REFERENCE TRANSLATION

This English translation is a reference translation of the Japanese language original. Should there be any discrepancies, the Japanese language original shall prevail.

METI
Ministry of Economy, Trade and Industry

For Public Comment

Q&A on the "Guidelines for Corporate Takeovers" (Draft)

MM DD, 2026

Table of Contents

The following abbreviations are used in this document.

Official Name	Abbreviation
Guidelines for Corporate Takeovers https://www.meti.go.jp/press/2023/08/20230831003/20230831003-b.pdf	Guidelines
Summary of Major Comments on the Public Consultation for the "Draft Guidelines for Corporate Takeovers" and the Ministry of Economy, Trade and Industry's Responses https://www.meti.go.jp/press/2023/08/20230831003/20230831003-c.pdf	Public Comments Response
Fair M&A Guidelines https://www.meti.go.jp/policy/economy/keiei_innovation/keizaihousei/pdf/fairmaguidelines_english.pdf	Fair M&A Guidelines

1. Desirable Acquisition

(Question 1) On what basis is a "Desirable Acquisition" judged?
Additionally, what points should be noted in making such a judgment?

[Case Example[1]] Listed Company A received an acquisition proposal from Acquirer B, offering a purchase price considerably higher than the historical stock price level. The proposal was submitted to the board of directors, which, after discussion, determined that it constitutes a "bona fide offer" and decided to give it sincere consideration.
Does the fact that Acquirer B's proposal offers a considerably high purchase price alone qualify it as a "Desirable Acquisition"?

[Case Example] Listed Company A received multiple acquisition proposals (all for full acquisition) from Acquirers C and D. The proposals were submitted to the board of directors, which, after discussion, determined that they constitute "bona fide offers" and decided to give them sincere consideration.
In a situation where Acquirer C's offered purchase price is higher than that of Acquirer D, does the acquisition by Acquirer C qualify as a "Desirable Acquisition"?

(Answer)

1. Whether or not an acquisition is desirable should be determined on the basis of whether it will secure or enhance corporate value and the shareholders' common interests[2].

   This expresses the series of conditions that (i) the acquisition enhances the corporate value of the target company, (ii) the increase in corporate value is fairly distributed between the acquirer and shareholders under appropriate transaction terms, and thereby ensuring that (iii) the shareholders' common interests are secured.

   In other words, the enhancement of the target company's corporate value is a prerequisite for a "Desirable Acquisition".

2. Therefore, a "Desirable Acquisition" is one that both (i) enhances corporate value and (ii) secures interests of shareholders of the target company[3]. Accordingly, an acquisition is not considered as a "Desirable Acquisitions" solely because it offers a high purchase price.

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[1] This refers to specific situations or settings that require consideration of the question.
[2] Guidelines 2.1 (Page 10) Principle 1
[3] Guidelines 1.2 (Page 5), Public Comment Responses No. 12 and No. 49. Note that "Desirable Acquisitions" does not mean acquisitions that are desirable for specific parties such as the target company or the acquirer, but rather acquisitions that are socially desirable from an economic perspective (Public Comment Response No. 49).

3. The directors and the board of directors of the target company are expected to sincerely consider whether to accept the acquisition or not from the perspective of whether the acquisition will contribute to enhancing corporate value[4]. When deciding on a direction toward reaching agreement of an acquisition, the directors and board of directors of the target company should make reasonable efforts to ensure that the acquisition will be based on terms that will secure the interest which shareholders should enjoy[5].

[4] Guidelines 3.1.2 (Page 19)
[5] Guidelines 3.2.1

2. A "Bona Fide Offer"

(Question 2) What kind of acquisition proposal is meant by a "bona fide offer"?

[Case Example] Listed company A has received an acquisition proposal from Acquirer B and submitted it to its board of directors. The board is currently considering whether Acquirer B's acquisition proposal qualifies as a "bona fide offer."
The board of directors of Company A believes that the acquisition by Acquirer B may not be able to obtain necessary approvals or permits from authorities such as competition laws or foreign direct investment laws. Should the proposal still be treated as a "bona fide offer"?

(Answer)

1. The board of directors to which the matter is submitted shall in general give "sincere consideration" to a "bona fide offer." A "bona fide offer" means an acquisition proposal that is (i) specific, (ii) legitimate of purpose, and (iii) feasible[6].

2. If any of these factors (i) to (iii) are reasonably doubtful, it may be determined that the proposal does not constitute a "bona fide offer." When examining whether there is reasonable doubt, the following factors should be comprehensively considered, for example:

   (i) Specifics may be reasonably doubtful if:
   - a) Acquisition proposals that do not specify key terms of the transaction such as acquisition structure, amount and type of acquisition consideration, conditions precedent to the transaction, or schedule.

   (ii) Legitimacy of purpose may be reasonably doubtful[7] if:
   - a) Acquisition proposal does not indicate the management strategy after acquiring corporate control.
   - b) Acquisition proposal is made for the purpose of raising the purchase price of other parties (in situations where there are other competing bidders).
   - c) Acquisition proposal is made by competitors for a purpose such as gaining confidential information.

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[6] Guidelines 3.1.2 (Page 19)
[7] The mere fact that an acquisition is by a financial buyer or by a competing company does not, by itself, negate the legitimacy of purpose; rather, the determination is expected to be made by comprehensively considering other circumstances as well (Public Comments Response No. 113 and No. 114).

(iii) Feasibility may be reasonably doubtful[8] if:

a) Acquisition proposal without appropriate financing of the transaction (such as balance certificates, loan certificates, commitment letters, or a letter issued by a financial institution indicating a high degree of certainty of financing).

b) Acquisition proposal is objectively unlikely to succeed due to the low probability of satisfying the conditions for acquisition, such as regulatory permits and approvals (e.g., competition laws, foreign direct investment laws).

c) Acquisition proposal aims to obtain controlling interest in situations where the controlling shareholder is known to have no intent of selling its controlling shares to a third party.

Note that the above elements (a) to (c) are examples of factors to be comprehensively considered, and the presence of any one of these elements does not immediately mean that the proposal is not a "bona fide offer.[9]"

Conversely, the absence of these elements does not automatically lead to the conclusion that the proposal should be treated as a "bona fide offer." Comprehensive consideration based on the individual circumstances of each case is necessary[10].

3. It is important for the board of directors to take care not to arbitrarily interpret the meaning of a "bona fide offer" and avoid sincere consideration[11].

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[8] Regarding element (iii), at the initial stage of a proposal (prior to conducting due diligence) there may be room to enhance feasibility through (a) negotiations with financial institutions based on due diligence, (b) taking the necessary procedures and measures to resolve the issues (remedies), and (c) efforts by the target company to engage with controlling shareholders. Therefore, it should be noted that it may be inappropriate to decide solely from such circumstance that the feasibility is doubtful (Guidelines 3.1.2 (page 21), Notes 22, 23, and 24).

[9] Public Comments Response No. 87. Furthermore, at the initial stage of the proposal, the mere fact that it does not have legal binding force does not necessarily mean that it should be judged as not a "bona fide offer" (Public Comments Response No. 107).

[10] Public Comments Response No. 109.

[11] Guidelines 3.1.2 (page 20)

3. Sincere Consideration

(Question 2) What does "Sincere Consideration" specifically mean in terms of what should be considered and based on what information?

[Case Example] Listed Company A has received an acquisition proposal from Acquirer B, offering an purchase price considerably higher than historical stock price level. The proposal was submitted to the board of directors, and after discussion, it was determined to be a "bona fide offer," and thus the board decided to conduct a sincere consideration.
As a director of Company A, how should information be collected from Acquirer B, and how should the consideration be conducted? Also, is it possible to choose to standalone management (such as management by the incumbent management team or under the current shareholder structure) without accepting the acquisition?

(Answer)

1. The board of directors to which the matter is submitted shall in general give "sincere consideration" to a "bona fide offer".[12]

   The board of directors has broad discretion, under the Business Judgment Rule[13], in deciding whether to accept an acquisition or not. Therefore, after sincere consideration, the board of directors, within their broad discretion, makes management decisions, including whether to accept the acquisition, pursue standalone management (such as management by the incumbent management team or under the current shareholder structure), or consider strategic options such as partnerships or collaborations with third parties.

2. In sincere consideration, the board should consider whether to accept the acquisition or not from the perspective of whether the acquisition will contribute to enhancing corporate value[14].

   In doing so, the following points, among others, are primarily considered[15]:

   a) The acquirer's post-acquisition management strategy

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[12] Guidelines 3.1.2 (Page 19)
[13] According to case law, with respect to business-related professional judgments (management decisions), unless there are significantly unreasonable points in the decision-making process or the content of the decision, such judgments are not considered to violate the directors' duty of care (Supreme Court ruling, July 15, 2010, Hanji No. 2091, p. 90).
[14] Guidelines 3.1.2 (Page 21). As a general principle, under the Companies Act, directors are primarily considered to owe the duty of care and duty of loyalty to the company. Therefore, it is consistent with the Companies Act that directors consider whether to accept an acquisition or not from the perspective of whether it will contribute to enhancing corporate value.
[15] Guidelines 3.1.2 (Page 21)

b) The appropriateness of the purchase price and other transaction terms (including acquisition structure and basis for determining the purchase price, the conditions for acquisition, the basis for determining the acquisition price, and whether and how the target company's assets will be allocated to acquisition funds[16])

c) Attributes of the acquirer and its investors (including compliance status and systems)

d) The acquirer's financial resources, track record (past investment behavior, record of completing acquisitions, achievements in enhancing corporate value of acquired companies, etc.), and management capabilities

e) Feasibility and timing of the acquisition (probability and timing of obtaining necessary approvals)

f) Feasibility and timing of the acquirer's proposed measures to enhance corporate value

3. Furthermore, in conducting sincere consideration, to obtain such additional information, it may be appropriate to ask the acquirer questions within a reasonable scope[17].

The acquirer is expected to respond, within a reasonable scope, concretely (quantitatively where possible) to questions received from the target company, providing information necessary for the target company to determine whether the acquisition will contribute to enhancing corporate value (such as the acquirer's track record and information useful for examining the presence and extent of synergies or dis-synergies).

4. It is advisable for the board of directors to thoroughly compare from a quantitative perspective which of the following (i) or (ii) will contribute more to the enhancement of corporate value over the medium to long-term[18], taking into account both synergies and dis-

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[16] For example, even in cases where the target company sells assets necessary for its business, if the proceeds from such sale are used as funds for growth investments and thereby enhance profitability, it is considered to contribute to enhancing corporate value. On the other hand, if all of the proceeds from such sale are used as funds for the purchase price, it may not contribute to enhancing corporate value.

Furthermore, when acquisition funds are procured through borrowing secured by the target company's cash flow or assets, if the burden of repaying such acquisition funds prevents the implementation of the envisaged measures to enhance corporate value, it may not contribute to enhancing the corporate value of the target company.

[17] It should be noted that for information requests from the target company to the acquiring party, asking overly detailed questions to an acquiring party should not be used as a tactic to effectively prevent potential acquisition of management control (Guidelines 4.1.1.1 (Page 31), Note 37).

[18] Public Comments Response No. 124

synergies[19][20]. However, if quantitative analysis of (i) is difficult, it may be substituted by confirming whether the qualitative explanations provided by the acquirer are reasonable and persuasive, among other factors.

(i) Purchase price and measures to enhance corporate value through acquisitions proposed by the acquirer (such as new business models or innovations proposed by the acquirer, and synergies brought by the acquirer's management resources)

(ii) Measures to enhance corporate value if the target company were to operate on a standalone basis, etc.

Based on such examinations, the board of directors, within their broad discretion, makes management decisions, including whether to accept the acquisition or to pursue standalone, etc.

5. Upon a public announcement of an acquisition, the board of directors should act in a manner that allows it to be responsible for explaining the rationale behind its reactions to acquisition proposals and their decisions on whether to accept acquisition proposals[21].

It should be noted that this does not necessarily mean that the board must always provide explanations from a quantitative perspective when requested by shareholders; the content and extent of explanations should be judged based on the individual circumstances of each case[22]. However, if it is difficult to provide explanations from a quantitative perspective, the board is expected to consider providing persuasive explanations to shareholders.

6. The rational intent of shareholders should be relied upon in matters involving the corporate control of the company[23]. Therefore, even if the board of directors decides not to accept an acquisition, it should be noted that shareholders ultimately decide the success or

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[19] An acquisition proposal should not be immediately rejected solely because there is a possibility of dis-synergies arising from the acquisition. Rather, it is required to compare and examine: (i) the enhancement of corporate value through the acquisition, calculated by deducting dis-synergies from synergies; and (ii) the enhancement of corporate value through stand-alone management or similar measures.

Furthermore, efforts to enhance corporate value during the normal phase will enable prompt and effective comparison and examination of such matters (Chapter 3 of the Guidelines).

[20] Guidelines 3.1.2 (Page 22). It should be noted that the measures to enhance corporate value proposed by the acquirer may, in cases such as assuming a shift to a new business model, differ in assumptions and other premises from the corporate value evaluation based on the target company's existing business model.

[21] Guidelines 3.1.2 (Page 22). Moreover, engaging in dialogue with shareholders during the normal phase can serve as an important foundation for obtaining shareholders' understanding and support regarding the board of directors' decisions on acquisition proposals. When explaining to shareholders, it is considered useful to provide information such as the management's historical performance, future corporate value enhancement measures, and commitments to enhancing corporate value.

[22] Public Comments Response No. 123

[23] Guidelines 2.1 (Page 10) Principle 2

failure of the acquisition, and therefore there remains a possibility that the acquisition may ultimately be completed.

7. When the target company's directors and board of directors decide not to accept an acquisition, they are expected to implement corporate value enhancement measures that exceed, over the medium-to-long term, the corporate value assumed under the acquisition, thereby securing the common interests of shareholders.

4. Corporate Value

(Question 4) What does "Corporate Value" mean?
Also, what points should be noted when considering "Corporate Value"?

[Case Example] Listed Company A has received an acquisition proposal from Acquirer B, offering a purchase price considerably higher than historical stock price level. The proposal was submitted to the board of directors, and after discussion, it was determined to be a "bona fide offer," and thus the board decided to conduct a sincere consideration.

When examining whether Acquirer B's acquisition proposal contributes to enhancing Company A's corporate value, is it possible to take into account the intentions of Company A's employees and business partners?

Also, although Acquirer B's previously acquired target companies have experienced high employee turnover after acquisition, how should Company A's board of directors confirm the voices of Company A's employees and consider the corporate value of Company A after the acquisition?

[Case Example] Listed Company A has received multiple acquisition proposals (all for full acquisition) from Acquirers C and D, which are under consideration by the board of directors.

The board of directors of Company A considers that measures addressing economic security, such as (i) diversifying procurement sources of necessary materials to strengthen supply chain resilience, and (ii) measures to protect the company's important technologies and information from external cyberattacks, are indispensable not only for compliance with laws and government requests but also for the continuation and growth of the company's business.

When the board asked Acquirer C, who offered the highest purchase price, about the post-acquisition management strategy, Acquirer C responded that profitability would be improved by switching all procurement of necessary materials to a low-cost overseas supplier E. How should the board of directors consider the corporate value of Company A after the acquisition by Acquirer C?

(Answer)

1. "Corporate value" is a quantitative concept meaning "the sum of the present values of discounted future cash flows generated by a company[24]."

[24] Guidelines 1.4 (Page 8), Guidelines 2.2.2 (Page 11)

Even if a value appears qualitative[25], if it is reasonably expected to increase future cash flows or reduce the discount rate used to calculate the present value of cash flows[26], thereby increasing the present values of discounted future cash flows, such value is also included in corporate value.

In other words, corporate value includes, for example, the value resulting from an increase in future cash flows or reduction of the discount rate, through the following factors[27]:

(i) The contributions by employees, counterparties, and other stakeholders in business activities;

(ii) The prompt and decisive decisions, the establishment of governance structures, and the sustainable business activities in consideration of diverse stakeholders including local community and global environment, which lead to risk mitigation; and

(iii) The management addressing economic security (for example, strengthening supply chains and implementing measures to prevent the leakage of technical information of the company or its business partners).

Therefore, even if a value appears qualitative, if it is reasonably expected that an acquisition will affect the target company's future cash flows or discount rate generated from such value, such effects on future cash flows or discount rates may be taken into account when considering the enhancement of corporate value by the acquisition proposal.

2. Therefore, even if a value appears qualitative,

(i) a) when the interests of stakeholders (employees, major business partners, etc.) will be harmed,

b) when the acquirer has significant compliance or ethical issues or lacks a sustainability perspective (resulting in negative externalities from business activities), or

c) when there is a possibility that the supply chain will become vulnerable due to changes in procurement sources or that technical information may leak after the acquisition,

and

[25] The elements described in items (i) to (iii), among others, refer to factors that, although not quantified, can reasonably affect corporate value.

[26] For example, if investors judge that management stability has improved due to a reduction in the risk of disruption in the target company's supply chain, and as a result, the discount rate used to calculate the present value of cash flows decreases, it is considered that the corporate value of the target company has increased.

It should be noted that the discount rate reflects investors' expected rate of return, and the board of directors of the target company should be careful not to arbitrarily manipulate the discount rate and overestimate or underestimate corporate value.

[27] Regarding items (i) and (ii), see Guidelines 2.2.2 (Page 11 and Page 12).

(ii) if it is reasonably expected that an acquisition will affect the target company's future cash flows or discount rate generated from such value,

such effects on future cash flows or discount rates may be taken into account when considering the enhancement of corporate value by the acquisition proposal.

However, the directors and the board of directors of the target company need to be aware that the measures to enhance corporate value proposed by the acquirer may have both positive and negative impacts on future cash flows and discount rates.

3. In addition, it should be noted that the target company management should not make the concept of corporate value unclear by overly emphasizing qualitative value, which is difficult to measure, nor should the "corporate value" concept be used as a tool for management to defend themselves[28].

Therefore, when it is reasonably expected that the acquisition will affect future cash flows or the discount rate, it is desirable to quantify such impacts. If quantification is difficult, persuasive explanations to shareholders are required.

4. The directors and the board of directors of the target company may consider confirming the specific intentions of stakeholders such as employees and business partners after the acquisition in order to examine the impact on future cash flows or the discount rate. However, it is necessary to ensure strict information management to prevent information leakage and insider trading, and to allow such stakeholders to freely express their intentions without considering the views of the directors or the board of directors.

[28] Guidelines 2.2.2 (Page 12).

5. Relationship between Corporate Value and Acquisition Price

(Question 5) In what cases does a high purchase price get offered despite the acquisition not contributing to the enhancement of corporate value, or when the acquisition proposal that most contributes to corporate value enhancement does not coincide with the proposal offering the highest purchase price?

[Case Example] Listed Company A has received an acquisition proposal from Acquirer B, offering an purchase price considerably higher than historical stock price level. The proposal was submitted to the board of directors, and after discussion, it was determined to be a "bona fide offer," and thus the board decided to conduct a sincere consideration.
Should Acquirer B's acquisition proposal be considered as one that enhances Company A's corporate value?

[Case Example] Listed Company A has received multiple acquisition proposals (all for full acquisition) from Acquirers C and D, which were submitted to the board of directors. After discussion, it was determined that these proposals qualify as bona fide offers, and the board decided to conduct sincere consideration.
Although Acquirer C offers a higher purchase price than Acquirer D, does the board of directors of Company A need to consider the proposal with the highest purchase price (Acquirer C's proposal) as the one that most enhances Company A's corporate value?

(Answer)

1. The purchase price offered by the acquirer is generally considered to be the acquirer's evaluation of the "prospect of enhancing the corporate value of the target company through the acquisition," and the purchase price is an important factor indicating the corporate value of the target company after the acquisition.

   Therefore, when the acquirer offers a purchase price considerably higher than the historical stock price level, it can be reasonably expected that corporate value will be enhanced[29]. Moreover, when there are multiple bona fide offers aimed at full acquisition, (a) acquisition proposals that contribute to enhancing the corporate value of the target company and (b) acquisition proposals offering greater benefits (purchase price) to general shareholders usually coincide[30].

[29] Guidelines 3.1.2 (Page 21)
[30] Fair M&A Guidelines 3.4.4 (Page 41)

2. On the other hand, exceptions may occur where (i) a high purchase price is offered despite the acquisition not sufficiently contributing to the enhancement of corporate value, or (ii) (a) the proposal that most contributes to enhancing corporate value and (b) the proposal that most secures shareholder interests do not coincide, resulting in a discrepancy between post-acquisition corporate value of the target company and purchase price.

For example,

(i) when it is reasonably expected that the acquisition will adversely affect the target company's future cash flows or discount rate (see Question 4, Section 2),
and

(ii) the acquirer can offer a high purchase price for reasons such as:

a) unfairly reducing the interests of various stakeholders including employees, business partners, local economies, and the global environment to increase shareholders' interests[31]; or

b) overestimating the post-acquisition corporate value of the target company[32],

exceptionally, a discrepancy between post-acquisition corporate value of the target company and purchase price may occur.

3. The directors and the board of directors of the target company are required to examine whether the purchase price presented by the acquirer corresponds to the post-acquisition corporate value by referring to Questions 3 and 4, and collecting information as necessary from the acquirer and stakeholders.

The acquirer is expected to respond, within a reasonable scope, concretely (quantitatively where possible) to questions received from the target company.

4. In cases where the board of directors makes judgment that the post-acquisition corporate value and purchase price do not correspond, a persuasive explanation to shareholders is required.

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[31] Fair M&A Guidelines 3.4.4 (Page 41), Note 68

[32] Fair M&A Guidelines 3.4.4 (Page 41), Note 68. It is considered that this also includes cases where synergies generated in the target company from the acquisition are overestimated, dis-synergies generated in the target company are underestimated, or risk factors of the target company that the acquirer is unaware of are not reflected in the purchase price.

6. When Deciding on a Direction toward Reaching Agreement of an Acquisition

(Question 6) When the board of directors of the target company, after sincere consideration, decides on a direction toward reaching agreement of an acquisition and is reviewing multiple acquisition proposals, how should the proposal that contributes most to enhancing corporate value and the proposal offering the highest purchase price be evaluated?
Also, what points should be noted in this regard?

[Case Example] Listed Company A decided on a direction toward reaching agreement of an acquisition and has initiated a bidding process, receiving multiple acquisition proposals (all for full acquisition) from Acquirers B and C.
Although Acquirer B offers a higher purchase price than Acquirer C, does the board of directors of Company A have to select the proposal with the highest purchase price (Acquirer B's proposal)?
Furthermore, if the board of directors of Company A believes that Acquirer C can better enhance Company A's corporate value, is it acceptable to support Acquirer C's proposal?

(Answer)

1. Even when deciding on a direction toward reaching agreement of an acquisition[33], the directors and the board of directors of the target company (including the special committee if it is established; this inclusion shall apply hereinafter) shall make management decisions on whether to accept the acquisition (including whether to withdraw the direction toward reaching agreement of the acquisition) and which acquisition proposal to accept (or support), from the perspective of enhancing the company's corporate value.

   It should be noted that the Guideline requires that even when the board decides on a direction toward reaching agreement of an acquisition, the decision should be made from the perspective of enhancing the company's corporate value, and the Guideline does not establish the Revlon duties[34] in Delaware, U.S., which require the board of directors to maximize shareholder's interests (i.e., purchase price) when the company is put up for sale[35].

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[33] For example, cases where (i) the target company actively seeks acquisition proposals for the transfer of corporate control and enters into negotiations to select a proposal and to fix the terms and conditions, or (ii) the target company enters into negotiations to reach an agreement to accept a proposal from an acquiring party to acquire corporate control, may be applicable (Guidelines 3.2.1 (Page 23)).

[34] Specifically, when the board of directors actively initiates a sale of the company and seeks potential acquirers, undertakes an M&A transaction involving a change of control, or enters into an M&A transaction resulting in a break-up of the company, the directors assume the role of auctioneers charged with obtaining, for the shareholders' benefit, the best price reasonably available for the shares (Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986)).

[35] In the United Kingdom as well, the Takeover Code provides that the board is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant (Rule 25.2).

2. When the board of directors decides on a direction toward reaching agreement of an acquisition, the directors and the board of directors should make reasonable efforts (such as diligent negotiations and search for potential acquisitions) to ensure that the acquisition will be based on terms that will secure the interest which shareholders should enjoy (including raising the purchase price and eliminating coercion)[36].

Through diligent negotiations and search for potential acquisitions, (i) the proposal that most contributes to enhancing corporate value and (ii) the proposal that most secures shareholder interests (such as the highest purchase price) usually coincide[37].

3. Notwithstanding such efforts being carried out, though it is exceptional, situations where (i) the proposal that most contributes to enhancing corporate value and (ii) the proposal that most secures shareholder interests may differ. In such situations, the board of directors may make a management decision to support (i) the proposal that contributes most to enhancing corporate value, provided that sufficient accountability to shareholders is fulfilled[38].

4. The rational intent of shareholders should be relied upon in matters involving the corporate control of the company[39].

Therefore, even if the board of directors makes a management decision to support (i) the proposal that most contributes to enhancing corporate value, it should be noted that shareholders ultimately decide the success or failure of the acquisition, and therefore there remains a possibility that an acquisition related to a proposal different from the board's decision (such as (ii) the proposal with the highest purchase price) may ultimately be completed[40].

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[36] Guidelines 3.2.1 (Page 23)
[37] Guidelines 3.2.3 (Page 26)
[38] Guidelines 3.2.3 (Page 26), Fair M&A Guidelines 3.4.4 (Page 41)
[39] Guidelines 2.1 (Page 10), Principle 2. It is also considered that a corporation that is a shareholder of the target company is granted broad discretion under the Business Judgment Rule regarding which acquisition to agree to (which tender offer to participate in). Therefore, it is necessary to consider which acquisition to accept, taking into account that it is generally recognized as a business judgment for the target company's board of directors to tender to the acquisition (the proposal that will most contribute to enhancing corporate value) that maintains trust and relationships with the target company. There is also a court precedent denying breach of directors' duty of care and duty of loyalty under the Business Judgment Rule in a case where, during a tender offer period, the market price exceeded the tender offer price, but the tender was made based on a tender agreement rather than market sale (Tokyo High Court, October 25, 2006).
[40] Guidelines 3.2.3 (Page 26)

7. Positioning of the Guidelines

(Question 7) What effects arise when directors of a target company that has received an acquisition proposal refer to and act in accordance with the best practices presented in the Guidelines?

[Case Example] Listed Company A received a "bona fide offer" from Acquirer B and, after conducting Sincere Consideration, made a management decision not to accept the acquisition. Subsequently, Acquirer B launched a tender offer for Company A, and as a result, the tender offer that Company A decided not to accept was successful. In this case, would the directors of Company A be considered to have breached their duty of care?

[Case Example] Listed Company A decided on a direction toward reaching agreement of an acquisition and initiated a bidding process, receiving multiple acquisition proposals (all for full acquisition) from Acquirers C and D. Acquirer C offered a higher purchase price than Acquirer D. The board of directors of Company A believed that Acquirer D could better enhance Company A's Corporate Value, so they requested an increase in the purchase price from Acquirer D and made reasonable efforts, including diligent negotiations, before supporting Acquirer D's proposal. Subsequently, both Acquirers C and D launched tender offers for Company A. As a result, the tender offer by Acquirer D, which Company A supported, failed, while the tender offer by Acquirer C, which Company A did not support, succeeded. In this case, would the directors of Company A be considered to have breached their duty of care by supporting Acquirer D's proposal, which aimed to secure transaction terms that benefit Company A's shareholders and most enhance the Company's Corporate Value?

(Answer)

1. Although the Guidelines are not directly intended to clarify matters such as the duty of care and duty of loyalty of directors under the Companies Act, a "fair price," it is expected that by referring to and acting based on the best practices presented in the Guidelines, the risk of breaching the duty of care and duty of loyalty of directors will be reduced[41].

2. Furthermore, the board of directors has broad discretion, under the Business Judgment Rule, in deciding whether to accept an acquisition or not.

   If the board of directors makes a management decision not to accept the acquisition after conducting sincere consideration, it is generally not assumed that the directors' management

[41] Guidelines 2.2.2 (Page 14), Note 10

decision itself constitutes a breach of the duty of care, even if the acquisition is ultimately completed.

3. Similarly, if the directors and the board of directors make a management decision to support the proposal that most contributes to enhancing corporate value after making reasonable efforts aimed at ensuring that the acquisition is based on terms that secure the interest which shareholders should enjoy, it is generally not assumed that the directors' management decision itself constitutes a breach of the duty of care, even if an acquisition based on a proposal different from the board's decision (such as the proposal with the highest purchase price) ultimately completed.

4. Since the best practices presented in the Guidelines are not necessarily legally required, failure to comply with some of the best practices does not immediately constitute a breach of the duty of care and duty of loyalty.

However, directors are expected to refer to and act in accordance with the best practices presented in the Guidelines in order to fulfill their responsibility to enhance the company's corporate value.

(Reference) Changes in Legal and Regulatory Frameworks Following the Formulation of the Guidelines

(Question) Since the formulation of the Guidelines on August 31, 2023, there have been changes in legal systems, etc. related to M&A. What points should be noted when reading the Guidelines?

(Answer)

In light of changes in legal systems, etc. following the formulation of the Guidelines, it may be necessary to interpret the Guidelines, for example, as follows.

For future changes in legal systems, etc., it is essential to consider the content of such changes and the purpose of the Guidelines, and to appropriately reinterpret them based on advice from external advisors and others.

1. Changes to the Tender Offer Regulation (Amendments to the Financial Instruments and Exchange Act, 2024)

With the 2024 amendments to the Financial Instruments and Exchange Act, a tender offer is now mandatory when the ownership ratio exceeds 30% through open-market purchases[42].

① The second paragraph on page 30 of the Guidelines under "4.1.1.1 Disclosure and Provision of Information at the Time of Acquisition," and Note 79(ii) on page 56, assume that open-market purchases are not subject to mandatory tender offers and that information disclosure regulations under the tender offer regulation do not apply when acquiring corporate control through open-market purchases. However, as of the publication of this Q&A, tender offers are mandatory when the ownership ratio exceeds 30% through open-market purchases.

② The section "2. Coercion in Open-Market Purchases" starting on page 51 of the Guidelines assumes that open-market purchases are not subject to mandatory tender offers. As of the publication of this Q&A, the examination of the section "2. Coercion in Open-Market Purchases" will be conducted only with respect to open-market purchases that are not subject to mandatory tender offers. The court case mentioned in the third paragraph (Tokyo Kikai Seisakusho case) involved acquiring more than one-third of ownership through open-market purchases that are not subject to mandatory tender offers within a short period. As of the publication of this Q&A, open-market purchases exceeding 30% ownership are subject to mandatory tender offers and should be considered accordingly.

[42] Article 27-2, Paragraph 1, Item 1 of the Financial Instruments and Exchange Act

2. Changes to the Large Shareholdings Reporting Regulation (Amendments to the Financial Instruments and Exchange Act, 2024)

With the 2024 amendments to the Financial Instruments and Exchange Act, (i)When deciding to increase ownership by more than 5% (excluding cases where the total number of shares held does not increase; hereinafter "5%+ acquisition"), and (ii)when submitting a large shareholding report or amendment report due to an increase in ownership ratio, and planning to conduct a 5%+ acquisition within three months from the date the reporting obligation arises, it is now required to describe the details (e.g., type of shares to be acquired, timing, purchase price, quantity, purpose, method, and counterparty) as specifically as possible in the "Purpose of Holding" section of the large shareholding report[43].

Page 32 of the Guidelines, "4.1.1.2 Toehold and Disclosure of Intent of Acquisition," requires compliance with the amended large shareholdings reporting system.

3. Other Changes

Other changes to the Guidelines have occurred due to amendments to the tender offer system, revisions to "Q&A on Tender Offers for Share Certificates, etc." by the Policy and Markets Bureau of the Financial Services Agency, revisions to the Corporate Governance Code[44], and amendments to Securities Listing Regulations, etc. of the Tokyo Stock Exchange.

Relevant Section	New	Old
Page 28, Note 32	Note that the "Code of Corporate Conduct for Matters to be Observed Pertaining to Significant Transactions, etc. with Controlling Shareholders" (issued by the financial instruments exchanges) requires to obtain an opinion from **an entity that is independent from** the controlling shareholder (such as a special committee) that the squeeze-out procedures subsequent to the tender offer are not disadvantageous to minority shareholders. Therefore, in practice, often a special committee is established from the initial stage of a tender offer process.	Note that the "Code of Corporate Conduct for Matters to be Observed Pertaining to Significant Transactions, etc. with Controlling Shareholders" (issued by the financial instruments exchanges) requires to obtain an opinion from **a person without interest in** the controlling shareholder (such as a special committee) that the squeeze-out procedures subsequent to the tender offer are not disadvantageous to minority shareholders. Therefore, in practice, often a special committee is established from the initial stage of a tender offer process.

[43] Notes on Filling Out Form No. 1 of the Cabinet Office Order on Disclosure of the Status of Large-Volume Holdings in Share Certificates, Item ⑽c

[44] This is described based on the "Draft of the Revised Corporate Governance Code" published on April 10, 2026.

Relevant Section	New	Old
Page 28	*In addition to the types of transactions discussed above, it is advisable to establish a special committee when structural conflict of interests issues exist in connection with the transaction, such as an MBO or acquisition of controlled companies by controlling shareholders (see Fair M&A Guidelines). **Furthermore, the "Code of Corporate Conduct for Matters to be Observed Pertaining to MBOs, etc." (issued by the financial instruments exchanges) requires a target company to obtain an opinion from a special committee that the procedure is fair to general shareholders when a squeeze-out procedure is conducted through a MBO, or a tender offer by a controlling shareholder or other associated company. Therefore, in such cases, the establishment of a Special Committee is required.**	*In addition to the types of transactions discussed above, it is advisable to establish a special committee when structural conflict of interests issues exist in connection with the transaction, such as an MBO or acquisition of controlled companies by controlling shareholders (see Fair M&A Guidelines).
Page 33, Note 41	According to the answer to **Q31** of "Q&A on Tender Offers for Share Certificates, etc." by the Policy and Markets Bureau of the Financial Services Agency, while the legitimacy must be judged on a case-by-case basis, for example, if a company announces that it **is planned to** commence a tender offer even though there is no reasonable basis to actually commence a tender offer **(including cases where there is not a reasonable degree of certainty in securing funds required for the settlement of a tender offer)**, this may be considered as spreading false information (Article 158 of the Financial Instruments and Exchange Act) or market manipulation (Article 159, Paragraph	According to the answer to **Q48** of "Q&A on Tender Offers for Share Certificates, etc." by the Policy and Markets Bureau of the Financial Services Agency, while the legitimacy must be judged on a case-by-case basis, for example, if a company announces that it **may** commence a tender offer even though there is no reasonable basis to actually commence a tender offer, this may be considered as spreading false information (Article 158 of the Financial Instruments and Exchange Act) or market manipulation (Article 159, Paragraph 2, Item 2 of the Financial Instruments and Exchange Act).

Relevant Section	New	Old
	2, Item 2 of the Financial Instruments and Exchange Act).	
Page 40, Note 53	Corporate Governance Code, Supplementary Principle 1.5.1 **prior to the 2026 revision stated** that "In case of a tender offer, companies should clearly explain the position of the board, including any counteroffers, and should not take measures that would frustrate shareholder rights to sell their shares in response to the tender offer." **Although the revision proposes to delete this Supplementary Principle on the grounds that it overlaps with other laws and regulations, the perspective of protecting shareholders' interests has been incorporated into the Interpretive Guidance to General Principle 1, and the importance of the statements in this Supplementary Principle should not be considered to have been diminished (see Preface 12).**	Corporate Governance Code, Supplementary Principle 1.5.1 **states** that "In case of a tender offer, companies should clearly explain the position of the board, including any counteroffers, and should not take measures that would frustrate shareholder rights to sell their shares in response to the tender offer."
Page 57 [Reference]	In the Tokyo Kikai Seisakusho case (Supreme Court decision, November 18, 2021), the court held that regarding resolution requiring a majority of non-interested parties to affirmatively vote, the acquisition of shares exceeding one-third ownership in a short period of time was advanced through open-market transactions, which are not subject to the tender offer regulations **at that time**, is coercive to general shareholders (i.e., non-interested parties).	In the Tokyo Kikai Seisakusho case (Supreme Court decision, November 18, 2021), the court held that regarding resolution requiring a majority of non-interested parties to affirmatively vote, the acquisition of shares exceeding one-third ownership in a short period of time was advanced through open-market transactions, which are not subject to the tender offer regulations, is coercive to general shareholders (i.e., non-interested parties).