Corporate Value Report 2006

Toward the firm establishment of fair rules in the corporate community

March 31, 2006

The Corporate Value Study Group

Contents

Introduction

The year 2005 saw numerous changes on corporate acquisitions in the corporate community of Japan. A hostile takeover is becoming a reality in Japan also, and firms introducing takeover defensive measures are increasing in number. Infrastructure for market surveillance has started to be firmly developed as we have seen courts rendered verdicts on takeover defensive measures and institutional investors have fixed guidelines for exercising voting rights on them. Formulation of rules by legislation, administration and securities exchanges which operate stock markets has been much advanced. Rules prepared by those who defend were shown at first. The Corporate Study Group released the "Corporate Value Report - Proposal toward establishment of rules for a fair business community" in May 2005. The other from the defender is "The Guidelines on takeover defensive measures for securing or improving combined profit for corporate value and shareholders" laid down by Ministry of Economy, Trade and Industry and Ministry of Justice based on the contents of the above Corporate Value Report. What built up the Guidelines was formulation of disclosure rules of Enforcement Regulation of the Corporate Law and disclosure rules and listing rules of securities exchanges. These moves made a great contribution to the development of formulation of rules for takeover defensive measures. On the other hand, formulation of rules and reviews at an acquirer's camp improved very much. The government is having Financial Services Agency and Financial System Council review TOB rules, and is now set to submit the amendment bills to the current ordinary session of the Diet. Meanwhile, the Corporate Governance Committee of the ruling Liberal Democratic Party issued in July its Proposals Regarding Fair M&A Rules and pointed the way to M&A rules as a whole including acquisition rules in Japan.

These moves mentioned above are reflecting major changes which had not been thought of in September 2004 when the Corporate Value Study Group was inaugurated. Major development has been seen in legal systems and rules on hostile takeover over the past year or so. From now on, formulation of laws and regulations will be settled for the time being when the new Corporate Law is put in force in May 2006, a bill for amending the Securities and Exchange Law and other financial laws (the Financial Instruments and Exchange Law) which is already submitted to the current Diet session is approved, and the related cabinet orders and ministerial ordinance are laid down. Under the circumstances like this, we should pay attention to general shareholders' meetings in 2006. Whether or not they introduce takeover defensive measures, Japanese management will be required to explain business strategies to enhance the corporate value more than ever. It will be very important for shareholders including institutional shareholders to assess the value of such efforts in a proper manner. It will be not too much to say that the true worth of the Japanese corporate community is now being asked.

Under such circumstances, what we would like to confirm again as a shared recognition in the corporate community is that a meaning of takeover defensive measures lies in to secure information, time and opportunity to compare which may enhance the corporate value: a proposal of an acquirer or that of current management. Since the announcement of the Corporate Value Report, an idea that ideal takeover defensive measures should be "while a takeover enhancing corporate value is realized, on the other, the one impairing it is not realized" is likely to have penetrated into the corporate community also because we have often come to hear the expression "to protect the corporate value". However, it is difficult to measure accurately the corporate value to begin with. Though the correct corporate value is shown in a share price of the firm only in case you are in a perfect and faultless market, such information as trade secret and know-how to actually decide the fate of the firm is seldom available in the market. In order to judge whether a takeover proposal would enhance the corporate value or impair it, it is necessary to eliminate asymmetry of information of this kind. Hence, it is of extreme importance to secure information, time and

opportunities for this.

Therefore, the Corporate Value Study Group resumed to study in September 2005 from the perspectives that making a proper judgment becomes possible after shareholders/investors collect enough information about a takeover proposal and management policies of current management (informed judgment), and eliminating excessive takeover defensive measures which make it difficult to make a proper judgment and prevent a buyout enhancing the corporate value.

The Corporate Value Study Group which restarted the activities for the purpose of still formulating takeover-related fair rules, and let them take root in the corporate community in Japan. Therefore, the group members as a whole increased very much because those from institutional investors, in particular, increased in addition to current members of businesspersons including experts, managers and lawyers. Also, some members from institutions which are deeply-committed to rules on takeover, Financial Services Agency, Tokyo Stock Exchange Inc. together with the Ministry of Justice participate as observers. The members held repeated discussions on rules of both a defensive side and an acquiring side. Part of the discussion was made public as "Summary of Outline of Discussion points" in order for this to serve as a useful reference to various system adjustments whose reviews had been executed in tandem with the Corporate Value Study Group and companies, etc. which were considering the introduction of takeover defensive measures. The results are "Publication of points of discussion on modalities for equitable takeover defense measures - modalities for disclosure and management of takeover defense measures at a stock exchange" issued on November 10, 2006 and "Publication of points of discussion on modalities for acquisition rules for the realization of a business value standard" issued on December 5, 2006. In addition to these, the group is examining ideal infrastructure in the corporate community such as enriching dialogue between shareholders/investors and management.

As described above, this report is the product of repeated cross-sectional discussions of the Corporate Value Study Group comprising various relevant members in the corporate community for the sake of the establishment of fair rules on acquisitions.

This report is also a message to future corporate community in Japan. The Corporate Value Study Group mainly focuses on setting out basic ideas and fair rules which should be shared by the future corporate community in Japan, not through finding technical solutions for each specific problem, but through deepening reviews centering on enhancing corporate value about the ideal situation of relevant parties such as management, shareholders and investors facing corporate acquisitions. We expect that the ideas and rules are esteemed by relevant parties and they become a code of conduct in Japanese corporate community and that behaviors based on the ideas and rules will prompt changes in the corporate community of Japan.

Below are summary of each Chapter in this report:

The subject of Chapter 1 is "Moves of the Japanese corporate community on corporate acquisition and remaining issues".

In this chapter, we overview moves in the Japanese corporate community after the announcement of the Corporate Value Report and also refer to remaining issues toward establishment of fair rules on corporate acquisitions. The Corporate Value Report and the Guidelines on takeover defensive measures compiled by the government are esteemed in the corporate community and development of institutions like takeover bid (TOB) rules is in progress. However, we will show the indispensability of development of infrastructure which enables relevant parties to exercise an informed judgment. This is the issue we think to be addressed when we resume the Corporate Value Study Group.

The subject of Chapter 2 is "Disclosure and listing rules on takeover defensive measures".

In order to eliminate takeover defensive measures which may block acquisitions enhancing corporate value, it is necessary to disclose beforehand purposes and specific contents of takeover defensive measures and make it possible for shareholders and investors to judge the rights and wrongs of them. Therefore, we are making specific proposals on ideal disclosure of takeover defensive measures in Japan, considering of the situation in Europe and the United States.

It is very important to make it clear that takeover defensive measures are by no means for the sake of protecting management's own interests, and the terms of exercising the measures, the criterion and process on exercising and abolishing them, and possible effect acquirers and shareholders may feel should be disclosed. Such measures, once their introduction is decided, should be disclosed abiding by timely disclosure of securities exchanges, and should be open to the public continuously based on business report of Corporation Law, etc.

Next, we will refer to the handling of takeover defensive measures at securities exchanges. Such measures are in principle taken by listed companies because they are for the purpose of vying against a hostile takeover to corner the shares. Therefore, in reality, rules of securities exchanges can play the role of an effective screening function to eliminate the takeover defensive measures to block even hostile acquisitions which may enhance the corporate value. We have proposed an idea on the rules of securities exchanges that listing on a bourse may be granted as long as takeover defensive measures are consistent with the governmental Guidelines, and that options of corporations and shareholders/investors should not be narrowed based on uniform standard such as a legal formality.

The subject of Chapter 3 is "What acquisition rules in japan should be."

Assuming a hostile acquisition becomes a reality and takeover defensive measures are introduced in Japan, it is necessary to amend the rules of TOB so that shareholders and investors, etc. can make an appropriate judgment providing they have enough information on a proposed acquisition and management policy of incumbent management as well as securing a negotiation balance between an acquirer side and a defender side. Therefore, we have proposed to take measures to eliminate the information asymmetricity between management and shareholders/investors in such ways as to permit cancellation and change of terms of a takeover bid subject to the possibility of exercising takeover defensive measures, to give an acquirer an opportunity to ask questions, and to oblige a defender to express their opinions.

As to the handling in Japan of measures to regulate a two-tier takeover attempt (an obligation to buy all shares and business joining restrictions) adopted in Europe and the United States, we have shown a certain basic direction. We state that we should be prudent to adapt an obligation to buy all shares to all the takeover bids because the obligation, which is adopted in Europe, may block even a friendly acquisition and it may become over-regularized to an acquirer once the introduction of takeover defensive measures become generalized in Japan. We propose that it is not necessary to enshrine business combination restriction adopted in U.S. state laws into our law since we will have the same effect once the Corporate Law becomes effective for use.

The subject of Chapter 4 is "Enriching dialogue between management and shareholders/ investors".

Though the first step to reject takeover defensive measures which even block acquisitions enhancing the corporate value is disclosure and rules of securities exchanges, it is shareholders who

ultimately judge rights and wrongs of takeover defensive measures. We have proposed, therefore, that steps to reflect shareholders' intention in takeover defensive measures are needed to be incorporated as well as sufficient information such as takeover defensive measures and management's corporate strategies including the measures should be provided to shareholders/investors; specifically, it is necessary to manage to enrich dialogue between shareholders/investors and management, accelerate exercising voting rights by shareholders, clarify the policy of exercising voting rights by institutional investors and firmly establish systems to confirm beneficial owners.

The subject of Chapter 5 is "Expectations for future corporate community in Japan".

Systems and rules on corporate acquisitions have been much advanced. At least the direction of the improvement has been hammered out by various relevant institutions. Under formulated systems and rules like this, the most important factor for the future Japanese corporate community is how market relevant parties such as corporations, shareholders, investors and businesspeople would behave. What is important is that fair rules proposed by the Corporate Value Study Group are esteemed by the relevant people in the corporate community and these rules become a code of conduct of them, and the we expect the corporate community in Japan will be heading for a better direction owning to these rules.

First, it is expected of managerial people to deepen the trusting relationship with shareholders through strengthening corporate governance as well as promoting shareholders' understanding by explaining elaborately of the approach to improve the corporate value in a long span including business and finance strategies to take advantage of their own strong points and to strengthen them. Such relationships will create a virtuous cycle of investment and improving the corporate value.

Then, shareholders and investors are expected to make an appropriate judgment utilizing necessary and sufficient information provided. Institutional investors, in particular, are required of responsible behaviors. Their behaviors will become a discipline to management, advance management innovation, enhance the corporate value; thus a virtuous cycle will be created.

Discussions about corporate acquisitions may become an opportunity for these changes. Hereafter, we expect to deepen the discussions on what the relation between managers as management specialists and shareholders/investors should be, and on ideal discipline toward those people such as analysts with specialized knowledge, rating agencies and advisory institutions for exercising voting rights who fill the gap created by information asymmetricity between management and shareholders/investors and help shareholders/investors make an appropriate judgment.

Change the situation without rules to the situation with rules: this is the issue which the Corporate Value Study Group has pursued from the start to the present. For the past 18 months, the Corporate Value Study Group held repeated discussions from the point of enhancing the corporate value about who takes what kind of responsibilities among stakeholders such as managers, acquiring companies, shareholders and employees when facing corporate acquisitions. Here, we expect very much that the fair rules proposed at the result of the discussions will penetrate into the corporate community in Japan, leading to the improvement of corporate value, and consequently to invigoration of Japanese economy.

Chapter 1 Movement of the Japanese corporate community on corporate acquisition and remaining issues

Section 1 Activities of the Corporate Value Study Group (Period 1)

(Establishment of the Corporate Value Report and the Guidelines)

The Corporate Value Study Group began in September 2004 to review from the point of what are fair takeover defensive measures to be taken under the current corporation law to compensate for the lack of knowledge and experience on a hostile takeover amid the growing concern about it. At the back of this trend we are observing the change of corporate community in Japan as are seen in the elimination of cross-held shares, a gap of aggregate market value between Japan and the United States and a change in awareness of acquisitions.

We studied from wide views such as the situation and judicial decisions on takeover defensive measures abroad and ideas of foreign institutional investors with the following four basic principles in mind: enhancement of corporate value, equal footing with global standards, no discrimination between foreign and domestic companies, and offering increased options for shareholders and management. In order to clarify what kind of takeover defensive measures may work as tools to enhance corporate value, we compiled and published "the Corporate Value Report: Proposal toward establishment of rules for a fair business community[1]" in May 2005.

The Corporate Value Report states that right and wrong of the takeover defensive measures should be judged by "the corporate value standard" of "corporate acquisitions enhancing corporate value are realized, however, those detrimental to corporate value not realized." It also says that in order to secure the situation where judgment of board of directors on takeover defensive measures should solely be based on enhancement of the corporate value, not be based on trying to protect their own interests, it is required in designing takeover defensive measures to satisfy the following requirements: (1) introducing them in peacetime and disclose them, (2) enabling them to be abolished at one general meeting of shareholders, (3) devising ways to prevent board of directors from abusing them by incorporating such as third party's check, objective threshold to redeem the measures and a mechanism of the offer to be determined not by the board but by shareholders.

The Corporate Value Report is showing some points of discussion as remaining institutional reforms to be solved, which are the handling in Japan of an obligation to buy all shares and business combination restrictions, measures to be adopted in Europe and the United States, to regulate two-tier takeover attempts, ideal takeover bid rules on the premise of introducing takeover defensive measures and ideal infrastructure to effectively overlook takeover defensive measures.

Further, in order to show ideal takeover defensive measures with high legality and reasonableness, paying attention to the Corporate Value Report, court decisions and theories, "Ensuring and/or increasing corporate value and stakeholder profits: takeover defense guidelines (hereinafter called the "Guidelines")[2]" was compiled and published by Ministry of Economy, Trade and Industry and Ministry of Justice[3].

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[1] Available at homepage of Ministry of Economy, Trade and Industry (http://meti.go.jp/press/20050527005/3-houkokusho-honntai-set.pdf)

[2] Available at homepage of Ministry of Economy, Trade and Industry (http://meti.go.jp/press/20050527005/3-shinshinn-honntai-set.pdf)

[3] The definition of " a takeover defensive measure" in this report is quoted from the Guidelines, therefore, it should be "measure(s) introduced before the start of an acquisition, of measures which make it difficult for an acquirer to realize an acquisition of the corporation through such as an issuance of new stock or warrant to subscribe for new shares without any specific business related reasons such as financing."

(Evaluation of the Corporate Value Report and the Guidelines)

The Corporate Value Report and the Guidelines are appreciated to some extent by relevant parties in the corporate community such as many corporate managers and institutional investors. The survey conducted by the Ministry of Economy, Trade and Industry in September 2005 in the form of a questionnaire covering Japanese corporations and institutional investors revealed that the Corporate Value Report and the Guidelines enjoy a high recognition rate of about 90% of the corporations surveyed and almost all the institutional investors replied that they have read the report and the Guidelines or at least know them.

Further, ninety-six percent of corporations and seventy-seven percent of institutional investors replied that they will refer to the report and the Guidelines in case of adopting takeover defensive measures or exercising voting right of them.

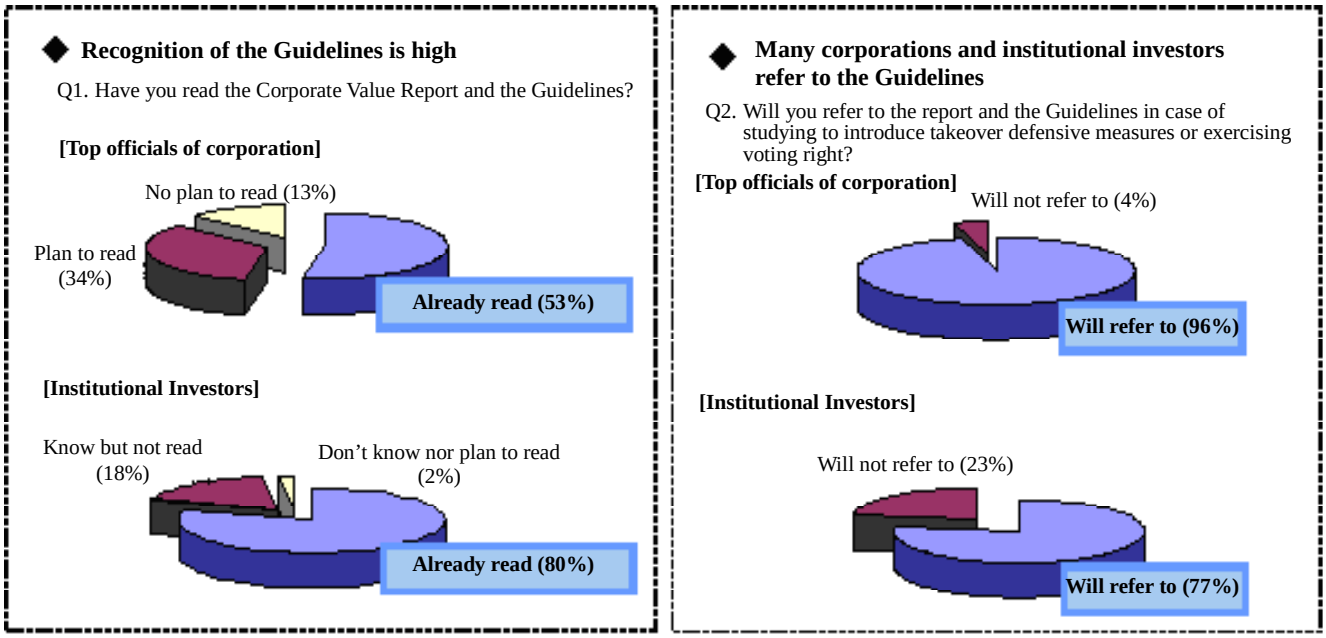

Figure 1-1 Results of the Questionnaire for those concerned with firms and institutional investors

The Corporate Value Report states that it is expected that rules proposed by the Corporate Value Study Group and the administrative guidelines which are based on the rules are respected by relevant people in the corporate community, eventually will become a code of conduct for the Japanese corporate community. We can say that the Corporate Value Report and the Guidelines are esteemed by many relevant people in the corporate community.

Section 2 Movement after the Corporate Value Report and the Guidelines were established

Various moves were observed among individuals involved in the corporate community including firms and investors since the establishment and announcement of the Corporate Value Report and the Guideline in May, 2005.

1. Moves of involved parties concerning the introduction of takeover defensive measures

(Movement of corporations)

After the formulation of the Corporate Value Report and the Guidelines, some companies studied to introduce so-called "pre-warning defensive measures[4]" and a "trust-type rights plan[5]" referred to in the Corporate Value Report, and actually introduced such methods[6]. A so-called "rights plan", whose mechanism is to dilute the percentage of shares held by an acquirer through an issuance of subscription right of shares, etc. to all existing holders except the acquirer at the time of a hostile takeover, were introduced[7] by more than 40 corporations since April 2005. Rights plans adopted by such firms differ in type[8]. Some of the features seen in those plans are to clarify the measures are not for the sake of protecting company mangers' own interests, but aimed at maintaining and enhancing the corporate value by making clear resources to elevate their own corporate value; to incorporate ideas to realize shareholders' intention into the rights plan by such as fixing the term of directors for a year; to adopt devices to prevent inside directors from making arbitrary judgments by making objective abolition standards and to make a scheme to be judged by independent and outside members; how the measures would affect shareholders/investors is clearly expressed. As such, those corporations have made efforts to introduce takeover defensive measures in line with the Corporate Value Report and the Guidelines.

Takeover defensive measures have the features whose costs, procedures and effects, etc. change based on whether they are introduced through a resolution of meeting of shareholders or a board of directors' resolution, or, subscription right of shares is issued beforehand or they are issued when facing a takeover bid. If we pay attention to the facts that the function of takeover defensive measures is tools for the company to temporarily stop a purchase of the stock, to negotiate with the

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4 See , the Corporate Value Report, at 98, note 155

5 See , the Corporate Value Report, at 98, note 154

6 One of the reasons of the move written here would be that the concerned legal issue on takeover defensive measures so far was cleared in the Corporate Value Report and the Guidelines by mentioning that warrants with discriminatory terms of voting can be issued in such forms as issues to shareholders and a grantis issue subject to the authorization and approval of a shareholders meeting.

7 The number of corporations which introduced the plan as of the end of March, 2006 is forty-eight. The figure is counted by Ministry of Economy, Trade and Industry based mainly on timely disclosure information of securities exchanges.

8 Classifying by the type shown in the Corporate Value Report, nine companies introduced a plan by seeking an approval at a general meeting of shareholders. Most of the nine companies adopt a mechanism to issue warrants with discriminative voting right and ask a trust bank to manage it. Thirty-six corporations introduced it only through a board of directors' resolution. The firms which introduced it by the resolution of the board of directors do not issue warrants, etc. in peacetime, and use a method to give warning of exercising it once it is subjected to a takeover bid. A lot of the corporations have fixed objective elimination terms for a takeover bid to exercise the plan. The corporations require the acquirer to give a certain period of reviewing time, and they will eliminate the takeover defensive measures if the buyer abides by the terms. The way to decide a certain period differs in accordance with a takeover method. The period of all-stock and all-cash is usually shorter than other type of acquisition. For instance, the former is fixed as 60 days, but the latter 90 days. Further, not a few firms hold a special committee comprising independent and outside members and the committee make a judgment of right and wrong of the takeover bid. This is called an independent-outside-check type. There are a few combinations of how the special committee is comprised of. Some companies adopt a committee comprised of outside directors, some outside directors and experts combined, and some prefer experts only.

acquirer, collect information and analyze it, to save time to present alternative plans, then it would be very important to in advance disclose obviously the fact to shareholders/investors that the defensive measures are already introduced, to clarify what their own corporate value to be protected is and also clarify that arbitrary judgments of director have not been made.

At general shareholders meetings in 2005, with main purpose as taking prompt countermeasures including an issuance of subscription right of shares against a hostile takeover bit, a lot of companies asked amendments of the articles of incorporation for the sake of increasing the authorized capital. ISS (Institutional Shareholder Services), an advisory institution on voting right, says that six corporations proposed to introduce a so-called "trust-type rights plan" at a general meeting of shareholders held in June 2005[9] [10]. As for the increase of authorized capital, the companies proposed it at a general meeting of shareholders held in the same month numbered 235[11].

On the other hand, 860 corporations out of about 1830 listed corporations (the ratio is about 1 : 2) with closing day of the end of March, 2005 determined and carried out to increase or resume dividend[12]. This is due to the fact that growing number of the corporations are, conscious of a hostile takeover bid, placing value on shareholders by reviewing its capital policy and improving return to shareholders, etc.[13]

The introduction of takeover defensive measures is considered to continue in years to come, too[14]. At general meetings of shareholders held in June 2006, too, we will observe that lively discussion about right and wrong of the introduction is being conducted and that the moves to take comprehensive measures to improve corporate value such as new business strategies and capital policies are being invigorated.

(Establishment of guidelines for exercising voting rights by institutional investors)

In light of the introduction of takeover defenses by corporations, institutional investors have had more opportunities to exercise their voting rights at general meetings of shareholders about pros and cons of introducing takeover defensive measures due to resolutions asking for amendment of articles of incorporation on issues of subscription right of shares with advantageous terms like a trust-type rights plan and an increase of authorized capital.

In most cases, institutional investors in Europe and the United States have guidelines for exercising voting rights on takeover defenses, and they exercise the voting rights in line with the guidelines considering each corporation's situation, etc.[15] So far, however, takeover defensive measures

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[9] Nihon Keizai Shimbun dated on July 4, 2005 (morning edition) at 9

[10] There are two other corporations which asked general meetings of shareholders for approval of the adoption of takeover defenses except six companies which introduced trust-type rights plans.

[11] Employees' Pension Fund Association, currently called Pension Fund Association, says that 154 corporations of firms in which they invested made a proposal to amend articles of incorporation in order to increase the maximum authorized capital.

[12] Nihon Keizai Shimbun dated on June 25, 2005 (morning edition) Section 2 at 1
Total dividends of all the listed corporations except finance and those listed in markets for new companies with the closing date of March 31, 2006 is expected to stand at ¥ 3,847.1 billion, up 19% over the previous quarter. (Nihon Keizai Shimbun dated on March 8, 2005 (morning edition) at 1

[13] About 10% of difference of dividends ratio between Japan and the United States is seen. The actual figures of Japan and the United States recorded in 2004 were 18% and 31%, respectively. (Questionnaire "About the efforts to improve shares value" conducted by the Life Insurance Association of Japan in 2005 at 4)

[14] Some people point out that there are still many corporations wishing to use cross-shareholdings, which have been used as takeover defenses in peace time so far, as takeover defensive measures. It is expected that right and wrong of this matter will be discussed. (Nihon Keizai Shimbun dated on March 23, 2006 (morning edition) at 11)

[15] See "the Corporate Value Report" Chapter 3 at 54 to 58

similar to those of Europe and the United States have not been introduced in Japan. Therefore, Japanese institutional investors have not formulated guidelines to exercise voting rights to cope with the trend.

Under the circumstances, approximately 50% of the institutional investors replied in the survey mentioned above that they have made guidelines for exercising voting rights on takeover defensive measures considering the movement to introduce them by corporations. Also, since Pension Fund Association, formerly Employees' Pension Fund Association, established and published "Criterion for Exercising Voting Rights concerning Takeover Defensive Measures" on April 28, 2005, major institutional investors such as Pension Fund Association for Local Government Officials, Nomura Asset Management Co., Ltd. and Nikko Asset Management Co., Ltd. made and released their guidelines to exercise voting rights. In this way, policies on takeover defensive measures of institutional investors have been settled into shape.

(Trend of general meeting of shareholders)

Because a lot of resolutions on takeover defensive measures such as amendments of the articles of incorporation brought by issues of equity warrants with advantageous terms due to aforementioned adoption of a trust-type rights plan and an increase of authorized capital were submitted for discussions at general meetings of shareholders held in June 2005, vigorous discussions between shareholders and management primarily focused on right and wrong of the introduction of takeover defenses were observed, and at the same time, the results of resolutions drew keen social attention nationwide.

All of the resolutions of the aforementioned six corporations asking for approval of equity warrants with advantageous terms accompanied with the introduction of the so-called "trust-type rights plan" were approved at general shareholders meetings held in June 2005[16]. On the other hand, though most of the resolutions asking for amendments of articles of incorporation on increase of authorized capital were approved, in some companies they were denied. These results are suggesting the growing influence of shareholders surrounding corporate management[17]. Such a trend is indicating that dialogue between management and shareholders/investors and the mutual understanding of them are becoming more and more important.

(Efforts made at Securities Exchanges)

In accordance with the adoptions of takeover defensive measures by firms, Tokyo Stock Exchange, Inc., using Summary Outline of Discussion points of the Corporate Value Study Group as a reference, released "Points of Consideration in protecting investors at the adoption of hostile takeover defensive measures" in April 2005. In the announcement, Tokyo Stock Exchange requested listed corporations at adoptions of defensive measures to observe the following points[18]:

(1) Listed companies should conduct necessary, adequate and timely disclosure on the contents of takeover defenses including the objective, main terms such as implementing and terminating them and any effect which the implementation may exercise to shareholders/investors.

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[16] The resolutions of two companies asking general meetings of shareholders for introduction of takeover defensive measures in addition to a trust-type rights plan were all approved.

[17] On the issue of increase of authorized capital, ISS is suggesting to cast a dissentient vote to about 200 corporations out of 235. Further, Pension Fund Association, formerly Employees' Pension Fund Association cast a dissentient vote to 146 companies out of 154 firms in which the Association has invested.

[18] Except Tokyo Stock Exchange, Inc., Jasdaq Securities Exchange, Osaka Securities Exchange, Fukuoka Stock Exchange and Sapporo Securities Exchange made public similar points of consideration on April 21, April 28, April 28 and May 10, all in the year 2005, respectively.

(2) Conditions for implementation and termination of takeover defensive measures should not be unclear
(3) Takeover defensive measures should not contain any factors that cause unexpected damage to shareholders and investors other than an acquiring person
(4) Takeover defensive measures should not adopt a so-called "Dead hand shareholder rights plans".

2. Moves made by the Japanese government, etc. to establish fair M&A rules

Other efforts to form fair M&A rules except the Corporate Value Report and the Guidelines have been geared up. First, as for takeover rules, after-hours share trading which was used to buy massive amount of shares of Nippon Broadcasting System Inc. by Livedoor Co. Ltd. in February 2005, and became known to people from all walks of life in Japan was included in a target of regulatory controls of takeover bids. This was incorporated in the amendment of the Securities Exchange Law which took effect in June 2005.

Further, in July 2005, the Committee on Corporate Governance of the Liberal Democratic Party made public "Proposals on Fair M&A Rules[19]" in which reform of TOB system and foundation of disclosure on acquisition defensive measures were proposed.

Moreover, the government not only started to review the TOB rules, but studied to incorporate disclosure system on takeover defenses into Enforcement Regulations of the Corporate Law.

3. Emerging hostile takeovers and court rulings

(Increase of hostile corporate takeovers becoming clearer)

The number of M&As increased sharply since 2000, and it reached 2,725 cases in 2005. This figure is about six times as much as ten years ago[20].

Though the Corporate Value Report pointed out[21] that "M&As in Japan are mainly friendly, however, there is an indication of hostile M&As growing in number in years to come". The year 2005 symbolically started with a hostile takeover to acquire Nippon Broadcasting System Inc. by Livedoor Co., Ltd. which began in February of the year and it was followed by many other hostile acquisitions. Like this, hostile takeover attempts are growing in number even in Japan.

In July 2005, Yumeshin Holdings Co., Ltd. made an unsolicited takeover proposal to Japan Engineering Consults Co., Ltd. which introduced so-called pre-warning takeover defensive measures. Japan Engineering Consults declared a stock spilt as a countermeasure against it, and takeover defensive measures were actually implemented in this case. After this case, acquisition attempts by funds of business corporations such as the case of M&A Consulting, Inc. (MAC or also called Murakami Fund featuring the name of the representative) acquiring large shares of Hanshin Electric Railway Co. ,Ltd. continued. Rakuten, Inc.'s proposal of business integration to Tokyo Broadcasting System, Inc. (TBS) is the case of a hostile takeover between operating companies. Except these, we saw bidding wars of M&A Consulting and Nisshinbo Industries, Inc. for New Japan Radio Co., Ltd., and Don Quijote Co., Ltd. and AEON Co., Ltd. for Origin Toshu Co., Ltd.

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[19] See, available at homepage of the Liberal Democratic Party (http://www.jimin.jp/jimin/seisaku/2005/seisaku-006.html)
[20] Surveyed by Recof Corporation
[21] See, "the Corporate Value Report" Chapter 1

Thus, hostile business acquisitions are not only increasing in number, but also becoming more multifaceted.

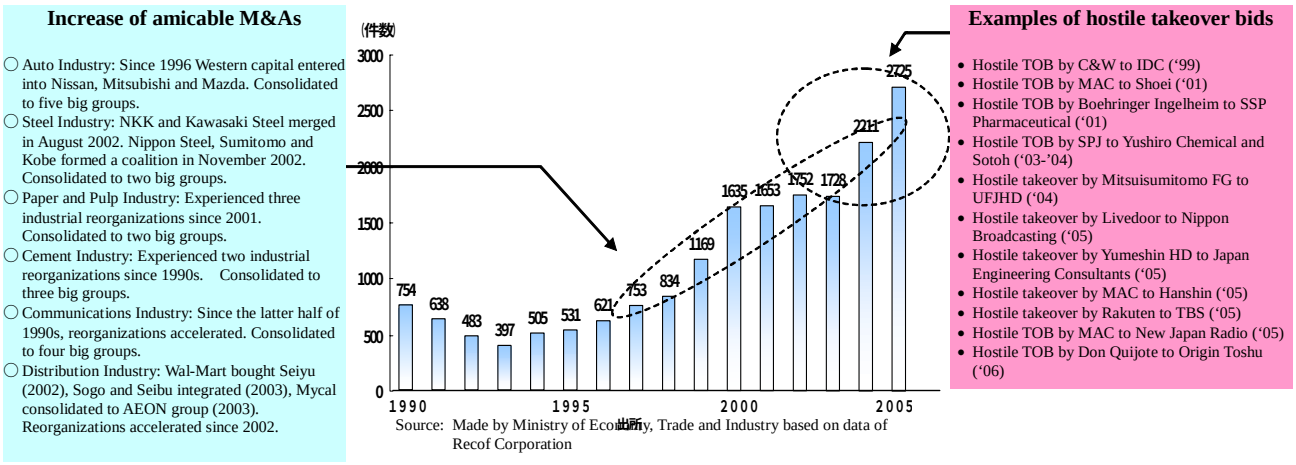

Figure 1-2 Number of M&A cases in Japan and examples of hostile takeover bids

(Court rulings on takeover defensive measures)

On the other hand, in accordance with adoption of takeover defensive measures and an increase of hostile takeovers, courts rendered some judgments on acquisition defensive measures. In March 2005, the Tokyo High Court accepted the provisional injunction of Liveldoor Inc. against issuing equity warrants by Nippon Broadcasting System, Inc.[22] In June 2005, the same court granted the preliminary injunction to an investment fund seeking a preliminary injunction to stop Nireco from issuing warrants[23]. As for the aforementioned stock-split of Japan Engineering Consultants Co., Ltd., Yumeshin sought a preliminary junction from the Tokyo District Court to stop Japan Engineering from declaring the stock-split. However, the court dismissed Yumeshin's preliminary injunction petition in July 2005[24].

[22] See, the "Corporate Value Report" at 21 note 42

[23] The Tokyo High Court stated on the issuance of equity warrants that "the issuance of warrant by a board of directors as defensive measures against an abusive hostile takeover may be possible to be considered", but "because directors have a trusting relationship with shareholders who are company owners, so they are responsible for not giving unjustifiable harm to shareholders." Therefore, it continued to state that "the issuance of warrants in this case may give unjustifiable harm to the current shareholders, so we cannot but admit that the issuance is based on the extremely unfair method which is beyond authority given to the board of the directors." And the Tokyo High Court affirmed the preliminary injunction granted by the Tokyo District Court to stop Nireco from issuing the warrants.

[24] On the stock-split during TOB implemented by Japan Engineering Consultants Co., Ltd., the Tokyo District Court stated that "it can say the board of directors is allowed to exercise its rights to supply necessary information and give enough time to consider the offer so that shareholders can make an appropriate judgment (on a struggle for controlling management)." On the appropriateness of the countermeasures taken by the board of directors for that purpose, the court further stated that "we should judge it in a comprehensive manner considering, among others, intentions of which the board of directors adopted the countermeasures, course which such countermeasures were taken, presence of harm which may do to current shareholders and its degree, and effect to block which the countermeasures give to the acquisition." Further, because the stock-split in this case only enables the effectiveness of the TOB to extend to a general shareholders meeting, and significant economic loss will not be caused by the stock-split, the court stated that "we cannot say the stock-split simply lacks appropriateness and the board of directors abused the rights." And the court dismissed preliminary injunction petition to stop the stock-split which Yumeshin Holdings sought.

Section 3 Issues to be solved toward establishing fair M&A rules

Judging from the trend since the publication of the Corporate Value Report and the Guidelines, a lot of people relevant to the corporate community refer to the documents. However, as was pointed out in the Corporate Value Report, there are various issues to be solved in order to form certain rules on takeover defenses. Further, it was necessary to deepen discussions on the issues so that fair M&A rules including acquirer's rules and defender's rules take root in the corporate community of Japan.

This is the reason the Corporate Value Study Group resumed discussions in September 2005. We would like to show some issues which we think necessary to be reviewed below.

1. Necessity to form fair M&A rules

Controlling right of a company has features of difficulty to making the correct choices compared to general commodities unless definitely voluminous information provided to shareholders, and to suffer heavy economic and social loss when erroneous choices are made. Whether it is a friendly takeover or a hostile one, the judgment on the exact controlling right of a company is made in facing a takeover.

As was summarized in the Corporation Value Report[25], because shareholders, at the time of a corporate acquisition, may select an offer which harms the corporate value if simply making a comparison between a one-time buyout price and the share price, it is preferable to review and make a relative comparison from the point of which of the proposals, an acquirer's or that of current management, gains more support. In order to do this, necessary and enough information is required to provide to shareholders from a purchaser and the current management so that shareholders can make a relative comparison. If takeover defensive measures carry out such functions, they are evaluated as means to enhance corporate value[26]. To sum up the matter, establishing systems and customary practices enabling shareholders and investors facing a takeover to make a judgment based on sufficient information (informed judgment) is required.

From this point of view, though fair rules concerning takeover defensive measures had been established to some extent through the publication of the Corporate Value Report and the Guidelines as of September 2005, some problems were left for from the point of making them take root in Japanese corporate community.

2. Remaining issues

(Disclosure rules concerning takeover defensive measures)

The disclosure of takeover defensive measures is very important from the points of improving predictability of shareholders/investors and acquiring persons, etc. and securing opportunities for shareholders to make appropriate choices. Therefore, we pointed out in the Corporate Value Report that it is pertinent to introduce a new disclosure system using operating reports[27]. Currently,

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[25] See "the Corporate Value Report" Chapter 2, Section 2

[26] There is an indication also that the maximum efficacy attained by introducing appropriate takeover defensive measures is the structure of takeover itself is converted into "manifest-type takeover" where both a purchaser and current management make an appeal for the rightfulness holding up the manifest focusing on keeping and improving corporate value.
Kazuhiro Takei, Ryutaro Nakayama, Corporate Takeover Defense Strategy Volume 2 (Commercial Law, 2006) at 14 and below

[27] See "the Corporate Value Report" at 80

those firms which introduced takeover defensive measures are found to disclose the measures, etc. on a voluntary basis. However, the relevant parties such as corporations, shareholders and investors did not have a shared understanding concerning such as contents, means and timing of disclosures.

(Handling of takeover defensive measures at stock exchanges)

Though it can be said that takeover defensive measures are issues of publicly traded companies, stock exchanges are asking firms which issued listed stocks to satisfy a certain standard shown in listing rules, etc. from the point of investor protection. However, we could not state that common understanding has been established in the listing rules, etc. as to handling specifically and individually a defensive measure including those which can be introduced upon the enforcement of the Corporate Law.

(Rules for takeover)

The takeover bid rules, one of the acquisition rules, which form a part of the Securities Exchange Law of Japan were introduced in 1971. Though they were totally revised in 1990 when a report on large shareholders was introduced, no major points were revised since then. However, because the situation around takeovers and takeover defensive measures in Japan has been changing in recent years as are seen in the actual moves of introducing takeover defensive measures by several corporations, and takeover bids were in reality implemented for hostile acquisitions, the establishment of new takeover rules such as new takeover bids system to cope with the circumstance were being sought.

(Enriching the dialogue between shareholders/investors and corporate managers)

In introducing takeover defensive measures, it is necessary for management to serve to win the understanding of shareholders/investors. In order to realize this, corporate executives are required to give routinely information about management targeting the enhancement of the corporate value to shareholders/investors, and in addition to this, they are required to introduce takeover defensive measures after securing bipartite agreement based on sufficient dialogue in asking the intention on the measures of shareholders at a general meeting of shareholders.

It is needless to say that in what way for management to enrich dialogue in order to achieve full understanding from shareholders/investors is purely a matter of an individual company's scope depending on the situation around the firm and the relationship mainly with shareholders. However, as long as we observe what happened in general shareholders' meetings held in June 2005, it cannot be denied that some companies which introduced takeover defenses failed to get full understanding from shareholders/investors since their efforts to hold sufficient dialogue with them were not enough. Also, some corporations found it difficult to handle the situation because they did not understand the stance on takeover defensive measures of institutional investors.

3. Discussions at the Corporate Value Study Group

The Corporate Value Study Group held repeated discussions on what reasonable takeover defensive measures should be, and published the Corporate Value Report. The objective was to ingrain fair M&A rules into the corporate community in Japan as early as possible.

Though fair rules on takeover defensive measure have been established to some degree, as was noted previously, a lot of issues have been left toward establishing fair M&A rules.

The Corporate Value Study Group conducted a comprehensive study on what institutions concerning each of the following three themes should be, referring to investigations on the present circumstances of institutions in Japan, institutions in European countries and the United States and their actual conditions: (i) what disclosure rules on takeover defensive measures and handling of them at stock exchanges should be, (ii) what acquisition rules in Japan should be, (iii) ways to further enrich dialogue between shareholders/investors and management.

Related government ministries and agencies, etc. are studying these themes while the Corporate Value Study Group is engaged in the review. The Corporate Value Study Group has continued to study them to make a comprehensive proposal in which what should be institutionalized and handled on a voluntary basis are also included in it from the points of improving infrastructure which enables the Corporate Value Standard pervade into the corporate community and concerned people excise an informed judgment toward the establishment of fair M&A rules. Of the themes, the group published about (i) in November 2005 "Points of discussion" ("Points of discussion on modalities for equitable takeover defense measures[28]") and about (ii), it published "Points of discussion" ("Points of discussion on modalities for acquisition rules for the realization of a business value standard[29])" in December 2005.

The Corporate Value Study Group states in this report from the point of Corporate Value Standard that disclosure rules on takeover defensive rules and management of them at stock exchanges (Chapter 2), what the acquisition rules should be (Chapter 3), ideal methods to enrich dialogue between shareholders/investors and corporate executives (Chapter 4). Also, the group aims at clarifying the overall picture of current Japanese M&A rules. Lastly, our expectations for the corporate community in Japan will be shown so that these fair rules firmly take root in the corporate community of Japan and encourage it to change it (Chapter 5).

This report, coupled with the Corporate Value Report and the Guidelines which showed what fair takeover defensive measures should be, will show a comprehensive picture of fair M&A rules in Japan. We hope and expect that the M&A rules are esteemed by relevant parties of corporate community such as company managers and markets related people and will be found useful for ingraining fair M&A rules into the corporate community in Japan.

[28] See available at homepage of Ministry of Economy, Trade and Industry (http://meti.go.jp/press/20051110002/20051110002.html)
[29] See available at homepage of Ministry of Economy, Trade and Industry (http://meti.go.jp/press/20051215010/20051215010.html)

Chapter 2 Disclosure and listing rules on takeover defensive measures

On what disclosure on takeover defensive measures should be and handling of them at securities exchanges

Section 1 What disclosure on takeover defensive measures should be

As stated in Chapter 1, the establishment of clear disclosure rules on takeover defenses is required from the view of formulating fair acquisition rules based on the Corporate Value Standard.

In this Chapter, we first would like to show the necessity of disclosure on takeover defenses. After we refer to the real situation on the disclosure and issues of the institutions, we would like to introduce the Discussion points[30] of the Corporate Value Study Group, efforts toward the development of disclosure system at stock exchanges, and disclosure system on Corporate Law, etc to clarify disclosure of takeover defenses in Japan as it ought to be.

1. Necessity of disclosure on takeover defensive measures

(Necessity of disclosure)

As is shown in the Corporate Value Report and the Guidelines, the introduction of takeover defenses in peace time requires disclosing in advance its objectives and specific contents, etc. To improve predictability of shareholders/investors through disclosing takeover defenses and secure appropriate options for shareholders elevates the legality and reasonableness[31].

(Awareness on disclosure of institutional investors and corporations)

A questionnaire[32] conducted by Ministry of Economy, Trade and Industry in September 2005 revealed that about half of institutional investors replied that disclosure of takeover defenses is necessary terms to approve takeover defensive measures (see Figure 2-1), and they hope, among others, “purposes of takeover defenses”, “specific contents of the measures” and “their effects” are included in the disclosure (see Figure 2-2). We can say that the importance of disclosure is fully known to and understood by institutional investors and firms as many corporations replied that they will disclose them by various means when takeover defenses are introduced[33] (see Figure 2-3).

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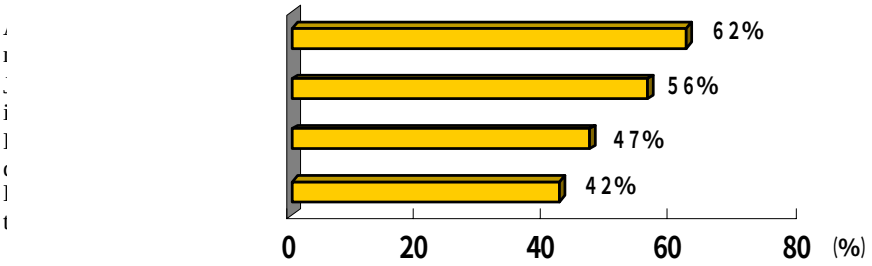
[30] See note 28

[31] See Section3, Chapter4 “the Corporate Value Report” dated on May 27, 2005 the Corporate Value Study Group, See IX Drift “Ensuring and/or increasing corporate value and shareholder profits: takeover defense guidelines” dated on May 27, 2005 Ministry of Economy, Trade and Industry/Ministry of Justice

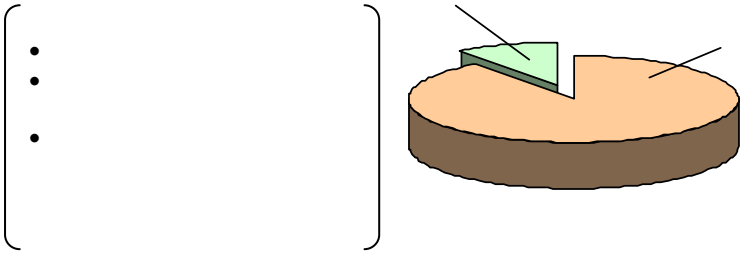
[32] A questionnaire conducted by Ministry of Economy, Trade and Industry in September 2005. It covered 113 institutional investors (trust banks, investment management companies and life insurance companies) which not only have their bases in Japan and invest in Japanese stocks but also make a judgment on voting rights on their own. Fifty firms of 113 replied (Forty-four percent). The survey was conducted with the aid of IR Japan, Inc.

[33] According to a survey conducted by Ministry of Economy, Trade and Industry in September 2005, all the corporation which said defenses are necessary or necessary depending on cases replied that they will disclose. Majority of the firms replied that they will disclose through operating reports, their homepages, financial statements and interim reports. The survey covered all the listed firms locally of 3,757, of which 837 replied. The response rate is 22.3%)



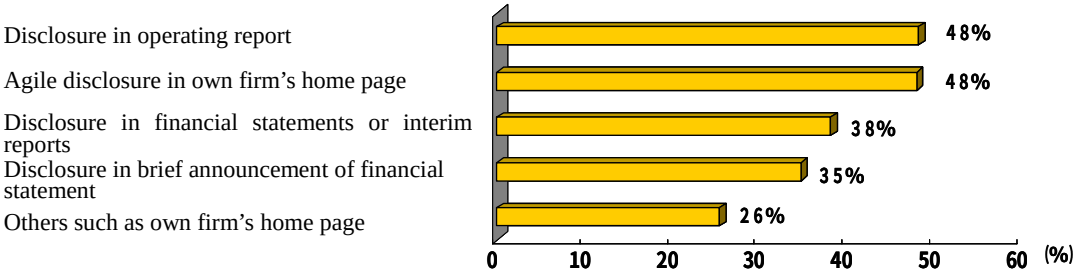
(Source) Compiled by Ministry of Economy, Trade and Industry in September 2005 (from the data of the 10th Corporate Value Study Group)

Figure 2-1 Conditions of which institutional investors approve takeover defensive measures (multiple answers)



(Source) Compiled by Ministry of Economy, Trade and Industry in September 2005 (from the data of the 10th Corporate Value Study Group)

Figure 2-2 Disclosure items of defenses which institutional investors request



(Source) Compiled by Ministry of Economy, Trade and Industry in September 2005 (from the data of the 11th Corporate Value Study Group)

Figure 2-3 Methods used by firms to disclose takeover defensive measures (multiple answers)

2. Current status of disclosure on takeover defensive measures and institutional problems

(Actual situation on disclosure of Japanese corporations)

The Corporate Value Study Group conducted an analysis of timing, contents and means of disclosure of 18 companies which had introduced takeover defenses as of October 2005.

As for the timing, all the firms made a disclosure promptly after the decision to introduce it in accordance with timely disclosure regulations of stock exchange. However, we found an institutional issue from the view of continuous disclosure as 12 corporations had a hiatus between timely disclosure and continuous disclosure using operating report, etc. or failing ever to disclose in operating report, etc[34].

While some companies disclosed in detail purposes of takeover defenses and the contents, on the other, there were firms which provided only insufficient or opaque contents to clarify specific content such as clear judgment processes.

Means of disclosure differed widely among companies as most of them used timely disclosure regulations of stock exchanges, financial reports, operating reports and their own home pages voluntarily, but five companies disclosed it neither in financial statements nor in operating reports. Also, even if the means of disclosure is described in financial statements or an operating report, shareholders/investors presumably found it difficult to specify the section where the means was referred to because the described portion is different in each report or statement[35].

(Issues concerning disclosure institution in Japan)

The reasons of adopting different methods of disclosure by each company as explained above are partly attributable to inexperience on takeover defenses of Japan and a voluntary decision on how to disclose it due to lack of specific regulations on takeover defenses in spite of wide variety of sources such as the Commercial Law and timely disclosure rules fixed by stock exchanges. It can be said that the relevant parties such as companies, shareholders and investors did not share a common recognition on what disclosure procedures such as timing, contents and means should be as of September 2005. Under such circumstances, insufficient disclosure and unclear disclosure may cause harmful effect and disorder such as influencing investment judgment of shareholders/investors and imposing a heavy burden to corporations and shareholders. So as not to cause any harmful effect and disorder, various devices to simply disclose necessary and sufficient information at the occasion of disclosure on a timely and consecutive basis had been sought.

(Current situation in Europe and the United States)

Rules on takeover defenses are different depending on each country in Europe[36] as U.K. prohibits takeover defensive measures, while countries in the Continent accept them. Though Takeover

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[34] Because timely disclosure period specified at each stock exchange is within 30 days, we assumed here that firms which consume more than 31 days from conducting timely disclosure to disclosing it in financial reports or operating report are firms with a hiatus on disclosure.

[35] It was described in the following sections of financial statements: “the situation of corporate governance”, “issues to be coped with”, “the status of equity warrants, etc.”, “risks of operation, etc.” and “the status of shares, etc.” Counterparts in operating reports are “important facts concerning company’s status arose after the accounting term” and “issues to be coped with”, etc.

[36] According to Freshfields Bruckhaus Deringer’s study, while countries like U.K. and Germany do not have specific regulation on disclosure of takeover defenses, on the other, in countries like France details of defensive measures in all the disclosure documents including expressing an opinion report are described, in countries like Netherlands stock exchanges impose disclosure obligations on listed firms.

Directive adopted in 2004 is not regulations specifically made to handle takeover defenses, it obliges disclosure of articles of incorporation, hence, disclosure of takeover defenses will be practically implemented in future.

On the other hand, in the United States, where there are no specific disclosure regulations exclusively targeting takeover defensive measures, however, certain rules of contents to be disclosed, means and timing, etc. concerning rights plan have been fixed through about 20 years' experiences.[37] Today in the United States, the introduction of rights plan is mostly considered to be an important matter, however, in effect, it seems that it is commonly regarded as a matter of no special importance. The following has been pointed out as reasons of the opinion: (i) companies not introduced rights plan at present can easily introduce it by a board meeting's resolution at any time, and even if not having issued rights plan, it does not mean the firm cannot utilize rights plan as means to defend a hostile takeover. This is well understood by the markets. (ii) Though there are minor differences between each of rights plans, core portions of the plans are mostly similar through 20 years'experiences.

In Japan also, the establishment of certain rules like those of Europe and the United States had been sought not to have an effect on investment decisions made by shareholders/investors and not to place a heavy burden to firms and shareholders.

(Efforts of the government and stock exchanges):

Considering the situation aforementioned, the government and stock exchanges which includes Tokyo Stock Exchange, Inc. began to study disclosure rules for takeover defenses as it ought to be. Tokyo Stock Exchange, in particular, obliged disclosure in the listing rule concerning takeover defense measures[38] which was executed on March 8, 2006. Further, the obligation of disclosure of takeover defenses on operating report was incorporated into Enforcement Regulations of the Corporate Law by the government. Like this, the formulation of relevant rules on takeover defensive measures is being made.

We would like to introduce the thoughts commonly seen in disclosure rules of such stock exchanges and Enforcement Regulations of the Corporate Law centering on the Discussion points of the Corporate Value Study Group.

3. The disclosure on takeover defensive measures in Japan as it ought to be

As mentioned above, devices to plainly disclose necessary and sufficient information on a timely and consecutive basis at the occasion of disclosure is required, and the Corporate Value Study Group has simplified the ideas about the basic points of disclosures of takeover defenses in the Discussion points:

(i) Main points such as purposes of introduction and contents should be disclosed.
(ii) The disclosure should be continued from the introduction to the abolishment.

Furthermore, the group straightened out the ideas concerning ideal disclosures satisfying two factors mentioned above from the three points of (1) subjects of disclosure, (2) items to be disclosed and (3) means, timing and continuity of disclosure.

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[37] Based on the report submitted by Sullivan & Cromwell LLP. See the data submitted to the 11th meeting of the Corporate Value Study Group

[38] "Listing Rule Revision with regard to the Adoption of Takeover Defense Measures" March 7, 2006 (http://www.tse.or.jp/guide/rule/taisho/060307_al.pdf)

(1) On objects of disclosure

Though material matters which may influence judgments of shareholders/investors are already obliged to be disclosed on financial reports, etc., the Points of discussion states also that important factors potentially influencing their judgments are required to be disclosed whether there is a purpose of takeover defenses or not. Accordingly, it states that in considering ideal disclosure on takeover defenses also, based on the basic principles on such information disclosure, adopting ideas which are consistent with them is appropriate.

If we agree with the aforementioned basic ideas on disclosure, as for the issuance of new stock or equity warrants aiming at takeover defenses at least, necessary and sufficient information should be timely and continuously disclosed in a plain matter based on (2) items to be disclosed, and (3) means, timing and continuity of disclosure.

Further, during discussions at the Corporate Value Study Group, someone pointed out that the presence or absence of a purpose of takeover defenses concerning increase of authorized capital and cross-shareholding, etc. also should be disclosed. However, we have straightened out our ideas that those policies just mentioned above of a firm which in essence aim at financing and business collaboration, and do not aim at making the acquisition difficult, are simply requested to be disclosed based on the aforementioned general principles of disclosure, and no further disclosure as defensive measures in addition to them is required. Considering the discussions at general shareholders meetings in 2005, etc., however, the group says about increase of authorized capital and cross-shareholding, etc., it naturally is desirable to give an enough explanation on the purposes based on business judgment for gaining assent and understanding from markets.

The group has summarized that measures to make an advanced warning on possible issue of new stocks and stock acquisition rights in an emergency (so-called a pre-warning type) and to make a conditional resolution at a board meeting (so-called a conditional-resolution type) are also included in objects for disclosure.

(2) About items to be disclosed

The Discussion points states that in disclosing takeover defenses, its purpose and the fixed specific contents should be disclosed so that shareholders/investors can properly judge to approve or reject it.

1) On purpose of introducing takeover defenses

The Discussion points states that takeover defenses shown in 1 should be introduced unsurprisingly for the purpose of securing or improving corporate value or eventually common interest of shareholders and that the reasons why firms judged the measures would maintain or improve the corporate value should be disclosed.

Matters to be disclosed would be, for example, what kind of takeovers are targeted (greenmailer, two-tiered takeover, etc.), what kind of effects are expected (saving time for collecting information and submitting an alternative plan, strengthening bargaining power, etc.), and what corporate value to be protected (value of shareholders and that of stakeholders, etc.)

2) On specific contents of takeover defensive measures

The Discussion points explains that as for the takeover defenses shown in 1, fixed terms for exercising and revoking and effect on an acquirer and shareholders should be disclosed.

Specifically, we think that exercisable percentage of shares, criterion to judge exercising or revoking the defenses, process of judgment such as objective requirements for revoking, check by an independent outside party and approval at a general shareholders' meeting, influence on buyer and shareholders such as degree of equity dilution, restriction and change of voting rights should be disclosed.

It has been pointed out that other matters such as efforts to enhance the corporate value including working on improvement of corporate governance, increase of dividends to shareholders and business strategies, and procedures taken when they are triggered should be disclosed. However, these endeavors have been summarized to be entrusted to a firm's voluntary efforts through investor relations taking into account the situation around the firm, etc.

(3) On disclosure means, timing and continuity

It is summarized in the Discussion points that takeover defenses shown in 1. should be promptly disclosed after the decision of the adoption, and should be continuously disclosed so that shareholders, investors and acquirer, etc. can check the defenses and the contents while they are being adopted. Therefore, it says that timely disclosure system of stock exchange should be utilized for timely disclosure purpose, and operating report of the Commercial Law and the Corporate Law utilized for continuous disclosure.

(On disclosure when the introduction is decided)

The Discussion points indicates that takeover defenses shown in 1. should be disclosed speedily after the decision of the adoption, and therefore the contents shown in (2) items to be disclosed should be disclosed utilizing timely disclosure system at stock exchange.

(On continuous disclosure)

It is summarized in the Discussion points that takeover defenses shown in 1. should be promptly disclosed after the decision of the adoption, and should be continuously disclosed so that shareholders, investors and acquirer, etc. can check the defenses and the contents while they are being adopted. It also says, therefore, that the defenses should be disclosed continuously using operating report which is required to be submitted every business year by Enforcement Regulations of the Corporate Law.

Meanwhile, the Discussion points has pointed out that a company which adopted takeover defenses by a resolution of a board directors meeting soon after a general meeting of shareholders is not required to legally disclose them until they are disclosed on operating report in next business year, and therefore, it is desired to carry out institutional reforms enabling the disclosure to be continued by extending timely disclosure period at stock exchange from the view of securing continuous disclosure. It also states that possible comprehensive information services about firms which introduced the defenses provided by stock exchanges, etc. for shareholders/investors to check whether such firms adopted takeover defenses or not are worth studying. Additionally, efforts have been made to perform a continuous disclosure as Tokyo Stock Exchange, Inc. has required

listed companies to disclose takeover defenses in the system of corporate governance report which was implemented in March 2006.

The Discussion points further pointed out that it is preferable that corporations strive to disclose brief announcement of financial statement, etc. utilizing such as their own internet home pages which are means widely available to access such information though it is not required by law.

The Discussion points, with regard to disclosure based on the Securities and Exchange Law such as financial statements, makes recommendations on further studying aiming at disclosing something concerning takeover defenses in adherence with the spirit of the institution, paying attention to the fact that if information described in financial statements, etc. concerning securities issued by a firm to have adopted disclosure system which is necessary for investors to judge pros and cons of the investment is provided to investors without causing misunderstanding and that the firm will still be assessed to a penalty in case of a misstatement, etc.

4. On the Corporate Law and disclosure regulations of stock exchanges

Moves toward clarifying rules are rapidly developing among relevant parties as regulations for disclosure have been established as we have seen so far since November 2005 when the Corporate Value Study Group published "Summary outline of Discussion points: Proposal toward establishment of rules for a fair business community". Below we would like to introduce disclosure regulations on Corporate Law and stock exchanges.

(On disclosure rules based on the Corporate Law)

Disclosure rules on takeover defense measures were required to appear in operating report by Enforcement Regulation of the Corporate Law promulgated on February 7, 2006. Therefore, those companies which adopt takeover defenses from here on are obliged to disclose the measures in its operating report to be submitted to a general shareholders meeting.

Article 127 of the Enforcement Regulations on the Corporate Law requires firms to disclose in the contents of the operating report specifically, (i) basic policies on takeover defenses, (ii) concrete contents of efforts to prevent unsuitable persons from gaining a controlling interest (the so-called takeover defensive measures) in light of the basic policies, and (iii) evaluation on the reasonableness of takeover defenses made by management and their opinions on it.

(On disclosure regulations at stock exchanges)

According to the Listing Rule Revision with regard to the Adoption of Takeover Defense Measures" executed in March 8, 2006, the issuance of new stocks or stock acquisition rights accompanied by adoption of takeover defenses or exercising of them requires disclosure regardless of issuing prices. Further, on such disclosure, the following matters are to be defined as disclosure items in "Guidebook for timely disclosure of corporate information", etc[39]. These include: purposes of takeover defenses, contents of the scheme (detail description of who are ultimately responsible for exercise and abolishment, etc. and the criteria for judgment are necessary, and also devices (for example, resolution of a general shareholders' meeting at the time of adoption, establishment of objective abolishment standards such as an all stock / all cash tender offer requires an abolishment, establishment of a committee where judgment of independent outside persons are valued, hearing opinions of independent experts, the status of regularly reviewing sunset clause, etc., requirements

[39] Kazuhiro Iida, Improvement of listing system concerning adoption of takeover defenses measures (Commercial Law No.1760) at 18

for selecting and dismissing directors and their term of office, etc.) to enhance the reasonableness of takeover defenses, procedures for adoption and schedule, procedures to be followed when an acquirer emerges and its effects to shareholders/investors.

It can be said that the necessity of disclosure stated in the Corporate Value Report and the Guidelines and the disclosure on takeover defenses as it ought to be explained in 3 are common principles of these disclosure rules.

Although the discussions on takeover defenses have just started in Japan, developing disclosure rules on such defensive measures will establish the base where necessary and enough information is timely and continuously disclosed in a plain manner. We expect that we can secure proper investment opportunities for shareholders/investors, and introduce takeover defenses enhancing the reasonableness through disclosure of defensive measures.

Section 2 Handling of takeover defensive measures at stock exchanges

In section 1, we have introduced the Corporate Value Study Group's Discussion points on "disclosure concerning takeover defenses measures", which is a remaining issue on takeover defense. In this section, we would like to introduce another issue on takeover defenses, "handling of the measures at stock exchanges".

1. Background information of the study and its necessity

Listing stock means having the liberty to trade stocks at stock exchange. Listing stocks is assumed to give the company merits such as keeping various financing methods and improving company name recognition. On the other, because unspecified number of shareholders participate in trading stocks, stock exchanges require companies wishing to be listed to satisfy certain standards (criteria for listing) and information disclosure on financial status, etc. (timely disclosure). If a company does not respect them, stock exchange ensures its effectiveness by letting them leave the stock exchange (delisting) eventually.

Since takeover defense measures may affect free trade of stocks of shareholders/investors, stock exchanges need to fix certain rules which are allowed from the point of investor protection. What such rules should be is extremely important because these rules serve as an effective screening in order to eliminate takeover defenses which even block an acquisition enhancing the corporate value.

While various types of infrastructure concerning takeover defensive measures were improving, domestic stock exchanges based on summary outline of Discussion points published by the Corporate Value Study Group released "Points of Consideration"[40], etc. from April 2005 to May 2005, in which it showed basic ideas on adoption of takeover defenses saying "it is necessary for terms of implementation, termination and maintenance of defenses to be prefixed and properly functioned" and "adoption of dead hand shareholder rights plan is not appropriate from the view of investor protection[41]", and suggested to consult with them in advance when introducing defenses.

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[40] Each stock exchange published points of consideration, etc. as below: "Items of consideration to protect investors at the adoption of takeover defense measures" published on April 21, 2005 by Tokyo Stock Exchange, Inc. and Jasdaq Securities Exchange, Inc. (the same title was used for other exchanges except Osaka Securities Exchange Co., Ltd.) Fukuoka Stock Exchange on April 25, "Points of consideration to protect investors at the adoption of takeover defense measures" Osaka Securities Exchange Co., Ltd. on April 28, Sapporo Securities Exchange on May 10. No publication from Nagoya Stock Exchange, Inc.

[41] Besides, the Points of consideration states that a scheme (excluding a case where stock acquisition rights are allotted to certain people tentatively at the time of adoption in order to allot them to shareholders as of implementation of the defenses in essence) where stock acquisition rights are allotted in advance to shareholders, etc. as of the adoption of the

The Points of consideration, etc. showed only basic concept on takeover defenses because future institutionalization of these points based on the governmental Guidelines had been projected. Ideas of more specific takeover defenses and handling of defenses which would be exercisable under the Corporate Law had been supposed to be decided later.

Considering the circumstances described above, the Corporate Value Study Group published the Discussion points in November 2005 for the purposes of clarifying that takeover defenses based on the Corporate Value Standard does not block the listing of firms which introduced them and interrupting adoption of takeover defenses which harm the corporate value. On the other, stock exchanges further studied handling of takeover defenses at the same time. Consequently, Tokyo Stock Exchange, Inc. implemented public comments[42] two times, one in November 2005 and the other in January 2006. Then it executed a partial revision[43] of "criteria for listing" in March 2006[44].

Below we would like to introduce the Discussion points of the Corporate Value Study Group and efforts to improve listing system at stock exchanges concerning handling of takeover defenses there, referring to how defensive measures are treated at foreign stock exchanges.

2. Handling of takeover defensive measures at stock exchanges in Europe and the United States

It can be said that roles toward takeover defensive measures at stock exchanges in Europe and the United States are generally restrictive.

In U.S., listing of shares such as golden shares and super voting stock which may unfairly spoil voting rights of existing shareholders are restricted. However, takeover defenses such as a rights plan which do not harm shareholders except purchaser are considered to be entrusted to state laws or judgments of court[45].

European stock exchanges have hardly any regulations for takeover defenses[46]. However, adoption of the defenses requires an approval of a general shareholders meeting in U.K. On the other hand, German Securities Law does not allow adoption of takeover defenses using rights plan or different classes of shares. These two countries have legal restrictions. In France, too, the introduction of defenses are basically regulated by the Corporate Law and general rules[47] of the financial market agency (AMF)[48].

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defenses from among the takeover defenses utilizing stock acquisition rights which are exercisable only when an acquirer emerges is not proper also from the point of shareholder protection.

[42] November 22, 2005 "Listing system: Revision and the adoption of takeover defense measures (Draft Outline), January 24, 2006 "Listing rule revision with regard to the adoption of takeover defense measures"

[43] See note 38

[44] Additionally, the public comment on "Listing system: Revision and adoption of takeover defense measures (Draft)" was independently announced at Osaka Securities Exchange Co., Ltd., Jasdaq Securities Exchange, Inc., Fukuoka Stock Exchange, Sapporo Securities Exchange, on February 21, February 22, March 20, March 29, respectively.

[45] Any regulation is not fixed concerning contents of rights plan at NYSE and NASDAQ, etc. Therefore, no regulation is imposed to rights plan, etc. of dead hand type.

[46] Rules concerning continuous period of super voting stock are established in listing rules of Euronext Paris.

[47] Including the principle of shareholder equality, fair competition among purchasers, transparency and principle of faith and trust, etc. All of authorization on issuance of shares, etc. at directors meeting is in principle suspended during the takeover. However, regular transactions which do not block takeover bids are, subject to approval of shareholders and observance to AMF rules, are allowed.

[48] In Europe, each country is studying the treatment of takeover defenses based on EU Takeover Directive which was established in 2004. We need to watch the future moves.

	U.S.			U.K.			Germany			France		
	Law	Stock Exchange	Status of Adoption	Law	Stock Exchange	Status of Adoption	Law	Stock Exchange	Status of Adoption	Law	Stock Exchange	Status of Adoption
Rights Plan	○	○	○ (Dell and Yahoo, and many others)	△ Legally possible, but regulated by City-Code	— No specific rule	× Approval of shareholders necessary to trigger	×	— No specific rule	×	△ No specific prohibition rule	○	× Difficult to trigger without approval of shareholders
Share with vetoing rights (Golden share, Priority share)	○	×	×	○ Share-holders' approval necessary	— No specific rule	○ (Rolls-Royce, Unilever, etc.)	×	— No specific rule	×	○ Approval of shareholders required, a high probability of regulation by AMF	○	○ (Michelin, etc.)
Share with Limited Voting Rights (Voting right ceiling, capped voting plan)	○	△ Cases of new listing, etc. are possible	△ REITS, etc.	○ Share-holders' approval necessary	— No specific rule	○ (Reuters, BAE Systems, etc.)	△ Existence by a special law	— No specific rule	○ (Lufthansa, Volks-wagen)	○	○	○ (Alcatel, Danone, etc.)
Super Voting Stocks (Multiple voting right, Super-voting stock, dual class stock)	○	△ Cases of new listing, etc. are possible	○ (Google, Viacom, etc.)	○ Share-holders' approval necessary	— No specific rule	○ (BP, etc.)	×	— No specific rule	×	○ Dual voting right to shares with tenure of two years and more	○ Restricting tenure for four years or less for dual voting right	○ (AXA, Christian Dior, etc.)

(Source): In March 2005 Published Document by ABI (Association of British Insurers), Sullivan & Cromwell LLP "Outline of the rules on shares with different voting rights of New York Stock Exchange" and Freshfields Bruckhaus Deringer "On the rules of takeover defense measures in Europe" (both of which were documents for the 11th meeting of the Corporate Value Study Group)

Figure 2-4 Handling of defensive measures in Europe and the United States and actual cases of adoption

3. The Discussion points of the Corporate Value Study Group and efforts concerning improving listing system of stock exchanges

(1) On basic ideas

The Discussion points of the Corporate Value Study Group published on November 10, 2005 clearly stated that handling of takeover defenses fundamentally should be entrusted to independence of listing rules of each stock exchange. This concept is incorporated into the idea that as long as rules on takeover defenses are in consistence with the governmental Guidelines, it is not necessary for each stock exchange to establish unified rules and it is also important to endeavor diversifying markets for the purpose of providing more options for shareholders/investors and corporations.

From this view point, it is also an idea to separate listed companies with a lot of general investors and newly listing companies and set different criteria exclusively for the latter. The Discussion points stated on this matter that "when newly listing companies introduce shares with multiple voting rights, etc., considering U.S. situation, each stock exchange may admit of such rights taking into the account the status of markets for start-ups for the purpose of expanding choices for shareholders/investors.

In this context, "Listing system revision and the adoption of takeover defense measures", (hereinafter called " Summary of listing system revision"), published in January 2006 by Tokyo Stock Exchange, Inc., explains that "the stock exchange will be very prudent to apply an exception of delisting criteria since the possibility of current general shareholders' interests being hurt is large in case of the issuance of different classes of stocks with vetoing rights by listed companies", thus showing the different handling between listed companies and newly listing companies[49].

(2) On consistency with the Corporate Value Standard

The Discussion points, after confirming that showing a proper way for a listed company should be the basic view point ensuring consistency with "the Corporate Value Standard" in considering how to handle takeover defenses at stock exchange, states that firms with the following measures may not be allowed to be listed:

○ Takeover defenses which have a strong possibility to deny even such a buyout offer as enhancing the corporate value or combined interests of shareholders

○ Takeover defenses of which enough disclosure was not made

○ Takeover defenses which cannot be abolished due to the holistic intention of shareholders

○ Takeover defenses having excessive defense effect toward an action of purchase (defenses without appropriateness)

In relation to this, Tokyo Stock Exchange has fixed four obligations to be esteemed at the introduction of takeover defenses by corporations in "Summary of listing system revision" and "Listing rule revision with regard to the adoption of takeover defense measures" (hereinafter called "Revised listing rule") published in March 2006, and it states that if these four obligations[50] are not observed by a firm, they call for attention of investors by announcing the fact. The four points mentioned here include that enough disclosure is necessary, terms for implementation and abolishment of them are not based on arbitrary judgment of management and that rights of shareholders are not to be constrained, showing the "Revised listing rule" and the Discussion points are the same in terms of the concept on this matter.

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[49] In the public comment publicized by Jasdaq Securities Exchange, Inc. on February 22, 2006, there was no reference to the difference between listed firms and listing firms.

[50] Four obligations are as follows:

(i) Sufficiency of disclosure (necessary and sufficient timely disclosure on takeover defenses should be conducted)

(ii) Transparency (terms to trigger and revoke takeover defenses are not depending on arbitrary judgment of management)

(iii) Effect to distribution markets (takeover defenses should not include such factors to destabilize significantly price formation of shares and to cause contingent damage to other investors)

(iv) Respect for right of shareholders (contents of takeover defenses should give consideration to contents of shareholders' right and the excising of it)

(3) On breaking takeover defenses into patterns

Takeover defenses with rights plan incorporating stock acquisition rights and different classes of shares with vetoing right have been introduced by some companies, and additionally takeover defenses with new devices such as shares with limited voting rights and different classes of share with terms to take all, etc. may be introduced in 2006 and later when the Corporate Law is put in force.

Effect of these takeover defenses can be controlled by the planning and operation. Therefore, pros and cons of the defenses should be judged individually and specifically, and should not be judged merely by legal style such as stock acquisition rights or different classes of shares.

The Discussion points, therefore, has made it clear paying attention to the view mentioned above that takeover defenses introduced based on the Corporate Value Standard do not constitute an obstacle to the listing of the firms which have introduced them, on the other hand, takeover defenses already adopted or having potential to be adopted by firms have been typified based on its essence for the purpose of preventing the adoption of the defenses which damage the corporate value. The handling of such measures at stock exchange as it out to be was deliberated one by one.

(4) Specific contents proposed

First, takeover defenses, etc. are divided into three prominent types as below in the Discussion points, and then specific examples are given to each of the type and it is further deliberated.

1) Takeover defenses which will not basically bring disadvantages to shareholders other than the acquirer

We can name as takeover defenses falling under this type, for instance, rights plan using stock acquisition rights, and the defenses utilizing different classes of shares with terms to take all and with limited voting rights. (However, some of the takeover defenses based on such legal forms may not be considered to belong to this type depending on the concrete making.)

On these, the Discussion points has defined that "if takeover defenses whose mechanism in principle do not give disadvantage to shareholders other than the acquirer are reasonable measures based on the Corporate Value Standard, listing of common stock of the adopting firm can be considered to be allowed." As a specific example, it shows two rights plans: one with stock acquisition rights and the other[51] using different classes of shares.

The Discussion points states that listing of common stock can be accepted in the two examples of rights plans on the conditions that the structure does not eliminate acquisition offers enhancing corporate value and that appropriate disclosure is carried out. It further states that the listing is allowed subject to making reasonable devices such as establishing terms enabling the firm to abolish the defenses by a resolution at a general

[51] Someone points out that "takeover defenses utilizing different classes of shares are not called rights plan", however, we would like to call it rights plan for convenience in this report paying attention to the similarity of both of the features.

shareholders meeting or a board of directors meeting, limiting the time during which the effectiveness continues, etc.[52]

The reasons to ask such devices are because there is a possibility of not satisfying the principle of shareholders' intention and the principle of securing necessity and reasonability shown in the governmental Guidelines caused by the difficulty of abolishing the defenses by the purchaser and shareholders even in such cases as change of combined intention of shareholders is observed due to the changes of managing conditions and the environment around firms in case these rights plans are not built[53] to block the implementation[54] even when majority of board members are replaced and in case requirements to make abolishment difficult are imposed by, for instance, elevating prerequisite for a resolution to dismiss directors by changing articles of incorporation.

In conjunction with these, Tokyo Stock Exchange stated in the Summary of listing system revision a certain time to judge the following is needed from the view of complying obligation to respect: (i) rights plans with stock acquisition rights, and those cannot be abolished by shareholders or those not passed through judgment of a fair and neutral committee, etc.[55] (ii) rights plans with different classes of shares which may seriously damage voting rights of listed shares or issuance of stock acquisition right[56].

During the discussions at the Corporate Value Study Group, there were some comments on the following points on rights plan: "rights plans depending on its design may have a possibility to have an excessive defense effect to give a serious damage to buyer's right to own property and nullify voting right completely, etc.," "different classes of stocks are not included in objects of representative stocks comprising index investing of Japan and foreign countries, and so if converted to different classes of stocks from common stock, institutional investors engaged in index investing may decrease the investment", "unless board of directors take actions such as to rebuke the plan when the buyout offer to improve the corporate value is made, then the arbitrariness of the board may be questioned, hence, they need to get a thorough understanding from markets." These points are shown in the Discussion points.

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[52] Considering that it is possible to completely eliminate voting right of the acquirer in compensation for giving shares without voting right or cash in case of rights plan with different classes of shares, it has added the term of " it is so constructed not to completely exclude an acquirer at a general shareholders meeting".

[53] Takeover defenses with dead-hand provision, no-hand provision, and slow-hand provision, etc.

[54] Such a scheme is defined in listing rules revision of Tokyo Stock Exchange as "the adoption of rights plans which cannot to be abolished or ceased to be triggered even after the replacement of the majority of directors are resolved at a general shareholders' meeting", and is an object of delisting.

[55] Accurately these include:

(i) Rights plans which have not incorporated methods to abolish or cease triggering by the integrated intention of shareholders (including those adopting ways to making it difficult to control majority of directors at one ordinary general meeting of shareholders)

(ii) Rights plans which are not designed to decide an implementation, etc. through judgments of a committee, etc. which can make a fair and neutral judgment, and terms of which to trigger and criteria for judgment are not specifically stated

(iii) Rights plans which still have a possibility of the implementation being revoked even after the implementation is decided and the shareholders to whom shares should be allotted have been already fixed, and that the possibility and the terms hereof are not referred to in timely disclosure document

[56] However, it is clearly mentioned that "if there is a special situation to elevate appropriateness of takeover defenses such as adopting through a resolution of a general shareholders meeting, consideration is given to this." Furthermore, it states that "even on other takeover defenses, it takes long hours to examine sufficiency of disclosure, etc., therefore, it is desirable in principle to have a enough margin to start a prior consultation about takeover defenses."

2) On adoption of takeover defenses which have a possibility to put shareholders other than the acquirer at a disadvantage

Appropriate takeover defenses for this type are, for example, defense measures using different classes of shares with vetoing rights and shares of multiple voting rights. (However, the measures adopting such a legal form may in some cases be considered to belong to other type depending on the specific making.)

The Discussion points explained about these points that "firms should be prudent to introduce takeover defenses which may harm shareholders other than the acquirer. However, if these are reasonable measures rested on the Corporate Value Standard and can be regarded as common interests of shareholders, listing of common stock of adopting company may be allowed" and it quoted stocks such as different classes of shares with vetoing right and multiple voting rights as examples[57].

In concrete examples, it mentions that takeover defenses such as different classes of shares with vetoing rights and shares with multiple voting rights which may cause disadvantage to shareholders other than the acquirer should be cautious about adopting, and further says that listing of common stock of adopting firms may be allowed on the conditions that these are not measures to have a scheme to eliminate a buyout offer enhancing corporate value and proper disclosures are implemented by firms. Preconditions for realizing the listing include reasonable devices such as defining clear terms for exercising, establishing provisions which nullifies the effect by a resolution of meeting of shareholders having common stock or a resolution of a board of directors, and set a limit on time during which the effect continues.

This is because, like rights plan, there is a possibility of not satisfying the principle of shareholders' intention and the principle of securing necessity and reasonability shown in the governmental Guidelines due to the difficulty to abolish them by the acquirer even when the mind of shareholders as a whole has changed, etc. caused by changes of corporate management and environment surrounding companies in cases such as the structure of the defenses cannot choose board members even when acquiring majority of listed common stocks, also it cannot block the implementation even by dissolving a majority of board of directors, and factors making deactivation difficult are imposed.

Concerning this, the revision of listing rules of Tokyo Stock Exchange states that from different classes of shares with vetoing rights, the issuance of the stocks which requires a resolution at class meeting on selecting or dismissing majority of directors and other important matters is regarded as the situation in which basic and crucial rights which listed stocks originally should have are significantly impaired, and unless the status is dissolved within six months the firm is delisted[58].[59]

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[57] The Discussion points states that in newly adopting different classes of shares with vetoing rights and shares with multiple voting rights it is required to implement proper measures rested on the Corporate Value Standard, in addition, to acquire a full understanding from the markets. Also, it asks to provide sufficient information to shareholders/investors on the reason why such different classes of shares have been selected instead of takeover defenses like rights plans which do not hurt the interests of shareholders other than the buyer.

[58] In the Discussion points also, it states that if takeover defenses which are not in conformity with the Corporate Value Standard and irrational are not abolished within a certain period, it is necessary to take measures to secure the effectiveness of the rules of handling at stock exchange including delisting.

[59] Also, it states that "adoption of rights plans in which subscription right of shares whose exercise price is remarkable lower than current price of share allotted beforehand to shareholders, etc. as of the time of the adoption" is regarded as delisting, too.

However, because this regulation is handled as an exception when it is less likely to infringe on the interests of shareholders and investors[60] the permission to be listed cannot be denied in such cases as measures to protect considerably investors are satisfied by implementing reasonable devices shown in the Discussion points.

In the Discussion points, on cases such as an important wholly owned subsidiary of listed holding company (parent company) issues different classes of shares with vetoing rights or shares with multiple voting rights to a friendly third party, etc., it states that because the existence of vetoing rights and multiple voting rights by the friendly third party, etc. may have a crucial effect on an acquisition of a parent company, an appropriate disclosure and aforementioned reasonable devices are requested. Tokyo Stock Exchange shows a similar idea on this point in the Summary revision of listing rules[61].

The Discussion points states that the ideas mentioned so far "are originally not applied to the case in which different classes of shares with vetoing rights are owned by the nation due to policy reason". Entrusting a certain voting rights to market and having investors hold them rather than the government holds them as a large shareholder is necessary from state policy because it is expected to invigorate the economy. In a example of INPEX Corporation[62], while different classes of shares with vetoing rights, etc. is issued to the government, on the other, common stock is distributed in market. Adoption of such a method may be an option.

In recent years in Europe and the United States, etc, there have been many M&A offers[63] to finance related companies and energy related firms from foreign corporations to which the administration, etc. of each nation have taken restrictive and protective measures.

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[60] What is accurately stated is "in light of company's business purposes, purposes of issuing different classes of shares with vetoing right, attribute of people to whom such shares are allotted, contents of rights and other terms, the cases this stock exchange acknowledges that chances of infringing the interests of shareholders and investor are low are excluded."

[61] The Revised summary of listing rules says that "in a case a subsidiary which is operating a main business of the listing company falling under the category of a holding company issues different classes of shares with vetoing rights or different classes of shares with selecting directors rights to a person other than the said listed company, and the issuance of the different classes of shares are regarded as measures to make the realization of a purchase of the said listed company difficult, too, the Stock Exchange regards that the different classes of shares with vetoing rights is issued by the said listed company in itself."

[62] In November 2004, INPEX Corporation was listed for the purposes of selling asset and strengthening governance discipline by market. On this occasion, for the purpose of precluding the possibility of short-time fund collection and management control by foreign capitals, etc., it issued a share with vetoing right. Later, in April 2005, when Japan National Oil Corporation was abolished, the share was succeeded to the Minister of Economy, Trade and Industry.

[63] Main instances compiled from newspapers were listed here:

January 2004 When Sanofi-Symthelabo (pharmacy) of France triggered a hostile takeover bid for Aventis, Novartis (Switzerland, pharmacy) declared bid for it as a white knight. The French government opposed the buyout offer of Novartis, and mediated the M&A between Sanofi and Aventis.

March 2005 When a Spanish bank and a Dutch bank respectively made a takeover bid to two banks in Italy, the president of the Bank of Italy rejected applications for expanding shareholding rate, and implemented such measures as to give preferential treatment to local financial institutions.

July 2005 At the buyout offer for US Unocal Corporation by China National Offshore Oil Corp.(CNOOC), the Congress passed a resolution of opposing the bid. The government deliberated the matter based on the Exon-Florio provisions of Omnibus Trade and Competitiveness Act of 1988.

February 2006 To the purchase offer for Endesa (Spain, energy) from E.ON (Germany, energy), Spanish Prime Minster expressed opposition.

March 2006 The Polish government opposed the merger between a subsidiary of an Italian bank and also a subsidiary of a German bank both of which located in Poland, and rejected to issue a license.

March 2006 Against the buyout offer for Suez (France, energy) of Enel (Italy, electricity), the French government planned a merger between Suez and GDF (Gas of France, France, gas).

Securing clear disclosure by introducing in advance such different classes of shares with vetoing rights at the privatization of state-owned firms is considered to be effective in enhancing foreseeability of shareholders/investors and acquirers also.

3) On other measures

In the Discussion points, considering, for example, that measures to have the potential also to make the realization of buyouts difficult such as increase of authorized capital and limitation on dismissal of board of directors except 1) and 2) are not necessarily adopted as takeover defenses, that items requiring the change of article of incorporation are disclosed accordingly, that combined intention of shareholders are reflected at the adoption, that important matters to make investment decisions are disclosed complying with disclosure principles, it states whether these measures should be judged as takeover defenses or not are entrusted to companies voluntarism and markets' observation and discipline rather than deciding rules in a single uniform way at the stock exchange[64].

4. Summary

Stock exchanges maintain a consistent basic stance of the necessity of prior consultation at the adoption of takeover defenses since the Points of consideration, etc. were published. Summary of listing system revision and revised listing rules have revealed partially types of takeover defenses to be consulted in advance.

It is considered that the rights plans, etc. adopted since 2005 are introduced through prior consultations with stock exchanges[65]. Takeover defenses to be able to be introduced due to the enforcement of the Corporate Law in future will require an earliest possible preliminary consultation and coordination with stock exchange.

On the other hand, the Points of discussion states that when stock exchange makes a judgment of pros and cons of takeover defenses, it is important for them to establish suitable rules for listed companies which are based on clear standards consistent with the Guidelines and court decisions including those to appear from now on and make a judgment without arbitrariness base on these rules. Consequently, future operation of stock exchange draws our attention.

In this Chapter, we have introduced remaining issues to establish fair takeover defenses. In the next Chapter, we would like to introduce fair rules as they ought to be at the time of acquisition from the view of the Corporate Value Study Group.

[64] Even if the measures shown in 1) and 2) are used also as purposes other than takeover defenses, it says that the judgment should be entrusted to companies' voluntarism and markets' observation and discipline.

[65] Eisai Co., Ltd. in February 2006 disclosed "Policy for Protection of the Company's Corporate Value and Common Interests of Shareholders", in which they stated that the details of the policy were decided in priorconsultation with the Tokyo Stock Exchange.

Chapter 3 What acquisition rules in Japan should be

We have described heretofore the ideas of the Corporate Value Study Group concerning takeover defenses including disclosure rules on defenses and handling of them at stock exchange. However, from the point of fair M&A rules, the establishment of transparent and fair rules for takeovers is also required.

In this chapter, we would like at first to point out the necessity to examine takeover rules and points of basic ideas and introduce the "Points of discussion on modalities for acquisition rules for the realization of Corporate Value Standard" which was publicized by the Corporate Value Study Group in December 2005 concerning ideal takeover rules from the point of realizing the Corporate Value Standard.

As a step to establish an ideal TOB system of takeover rules, bill for amending the institution concerning TOB, etc. (bill[66] for amending the Securities Exchange Law and other financial laws) was submitted to the Diet on March 13, 2006.

Section 1 The necessity to review what takeover rules should be

(Ideas on hostile takeovers and the defenses)

An acquisition is a method acquiring a controlling right of a targeted company by buy-in, etc. In purchasing a listed company, there are roughly two methods: to buy in shares through stock exchange and through TOB.

There are also two types of takeovers: a friendly takeover and a hostile takeover. It is needless to say in case of a friendly takeover, however, even if it is a hostile one, it may implement the management renovation to enhance the corporate value. Also, a concern on a hostile takeover has an effect to elevate management discipline. Therefore, a hostile acquisition should not be automatically denied[67].

On the other hand, it is true that some acquisitions may impair the corporate value. Whether a buyout plan enhances the corporate value or not should be, in general terms, judged by a comparison between a buyout offer of a buyer and operation policies of current management, or depending the case, by a comparison among the former two plus an offer of other acquirer. In case shareholders make a judgment to choose the best plan among these, if both a buyer and management are stimulated by takeover defenses and as a result, useful information is provided to shareholders to make a relative comparison, it would be possible to say that the defenses serve to realize the "Corporate Value Standard"[68].

(What is TOB?)

TOB is an act where an acquirer, clearly specifying terms such as buying price and number of shares to purchase, buys in shares of a targeted company out of the market from shareholders clearly specifying terms such as buying price and buying number of shares. TOB is regulated by the Securities Exchange Law[69]. Under the current Securities Exchange Law, an acquirer is

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66 Available at home page of Financial Services Agency (http://www/fsa/go.jp/common/diet/index.html)
67 See, the Corporate Value Report, chapter 2, section 2, at 30 and 31
68 See, the Corporate Value Report, chapter 2, section2, at 31-38
69 Chapter 2-2 of the Securities Exchange Law (Article 27-2 to Article 27-22-4)

required to disclose buying period, number of shares they plan to buy, and buying prices, etc. Buying period can be fixed subject to within 20 to 60 days at buyer's own discretion. Further, from the point of investor protection, withdrawal of TOB or changes of the buying terms are restricted to certain cases.

Initially, the acquisitions by TOB in Japan were very small in number, however, the utilizations of TOB are rapidly increasing in number recently[70].

(Current status of acquisitions and takeover defenses in Japan)

We would like to overview the current situation of acquisitions and takeover defenses in Japan. At first, concerning the move of takeover defensive measures, we have noticed that while traditional cross-shareholdings as a takeover are further dissolved, on the other hand, the infrastructure where takeover defenses similar to those of Europe and the United States can be used is established, and corporations introducing takeover defenses based on the Corporate Value Report and the Guidelines are actually appearing.

On the other, acquisitions seen in Japan so far were mostly friendly, and very few hostile takeovers happened here. Moreover, almost no hostile acquisition attempts succeeded, and someone points out that we are in an environment where a hostile takeover is difficult to be successfully realized. But the cases[71] TOB is also used for a hostile acquisition are gradually coming on the scene in recent years.

Change of situation surrounding acquisitions and takeover defenses in Japan of late is necessitating reviewing ideal acquisition rules as a whole from the point of realizing fair and transparent takeovers and defenses as of now.

Section 2 Points of basic ideas on takeover rules

In considering ideal takeover defenses, what are points of basic ideas? The Discussion points, after overviewing rules on takeovers and takeover defenses of countries in Europe and U.S., presented the points.

(Rules on takeovers and the defenses in European countries and the United States)

Rules on takeovers and the defenses in Western countries are diversified at one word[72].

In U.K., an obligation to bid buy-in to all the shareholders (an obligation to buy all stocks) is imposed when an acquirer plans to acquire 30% and more of voting rights of shares. The acquirer is required to submit corroboration for source of the money for the bid. We can say U.K. regulates coercive two-stage takeovers in initial stage like this. However, the rules are not based on laws, but on self-imposed codes (City Codes) of a private organization called Panel. On the other hand, takeover defenses can be adopted in terms of institution subject to approval at a general shareholders meeting, however, it is said that the adoption is actually difficult.

In Germany, the Takeover Law requires an acquirer of an obligation to buy all stocks. On the other, takeover defenses are possible to be adopted in certain cases such as they are approved by a

[70] The number of TOB in Japan were only several per annum up to the first half on 1990's, but started to increase since, and it reached 53 in 2005 (Surveyed Recof Corporation).

[71] For example, TOB from Steal Partners to Yushiro and Sotoh (2003 to 2004), TOB from Yumeshin Holding to Japan Engineering Consultants (2005), and TOB form Don Quijote to Origin Toshu (2006)

[72] See the Corporate Value Report chapter 3, section1

general meeting of shareholders or a meeting of auditors.

In continental nations such as France and countries in North Europe, they impose an obligation of buying all stocks to an acquirer. As for defenses, however, it seems many countries in these areas use different classes of shares such as shares with multiple voting rights based on an approval at a general meeting of shareholders.

In the United States[73], strict regulations of buyers like an obligation to buy all stocks seen in Europe are not implemented. However, defenses including rights plan can be adopted only subject to the decision of board of directors on the condition that directors' duty of loyalty is severely required. Further, some of U.S.. states laws impose restrictions on business joining whose shares have partially been already bought for several years (Business Joining Restrictions) and measures to submit a fair price (fair price regulation) also from the point of protecting minority shareholders.

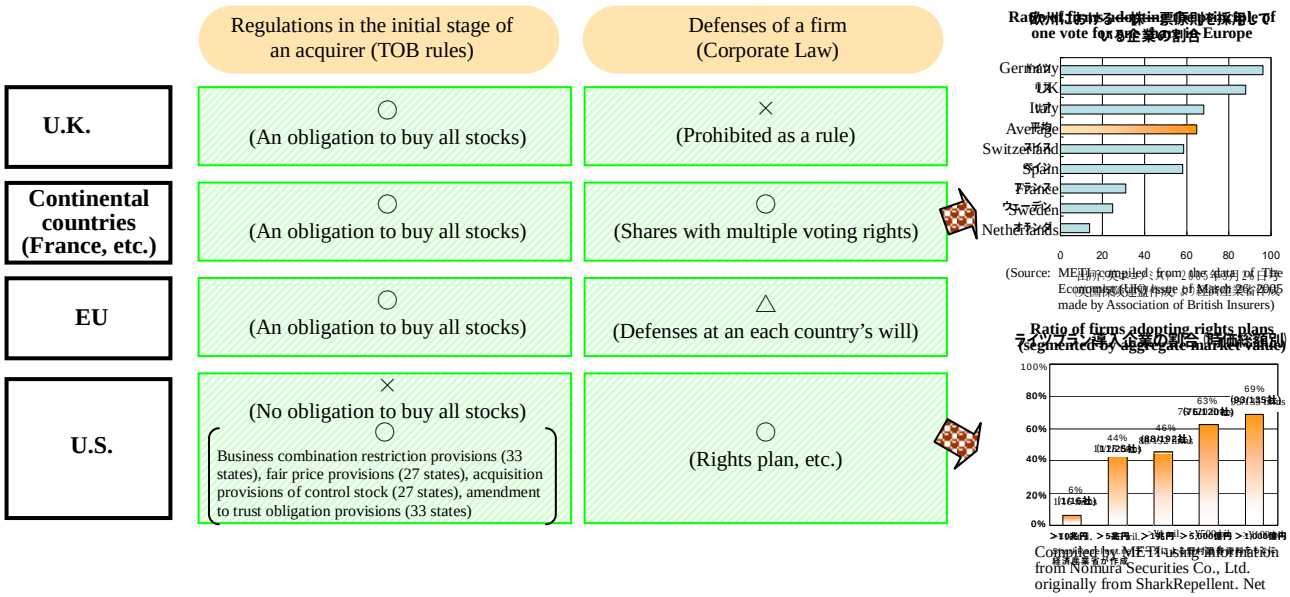

Figure 3-1 Rules regulating takeovers in countries in Western countries

(Points of basic ideas on ideal takeover rules)

As stated above, rules on acquisitions and takeover defenses differ with each country's circumstances. Judging from the information stated above, it would be possible to say that the primary pillar to support the points of the ideas is how to maintain a balance between an acquirer and a targeted company.

As stated in Chapter 1, unless significantly sufficient information is provided compared to ordinary commodities it is difficult to judge rightly pros and cons of the corporate value because an acquisition of a firm, particularly a hostile takeover bid, involve many interested parties, and economic and social loss caused by a wrong choice is large.

Therefore, the efforts to establish and realize practices and institutions which enable shareholders/investors to judge based on enough information (informed judgment) is the second pillar to become the point.

[73] See the Corporate Value Report chapter 3, section 2

In order to establish practices and institutions for shareholders/investors to utilize an informed judgment mentioned above, it is important for an acquirer and top management of a targeted company to provide sufficient information such as appropriateness of buying price, other acquisition offers and future management policies subject to maintaining a balance between an acquirer and a targeted company as mentioned earlier.

The Corporate Value Study Group discussed ideal acquisition rules such as TOB from the aforementioned two viewpoints; to secure a balance between buyer's corner and defender's corner, and to establish institutions and practices enabling shareholders/investors to implement an informed judgment, and pointed out not only those matters which should be institutionalized but also such items as to be solved by relevant parties on a voluntary basis in the Discussion points released in December 2005.

Below we would like to introduce specific contents proposed in the Discussion points.

Section 3 Specific proposals on ideal takeover rules

1. Securing a balance between an acquirer and a targeted company

(1) Withdrawal of TOB and change of terms

In the current TOB system, withdrawal of TOB is restricted[74] to such cases as a bankruptcy of a targeted company. Also, change of terms of purchase such as lowering buying price which disadvantage shareholders cannot to be permitted[75]. However, for instance, an acquirer may have a disadvantage due to the constraints when takeover defenses are triggered. In consequence, disruption of a balance between a buyer and a defender leads to a situation where even a buyout offer which enhances the corporate value of a targeted company may be blocked.

Therefore, the Discussion points pointed out that it is important to give consideration to the effect brought to shareholders/investors caused by withdrawal of TOB and change of terms, at the same time, to accept the withdrawal of TOB and change of terms only in certain cases like the targeted firm implements takeover defenses or it does not abolish them, and to maintain a balance between an acquirer and a firm which adopted takeover defenses in such manner.

In the aforementioned bill for amending the Securities Exchange Law and other financial laws that there are some proposals including a clause that if a tender offerer sets in advance conditions of lowering the buying price, etc. in case the targeted party executes stock splits, etc., lowering the buying price by the acquirer is allowed.

(2) Securing enough buy-in time for TOB

The period for TOB can currently be set within 20 days to 60 days at an acquirer's own discretion[76]. The Discussion points pointed out that ideal periods required during a hostile takeover for a targeted company, an acquirer and shareholders/investors are considered respectively as below:

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[74] Article 27-11 the Securities and Exchange Law

[75] Article 27-6 the Securities and Exchange Law

[76] Article 27-2 the Securities and Exchange Law. Specific periods are regulated by Article 8 of Enforcement Ordinance of Securities and Exchange Law.

(Period for a targeted company)

First, we would like to see a targeted company. If the targeted company has adopted takeover defenses, an acquirer negotiates with the targeted company asking for the abolishment or nullification of them. Therefore, it is possible to some degree for the targeted company to secure time to judge such matters as preparing an alternative plan or pros and cons of exercising of takeover defenses[77]. However, in cases of target companies which have not introduced takeover defenses, a purchaser may have few incentives to negotiate with the targeted company compared to companies which have adopted takeover defenses, hence, it may start TOB suddenly. So the target company has possibilities of failing to secure necessary time to review and judge pros and cons of a buyout offer and confirm intentions of shareholders by calling a shareholders' meeting. Accordingly, the Discussion points mentions that it is desirable to secure a certain period of time from the view of enhancing the corporate value.

(Period for an acquirer)

For an acquirer, it is desirable to use shorter time to acquire a company in terms of cost of the acquisition, etc. However, if a targeted company maintains takeover defenses and the acquirer brings it to a proxy contest at a general shareholders meeting to rebuke them, the combined effect of a proxy contest and buy-in done simultaneously may easier lead to the realization of the acquisition. The Discussion points says that it is preferable to secure a certain period for an acquisition in such a case.

(Period for shareholders/investors)

It is needless to say that the time required for a hostile takeover is important not only for an acquirer and a targeted company but also for shareholders/investors. The Discussion points states that it is necessary from the point of enabling shareholders/investors to implement an informed judgment to secure time so that they can study and make a judgment on the appropriateness, etc. of the buying price based on enough information provided by the acquirer and the targeted company.

Further, it points out that possible alternative proposals made by a targeted company or a buyout offer proposed by other acquirer is favorable for the interests of shareholders/investors from the view of accumulating information, and in that sense, it is desirable to secure a certain period of time from the point of enhancing the corporate value, too.

As just described, from the standpoints of a targeted company, an acquirer and shareholders/investors, an ideal period to be secured at the time of a hostile takeover can be said to be required from the points of enhancing the corporate value through securing a balance between a buyer and an acquirer and enabling shareholders/investors to exercise an informed judgment.

Unnecessary long period of a takeover bid may influence distribution markets and put shareholders/investors at unstable positions, therefore, this issue should be much respected in considering the ideal period of a takeover bid.

[77] Someone pointed out that even if a firm which adopted takeover defenses is to call for a general shareholders meeting to seek for a judgment on pros and cons of a buyout offer or the excising of the defenses in such a case, it is desirable in certain cases to secure a certain period of time because it takes some time to convene a general shareholders meeting.

From the viewpoint above mentioned, the Discussion points pointed out the following concrete thoughts on what period of a takeover bid should be as below.

1) On lower limit of buying period

The lower limit of buying period of a takeover bid is 20 days under the current institution. The Discussion points states that because it is difficult in actual business scenes for a targeted company or other buyers to secure necessary time to present other buyout offers to shareholders if they adopt 20 days, which reduces the chances of enough information given to shareholders/investors so that they can implement an informed judgment, it is desirable to secure a certain period by adding some to the current number of days.

Therefore, it says that the lower limit of buying period should be extended to some extent considering the effect to a friendly acquisition.

2) Securing a certain buying period by a targeted company

There is an opinion that a certain period of time should be secured without exception in a hostile takeover bid because a targeted company needs to review with discretion the validity of the buying offer and make a judgment hereof including an option to present an alternative proposal.

Concerning this opinion, the Discussion points states that in case of a target company which has not introduced takeover defenses, a purchaser may have few incentives to negotiate with the targeted company, and executives of the targeted firm may find it difficult to study and judge an appropriateness, etc. of the buying price of the acquisition or to secure time to ask interests of shareholders, hence, information on pros and cons of the buyout offer or an alternative proposal is not sufficiently provided to shareholders, etc., as a result, shareholders/investors may not implement an informed judgment, and in such a case, it is desirable to secure a certain period of time to enhance the corporate value.

Accordingly, with due considerations to the consistency with foreign countries and to the balance among firms adopted takeover defenses, actions such as extending a certain period depending on a targeted firm is desired for the purposes of exercising an informed judgment, etc. in cases such as a hostile takeover.

In the aforementioned bill for amending the Securities Exchange Law and other financial laws, the revisions of institution including the following are proposed: i) a targeted company can describe in its opinion report to the effect that they will request to extend the period for takeover bid in certain cases, and ii) in such a case, a tender offerer must extend the buying period to a period defined by cabinet order.

3) Extension of buying period by an acquirer

There are some opinions that when a firm which adopted takeover defenses maintains them, extension of buying period should be allowed in certain cases from the point of enhancing the corporate value by securing effectiveness of a proxy contest to seek for the abolishment.

The Discussion points replies on this opinion that if a proxy contest on the abolishment of the takeover defenses before an acquirer starts a takeover bid is necessary, it is not clear

for shareholders whether the acquisition is implemented later as is proposed and so the contest may not gain enough support, as a result, even an acquisition elevating the corporate value may not be realized.

It continues to say that in that sense if the targeted company, for instance, continues to maintain the takeover defenses, securing a certain period which simultaneously allows a proxy contest and a takeover bid leads to situations where a balance between the acquirer and the targeted firm is maintained and enough information on the abolition of the defenses is also given to shareholders from both sides, therefore, it is desirable from the view to enhance the corporate value.

On the other hand, the Discussion points pointed out that unnecessary long period of a takeover bid may influence distribution markets and put shareholders/investors at unstable positions, therefore, this point should be much cared.

Members at the Corporate Value Study Group discussed on this point and some of them said that while as long as the upper limit of buying period for a takeover bid stays at 60 days implementing a hostile acquisition is in reality substantially difficult, so the extension of the buying period should be carried out, on the other, some members said that the extension of TOB without end puts shareholders, etc. at an unstable position for a long time, consequently this is not proper.

Therefore, the Discussion points stated that since the number of the cases of the adoption of takeover defenses is now still a few, so the study should be continued after collecting information on cases of adopted takeover defenses and the real situation, etc. of takeover bids against firms which adopted takeover defenses.

(3) Elimination of coerciveness

It is necessary to avoid the situation where shareholders/investors are forced to make a judgment at the time of TOB to accept a takeover bid in order to avert a significant loss which they feel they may suffer later.

For instance, in case of partial takeovers whose purpose is to acquire most of the shares, if shareholders become a minority shareholder when the TOB becomes successful, those shareholders who did not accept the buy-in may have possibilities to significantly suffer losses due to the abolishment afterward, and ultimately are forced to accept the takeover bid. Like this, shareholders/investors may have to take unreasonable behaviors. As a result, the balance between the acquirer and the targeted company may be disrupted, and even an acquisition impairing the corporate value may be realized.

Consequently, the Discussion points states that in order to secure the balance between the acquirer and the targeted company and from the view of avoiding the situation where shareholders suffer a great loss due to delisting, etc., if the firm has to be delisted as a result of buy-in, it must be expressed clearly as such, and it is desirable that due consideration is given so that coerciveness effect will not force shareholders to accept the takeover bid for fear of suffering an unreasonable disadvantage afterward if they do not accept it at the time of TOB.

In the aforementioned bill for amending the Securities Exchange Law, etc., an idea to oblige takeover bidders to buy all of the applied shares, etc. if the ratio of shares, etc. held by the bidders, etc. exceeds that defined by cabinet order after the TOB has been proposed.

(On adoption across the board of obligation to buy all stocks and business combination restrictions)

On adopting an obligation to buy all stocks without exception by law, the Discussion points mentions from the view of a policy to give consideration to cause no coercive effect to shareholders that even a friendly takeover bid may be blocked subject to implementation of the institutional operation and that future generalization of takeover defenses may lead to imposing of severer acquisition regulations, and as a result the balance between an acquirer and the targeted corporation may be upset, therefore, utilization of these measures should be prudently examined.

About the opinions of using business combination regulations, the Discussion points states that if the Corporate Law takes effects, each company can take measures which can achieve a similar effect by tightening terms of the resolution required for a merger by, for instance, changing articles of incorporation[78] based on judgment of each firm at their own risk, therefore, it is not necessary to add a legal obligation in addition to this.

(4) Others (how to deal with MBO, etc.)

In cases such as management undertakes a management buyout[79] (MBO) or a parent company purchases more shares of a subsidiary under the strong influence of the controlling firm, top executives of the subsidiary may face a higher risk of conflict of interests compared to regular acquisitions. Of these, if executive management of the target can be identified with the buyer, there are such features as large asymmetricity of information, in addition to a problem of conflict of interests, and difficulty of exercising an informed judgment on the appropriateness of buying price, etc. for shareholders/investor.

The Discussion points states that in such cases in order for shareholders/investors to make a proper judgment of the appropriateness of buy-in price, etc., various measures should be taken. The measures include: to make further efforts to provide information hereof and receive assessment from specialists, to secure objectiveness of judgment processes utilizing such as check by third party and to secure a certain period so that other acquirer may propose an acquisition offer.

Further, in the Discussion points it says that if a firm is delisted by MBO, etc., it should be clearly stated that the company is to be delisted in order for shareholders to avoid suffering a great disadvantage caused by it, also consideration should be given so as not to cause a coercive effect by buying all stocks, etc.

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[78] Article 309-2 the Corporate Law

[79] MBO is a purchase of shares of a targeted company by current top executives of the company subject to staying in business. The types of MBO are diversified. In some cases managers of the target mainly lead it, but in other cases the acquisition itself is done by fund and top management shoulders a part of investment for it. MBO has been used so far as a tool of business revitalization. However, we have seen in recent years the growing numbers of cases where listed companies are using this for the purpose of facilitating faster and more flexible management from a mid- to long-term viewpoint without paying too much attention to short-term performance. If MBO like this, which is to be undertaken as a part of business judgment to secure a degree of freedom of management by top executives of the targeted company, successfully enhances the corporate value, we can say that it should be appraised. The numbers of cases of MBO are increasing, and there were 67 cases in 2005 (surveyed by Recof Corporation).

2. Establishment of situation enabling shareholders/investors to exercise an informed judgment

(1) Enriching information provided by an acquirer and a targeted company

It is a matter of course that information about the appropriateness on buying price and number of stocks to buy from both an acquirer and management of the target should be furnished in a well-balanced manner from the viewpoints of enabling shareholders/investors to exercise an informed judgment and enhancing the corporate value. Also, information on future management policies should be positively provided.

For that reason, the Discussion points suggests that facilitating measures to enable an acquire and the targeted company to timely and properly provide necessary information in a plain manner including enriching information provided from a purchaser, giving the buyer opportunities to ask questions and an obligation for the target to announce their opinion should be taken.

(Enriching information provided by an acquirer)

When an acquirer makes a tender offer, the information such as buying period, buying price and number of shares to be bought is supposed to be disclosed in a notification of tender offer, etc[80]. The Discussion points says that it is necessary to enrich information on future management policies in addition to information on the appropriateness of buying price and buying number of shares provided by an acquirer from the point of enhancing the corporate value through enabling shareholders/investors to exercise an informed judgment.

Further, the Discussion points states that in order to help shareholders/investors collect specific and enough information on the intention of the acquisition and future management policies from the purchaser, it is desirable for top executives of the target to secure opportunities to ask the acquirer questions.

An obligation to submit a reply to question report within a period fixed by cabinet order to a takeover bidder if questions to the party are described in an express opinion report is proposed in the aforementioned bill amending the Securities Exchange Law and other financial laws.

(Enriching provision of information by the targeted company)

From the viewpoints of enabling shareholders/investors to exercise an informed judgment and enhancing the corporate value, sufficient information such as reasons of for or against the buying offer or future management policies in case of opposing it from the targeted company is required to be provided not only from an acquirer but also from the targeted company.

Hitherto, whether the targeted company expresses an opinion on takeover bit or not is left for the will of the firm, and the submission of an expressing opinion report is obliged only in case they expressed their opinion[81]. However, the Discussion points states that provision of information should be enriched by, for instance, obliging the target to express their opinion also from the point of prompting the targeted company to provide information on the

[80] Chapter 27-3-1 (advertisement for commencement of takeover bid) of the Securities Exchange Law, Chapter 27-3-2 (notification of tender offer) of the same law, etc. Specific description items are regulated in Cabinet Office regulations concerning disclosure of takeover bid for stock certificates, etc. by those other than a company as an issuer.
[81] Chapter 27-10 of the Securities Exchange Law

condition that information should be positively furnished from the acquirer.

An obligation to submit an expressing opinion report by a target company within a period fixed by cabinet order from an advertisement for commencement of takeover bid is proposed in the aforementioned bill for amending the Securities Exchange Law, etc.,

(Enriching information supplement in case of a buy-in inside the market)

At present acquiring a large volume of shares in the market is not intended for application of takeover bid regulations. But there are voices pointing out furnishing information such as buying price, purpose and the number of shares to be purchased is not enough compared to TOB. The Discussion points says it is necessary to review how best to provide enough information to shareholders/investors from now on.

Further, in the Discussion points, it states that even when an acquirer purchases a bulk of shares in the market, too, obliging a takeover bid by law may lead to narrowing options of the purchaser. Therefore, it says it is not easy to judge whether the obligation is reasonable or not from the view of securing the balance between acquirer and the target.

(2) Enriching large shareholders related information supplement

When shareholders/investors make a judgment, moves of large shareholders have a large influence on it.

There is a system of large shareholders report on the disclosure of information on large shareholders. If a shareholder is turned out to hold shares of five percent or more, or afterward, the shares increase or decrease by one percentage point or more, the submission of a large shareholders report is required based on this within five business days[82]. For institutional investors, however, special rules are applied and they can submit a report covering one to three months at one time[83].

The Discussion points states that it is necessary to disclose the status of shares held promptly and accurately in principle from the point of establishing fair and transparent rules. From that view, it says ideal large shareholders report including shortening to some extent of the duration in the report of special rules should be studied.

When we review ideal special rules of report admitted to institutional investors in large shareholders report system, the Discussion points states that it is necessary to keep in mind that such rules should not disturb the flow of money to stock markets as well as to be in consistence with global rules and paying particular attention to the effect to investment behavior of institutional investors and administrative burden resulting from it.

System revisions where the frequency and period of submission of special rules in the large shareholders report is set within five business days to every standard date which is decided by cabinet order, etc. is proposed in the aforementioned bill for amending the Securities

[82] Chapter 27-23 of the Securities Exchange Law. Large shareholders report is also introduced in European countries and U.S. In U.S.A., for example, in cases (i) shares reach five percent or more, (ii) afterward, the shares increase or decrease by one percentage point or more, the submission of a large shareholders report is required within ten business days. In U.K., (i) shares reach three percent or more, (ii) afterward, the shares increase or decrease by one percentage point or more, the submission of the report is required within two business days. The special treatments for institutional investors are authorized in each of the countries.

[83] Chapter 27-26 of the Securities Exchange Law

Exchange Law, etc.

(3) Enriching provision of information on beneficial owners

At present, shareholders registered in the shareholders' list (formal shareholders) are mostly different from those who actually trade stocks or those who have instruction rights of exercising voting rights of the shares (beneficial owners). Hence, firms find it more and more difficult to determine who beneficial owners are by simply looking at the shareholders list.

In order for a company to take actions depending on the intentions of shareholders as a whole at the time of a takeover, especially, a hostile takeover, it can be said that it is highly necessary to know who has legitimate instructing rights in advance.

While companies are making efforts to accurately know the beneficial owners on a voluntary basis, on the other hand, institutional investors, etc. pay attention to their fiduciary responsibilities, and cater voluntarily to the requests of companies to provide information on beneficial owners, etc., the Discussion points states that these are desirable from the viewpoint of improving communications between shareholders and the company.

It further states that in addition to these voluntary efforts, the necessity of any measures to secure the effectiveness should be reviewed from the point of what kind of measures are desired in order for dialogue between companies and shareholders in general terms, not necessarily at the time of a hostile takeover bid, to be enriched. (Below, this will be studied in Chapter 4.)

Section 4 Summary

The Corporate Value Study Group made the specific proposals on ideal acquisition rules based on the following two ideas from the view of realizing the Corporate Value Standard: (i) maintaining a balance between the acquirer and the targeted company, (ii) a suitable situation enabling shareholders/investors to exercising an informed judgment should be established. This is because reducing the possibilities of completion of a takeover which may entrench the corporate value to be potentially arisen due to imperfect balance between the two parties at the time of takeover, and also furnishing enough information to shareholders/investors who actually make a judgment are required from the viewpoint of realizing the Corporate Value Standard.

As stated in Chapter 1, M&A including hostile takeover bids is predicted to be intensified in Japan in the future, therefore, rules on acquisitions described hitherto are expected to be formulated in order to realize the Corporate Value Standard.

From the view of establishing fair takeover defenses, we have so far told our ideas on what disclosure rules on the defenses and actions to be taken at stock exchanges should be and what rules applied to when takeovers are really made should be. However, in order to formulate fair M&A rules, practices of introducing takeover defenses after gaining understanding of shareholders are required to be established as a major premise of these rules

In the next chapter, we would like to introduce our ideas on what kind of measures are effective so that shareholders/investors and corporate management clarify each of the opinions and deepen mutual understanding at the adoption of takeover defenses, etc.

Chapter 4 Enriching dialogue between shareholders/investors and management

As described hitherto, legal infrastructure on hostile takeovers and takeover defenses is considered to have been formulated significantly. However, at the introduction of takeover defenses, etc., it is important to shareholders/investors to make a judgment based on sufficient information (informed judgment). It is considered that fair M&A rules more firmly based on the Corporate Value Standard is realized by securing it.

In this chapter, we would like to show some measures (measures to enrich dialogue between shareholders/investors and management) which seem to be effective for both of shareholders/investors and company executives to clearly deliver their intentions and ideas and deepen mutual understanding.

1. Background of review and its necessity

During the period of June 2005 when general shareholders meetings concentrated on, there emerged such firms which submitted a resolution of rights plan with stock acquisition rights, etc. to the meeting and amended articles of incorporation incorporating amendment of authorized capital for the sake of adopting takeover defenses and capability to flexibly decide a date for fixing shareholders, etc. But because the Guidelines were published in June just before general shareholders meetings were held in a concentrated manner, it is considered that the points shown in the Guidelines were not adequately reflected in all the measures adopted by such firms. Likewise, shareholders/investors seemed to have no clear criterion for those bills. Therefore, as we have seen several bills proposing increase of authorized capitol were rejected, voting rights were exercised in a different way observed in the past, which underscored the growing influence of shareholders.

Considering takeover defenses based more on the Corporate Value Report and the Guidelines than previous year to be introduced in 2006 and new takeover defenses can also be adopted due to the enforcement of the Corporate Law, it is anticipated that this tendency is developed more strongly, and more active discussions on takeover defenses, voting against proposals of company and positive proposals made by shareholders will be seen at general shareholders meetings.

Hence, when asking the intentions of shareholders on takeover defenses at a general shareholders meeting in future, it is considered to be necessary for shareholders/investors and management to fully discuss, understand, and then adopt them in order also to enhance the corporate value. Consequently, in order to realize the Corporate Value Standard of “acquisition enhancing the corporate value is realized, but that impairing it is not” on such occasions as adopting takeover defenses, it would be possible to say that securing opportunities in which the intensions of shareholders/investors are clearly stated to corporate executives and establishing the situation where the intentions of management are distinctly delivered to shareholders/investors after company managers fully understand the intentions of shareholders/investors are necessary.

Furthermore, it is considered to be important to make it clear in advance that shareholders/investors can choose a proposal to enhance common interests of shareholders and the corporate value after shareholders/investors collect enough information from both management and the acquirer at the time of takeover defenses triggered in order to gain an understanding of shareholders/investors of takeover defenses.

In this chapter, we would like to show, giving consideration to these points, the ideas of the Corporate Value Study Group on measures to enrich the dialogue between shareholders/investors and management at the time of introducing or triggering the takeover defenses from the following two viewpoints:

(i) Discussion points of the establishment of institutions on enriching dialogue
(ii) Discussion points of the expansion of choices to enrich dialogue

2. Discussion points of the improvement of institutions on enriching dialogue

It is important from the view of the Corporate Value Standard for corporate managers to secure opportunities and means to express clearly their own intentions such as reasons why takeover defenses are necessary to improve the corporate value and what kind of reasonable devices are incorporated in the contents of the defenses after company executives gain an understanding of shareholders/shareholders on takeover defenses. This is also considered to be important to induce judgments based on accurate understanding and assent of shareholders on the defenses at a general shareholders meeting.

An annual meeting of shareholders is an important occasion when management explains management policies and future views to shareholders once a year, and decides company's intentions based on consensus of shareholders. Consequently, striving to make the meeting an occasion where as many shareholders as possible can come, and make them understand and assent the necessity of the defenses after collecting enough information through dialogue with management to ask explicitly the intentions of shareholders at the meeting is considered important in order also to elevate the reasonableness of the takeover defenses.

It seems that management's efforts to confirm "beneficial owners" who actually exercise voting right, or further "real shareholders", who provide fund, and instruct beneficial owners on the exercise of the voting right, and dispersing dates of shareholders meetings by accelerating or staggering backward dates of general shareholders meetings are effective measures to realize the matters mentioned above.

These are matters to be judged by firms at their own will. However, even if firms are willing to cope with them voluntarily, some of them are difficult to be solved due to no exact clause available or only ambiguous comprehension available thereon. Hence, we would like to introduce the issues to enrich the dialogue between shareholders/investors and corporate matters which were discussed at the Corporate Value Study Group from among the measures described above.

(Identifying beneficial owners)

As stated in the previous chapter, companies make a register of shareholders to identify shareholders. But persons actually listed on the roster are those who care stock certificates. For instance, when investing agencies like institutional investors manage investment after having the stock certificates in trust banks' custody, the names of trust banks engaging in the custody job are recorded on the register list. Hence, companies cannot confirm who real shareholders (beneficial shareholders) are from the register of shareholders[84].

[84] In comparison with U.S.., Japanese firms can identify more easily individual shareholders by Article 31 of the "Law on Custody of Stock Certificates and Transfer" (Notice of Beneficial Owners). (In U.S., it is possible to confirm individual shareholders who gave their consent to disclosure of information.)

Investment institutions such as investment advisory companies and investment trusts out of beneficial owners usually receive dividends from shares which they invest and exercise the voting rights of them, however, in some cases they exercise the voting rights based on the instructions from capital investors, etc. such as pension funds. Companies cannot identify the instructors of the exercise of the voting rights (real shareholders) in such cases from the register of shareholders[85].

Explicit explanation by management given, at the time of explanation of important bills such as adoption of takeover defenses in an ordinary general meeting of shareholders, to beneficial owners who actually make a judgment of exercising the voting right about the necessity and contents of takeover defenses, management policies and company's ideal future image is considered an important facilitator for beneficial owners to exercise their voting rights after they collect accurate information and understand and satisfy with it. If American beneficial owners are found out to be occupying a share of 10% or more of the total shareholders in conducting a merger, etc. using stock-for-stock even a Japanese company has an obligation to report various matters to SEC. Hence, confirming beneficial owners is important from the view of dealing with foreign regulations, too.

At present, there is a legal system of a large shareholders report[86] stipulated on the Securities and Exchange Law as means to confirm beneficial owners, etc. Additionally, corporations carry out a shareholder identification which is not required by law in order to know detail shareholders composition. However, someone points out that formation of a law may be necessary to secure the effectiveness for the survey currently conducted on a voluntary basis. Particularly, when a firm take actions based on the total intentions of shareholders facing a hostile takeover, it is highly necessary to confirm beneficial owners and real shareholders and positively provide enough information to them.

Concerning this, there is a system based on Article 212[87], etc. of the Companies Acts of 1985 in U.K. which partially[88] allows to disclose beneficial owners or real shareholders. If management assumes that there exists shareholder(s) who substantially owns the company, it is possible to confirm from them the ratio, etc.[89] of shares the shareholders hold[90] [91]. In the United States, every

[85] We observed cases where some companies could confirm neither beneficial owners nor real shareholders, and they were forced to make bills in a situation where they could not sufficiently use institutional supports to submit bills reflecting the comprehensive intentions of shareholders to a general shareholders meeting, and at a result, bills to amend articles of incorporation were rejected. There are opinions that there results were arising not from the result of serious discussions between shareholders and the company, but rather from the fact that firms did not have effective means to reasonably estimate the comprehensive intentions of shareholders and depended only on available information at that time.

[86] Article 27-23 the Securities and Exchange Law

[87] If a firm knows a registered shareholder on stock ledger or a shareholder held the stock for the past three years, and there is a rational reason to believe the person holds the stock, the firm may ask the stockholder in writing to bring the fact of holding stocks into open (Article 212).

[88] It is possible to send a notice to shareholders other than shareholders of British nationality. But replying to it is not required, and is not subject to punishment.

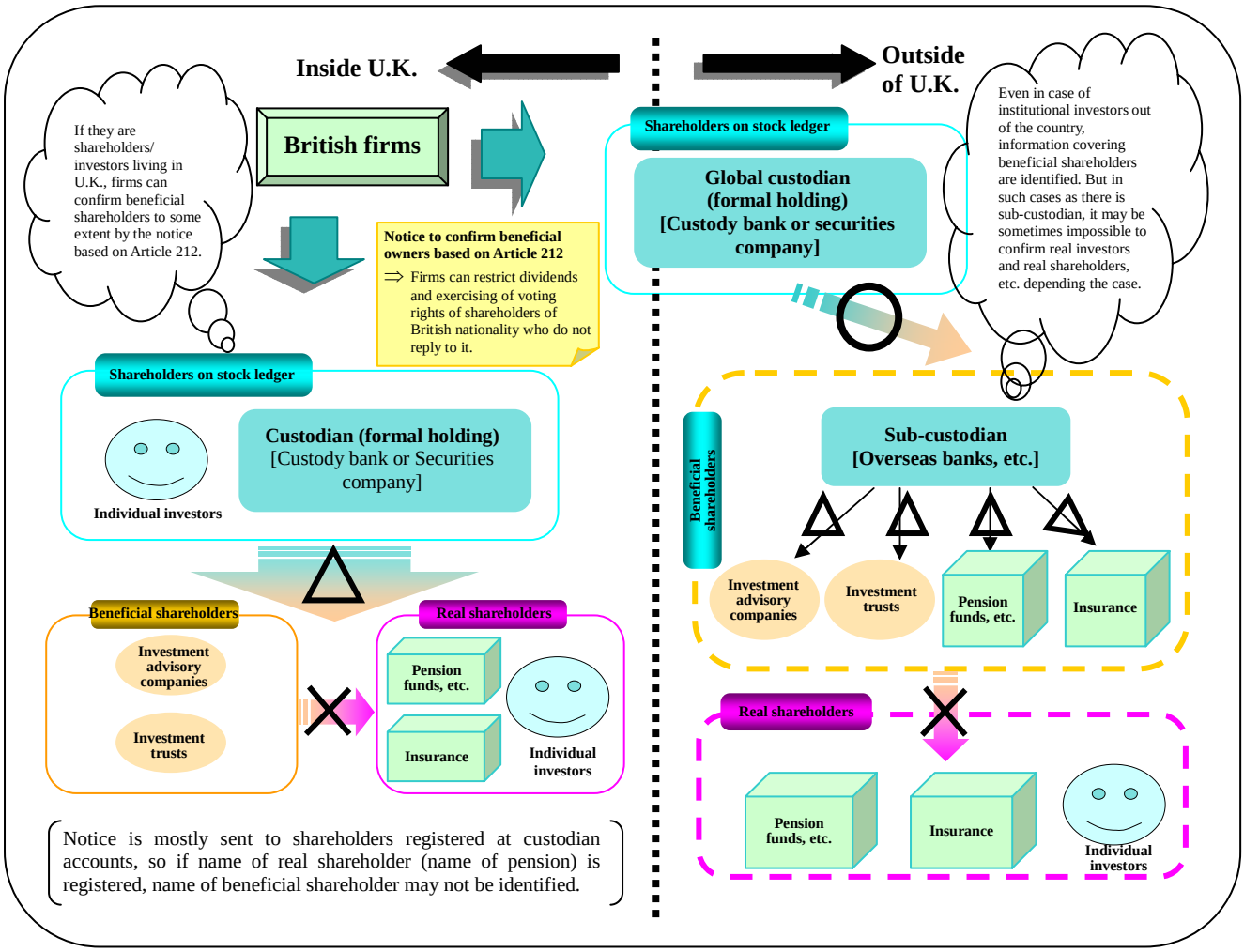
[89] It is possible to confirm the information on whether they hold the stocks or not, status of holding the stocks from three years before up to the present, status of holding the stocks in the past and to whom it was sold, and co-owner of the stocks (Article 212).

[90] A shareholder who received the notice must provide the information on the shares he/she owns, and if the shareholder does not comply with the notice, a court may impose the restriction on the exercise of voting right and payment of dividend arising from the shares, etc. (Article 216).

[91] But the Article 212 obliges a firm which acquired the information on beneficial owners to make a stock ledger based on the received information, and to make it available for everyone's inspection (Article 215, 219). Further, a shareholder having shares of 10% or more can request an investigation based on the Article 212 and the firm must accept this. Therefore, it is possible for a hostile acquirer to utilize this and identify beneficial shareholders, etc. (Article 214).

investment institution[92] having an aggregate fair market value of $100 million during the past 12 months based on Rule 13F of the Securities Exchange Act of 1934 is required to disclose stock brands they hold on a quarterly basis[93], and the information is in a public filing (Form 13F) and it is used to identify beneficial shareholders.

Because there are opinions that requesting shareholders/investors, etc. excessively to provide information on beneficial shareholders may influence their investment behaviors, we should be prudent to do so. On the other hand, firms honestly wishing to have dialogue with shareholders/investors have an opinion that the systems to support their wishes are not sufficiently built. Thus, it is considered necessary to review the formation of these issues including the point of enriching dialogue between shareholders/investors and top managers of corporations[94].



(Source: compiled by METI from various data)

Figure 4-1 Image of identifying beneficial owners based on Article 212 of the British Companies Acts 1985

[92] Investment institutions in the United States are covered by the regulations, and other countries' institutions do not have the obligation to make a report. But institutions registered at SEC due to activities such as selling investment trusts in U.S. must abide by the rules.

[93] Within 45 days after the last day of March, June, September and December, the status of holding stocks (name of stock, the number of shares held, etc.) based on a quarterly basis must be submitted.

[94] In the discussions at the Corporate Value Study Group, someone pointed out that it may be possible to add a regulation on incorporation of articles demanding a certain controlling shareholder, etc. found by the submission of a large shareholders report to disclose the name appeared on stock ledger.

(Time of year when an annual meeting of stockholders is held)

In Japan there are many companies whose financial year ending in March, and 80% of annual meetings of stockholders is focused on June[95]. Furthermore, the meetings are focused[96] on certain days of the latter half of June, hence, shareholders/investors are practically not able to attend all of the shareholders meeting. On the other hand, referring to general shareholders meeting in Europe and U.S.A., it is required to hold it within 13 months and 15 months from the last meeting in U.S.A and U.K., respectively. As for Germany and France, it is required to hold it within eight months and six months from the end of business year, respectively. They can choose a date to hold the meeting from a relatively long period. In reality, a date for a meeting of shareholders is chosen from four to five months after the closing month. (See Figure 4-2)

In case shareholders wish to attend the general shareholders meeting to make a judgment when a firm is adopting takeover defenses, if multiple companies hold general shareholders meetings during the almost same hours of the same day, shareholders can confirm the proposals of only one company, hence there is a possibility they would have to oppose proposals of other companies without exception. Therefore, it would be possible to say that to deconcentrate months and days of general shareholders meetings as much as possible is desirable.

Decentralization of annual meetings of stockholders is a choice to enabling firms to enrich dialogue with shareholders/investors, however, it is naturally a matter the firm should make a judgment at their own discretion. The methods in deconcentrating the dates of general shareholders meetings are to schedule the meetings before the concentrated month and dates or set them after the concentrated month and dates. But there is an opinion that "under the current law, a firm closing the books in March is virtually required to hold a general shareholders meeting within three months after book closing, in other words, in the middle of or late June, hence, the deconcentration is difficult." Thus, it is considered important to clarify whether the decentralization is possible or not under the current system.

Because accounting documents and annexed specifications have had to be submitted to a board of auditors and an accounting auditor by eight weeks before the date of the general shareholders meeting[97] so far, it has been difficult practically to set the date earlier than three months. However, this regulation is abolished upon the enforcement of the Corporate Law, so it is considered easier to set the annual meeting earlier than before from the view of the system[98].

As for setting a general shareholders meeting at a later date, the effectiveness of the standard date is defined by the Corporate Law only as within three months[99]. Hence, it is considered possible to fix the meeting's date to a later date by first amending the article of corporation[100] to enable board of directors to decide on the dividends, and then devising measures to set the standard date for the voting right to a later date than the closing date, etc.

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[95] July 2002 - June 2003 2,044 firms of 2,542 firms (80%)
July 2003 - June 2004 2,039 firms of 2,532 firms (81%)
July 2004 - June 2005 2,050 firms on 2,575 firms (80%) (Quarterly Commercial Law 1749th issue White Paper on General Shareholders Meetings (Commercial Law 2005) (Hereinafter, it is called the "White Paper") at 11

[96] In June 2005, the number of firms which held the general shareholders meeting in June was 2,050, and 1,273 firms (62%) of total 2,050 held it on June29, and next, 262 firms (13%) on June 28, and 226 firms (11%) on June 24.

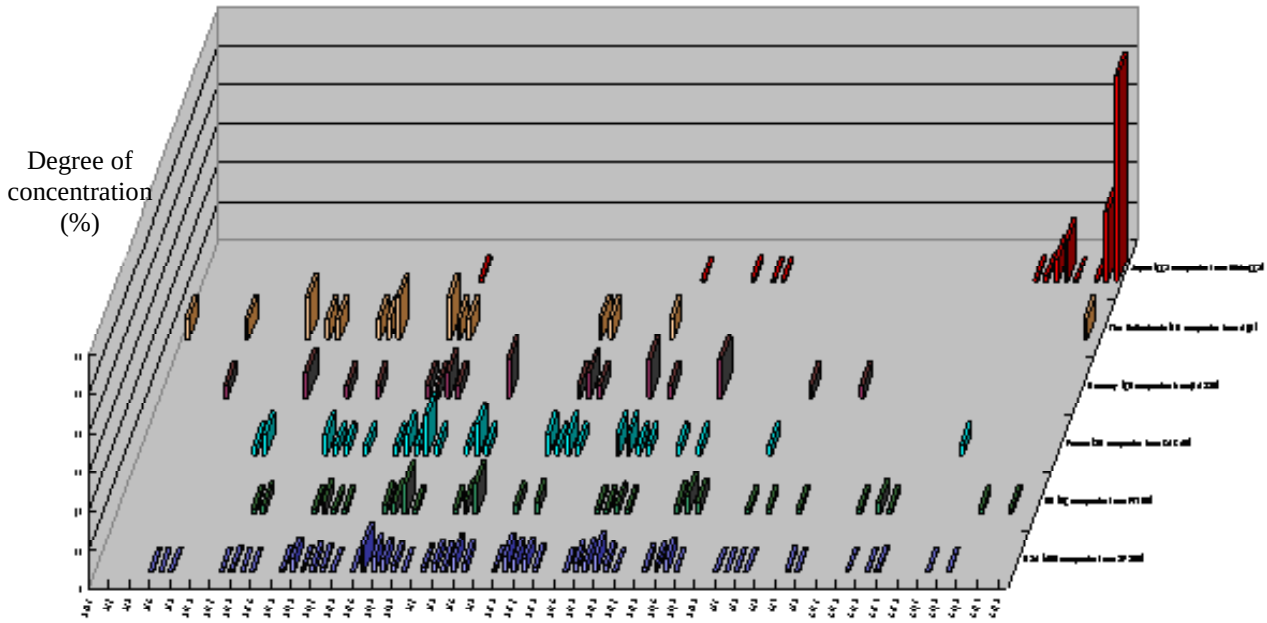
[97] Article 12-1 the Commercial Law Exception Rules

[98] However, there is an opinion that even if laws allow a firm to hold a shareholders meeting within three months, considering the volume of works such as finalizing account settlements and audit, it is practically difficult to schedule the meeting much earlier than it is currently set.

[99] Article 224-3-2 the Commercial Law, Article 124-2 Corporate Law

[100] Article 459 the Corporate Law

However, setting a general shareholders meeting to a later occasion has several challenges such as issues caused by the wide gap between directors' tenure of office and fiscal term, difficulty of explanation to shareholders if the meeting is held at a different time while other firms in the same trade hold the meetings in the same timing[101], and issues arising from submitting timing of financial statements. Incidentally, accelerating the deconcentration is also attained by amending the month of book closing. Though this is an issue solely judged by a company at their own discretion in accordance with their features, it is considered necessary to review from the view of expanding firms' options.



(Source: Data of Japan Investor Relation and Investor Support, Inc. (documents for the 16th meeting of the Corporate Value Study Group)

Figure 4-2 Degree of Concentration of Dates for General Shareholders Meetings in Each Country

(Securing the effectiveness of a proxy contest)

In Japan, the adoption of rights plan utilizing subscription right has become possible, and after the enforcement of the Corporate Law takeover defenses employing various different class of shares will be possible to be adopted. Hereby, an acquirer, in order to get a controlling right of a company whose management does not give the nod to the takeover, will after all conduct a proxy contest at a general shareholders meeting to ask for the abolishment of the takeover defenses, therefore, the intensions of shareholders will furthermore come to the front.

On a proxy contest, there are regulations about representative exercise of voting right or solicitation proxy in the Securities Exchange Law[102]. There are not many cases where an acquirer actually prepares a proxy, delivers it and collects it[103]. Rather, general procedures for a proxy contest are

[101] Someone pointed out that some foreign investors have opinions that the concentration of shareholders meetings is effective and convenient for them to exercise voting rights during the limited period.
[102] Article 36-2 cabinet order of the Securities Exchange Law
[103] Though the situation is different, the proxy contest conducted by MAC to Tokio Style in 2002 can be said to have used the method. Besides, there is a case where a shareholder of Tokyokoki Seizosho Ltd. held in person an

first conducting a shareholder proposal[104], and the proposal is resolved at the result of the votes conducted as a matter of resolution of exercising of the voting right document which the company delivers[105] [106] [107].

Recently we are seeing cases where even a shareholder's proposal is not conducted, voting against company's proposal is expressed, and approval for this are called on through investor relations activities and briefings[108].

When firms adopt takeover defenses in future and ask the intentions of shareholders on the defenses, the cases which do not use proxy solicitation or shareholders proposals may increase. In Japan, actions asking for vote against it without collecting proxy and actions of the company to ask for approval as competition with the opposite camp's behaviors are not deemed exercising of voting right, therefore, the treatment of it is not specifically defined. It is pointed out that because information is not provided fairly to shareholders/investors in a case of without proxy solicitation and also in a case where an acquirer and the target promote shareholders/investors to exercise the voting right after shareholders made proposals, it poses a problem for judgment of exercising the voting right.

Therefore, it is necessary to study a system in which shareholders/investors can collect information on an acquirer and the target company in a fair manner at the time of a proxy contest of these types[109].

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extraordinary general meeting for board members. (The bill was approved.)

[104] The number of companies when shareholders' right to make a proposal was used in general shareholders meetings held from July 2004 to June 2005 was 21. (White Paper at 15)

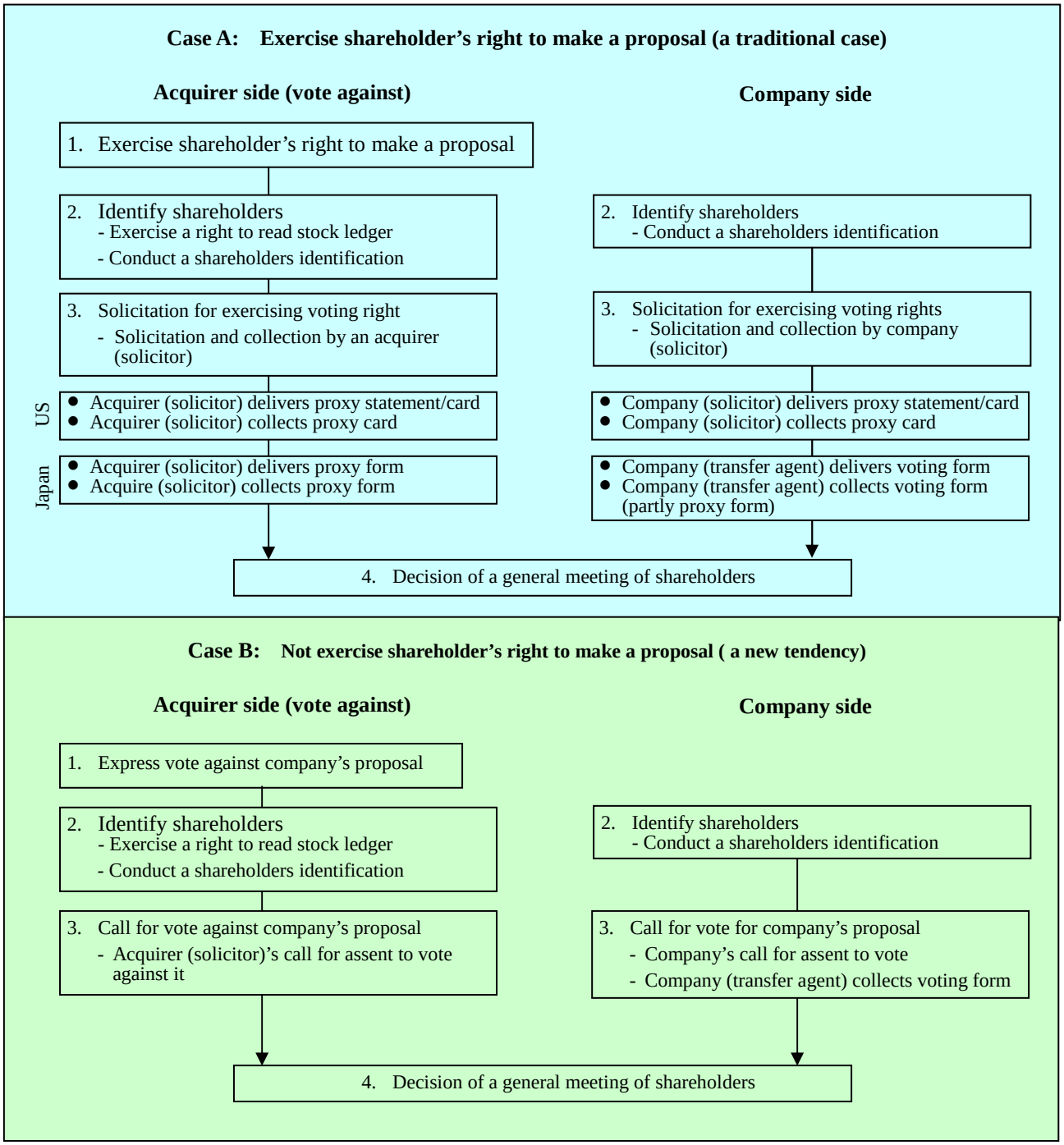
[105] In US, because proposals of shareholders are merely an advice in the legal sense and in many cases a company can exclude the proposals, an acquirer and the target company use agencies which engage in solicitation of exercising voting right. Hence, such proposals are mainly resolved by each of notice of convening and voting outcome.

[106] It would be possible to say that the proxy contest to Miyairi Valve Mfg. Co., Ltd. conducted by investment group such as Matsuka Co. (currently Banners) in 2004 used this measure.

[107] The ratio of Japanese companies which use a proxy system is approximately five percent, and the rest adopts voting paper. (White Paper at 62)

[108] Though the situation is different, it is possible to say that the activities against business merger between Sankyo Co., Ltd. and Daiichi Pharmaceutical Co., Ltd. taken by MAC in 2005 belong to this method.

[109] In the United States, conducts defined as solicitation proxy are interpreted as a comprehensive behavior to request to acquire a proxy, therefore, it is required to submit documents to be used including news releases and briefing papers for shareholders to SEC at the stage of soliciting vote for opposition without utilizing proxy form. Hence, these documents are provided for public reading (Article 14a-12 Rules of Stock Exchange).



(Source: Data from IR Japan, Inc. Data for the 16th meeting of the Corporate Value Study Group)

Figure 4-3 Process of proxy contest in Japan

(On notice, etc. of beneficial owners[110])

When a general meeting of shareholders on the implementation of takeover defenses is held[111] in such situations as a buying offer clearly hurts the corporate value at a hostile takeover and the exercise of the defenses is proper from the view of the Corporate Value Standard also or when

[110] The beneficial owners described here are those of defined in "Law on Custody of Stock Certificates and Transfer".

[111] Atsuko Koda, Kennichiro Suzuki, Natsuko Watanabe "Types of takeover defense measures to be judged at a general meeting of shareholders -tentative drafts of fair takeover defenses for shareholders, target company and acquirer-" (Commercial Law, 1752nd issue, 2005) see at 33

takeover defenses using stock subscription rights are actually triggered, identifying shareholders promptly is considered important not only for the targeted company, but also the shareholders/investors to secure their own rights.

When a corporation tries to fix beneficial owners at present, the firm fixes them primarily through a notice of beneficial owners sent from a custody and change-over organization based on the Law on Custody and Change-Over of Stocks, etc[112]. In this case, the timings of fixing are limited to several instances defined by law[113]. For example, for setting a standard date for allotting stock acquisition right to shareholders or holding an extraordinary general meeting of shareholders on the exercising of takeover defenses using different classes of shares, it is considered possible to receive a notice of beneficial owners since it is possible to set a standard date.

However, unless it is possible to receive a notice of beneficial owners or to hold an extraordinary general meeting of shareholders for the purpose of confirming the intentions of shareholders/investors about proposals from firms and shareholders on items which are not described on the Corporate Law and articles of incorporation such as the adoption and implementation of takeover defenses that do not require amendment of articles of incorporation, or unless interpretation on legality, etc. of resolutions gotten in this way or the system hereof is clarified, it is difficult to hold an extraordinary general meeting of shareholders in such a situation.

With relation to this, the Guidelines of the government states that acquiring a hortative resolution or a proclamatory resolution by which pros and cons of a bill is decided by the majority of the total voting rights at a general meeting of shareholders to satisfy the principle of shareholders' intention at the adoption of takeover defenses is allowed[114] as part of autonomous control by shareholders[115]. Clarifying the possibilities of making a similar interpretation in case of a hostile takeover also and arguing the rights and wrongs of the institution which enables these actions are considered meaningful.

3. Discussion points on the expansion of options to enrich dialogue

As mentioned above, issues which are rooted in investor relations and corporate governance of firms including the deconcentration of the dates of general meetings of shareholders are essentially items to be judged by corporations of their own initiative. Hence, pointing the way to these issues may restrict free economic activities of companies, and should be handled prudently.

But the introduction by a firm of reasonable takeover defenses based on the Corporate Value Standard are rejected for the adoption before shareholders/investors understand them or shareholders/investors approve abusive takeover defenses which are not satisfying the Corporate Value Standard without fully understanding the defenses in future, the possibilities of lowering the corporate value as a result cannot be denied.

In order to avoid such a situation, shareholders/investors must make a judgment based on the sufficient and accurate information through dialogue with tope executives of a corporation.

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[112] Article 31 of the Law on Custody and Change-Over of Stocks, etc.

[113] (i) when the firm fixes the standard date (ii) each of the effective dates for consolidated take-over, absorptive split and exchange of stocks; each of the dates to be approved of reverse stock split, merger by incorporating a new company, transfer of a detached business to a new company and transfer of stocks (iii) when six months have passed since the first day of the business year (excluding a case in which the standard date for interim dividend is fixed)

[114] "Ensuring and/or increasing corporate value and stakeholder profits: takeover defense guidelines" dated on May 27, 2005 Ministry of Economy, Trade and Industry/Ministry of Justice at 6

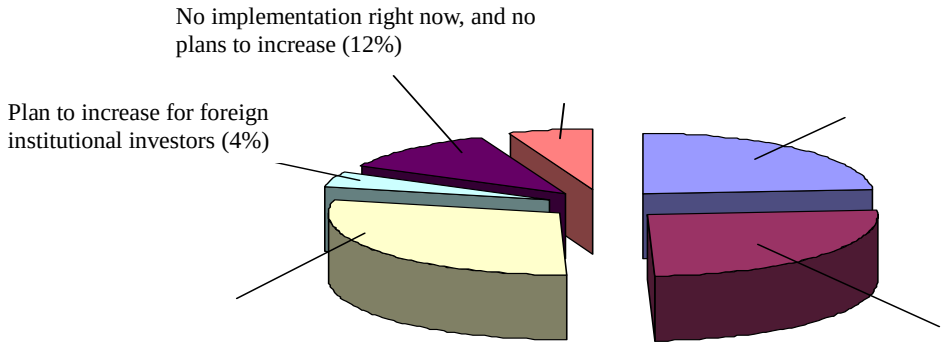
[115] The takeover defenses adopted by Moshi Moshi Hotline, Inc., CAC Corporation and The Torigoe Co., Ltd., in June 2005, February 2006 and February 2006, respectively, fell under this category.

In this section, we would like to introduce the measures to enrich dialogue between shareholders/investors and management at the adoption of takeover defenses which was pointed out by the Corporate Value Study Group from the view of expanding options for a firm.

(Pervasion of takeover defenses by investor relations, etc.)

As stated in Chapter 2, shareholders/investors will be able to easily acquire information through operation report or timely disclosure due to the enforcement of the Corporate Law and amendment of timely disclosure rules of stock exchanges from now on.

According to a survey conducted by the Ministry of Economy, Trade and industry in 2005, over 80% of Japanese companies are trying to show a positive approach to investor relations, and 20% of which think they have already engaged in sufficient investor relations[116].



(Source: Surveyed by Ministry of Economy, Trade and Industry in September 2005)
(Data submitted to the 10th meeting of the Corporate Value Study Group)

Figure 4-4 State of implementation of investor relations by Japanese companies

However, part of the shareholders/investors have comments that the description items on the notice of convening a general meeting of shareholders are lacking in disclosure of information[117], and some of them request[118] to disclose information which is not required by law, too[119].

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[116] White Paper on General Meetings of Shareholders revealed that 69% of companies have already conducted investor relations and 13% wish to carry it out, and so over 80% of companies take a positive attitude. (White Paper at 50)

[117] Japan Securities Investment Advisers Association, a corporate juridical person, made public in August 2005 the "Status of exercising on instructions of exercising voting right, etc. concerning discretionary investment contracts". This survey revealed that 49 firms (69%) of 72 firms surveyed replied that the content described in the notice of convening a meeting of shareholders sent from stocks issuing firms are not enough. Ten firms (14%) of these surveyed replied that disclosure of information about takeover defenses and increase of authorized capital was not sufficient.

[118] See "Efforts toward establishing infrastructure concerning exercise of voting right of shareholders" which was submitted in February 2005 to Tokyo Stock Exchange, Osaka Stock Exchange and Jasdaq Securities Exchange from Japan Securities Investment Advisers Association, a corporate juridical person, and Pension Fund Association. (Reference data for 16th meeting of the Corporate Value Study Group)

[119] Dialogue which institutional investors want to enrich most is well-balanced visions of a company such as growth strategies and policies on returning to shareholders of a firm. There are comments that if shareholders/investors and top management of a firm can share such visions, adoption of takeover defenses may be allowed.

Therefore, it is considered to be an option for firms to achieve an understanding of shareholders/investors not only by disclosing necessary information based on laws and regulations but also by disclosing positively purposes of takeover defenses and contents together with management renovation policies, etc. through disclosing utilizing routinely investor relations and the Internet websites[120].

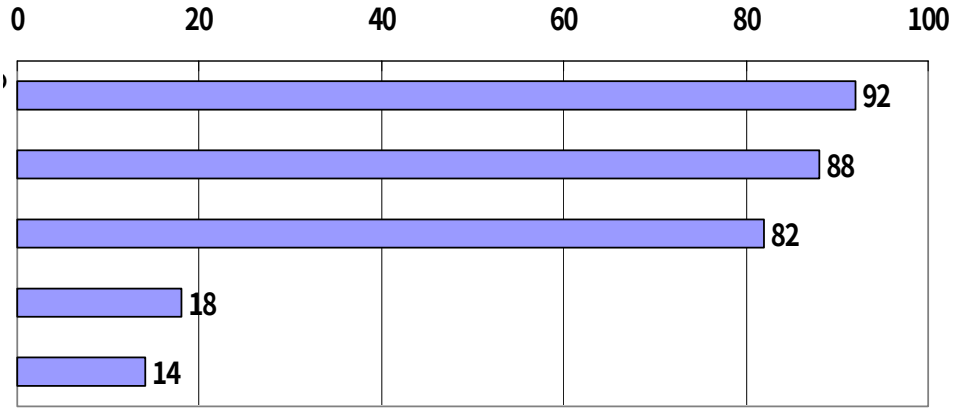

Figure 4-5 Points of a general meeting of shareholders to be improved based on opinions of institutional investors in Japan

In recent years, the growing number of corporations regard a general meeting of shareholders a part of investor relations[121], adopt a system under which they can appeal to eyes[122] of participants using various electronics devices such as personal computers and videotapes for public relations and holding informal gathering[123] for shareholders before or after the meeting. As for takeover defenses, there are methods also under which a company explains them positively and plainly by using personal computers, etc. at the venue of a general meeting of shareholders and they hold a prior briefing for shareholders. In this way they try to gain an understanding of shareholders/ investors.

In this case, those companies assuming their primary shareholders to be individual investors have options to hold the meeting not on weekdays but on Saturday or Sunday, or else on national holidays[124], etc., and in addition, set the meeting during convenient hours as much as possible for shareholders to attend in order to promote exercising voting rights of individual shareholders[125].

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[120] A questionnaire conducted by METI revealed that over 90% of institutional investors request firms to disclose sufficient information on measures for a general meeting of shareholders, etc. and make an explanation of them.

[121] More than 30% of the firms regard a general meeting of shareholders as part of investor relations and utilize it accordingly, according to the actual data coveting from July 2004 to June 2005. (White Paper at 51)

[122] Over 50% of firms adopt a system so that they can appeal to eyes of persons present using various electronics devices in a general meeting of shareholders according to the actual data covering from July 2004 to June 2005. (White Paper at 53)

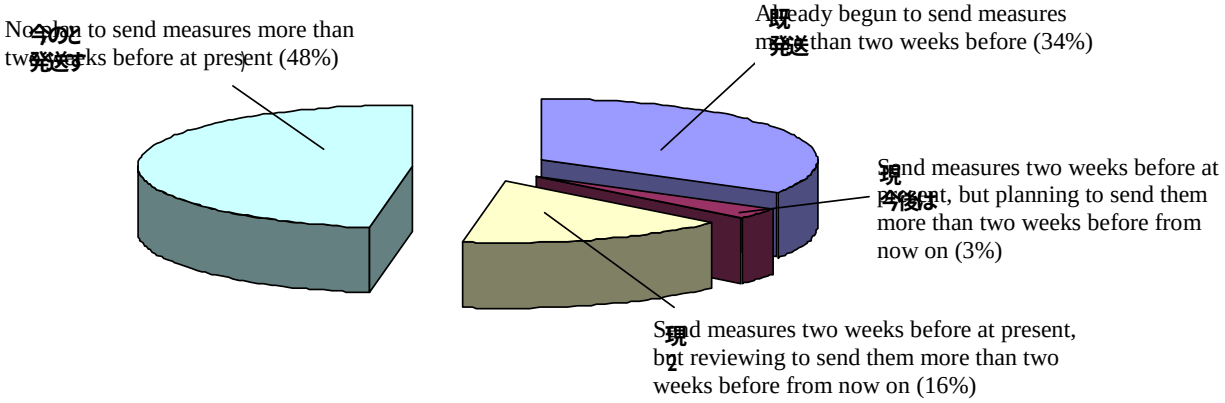
[123] The data from July 2004 to June 2005 reveals that the rate of firms which feel positive to hold an informal gathering for shareholders is about a quarter to all. (White Paper at 51)

[124] About two percent of the firms held a general meeting of shareholders on Saturday and Sunday according to the real data covering from July 2004 to June 2005. (White Paper at 22-23)

[125] See, Kazufumi Shibata "Various Aspects around General Meetings of Shareholders and Hostile Takeover Defenses - reading the 2005 version of the White Paper of General Meetings of Shareholders" (Commercial Law, the 1753rd issue, 2005) at 4-5

(Earlier delivery of a notice of convening an ordinary general meeting of shareholders)

According to a survey conducted by the Ministry of Economy, Trade and Industry in 2005, a majority of firms whose ordinary general meeting of shareholders was held in June 2005 replied that they sent a notice of convening the meeting more than two weeks before the date of the general meetings. Over 60% of institutional investors also replied that they received the notice two weeks before it. Hence, it can be considered to have already shown an improvement to some extent from the view of realizing an early delivery of the notice[126].



(Source: Surveyed by the Ministry of Economy, Trade and Industry in September 2005)
(Data for the 10th meeting of the Corporate Value Study Group)

Figure 4-6 Dates of sending a notice of convening a general meeting of shareholders by Japanese corporations

In Japan, a notice of convening a general meeting of shareholders is defined to be sent till 14 days[127] before the meeting[128]. If a company sends the notice within a time limit required by law, the net period allowed for a person who holds the voting right to deliberate and reply to it after actually receiving the notice of convening the meeting is only two to three days because this person may receive it only several days before the meeting in case the note is sent through a trust bank or other institution. Longer days are necessary for the notice to be reached foreign investors, so the time to deliberate it is further shortened. Therefore, there are possibilities for firms that rights and wrongs of bills on takeover defenses, etc. are judged superficially because it is difficult for shareholders to make an analysis of the bills and review them, hence, entrenching the effective and smooth exercising of voting rights.

Though in many cases important measures such as takeover defenses can be checked at an early date through timely disclosure system of stock exchange and websites of corporations, shareholders/investors have an opinion that the final decision are made after they read the note of convening a general meeting of shareholders. Hence, sending the notice of convening a general meeting of shareholders as early as possible is considered to be an option to gain an understanding

[126] On the other hand, some made a few comments in a questionnaire to institutional investors that it is not possible to say that there is a substantial improvement because nearly half of the firms received a notice of convening the meeting within 19 days of the event.

[127] Article 232 the Commercial Law, Article 299 the Corporate Law

[128] As for the date of sending a notice of convening a general meeting of shareholders, it is fixed to be sent till more than 10 days before and within 60 days of the date of the general meeting (but till 30 days before is applied to a proxy solicitation) in the United States. While sending a notice till 21 days before is required in U.K. (a case including an extraordinary resolution), on the other, it is till 30 days before for Germany and France.

of shareholders/investors[129].

(Send a notice of convening a general shareholders meeting which is written in a foreign language)

Because stock holding ratio of foreigners in Japanese companies is already approaching 25%[130], voting rights of foreign shareholders has occupied an important place in general meetings of shareholders[131]. Hence, a notice of convening a general meeting of shareholders which is sent to shareholders in advance is considered to play an important role in gaining an understanding of foreign shareholders/investors, however, the ratio of Japanese companies which send a notice of convening written in foreign languages is still about eight percent[132].

There are some comments that foreign shareholders/investors make investment in Japanese firms in many cases knowing that the firms do not send a notice of convening using foreign languages and that translations done by Japanese firms may have problems on its accuracy. Though, therefore, it is not necessary to prepare a foreign language version of the notice of convening without exception, making the notice written in such languages as English in accordance with composition of shareholders may be an option for foreign shareholders/investors to fully understand the purposes and contents of takeover defenses in advance and facilitate the exercising their voting rights after understanding and accepting them. A notice of convening in foreign languages, if it is made, may be considered to be handled as documents for shareholders on an arbitrary basis.

(Promoting exercise of voting rights[133] by electromagnetic methods)

It is expected that exercising of voting rights by electromagnetic methods increases opportunities for many shareholders to exercise their voting rights and boosts the rate of exercising them for corporations as well. Therefore, the methods are considered to play a role in confirming intensions of more shareholders on adoption of takeover defenses, etc. Further, as the burden of sending written documents will be lessened from medium- and long- term standpoint, it is considered to be linked to cost reduction of a firm[134].

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[129] According to a questionnaire conducted by the Ministry of Economy, Trade and Industry, almost 90% of institutional investors hope an early mailing of a notice of convening a general meeting of shareholders. Also, 70% of respondents think that the notice of convening should be arrived earlier than till 14 days before which is fixed by law.

[130] The real figure for 2004 stood at 23.7%. ("On the Results of the Survey of the Status Research of Stocks Distribution for fiscal 2004". Stock Exchanges nationwide. In June 2005 at 7)

[131] Considering the government's stance on investment promotion to Japan, there are possibilities that the ratio of stock holding of foreigners is increasing more and more. (The Yomiuri Shimbun, March 19, 2006, morning edition, 1st page)

[132] The survey covering July 2004 to June 2005 revealed that the companies which made an English notice of convening and sent it stood at 7.8%. (White Paper at 98)

[133] Article 301-2 of the Corporate Law has enabled a firm to do without sending written document for those shareholders who have given the assent to a notice of convening sent by electronic methods.

[134] In U.S.A., the SEC proposed new rules concerning electronic distribution of a notice of convening a general meeting of shareholders in November 2005. The proposed rules makes it possible for a firm to send electronically a notice of convening and an annual report which are to be delivered at the time of a general meeting of shareholders. While the electrical method as a supplemental means so far will become main rules, on the other hand, sending paper document will be collateral method instead. If the proposed rules are enacted, it is regarded as a cost cutting factor worth several hundred million dollars per year. The proposals have a significant meaning to companies as well because the cost burden of the dissenting shareholders will be substantially reduced as the proposed electrical method is also allowed to be used for such shareholders when they back up their own candidates for board members and trigger a proxy contest.

However, at present, only about 20%[135] of Japanese companies have introduced the methods because the response of shareholders/investors is not encouraging to the introduction of the electromagnetic methods at this time, and there are concerns, for example, that if a shareholder who has assented to U.S. of exercising of electromagnetic methods submits abusive requests and notifications, etc. to the firm utilizing such methods, the firm cannot reject them.

The introduction of exercising of voting rights by electromagnetic methods itself is regarded as an option which a company can select from such viewpoints as satisfying information disclosure and accountability, accelerating exercising of voting rights, firm's grasping the situation of exercising voting rights[136]. It can be said also that using positively electromagnetic methods in a rational way is one of the methods to enrich dialogue between shareholders/investor and corporate managers.

(Divided resolution of bills to amend articles of incorporation)

If a bill to amend articles of incorporation on adoption of takeover defenses is included in other multiple amendments proposals in the lump, shareholders may have to oppose all of the amendments of articles of incorporations though they oppose to a bill to adopt takeover defenses only. This result is disappointing for both shareholders and firms.

When takeover defensive measures are introduced forward, in order to confirm intentions of shareholders and also to lessen the influence of the bill to amend articles of incorporation on other amendments as much as possible, the realization of such ideas as each of the amended part is proposed one by one[137] or a bill on takeover defenses is exclusively proposed is a measure for management to understand the thoughts of shareholders/investors from the viewpoint of the Corporate Value Standard.

(Fixing and announcing early a date for a general meeting of shareholders and others)

Law requires that a shareholder's proposal by a shareholder must be exercised till eight weeks before the date of a general meeting of shareholders[138]. As for the date and time of the meeting, shareholders do not learn it in most cases until they receive a notice of convening the meeting which a company mails till two weeks before the meeting. Hence, it is necessary for shareholders/investors to make a proposal well in advance[139] to be in time for it even if the meeting this year is found to be set at an earlier date than previous year assuming a probable date for this year considering the dates of recent years. Therefore, there are some comments from shareholders/investors, for instance, that the time limit for exercising a shareholder's proposal should be changed to till less than eight weeks before the general meeting of shareholders[140].

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[135] The survey covering the results between July 2004 and June 2005 revealed that 18% of firms adopted the exercising of voting rights by electronic methods or will adopt it from the next annual meeting of shareholders. (White Paper at 120)

[136] Investor Communications Japan Inc.(ICJ), a joint venture established by Tokyo Stock Exchange, Inc., Japan Securities Dealers Association and Automatic Data Processing, Inc. (ADP, a U.S. data processing firms), is operating a web-based voting platform for voting rights at general meetings of shareholders for institutional investors. The exercising of voting rights is prompted by this. 97 corporations have joined it as of March 29, 2006. See their website at http://www.icj-co.com/

[137] Tokio Style Co., Ltd. divided a bill to amend articles of incorporation into four, and incorporated a function in it to be able to ballot for or against each of the divided part (a quarter) in the general meeting of shareholders of 2003. (It is counted as one bill.)

[138] Article 232-2 the Commercial Law, Article 303-2 the Corporate Law

[139] See Kenjiro Egashira "Corporation/Company with Limited Liability 4th edition" (Yuhikaku, 2005) at 294

[140] See Tsuyoshi Maruki, Kenya Takizawa, Takashi Asano "Fair Rules to General Meetings of Shareholders" (Monthly Legal Work 103, 2002) at 48

On the other, there are several opinions about stockholder proposals in Japan such as, "Compared with stockholder proposals in Europe and U.S. which do not have legal binding force, relevant rules for shareholder proposals already have been well established in Japan,"[141] "there are also some stockholder proposals which stick to shareholders' own perspective rather than the point of enhancing the corporate value, and so making a stockholder proposal easier may lead to an increase of abusive proposals", and "the time limit of exercising a shareholder's proposal was amended from six weeks to eight weeks[142] in 2005 in order to save enough time to accomplish the procedures in the real business situation, and actual conditions may not allow us to shorten the period to exercise the right."

Because a shareholder's proposal in itself is a means to positively show intentions of shareholders, and it is important from the view of delivering ideas on takeover defenses of shareholders/investors to top management of a corporation, fixing a date for a general meeting of shareholders and announcing it at an early date by a firm and/or shortening the time to exercise a shareholder's proposal and easing requirements[143] for shareholder's right of proposal at the general meeting by articles of incorporation is considered to be an option[144].

[141] Systems and real situations on shareholder's proposal in each country are as follows:
U.S.: Companies to which shareholders make a proposal are limited to listed companies, or companies whose number of shareholders is 500 and above and total assets is $5 million and above. Shareholder's right of proposal at the general meeting is given to a shareholder who has continuously held one percent of the voting rights or fair market value of $2,000 and above for a year, but one proposal is given to one shareholder. If it is more than 120 days before of the mailing date of a notice of convening a meeting, a shareholder can request that the proposal is inserted in the note. (But a firm can eliminate proposals which are related to the selection of board members and directly conflict the firm's proposals, etc.) Resolutions of shareholder proposals do not have legal binding force. Shareholders' proposals are generally proposed by individual shareholders. Institutional investors usually try to solve the problems through direct dialogue with the firm. The number of shareholders' proposal submitted to firms was 776 in 2004, and ballots were actually cast in general meetings of shareholders in 414 cases out of 776. (Surveyed by Georgeson Shareholder)
U.K.: Institutional investors put emphasis on a solution by prior discussions. Resolution of shareholder proposal do not have legal binding force, therefore, the number of proposals is very small. There were only four cases in 2001 to 2002, and two cases in 2002 to 2003. (Surveyed by Manifest Information Service)
France: It is very rare. However, activists who exercise shareholders' proposals asking for abolishment of multiple voting rights and dismissal of board members are emerging in recent years.
Germany: The number of proposals is said to be many in Europe due to loose requirements for shareholders' proposals as are seen in the facts that shareholder's equity required for making a proposal is not defined and that they can submit it to the firm till 24 hours before the general meeting of shareholders.

[142] Hitoshi Maeda "Introduction to the Corporate Law 10th edition" (Yuhikaku 2005) at 324

[143] Article 303-2 the Corporate Law To be able to amend these matters by changes of articles of incorporation has been definitized.

[144] Kazufumi Shibata "Various Aspects around General Meetings of Shareholders and Hostile Takeover Defenses - reading the 2005 version of the White Paper of General Meetings of Shareholders" (Commercial Law, the 1753rd issue, 2005) at 5

	U.S.	Japan
Law to be based on	Securities Exchanging Act of 1934 Section 14 (a) Rule 14a-8	Article 303 the Corporate Law
Subjects	Listed companies Companies whose shareholders are 500 and above and total assets are $500 million and above	Without distinction of listed or not listed
Requirements for proposal and restrictions	Continuously have held one percent of outstanding shares with voting rights or fair market value of $2,000 and above for one year. Only a proposal allowed per shareholder. Proposal and its reason must be stated within 500 words.	In case of company with board of directors, one percent and above of voting rights of all shareholders or 300 pieces and above (excluding the cases where less ratio or less quantity than these is fixed in articles of incorporation) have been continuously held from six months before (excluding a case where less period than this is fixed in articles of incorporation). (No specific limitation of words to be placed on reference document is fixed. Summary must be placed in cases, for example, there are so many words that placing the words without modification is considered improper.. Article 93, Enforcement Regulations, the Corporate Law)
Procedures	Requesting in principle till 120 days before the delivery date of a notice of convening	Requesting a director in writing till eight weeks before the general meeting of shareholders (possible to be shortened by articles of incorporation: the Corporate Law)
Shareholders' proposals which can be excluded from proxy statement/card of a corporation (those admitted as exclusion of application in SEC's No Action Letter)	1. Those not proper in light of the law of a state in which a company is located 2. Those asking matters which violate states law of U.S., US federal law or foreign law 3. Those violating SEC's rules on proxy solicitation 4. Those related to a shareholder's individual complaint or interests 5. Operations whose total assets at the end of the business year less than five percent of the total assets, and less than five percent in terms of net profit and total turnover, and no serious effect exercised to the company's business 6. Exceeding company's management authority 7. Those related to routine operations to be assigned to board of directors 8. Those related to selecting board members 9. Those directly touching on company's proposals 10. Those already implemented by company 11. Those proposed by other shareholder and are almost the same in essence as the one which is planned to be placed in proxy solicitation document 12. Those having the same content in kind proposed in the past and failed to acquire a certain level of approval 13. Those related to specific value/quantity of cash or stock dividend	1. Those violating law or articles of incorporation 2. Those cases where three years have not passed since the day when the same bill failed to get an approval of 10% and above

(Source: Data of IR Japan, Inc.) (Data for the 16th meeting of the Corporate Value Study Group)

Figure 4-7 Comparison of Shareholders' Proposal System between Japan and the United States

(Expressing clearly ideas by institutional investors)

Expressing clearly how institutional investors with plenty of voting rights think of takeover defenses elevates predictability of management who is studying adoption of defensive measures and has effect on firms to promote adoption and operation of takeover defenses in line with thoughts of primary institutional investors.

At present, there are guidelines for exercising voting rights as a means to know their thoughts about exercising voting rights of institutional investors. Investment agencies such as investment advisory companies release their guidelines into the public, and recently guidelines showing ideas on takeover defenses are beginning to be disclosed. However, there are a lot of institutions which do not release specific criterion of judgment so as to enable them to take flexible approach to the situation because exercising of voting rights is decided individually based on the comprehensive judgment.

Requiring institutional investors to release their thoughts on exercising voting rights and the results hereof without exception may let them take a rigid stance on investments, cause market distortion and, for instance, influence corporations because other investors may follow the exercising of voting rights of major institutional investor. Hence, this should be prudently treated.

On the other, there are opinions that guidelines for exercising the voting right is showing basic ideas of institutional investors, and in many cases they examine a bill individually at the time of exercising voting right, hence, from the view of enriching dialogue between institutional investors and top mangers of a company, in order for institutional investors to clearly express their own ideas, publicizing the result of exercising of voting right and the reasons is one of the measures to enhancing predictability of the firm and promoting enriching dialogue. There are comments that this is worth examining also from the point of enhancing governance of institutional investors[145].

In Europe and U.S.A., pension funds have initiative to improve corporate governance. Exercising of voting right is required for pension funds in U.S.A.[146] The Combined Code[147] attached to the Listing Rules made by the London Stock Exchange shows requirements on ideal exercising of voting right of institutional investors such as pension funds and at the same time asks them to have positively dialogue with corporations. Formulation of rules as described above to cope with the situation is considered an option. There are some comments that this may result in an improvement of social governance to some degree[148].

We have described ideal fair M&A rules hitherto from the view of the corporate value standard. In the next chapter, we would like to state the entire picture of these rules and our expectations for corporate community in Japan.

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[145] U.S. investment trust companies are required to disclose to the public policy of exercising voting right, process of it and actually exercised contents pursuant to Section 30 of Investment Company Act of 1940 and its rule 30b1-4.

[146] The notice of 1994 of the Department of Labor referring to the Employee Retirement Income Security Act of 1974 (ERISA) obliged pension funds on their own or through investing agencies to exercise voting rights in order to fulfill fiduciary responsibility.

[147] This is the Code made by the London Stock Exchange embracing the reports of each Corporate Governance Committees of Cadbury, Greenbury and Hampel in June 1998. The primary feature of the Code is that a subject of a recommendation is not limited to listed companies, but it has shown the Code of Best Practice for institutional investors which are the other important party of corporate governance.

[148] Takeover defenses, in particular, function effectively to takeovers which entrench the corporate value so long as they are in conformity to the corporate value standard, resulting in the increase of the corporate value and common interests of shareholders. Therefore, it is considered effective from the point of enriching dialogue for institutional investors to judge takeover defenses on a case-by-case basis without exercising voting right in a single uniform way subject to sufficient information delivered and their intentions from management.

Chapter 5 Expectations for future corporate community in Japan

Formulation of systems and rules concerning corporate acquisitions has been much advanced during these about 18 months since the inauguration of the Corporate Value Study Group. First, the rules of defenders were shown in May 2005. This is the Guidelines made by the Ministry of Economy, Trade and Industry and the Ministry of Justice. Formulation of disclosure rules based on the Enforcement Regulation of the Corporate Law and listing rules of stock exchanges were followed by the Guidelines. Rules of the acquirer side have been submitted to the current ordinary diet session as a bill to amend the Securities Exchange Law, etc. In the meantime, the Corporate Value Study Group released the Corporate Value Report in May 2005 in which what fair takeover defensive measures should be was presented. Further, the Group continued discussions from the viewpoint of establishing and improving the situation where the penetration of the Corporate Value Standard and exercising of an informed judgment are realized so that fair rules on corporate takeovers take root in the corporate community of Japan, and made proposals of what disclosure rules on takeover defenses and listing rules of stock exchanges should be (November 2005) and what takeover rules should be (December 2005). Additionally, as we explained in Chapter 4, we have made a proposal of measures to enrich dialogue between shareholders/investors and corporate managers in this report. We can say that Japan is changing from the situation without rules to the situation with formulated rules.

In such circumstance, the noteworthy events to come are general meetings of shareholders held in 2006. As shareholders meetings in 2005 are indicating, it is required for top executives of corporation to take accountability by clarifying such as purposes of introducing takeover defenses when they adopt them as well as explaining management strategies to enhance the corporate value more than ever presence or absence of adoption of takeover defenses. Further, it is also crucial for shareholders represented by institutional investors to accurately and fairly evaluate the efforts of management. Consequently, it is expected that these fair rules will accelerate the change of the Japanese corporate community as well as such rules will be esteemed by relevant parties of the corporate community of Japan such as companies and shareholders/investors from now onward.

As changes expected to happen in the corporate community of Japan, the Corporate Value Report also cited the development of restructuring of corporate governance, the establishment of management that focuses on shareholders' interests and fully-fledged communications with shareholders, the establishment of reasonable survey practices toward a takeover proposal, the diffusion of stock-price linked compensation, the responsible behavior by institutional investors, further, the formation of consensus to increase long term corporate value. It seems that the changes cited above are actually occurring. It is expected that these moves will be further developed utilizing fair rules concerning corporate acquisitions which are now being formulated and improving.

We would like to specifically mention the expectations toward future Japanese corporate community as below.

1. Expectations for top managers of corporation

(Acceleration of efforts to enhance long-term corporate value)

Takeover defenses require shareholders/investors and top managers of a firm to further promote communication and get a consensus in that what are firm's strong points to enhance the corporate value, that what kind of operation strategy and finance strategy is necessary to further strengthen the strong points, and that how incentives to stakeholders are strengthened to elevate long-term

shareholders' interests.

It seems that efforts to further strengthening abilities peculiar to Japanese companies such as cultivating human resource peculiar to the firm to produce differentiation, forging a good relation with splendid business partners, building up trust from customers and regional economy, unique technique, know-how, use of organizing power is considered effective to enhance long-term corporate value, therefore, it is also important for companies to recognize their own strong points and give a full explanation using an index so that shareholders/investors can judge the strong points objectively and evaluate them[149]. If shareholders/investors make an objective evaluation based on such index and explanations, and common value of corporate management is shared, virtuous circle will be created by further enhancing the corporate value.

(Enhancing corporate governance)

There are some comments that because utilization of people outside the company is not so common in Japan unlike U.S., takeover defenses may be abused. It is true that there are various discussions on checking function of outsiders. In order to adopt takeover defenses which are supported also from markets, it is necessary to study based on the Guidelines such measures as authorization to a general meeting of shareholders, chewable pill (to provide a mechanism to automatically redeem the defensive measures in the event of a "qualified offer" that is likely to enhance the corporate value with adequate disclosure), and third party check which are expected to eliminate the arbitrariness of board members. In other words, it would be possible to say that some measures of corporate governance are required. Further, modernization of the corporate law system requires, for instance, the disclosure of attribute of third party and improvement of internal control system, etc. as well as the disclosure of the reasons to have judged that takeover defenses are not for the sake of protecting their own interests of management.

It is expected that in the infrastructure of such systems the corporate governance in Japan also is further enhanced by deepening discussions on ideal systems and methods such as what corporate management should be, what corporate governance should be and what utilization of people from outside should be[150] through dialogue between corporate executives and shareholders/investors.

2. Expectations for shareholders/investors

(Proper judgment and behavior by investors represented by institutional investors)

The number of companies which introduce takeover defensive measures is increasing since 2005, and Japanese institutional investors have begun to establish guidelines of exercising voting rights concerning the measures. Some institutional investors, however, went to the length of saying that they may oppose all takeover defenses regardless the content because the defenses merely are tools to protect interests of management after all. Someone has pointed out that such remarks of institutional investors are reflecting reality where it is difficult to correctly understand, for example, whether or not takeover defenses can really enhance the corporate value and eliminate arbitrary

[149] A study of intellectual asset such as firm's human resource, technology, know-how and organizational strength is conducted by Subcommittee on Management & Intellectual Assets, New Growth Policy Committee, Industrial Structure Council which is organized by Ministry of Economy, Trade and Industry made public "the Interim Report" in August 2005. "The Intellectual Asset Management Disclosure Guideline" was released also from the Ministry of Economy, Trade and Industry in October 2005. (http://www.meti.go.jp/policy/intellectual_assets/index.htm)

[150] There are comments saying that in order to elevate the objectivity of directors of a firm, endeavoring to let corporate managers and shareholders share a mutual interest by introducing a U.S. type compensation system, adoption of measures to activate market for management executives, formulation of systems such as establishment of a well-developed judicial system other than the discussion points described here are necessary.

judgment made by board of directors because the measures are so complicated. Hence, as was stated in Chapter 4, it is of importance for corporate managers to take initiative to explain so that institutional investors can understand the measures.

On the other, it is also important for shareholders represented by institutional investors to make a proper judgment utilizing necessary and sufficient information provided. Takeover defensive measures may do harm or good depending on the design. Therefore, it is required of institutional investors to give a detailed assessment to purposes of adopting the measures (what is the corporate value to be protected) and terms to implement them (who makes a judgment based on what) based on the Corporate Value Standard.

If institutional investors behave in a responsible manner like this, corporate executives naturally will adopt reasonable takeover defenses abiding by the Guidelines of the government. In other words, responsible behaviors by institutional investors give discipline to corporate management, and the discipline promotes management innovation, consequently this flow brings profit due to the rise of share price. We expect that the corporate community of Japan will enjoy the birth of a virtuous cycle of this kind and the acceleration of it in future.

(Establishing a tense trusting relationship between corporate executives and shareholders/investors)

The improvement of returns to shareholders such as dividends and retirement of company's own shares is naturally important to shareholders/investors. Additionally, to invest in firms evaluating from a long-term perceptive such factors as human resources to strengthen Japanese companies, good relations with distinguished business partners and trusting relationships with customers and regional society would be effective to enhance the corporate value and, eventually, improve long-term profits for shareholders. Shared management vision through continuous and tense dialogue between managers and institutional investors is considered to be the most important of all because institutional investors are generally believed to aim long-term rise of share prices and continuous return of profits. Considering expertise required for corporate management, some argues that it would be more effective to entrust management judgments to corporate managers rather than shareholders excessively involve with the management. This is based on the idea that the roles of shareholders/investors are selection of executives who have abilities to control a firm and governance for the selected executives. The following matters also will come under closer scrutiny in considering business acquisitions: to what extent shareholders/investors should engage in management related matters which needs expertise to enhance the corporate value or long-term improvement of shareholders' profits, to what extent they can make a proper judgment on a lot of specialized information even if asymmetricity of information is eliminated, and how to strengthen surveillance function on top management of shareholders/investors.

The Corporate Value Study Group has deepened our considerations from such viewpoints as what are reasonable takeover defenses and what kind of methods should be adopted to make a proper judgment on right and wrong of a buyout offer or takeover defenses by shareholders/investors who have enough information. However, on reaching here, we have found an issue of what the responsibility relationship between top mangers and shareholders/investors should be is still left for. We would like to expect that a tense trusting relationship between management and shareholders/investors will be built in the corporate community of Japan by further deepening those points in future.

3. Expectations for those engaged in intermediary between management and shareholders/investors

While technology innovation and globalization is in progress and higher expertise for corporate management is required, the roles of institutions which support shareholders/investors for making a proper judgment such as analysts with special knowledge, rating agencies and advisory institutions of exercising voting rights in order to eliminate asymmetricity of information are becoming more and more important. Hence, the discipline to prompt a proper judgment of a party engaged in mediating information between top mangers of a firm and shareholders/investors has significance. It is a matter of course that a flood of false information in market hinders function of market mechanism. In stead, correct information makes market mechanism function accurately. From this viewpoint, it is expected that future discussions including ideal institutions which play the role of delivering corporate information to shareholders/investors will be deepened so that market mechanism functions correctly.

4. Messages to corporate community

Liberalization of systems such as the Corporate Law has been implemented in Japan so far. In the result, options for corporate management have significantly expanded. The bill to amend the Securities Exchange Law, etc. of this time also has increased options of buyer, and options shown to shareholders/investors are expanded as well. In future, each relevant party is further required to behave based on diversified choices on their own responsibility. On such occasions, they are required to take a disciplined behavior in accordance with reasonable rules from the view of working market mechanism.

The cost of deepening discussions and gaining an understanding of each other between shareholders and top executives of a firm subject to sufficient disclosure of information is lower than a case where they fight in a court. We expect that the administration attentively observes the move from now on and continues necessary formulation of rules and systems to enhance foreseeablility of corporate community from the point of reducing such social cost as much as possible, and at the same time, relevant parties such as companies, shareholders/investors and businesspersons share mutual recognition to utilize the systems properly under such a framework.

To change the situation without rules to situation with shared fair rules is the purpose of the Corporate Value Study Group, and this report is the comprehensive summary of it.

The Corporate Value Study Group have presented rules based on opinions of various participants in the corporate community including corporate managers, shareholders/investors, scholars, businesspersons, foreign institutions related people. Such rules are not called really rational rules which have taken root in the Japanese corporate community until they are respected by relevant people. We would like to expect that relevant parties of the corporate community will raise awareness about the rules, hold repeated discussions on them and fair rules are formulated in future. Also, we expect that behaviors based on such rules will prompt the evolution of Japanese corporate community.

Twenty years behind U.S. and 10 years the EU, full-fledged discussion started at last in Japan. During about 18 months since the start of the Corporate Value Study Group, various institutional reforms have been exercised. But changes surrounding corporate community are significant. It is necessary for the administration to respond flexibly to them if something inconvenient happens to institutions in conformity to changes seen in corporate community. There is a concern that the institutions may be used abusively while the liberalization is in progress of late. However, it is needless to say that the liberalization of corporate management, particularly, that of organizational

restructuring is indispensable to strengthening global competitiveness of companies through M&As, which by extension is absolutely necessary for invigoration of Japanese economy. The Corporate Value Study Group would like to review regularly the rules which we have shown, too, and continue to make a proposal on ideal corporate community.

Concluding remarks

In the process of working out the Corporate Value Report 2006, we received corporation from many people.

Mr. Izumi Akai, attorney at law, of Sullivan & Cromwell LLP Foreign Law Office, Mr. James Lawden and Junichi Kiuchi, attorneys at law, of Freshfields Bruckhaus Deringer Foreign Law Office kindly gave presentations about disclosure of takeover defenses of European countries and the United States and handling of them at stock exchanges to the members of the Study Group at our meetings. Also, Mr. Takaya Seki, chief researcher, at Japan Investor Relations and Investor Support, Inc. gave a presentation on the real situation of general meetings of shareholders of European countries and U.S. to us.

IR Japan, Inc., RECOF Corporation, Simpson Thacher & Bartlett LLP Foreign Law Office, Freshfields Bruckhaus Deringer Foreign Law Office and Sullivan & Cromwell LLP Foreign Law Office conducted surveys on such as disclosure systems on takeover defenses and listing rules in Europe and U.S., the outline of TOB and discussion points on a proxy contest in Japan, and the results of the surveys were all very useful for the discussions of the Group.

I would like to express my gratitude on behalf of the Study Group to many other people who provided their kind cooperation.

March 31, 2006
Hideki Kanda
Chairman
The Corporate Value Study Group

Appendix 1: Roster of the Corporate Value Study Group (2nd Term)

Chairman	Hideki KANDA	Professor, University of Tokyo Graduate Schools for Law and Politics
	Toshio ADACHI	Executive Corporate Director, Group General Manager, Tokyo Branch, Sharp Corporation
	Gaku ISHIWATA	Attorny at Law, Mori Hamada & Matsumoto
	Takeki UMEMOTO	Executive Officer, Director, Information Planning Department, RECOF Corporation
	Toshio OSAWA	Executive Corporate Officer, Corporate Administration Division Head, Astellas Pharma Inc.
	Kenichi OSUGI	Professor, Chuo Law School
	Masakazu KUBOTA	Director, Economic Policy Bureau, Japan Business Federation Nippon
	Nobuo SAYAMA	Professor, Graduate School of International Corporate Strategy, Hitotsubashi University, CEO, GCA CO., LTD.
	Kazufumi SHIBATA	Professor, Hosei University Law School
	Shigeki TAKAYAMA	Senior Vice Director, Research & Advisory Officer, Daiwa Securities SMBC Co. Ltd.
	Kazuhiro TAKEI	Attorney at Law, Nishimura & Partners
	Shirou TERASHITA	Executive Officer, IR Japan, Inc.
	Minoru TOKUMOTO	Associate Professor, Senshu University the Law School
	Motoharu NISHIKAWA	Chief Legal Counsel, Nippon Steel Corporation
	Takashi HATA	Managing Officer, Finance & Accounting Group, Toyota Motor Corporation
	Yasushi HATAKEYAMA	President & CEO, Lazard Frere KK, Japan
	Nobuo HATTA	Member of the Board, Director, Administrative Headquarters, ROHM Co. Ltd.
	Takashi HATCHOJI	Senior Vice President and Executive Officer, Hitachi, Ltd.
	Nobumichi HATTORI	Associated Professor, Graduate School of International Corporate Strategy, Htotsubashi University
	Tsutomu FUJITA	Director, Equity Strategy, Nikko Citygroup Limited
	Kenichi FUJINAWA	Attorney at Law, Nagashima, Ohno & Tsunematsu
	Osamu HOSHI	Associated Director, Trust Assets Planning Division, Mitsubishi UFJ Trust and Banking Corporation
	Keisuke HORII	Senior Vice President, Legal & Compliance Office, Sony Corporation
	Nami MATSUKO	Derector, Investment Banking Consulting Dept, Nomura Securities Co., Ltd.
	Eizo MATSUDA	Editorial Writer, Yomiuri Shimbun
	Toshikazu MURATA	Division Counselor, Planning and Research Division, Nippon Life Insurance Company Division Counselor, Planning and Research
	Noriyuki YANAGAWA	Associate Professor, Graduate School of Economics, Faculty of Economics, The University of Tokyo
	Tomomi YANO	Executive Managing Director, Pension Fund Association

(Observer)

Tetsu AIZAWA	Counsellor, Minister's Secretariat, Ministry of Justice
Yuichi IKEDA	Division Chief, Corporate Accounting and Disclosure Division, Financial Services Agency
Kiyoyuki TSUCHIMOTO	Director, Listing Department, Tokyo Stock Exchange, Inc.

Appendix 2: List of items surveyed by the Corporate Value Study Group (2nd Term)

1. Awareness of takeover defenses by relevant people in the corporate community in Japan

◎ Surveyed ideas on takeover defenses, etc. of institutional investors and Japanese corporations

2. Real situation of disclosure rules of defenses and handling of them at stock exchanges

◎ Current status of disclosure of takeover defenses in Japan
- Analyzed status of disclosure on defense measures of firms which adopted takeover defenses

◎ Real situation of disclosure rules and handling of them at securities exchanges in European countries and U.S.
- Surveyed contents of disclosure on takeover defenses including rights plan, etc.
- Surveyed whether listing of a company which introduced takeover defenses such as golden share is allowed or not

3. Outline, etc. of takeover rules

◎ General picture, etc. of TOB in Japan
- Surveyed brief overview of TOB and transition of the number of TOB and aggregate amount for takeovers

◎ General outline, etc. of TOB in European countries and U.S.
- Surveyed the outline of these countries making comparison with the current system of Japan

4. Real situation, etc. of general meetings of shareholders

◎ Actual status of general meetings of shareholders, etc. in Western countries and Japan
- Surveyed detail handling of matters related to general meetings of shareholders such as dates to hold it and to send a notice of convening it in each country
- Surveyed systems of U.K concerning identifying beneficial owners

5. Several discussion points on a proxy contest

◎ Survey discussion points, etc. on a proxy contest in Japan

6. Others

◎ Status of formulation of rules by related government ministries and agencies

◎ Future takeover defensive measures as they ought to be considering the enforcement of the Corporate Law

Appendix 3: Progress of discussion by the Corporate Value Study Group (2nd term)

10th Session (September 26, 2005)

Main moves surrounding the Corporate Value Study Group and M&A rules
Ideas on takeover defenses of institutional investors and Japanese corporations
On future discussion points

11th Session (October 18, 2005)

Disclosure rules and listing regulations in European countries and U.S.
What disclosure rules of defenses and handling of them at stock exchanges should be

12th Session (November 8, 2005)

About the Discussion points (Draft) on what fair takeover defenses (disclosure rules and listing regulations) should be

13th Session (November 22, 2005)

Listing System Revision and the Adoption of Takeover Defense Measures (Draft Outline) (explained by Tokyo Stock Exchange, Inc.)
About real status of TOB and the outline of the systems in Japan and Western countries
What corporate acquisition rules should be

14th Session (December 6, 2005)

What corporate acquisition rules should be

15th Session (December 14, 2005)

About the Discussion points (Draft) on what takeover rules to realize the Corporate Value Standard should be
About what measures to enrich dialogue between shareholders/investor and corporate executives should be

16th Session (January 26, 2006)

Comparison of major countries concerning exercising voting rights at general meetings of shareholders
Sorting out discussion points on a proxy contest in Japan
On what measures to enrich dialogue between shareholders/investors and top managers of a company

17th Session (February 21, 2006)

Status of efforts to establish fair M&A rules made by related government ministries and agencies
Future takeover defenses on the basis of the Corporate Law as they ought to be

About Summary Outline of the Corporate Value Study Group Report (Draft)

18th Session (March 28, 2006)

About the Corporate Value Study Group Report (Draft)