-style rights plan)
- There are two options with respect to staggered boards and option 2 will be adopted in Japan
 1. Similar to the U.S. models, introduce staggered boards and restrict removal of directors mid-term. The result is that it may take up to 2 years to take control of the board
 2. Similar to the current Japanese rule, limit director’s term to 1 to 2 years. As such, maximum 1 year to take control of the board

(Purpose of proxy contest)

- Shareholders will be afforded an opportunity to choose between the hostile bid and the management’s alternative plan assuming adequate disclosures
 - It may be necessary to establish a rule for information required to be disclosed during a proxy contest in Japan based on the U.S. models

(Effectiveness of proxy contest)

- From the point of view of a hostile suitor who is prepared to launch a hostile TOB, the additional cost of a proxy contest is not considered excessive. In addition, a proxy contest will provide shareholders with opportunities to choose (proxy contests are relatively common in the U.S.)
 - In Japan, the rules for proxy contests are similar to the U.S. rules, but proxy contests are rarely used. It is necessary to review the rules so that the proxy contest will be used properly and effectively in the near future

(Classified/staggered board)

- Approximately 60% of U.S. companies have classified/staggered boards so that it could take up to 2 years to take control of the board
- In Japan, a director’s term is limited to 1 to 2 years. In addition, there is no restriction on removal of directors mid-term. Accordingly, the Japanese model is believed to ensure greater flexibility for shareholders as compared to the U.S. model

Additional features to enhance the reasonableness (1): Third party check

Participation of third parties (who do not have conflict of interest in the board's decision-making process to either maintain or redeem defensive measures in takeover contexts) in order to ensure that shareholders' interests are reflected

- This is a typical U.S. mechanism. In the U.S., the presence of outside independent directors is generally considered to materially enhance the reasonableness of defensive measures taken in takeover contexts
- In order to enhance the reasonableness, it is important that the outside directors are truly independent and that they owe fiduciary duties to the company and its shareholders
- For example, in order to obtain support from institutional investors, regardless of the composition of the board, it is necessary to have clear involvement of independent outside directors and/or independent outside statutory auditors in the decision-making process
- Board of directors are entitled to rely on the advice of outside advisors (such as legal advisors) and must carry out reasonable investigation

(* In Japan, it is necessary to further discuss how to involve independent third parties who do not have a conflict of interest and who can qualify as truly independent third parties

(Function and responsibility of outside directors and statutory auditors)

Outside directors

- Appointed at shareholder meeting and owes fiduciary duty to company
- Could be liable to indemnify losses caused by violating laws or articles of incorporation
- Could be liable for third party claims when acting in bad faith or gross negligence
- (e.g.) Decision to be made by the board which consists of a majority of outside directors
- (e.g.) Board decision based on advice from committee which consist solely of outside directors (i.e. nomination committee, audit committee)

Outside statutory auditors

- Appointed at shareholder meeting and owes fiduciary duty to company
- Could be liable to indemnify the company when not fulfilling his duty
- Audits directors' management function
- Has the power to nullify a board decision which could cause material loss to the company or which is inconsistent with articles of incorporation
- Represents the company in a lawsuit against directors
- Has the right to consent to settlement of litigation against directors

Additional features to enhance the reasonableness (2): “Chewable pill”

To provide a mechanism to automatically redeem defensive measures in the event of a “qualified offer” that is likely to enhance corporate value with adequate disclosure. The success of the offer will be determined not by the board but by the shareholders in a TOB

- To provide objective threshold to redeem (or not to adopt) the defensive measures in the event of a “qualified offer” and allow TOB to proceed
- To enhance the reasonableness of the defensive measures by devising appropriate threshold
 - In the event of an offer with adequate disclosure in which the board has enough time to present alternative plans, the success of the offer will be determined not by the board but by the shareholders in a TOB
 - In the event of an offer which is likely to enhance corporate value (e.g. fully financed cash offer for all outstanding shares with sufficient premium), the success of the offer will be determined not by the board but by the shareholders in the TOB
- The more objective the threshold is, the more reasonable the defensive measures could be

(Example of objective threshold)

1. Passage of sufficient time to allow the board to present alternative plans after disclosure of fundamental information on the hostile proposal (e.g. management policy and business plan after the acquisition)
2. “Chewable pill”
 - A fully financed cash offer for all outstanding shares with X times premium – (2% of U.S. rights plans)
 - “Permitted offer (qualified offer) provision” in which certain thresholds are preset; determination of fairness (price, financing, post-acquisition management plan and employment policy), analysis methods (outside advisors expertise, etc.), review process (advice from independent third party, etc.) and benchmarks (company’s historical performance vs. industry average) – (30% of U.S. rights plans)

(Institutional investors’ point of view)

- There is no preset policy for “chewable pills” in their voting guidelines since they are judged on a case-by-case basis

Additional features to enhance the reasonableness (3): Shareholder approval

To seek shareholder approval at the time of adoption of defensive measures. In particular, the company must present to the shareholders how the defensive measures could be applied in takeover contexts (standards and process to determine when the measures may be redeemed)

- To obtain shareholder approval at a time when there is no imminent threat of takeovers will enhance the legality and the reasonableness of defensive measures
- Shareholders can determine the reasonableness of the defensive measures on a case-by-case basis depending upon the historical performance of the target company, its future business plans, and its management's capability and credibility
- Taking into account that many institutional investors support the 3 year sunset provision in the U.S., the reasonableness could be enhanced if the defensive measures are approved every 3 years in order to continue
- In the U.S., the above (1) "Third Party Check" is most common. Other than seeking shareholder approval when reinstating a rights plan after the plan is rescinded, there is little precedent for seeking shareholder approval for the adoption of a rights plan. In addition, in the U.S. as a variation on the Sunset provision, approximately 10% of rights plans feature a TIDE (Three-year Independent Director Examination) provision. At any rate, this shareholder approval option is believed to enhance the reasonableness of Japanese defensive measures compared to their U.S. counterparts

(Example of shareholder approval)

- Require shareholder approval even though board approval may be sufficient
- Golden shares need special approval at a shareholder meeting
- Same for adopting super voting stocks

(Support from U.S and European institutional investors)

- Likely to be supported by foreign investors as most of the U.S institutional investors require shareholder approval when adopting defensive measures
- In the U.K., directors' use of defensive measures in takeover contexts is strictly restricted by City Code. However, it is technically possible to adopt defensive measures with shareholder approval

(Shareholder approval prevents abuse)

- In the case of unprofitable/struggling companies with poor management, it will probably be difficult to obtain approval from shareholders (i.e. difficult to adopt defensive measures). On the other hand, for profitable companies with credible management, it is easier to obtain shareholder approval, but even in those cases, the ability to conduct a proxy contest is a basic minimum requirement

Additional features to enhance the reasonableness : Summary

[Basic concept]

- It is essential to preserve a mechanism for shareholders to ultimately voice their opinion in order to enhance the reasonableness of defensive measures

[Basic structure of defensive measures]

- Even if the target's board maintains defensive measures in the face of an actual hostile takeover, preservation of an avenue for a proxy contest is necessary

[3 types of additional features to enhance the reasonableness]

1. Third party check

- Independent directors or auditors' involvement
- Most common in U.S.

2. “Chewable pill”

- Mechanism to redeem defensive measures automatically and allow TOB to proceed in the event of an offer with adequate disclosure or an offer from a strategic buyer (with fully financed cash for all outstanding shares at a sufficient premium); otherwise defensive measures will be maintained and the outcome determined in a proxy contest
- Common variation in U.S. (30% of U.S. companies adopting rights plan)

3. Shareholder approval

- Seek shareholder approval even if board decision may be sufficient at the time of adoption of defensive measures
- Preferred by institutional investors; selected U.S. companies have committed to this feature when rescinding rights plans

It is important to add “shareholder friendly” features in order to enhance the reasonableness of defensive measures to enhance corporate and shareholder value

- Preference of institutional investors: Shareholder approval + up to 1 year for proxy contest
- U.S.: Third party check + up to 2 year proxy contest (trend toward “chewable pill”)
- Japan: Shareholder approval or third party check + up to 1 year for proxy contest (or “chewable pill”)

6. Preliminary conclusions

1. Western style defensive measures, which are already possible under the existing legal framework, will become more effectively available

<Introduction of new Corporate Law>

- Most Western-style defensive measures (those adopted before hostile approach and triggered in takeover contexts), if applied properly, are permissible in Japan
 - Rights plans are possible through the use of Shinkabu Yoyakuken (warrant to subscribe for new shares) with a board decision
 - Golden share and super voting stock are possible through the use of different classes of common stock
- Introduction of new Corporate Law is necessary to make defensive measures more effective
 - Target's management will be able to convert rights into new shares which will enhance the effectiveness of a rights plan
 - Provide a mechanism to convert currently outstanding shares into mandatory convertible classified stock with defensive mechanism
 - To enhance stability of defensive measures, transfer restrictions can be imposed on golden shares and super voting stock
 - Supermajority voting requirement would be permissible for a merger or removal of directors
- Securities Law and other related rules and regulations will be reviewed, as appropriate

2. Establishment of proper disclosure requirements as one of the conditions for reasonable defensive measures

<Amendment of related rules and regulations (disclosure requirements for defensive measures)>

- It is necessary to establish proper disclosure rules for relevant defensive measures so as to allow shareholders to make appropriate investment decisions
- Disclosure will allow acquiror to respond appropriately to the adopted defensive measure and provide a basis for “fair” negotiation between hostile suitor and target's management on an “informed” basis
- Therefore, it is necessary to review rules and regulations related to Corporate Law and establish rules for disclosure requirements for defensive measures
 - It is necessary to establish disclosure rules, such as “disclosure in the operating report shall be required in the event of 1) any issuance of Shinkabu Yoyakuken which restricts shareholders who have acquired a certain percentage of voting rights (including rights distributed to shareholders as a board authorized dividend), 2) any board decision to issue such Shinkabu Yoyakuken as of a specific point in time in the future, or 3) the adoption of any other defensive measures”

6. Preliminary conclusions (cont'd)

3. Establishment of guidelines for reasonable defensive measures will be useful

<Establishment of Guidelines for Corporate Value Protection Measures (METI and MoJ)>

- **Disclosure requirements:** Adoption of a hostile takeover defensive measure through Shinkabu Yoyakuken (warrant to subscribe for new shares) or classified stock requires timely disclosure pursuant to related rules and regulations
- **Compliance with Corporate Value Standard:** Adoption or application of a defensive measure is required to be not excessive but instead proportionate to the threat to corporate value
 - Defensive measures meeting Corporate Value Standard do not necessarily violate shareholder equality principle or constitute an unfair issuance of shares
- **Features to meet Corporate Value Standard:** Features below can enhance the reasonableness of defensive measures
 - Ability to conduct a proxy contest is a basic minimum requirement so as to allow shareholders to have the ultimate say (basic structure of defensive measures)
 - 3 additional features to enhance the reasonableness (additional features to enhance the reasonableness)
 - Third party check Participation of third parties (who do not have a conflict of interest in the board's decision-making process) in deciding whether to maintain or redeem defensive measures in takeover contexts
 - "Chewable pill" To provide a mechanism to automatically redeem if certain conditions for "qualified offer" are met
 - Shareholder approval To seek shareholder approval at the time of adoption (including explanation as to how the measures may be applied or redeemed in takeover contexts)

7. Next steps

- **Public release of Corporate Value Study Group Draft Recommendation (March 2005)**
 - ~ Public comments and in-depth discussions with relevant interested parties ~



Establishment of proper hostile takeover defense measures that enhance corporate value

- **Guidelines for Corporate Value Protection measures (METI and MoJ) (May 2005)**
- **Amendment of related rules and regulations**
 - Establishment of proper disclosure requirement (May 2005)
- **Introduction of new Corporate Law (April 2006)**
- **Review of Securities Law**



Further Development of Japanese M&A Market