- Overview of Report by the Financial System Council's Study Group on the Internationalization of Japanese Financial and Capital Markets
- Toward Stronger Corporate Governance of Publicly Listed Companies -

Issues concerning capital policies

Governance concerning company capital policies needs to be strengthened, to protect the interest of minority shareholders

1. On raising capital by issuing new shares

- With respect to third-party share issuance, the disclosure of information concerning the use of funds, identity of the third party and its financing methods. Obtaining supporting statements of opinion by statutory auditors when suspected of favourable issuance terms
- Where such third-party share issuance would significantly dilute the ownership of existing shareholders, or would result in the change of control of the company, examination by the stock exchanges, and disclosure of opinions by person(s) independent from management. Strict actions by stock exchanges for problematic cases, including delisting
- The same regulations as those applied to MSCB are applicable for financial products that are economically similar to MSCB (e.g., appropriate disclosure requirements and fair conversion conditions). Improving disclosures concerning the reasonableness of the conditions relating to issuance of MSCB and similar products
- Improving compliance monitoring and enhancing cooperation among regulatory authorities, stock exchanges and others

2. On squeeze outs

- Examination of the stock exchanges on whether shareholder rights are unduly restricted. Strict action by the stock exchanges for problematic cases
- Disclosure of the squeeze out plan and its specific content

3. On governance of group companies

- Clarification that the principles of corporate governance should also be applied at the corporate group level
- Where the activities of a subsidiary may significantly impact the business of its parent company, appropriate disclosure to be made to shareholders of the listed parent company, such as the views of the subsidiary management on its significant activities and its business conditions, alongside the views of the parent company management

4. On subsidiary listings

- Further review the appropriateness of subsidiary listings. If the practice of subsidiary listings remains in place, consideration of developing rules to prevent conflict of interests and abuse of power by parent companies, such as by requiring the election of outside directors and appointment of auditors who are not from its parent or sister companies

5. On cross shareholdings

- Promotion of disclosure concerning the status of cross holdings
- Active use of the Banks' Shareholdings Purchase Corporation

Structural aspects of corporate governance

Governance structure is very important in ensuring the quality of management at listed companies, and in maintaining the confidence of investors

1. The structure of board of directors

Adopting the "Company with Committees" system

⇔ At present, very few companies have adopted the Company with Committees system (2.3% of Tokyo Stock Exchange listed companies). For the majority of listed companies, adopting this system looks unrealistic in the near future

Board of directors comprising mainly of independent outside directors

For example, at least one-third or half of the company's board of directors is to comprise of independent outside directors

⇔ This requirement may overlap with that of the board of statutory auditors, where, by law the majority must be outside auditors

Joint monitoring by independent outside directors, the board of statutory auditors and the officers in charge of internal audit and internal control

Elect one or more highly independent outside directors. Coordinate with the board of statutory auditors, officers in charge of internal audit and internal control to strengthen the supervision of management

⇒ In order to gain and maintain the confidence of shareholders and investors, present this as a preferred model for the majority of listed companies. Based on this, listed companies are to disclose the details of their governance structure and the reasons for adopting that structure in relation to the preferred model

2. Strengthening the function of statutory auditors

- Identify the following as desirable attributes for listed companies, and listed companies to disclose their current status: (1) to maintain adequate human resources and infrastructure to support the audit by statutory auditors, (2) to appoint highly independent outside auditors, and (3) to appoint auditors with an in-depth knowledge of finance / accounting

3. Independence of outside directors and auditors

- Enhance disclosure concerning the relationship between the company and the outside director / auditor, as well as the company's view on their independence (On the issue of listed subsidiaries, see separate entry)

4. Authority to determine the agenda for electing accounting auditors and their compensation

- Encourage further discussion on the issue of giving statutory auditors the authority to determine the agenda for electing accounting auditors and their compensation

5. Enhancing the disclosure of executive compensation

- Disclosure of the executive compensation policy and the categorised breakdown of compensation

Monitoring of management by shareholders

Appropriate supervision of management by investors to improve market-based governance of listed companies

1. Appropriate exercise of voting rights by institutional investors as part of their fiduciary duties

- Clarify that the exercise of voting rights is a major element of fiduciary duties of institutional investors
- Develop industry rules to promote institutional investors to prepare and disclose their voting guidelines, and disclose the compiled results following the exercise of voting rights

2. Disclosure by listed companies of ballot results at shareholder meetings

- For each resolution announce the number of votes cast for and against

3. Promote the use of electronic voting platforms

- Promote the use of the system by listed companies in order to give shareholders sufficient time to review the agenda items

Framework to effect the governance discipline on listed companies

- It is a mission of stock exchanges to ensure that stock exchange rules provide a particularly high standard of corporate governance for listed companies
- Enhance the disclosure regime in order to ensure the effectiveness of market-based corporate governance
- Continue wide-ranging discussions on improving the legal system concerning the governance of listed companies