

C. Corporate Value Report 2006
Toward the firm establishment of fair rules
in the corporate community

(Abstract)

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Corporate Value Study Group
Secretariat

The Corporate Value Study Group, chaired by Professor Hideki Kanda of the University of Tokyo Graduate Schools for Law and Politics, released the Corporate Value Report on fair hostile takeover defense measures in May 2005. The Study Group, aiming toward the firm establishment of fair rules on takeover based on the corporate value standard whose concept is “acquisition enhancing corporate value is realized, on the other hand, acquisition impairing is not realized”, held repeated discussions since September 2005 with a focus on the following three subjects; disclosure of takeover defensive measures and listing rules; revisions of acquisition rules such as takeover bid system; and enriching dialogue between management and shareholders/investors. This report is a message to the corporate community sent from the Corporate Value Study Group which frequently held meetings to discuss issues during 18 months as well as the results of the reviews mentioned above.

1. Movement after the Corporate Value Report and the Guidelines were established and remaining issues (Chapter 1)

Upon the establishments of the Corporate Value Report and the Guidelines for takeover defensive measures by the government, various moves such as adopting takeover defensive measures by corporations, improving guidelines for exercising voting rights by institutional investors and formulating diverse rules by the government, etc. have been observed in Japan. However, improvement of infrastructure enabling shareholders etc., to exercise informed judgment from the point of the corporate value standard was indispensable to the formation of fair takeover rules.

2. What disclosure rules for takeover defensive measures and listing rules should be (Chapter 2)

The remaining issues to establish fair takeover defenses are disclosure and listing rules on takeover defense measures.

(1) Disclosure rules on takeover defense measures

In adopting defensive methods, it is required to disclose the objectives and specific contents. The following are specifically proposed points: (i) object to be disclosed: a case when new stock or subscription warrant is issued for the purposes of at least including defending takeover, (ii) contents to be disclosed: purposes of introducing defensive measures and specific contents such as judgmental standard for exercising or abolishing them, and (iii) period to be disclosed: it should be disclosed from the decision of the introduction of these measures to their abolishment abiding by timely disclosure of securities exchanges and the business report of the Corporation Law, etc.

(2) Listing rules on takeover defense measures

The report proposes that handling of defensive measures concerning rules, etc. of securities exchanges should be decided by, in principle, listing policies of each securities exchange and that the listing of the firm may be accepted as long as the introduced measures satisfy the corporate value standard. However, it is required for the corporation to use such ideas as the introduction of nullification measures and a sunset provision to be resolved by a general meeting of shareholders or a board of directors' meeting. Those defensive measures including shares with vetoing right which may put shareholders except an acquirer at a disadvantage should be discreetly adopted, the report proposes, however, it also says that listing of such a company may be permitted providing the above mentioned devices are realized.

3. *What rules for takeover should be (Chapter 3)*

In accordance with the increase of the adoptions of takeover defensive measures and hostile takeover bids attempts, the establishment of new rules for takeover is being sought. In considering takeover rules, they should be reviewed from the following two points: (i) adjusting a balance between an acquirer side and a defender side, (ii) establishing systems and practices enabling shareholders and investors to make judgments based on enough information (informed judgment). From the point (i), the acceptance of cancellation of a takeover bid and changes of terms at the time of exercising defensive measures, etc., saving enough time to acquire, taking into account stepping up efforts to furnish information and saving certain time to carry out an acquisition, and so on at the time of management buyout (MBO), etc. are required. And from the point (ii), reinforcement of information disclosure from an acquirer and a targeted company and also strengthening to provide information on large shareholders, etc. are required.

4. *Enriching dialogue between management and shareholders / investors*
(Chapter 4)

In introducing defensive measures, it is very important from the point of enhancing the corporate value to adopt them after management and shareholders/investors fully discuss it and reach agreement. Accordingly, confirming beneficial owners, fixing flexibly a date of a general meeting of shareholders; setting it to a later date, and offering fair information at a proxy contest, etc., including formulating relevant rules are required to be reviewed from the point of enriching the dialogue.

The following efforts can become options to promote mutual understanding: advancing understanding of defensive measures through such as investor relations by corporations, an earlier delivery of a notice of convening a general meeting of shareholders, a delivery of a notice of convening a general shareholders' meeting explained in foreign languages, a divided resolution of bills to amend articles of incorporation enabling shareholders selectively approve or disapprove a proposal, efforts to fix and announce a meeting of shareholders date at an earlier date, institutional investors' efforts to explicitly announce their ideas.

5. *Expectations for future approaches in the corporate community*
(Chapter 5)

The systems and rules on which corporate acquisitions are based have been much improved. In the years ahead, it is expected that such systems and rules are esteemed by relevant parties in the corporate community such as corporations, shareholders and investors, that they will become codes of conduct in the corporate society in Japan, and also, based on such systems and rules, they will accelerate the evolution of the Japanese corporate community through relevant parties' conducts seeking long-term improvement of the corporate value and proper assessment of it.