CFA INSTITUTE | Centre for Financial Market Integrity

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Listing Department
Tokyo Stock Exchange
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Chuo-Ku, Tokyo
103-8220 Japan

Via e-mail to: jojo-kikaku@tse.or.jp

Re: Listed Company Corporate Governance Questionnaire for Investors

Sirs:

The CFA Institute Centre for Financial Market Integrity[1] (the "Centre") and CFA Society of Japan[2] ("CFAJ") thank the Tokyo Stock Exchange for the opportunity to comment on the *Listed Company Corporate Governance Questionnaire for Investors*, issued on 26 June 2008. With headquarters in New York, USA, the Centre develops, promulgates, and maintains the highest ethical standards for the investment community, including the CFA Institute *Code of Ethics* and *Standards of Professional Conduct*. The Centre represents the views of investment professionals to standard setters, regulatory authorities, and legislative bodies worldwide to promote investor protection and efficient global capital markets.

The Centre and CFAJ commend the TSE for taking the initiative to enhance the corporate governance of Japanese companies, at a time when capital markets globally, including Japan's, are facing challenges that may compromise investors' ability to generate attractive and sustainable returns over the long term. We believe that good governance is positively correlated to a company's share price, and the creation of an internationally acceptable framework for the governance of listed companies is crucial to the long-term development of any capital market.

We address the issues in the Questionnaire attached, and our responses are guided by the CFA Institute "*Corporate Governance of Listed Companies: A Manual for Investors*". This Corporate Governance Manual is a comprehensive guide to help with the assessment of companies' corporate governance policies and the associated risks of investment decisions.

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[1] The CFA Institute Centre for Financial Market Integrity is part of CFA Institute. With headquarters in Charlottesville, VA and regional offices in New York, Hong Kong and London, CFA Institute, formerly the Association for Investment Management and Research®, is a global, non-profit professional association of more than 91,500 financial analysts, portfolio managers, and other investment professionals in 134 countries of which more than 78,200 are holders of the Chartered Financial Analyst® (CFA®) designation. CFA Institute membership also includes 134 Member Societies and Chapters in 55 countries and territories.

[2] Based in Tokyo, the CFA Society of Japan is a professional society comprised of 900 members who are mostly practitioners in the investment and fund management industry in Japan. Its mission is to promote global best practice in the areas of financial analysis, investment decision making, and ethical and professional conduct to contribute to the further improvement of capital market integrity and the investment profession in Japan.

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We appreciate your consideration of our comments. If you feel that we can provide additional information, please do not hesitate to contact Lee Kha Loon at +852.3103.9303 (khaloon.lee@cfainstitute.org) or Yasuhiro Oshima at +813.5549.5314 (yasuhiro.oshima@sgcib.com).

Yours sincerely,

/signed/

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Questionnaire

1. Contact information

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Which describes you best?	Investor-interest organization

2. Questionnaire

(1) Please circle the three issues you consider most important with regards to listed company corporate governance:

a. Issuance of new shares, etc., causing substantial dilution to existing shareholders

b. Issuance of new shares, etc., through private placement to a third party about whom transparent disclosure is not provided

c. Cross-shareholdings

d. Reverse stock splits that deprive many existing shareholders of their shareholder rights

e. Introduction of takeover defense measures

f. Exercise of takeover defense measures

g. Functions and roles of directors

h. Functions and roles of statutory auditors

i. Exercise of voting rights by institutional investors

j. Other issues

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(2) Please provide your specific opinions on the following issues. Please feel free to expand each column.

Issues	Opinions
a. Issuance of new shares, etc., causing substantial dilution to existing shareholders. b. Issuance of new shares, etc., through private placement to a third party about whom transparent disclosure is not provided	The Centre and CFAJ believe that crucial to good corporate governance is the equitable treatment of shareholders, including minority and foreign shareholders. In the *Shareowner Rights: Voting for Other Corporate Changes* section of the CFA Institute Corporate Governance Manual, we express our belief in the principle that shareholders should be able to vote for corporate changes, particularly those that affect their ownership of the company. This covers the issuance of new shares, which, as correctly pointed out in the questionnaire, has the potential to dilute the ownership of existing shareholders. For commercial, strategic or management purposes, companies may need to enlarge their share capital and issue new shares. But because insiders and control groups may use large rights issues or open offers to dilute smaller and independent shareholders, we believe that companies should have to receive approval of independent shareholders prior to issuance of new shares, whether for the purpose of compensation (such as stock options), mergers and acquisitions, divestitures, or effecting a significant change in capital structure. This is particularly imperative if the new-share issuance would increase the company's issued share capital or market capitalization by more than 50 percent. In some jurisdictions, companies issuing new shares are required to attach provisions for pre-emptive rights, which allow existing shareholders to subscribe to the new shares before the rest of the market. We believe this is a practice worthy of consideration. We also believe that shareholders should have the right to be sufficiently informed on fundamental developments within the company, such as changes in control and ownership. While issuance of new shares via private placement is a legitimate form of equity capital-raising, governance concerns may arise when fresh equity or convertible instruments are issued to related parties, especially at deeply discounted prices, which may ultimately alter the control structure of the company. To avoid this scenario, we believe that private placement of new shares to related parties should be appropriately disclosed, by identifying the related parties and the price at which the securities were sold. The transaction must also have been approved by the independent non-executive directors or statutory auditors of the company.

Issues	Opinions
c. Cross-shareholdings	The Centre and CFAJ understand that cross-shareholding is a fundamental characteristic of the Japanese equity market, with ties to the political and economic development of the country. We believe, however, that cross-shareholding in itself is not necessarily an ideal ownership structure in a changing market, particularly where a company's stakeholders are becoming more dispersed and more international. By definition, cross-shareholding creates related-party relationships that may, in turn, result in conflicts of interest between management and minority shareholders. One of the many situations that may lead to such conflict is a potential change in the company's ownership. As Japan has seen in recent years, non-related bidders have faced takeover-defense hurdles owing to the influence of parties involved in the cross-shareholding structure, even if they offered a significant premium to the current price. The Centre and CFAJ believe that unwinding of cross-shareholdings is ultimately subject to market forces, and will not happen overnight. However, companies and regulators can introduce governance mechanisms to ensure that minority shareholders are treated fairly, by strengthening the role of independent directors on the board, and by putting significant issues – such as related party transactions and takeover defense measures – to a vote by independent shareholders.
d. Reverse stock splits that deprive many existing shareholders of their shareholder rights.	The Centre and CFAJ believe that share consolidation through reverse stock splits is a legitimate strategic consideration for some companies for various reasons, and does not necessarily deprive existing shareholders of their shareholder rights. Reverse stock splits have a number of benefits, especially to companies faced with poor liquidity. As in the case of Hong Kong in the early part of this decade, reverse stock splits played a crucial role in maintaining the listing status of companies whose share prices have fallen below the minimum allowable to continue trading in the stock exchange. A company may also undertake share consolidation to align its share price with that of its peers, or to bring its share price to a level that falls within the investing guidelines of certain institutional investors. Problems may arise when investors are left with "odd lots" that would not qualify for the reverse split (for example, 50 shares in a 100:1 reverse split). In this case, share consolidation programs should make a provision towards compensating these investors.

Issues	Opinions
	In other situations, reverse stock splits may be used to "squeeze out" small investors – i.e., a company may design its share consolidation program such that a significant number of small shareholders will be left owning "odd lots" and eventually be cashed out of their ownership, leaving the company with a much smaller stockholder base. One scenario that may then arise is that the company will be acquired by another, possibly related, entity without the likelihood of dissent from small shareholders. Another is that the company will end up being taken private by its controlling shareholders without the benefit of making a general offer to small shareholders. To avoid such scenarios, it may be advisable that companies disclose not only their objectives for the reverse stock split, but also the potential impact of the share-consolidation program to their ultimate ownership, prior to the measure's being put to shareholders' vote.
e. Introduction of takeover defense measures f. Exercise of takeover defense measures	The Centre and CFAJ agree with the OECD corporate governance principle that takeover defense measures should not be used to shield management and the board from accountability. Takeover defense measures, or "shareholder rights plans" such as crown-jewel defenses, golden parachutes, poison pills, greenmail and excessive breakup fees, may reduce the potential of an acquirer to succeed even in situations that would benefit shareholders. They may also discount the value of the company's shares in normal trading because of the conditions and barriers they create. We recognize that the terms of introducing and exercising takeover defenses may vary according to the articles of incorporation of individual companies. As such, in the *Takeover Defenses* section of the CFA Institute Corporate Governance Manual, we urge investors to be aware of whether or not shareholder approval is required prior to implementation of the defense measures. We also urge them to consider the possibility that the board and management will use the company's cash and available credit lines to pay a hostile bidder to forego a takeover, as such payments should in general be discouraged. On the part of the companies, the Centre and CFAJ believe that the introduction and implementation of takeover defense measures should not be the action of first resort for companies

Issues	Opinions
	faced with a hostile takeover bid. Instead, a company should fairly consider a takeover bid in terms of its impact to shareholder value, as well as to the commercial and strategic future of the company. We believe that as best practice, a company may establish an independent committee made up of independent directors and statutory auditors that could demand an investment rationale from the potential acquirer, review its merits, and make an unbiased recommendation to management.
g. Functions and roles of directors	The Centre and CFAJ understand that Japan has two systems of corporate governance: the "company with committees" system and the "board of statutory auditors" system – both of which have a board of directors overseeing management. In both cases, we believe that a company's board of directors has several key responsibilities, including holding management, and in turn employees and auditors, responsible for its actions and securing regular reviews of the company by independent third parties to ensure reasonable internal controls. In the *Board of Directors* chapter of the CFA Institute Corporate Governance Manual, we state that board members owe a duty to make decisions based on what ultimately is best for the long-term interests of shareholders. In order to do this effectively, board members need a combination of three things: independence, experience and resources. First, a board should be composed of at least a majority of independent board members with the autonomy to act independently from management. Board members should bring with them a commitment to take an unbiased approach in making decisions that will benefit the company and long-term shareowners, rather than simply voting with management. Second, board members who have appropriate experience and expertise relevant to the Company's business are best able to evaluate what is in the best interests of shareowners. Depending on the nature of the business, this may require specialized expertise by at least some Board Members. Third, there needs to be internal mechanisms to support the independent work of the board, including the authority to hire outside consultants without management's intervention or approval. This mechanism alone provides the board with the ability to obtain expert help in specialized areas, to circumvent

Issues	Opinions
	potential areas of conflict with management, and to preserve the integrity of the board's independent oversight function. An expanded discussion of our views on the role of directors may be found in the CFA Institute Corporate Governance Manual.
h. Functions and roles of statutory auditors	The Centre and CFAJ understand that in relation to the "Board of Statutory Auditors" system, the Companies Law of Japan has no independence requirement with respect to directors. The task of overseeing management therefore falls to the corporate auditors who are separate from the company's management team and must number at least three, with the majority of them being independent. As such, statutory auditors play a crucial role in a company's governance – by monitoring the performance of directors, and by reviewing and expressing opinion on the company's audit reports (with the view of protecting the interests of all of company's shareholders, including minority and foreign shareholders). We believe that there is room to strengthen the independence of statutory auditors, particularly in the alignment of the definition of independence to global standards. The Centre and CFAJ believe that to be considered independent, auditors under the "Board of Statutory Auditors" system (as well as independent directors under the "Company with Committees" system) must not have a material business or other relationship with the following individuals or groups: • The Company and its subsidiaries or members of its group, including former employees and executives and their family members; • Individuals, groups or other entities — such as controlling families and governments — that can exert significant influence on the Company's management; • Executive management, including their family members; • Company advisers (including external auditors) and their families; or • Any entity that has a cross-directorship relationship with the Company.
i. Exercise of voting rights by institutional investors	The Centre and CFAJ believe in the principle of "one share, one vote", that shareholders should have the right to vote in proportion to their economic ownership of the company. As such, company rules should ensure that each common share

Issues	Opinions
	has one vote, regardless of whether they are held by institutional or individual investors, domestic or foreign. A structure that permits one group of shareholders disproportionate votes per share creates the potential for a minority shareholder to override the wishes of the majority of owners for personal interest. Where such dual structures are legal, companies should disclose such arrangements and the situations, the manner, and the extent to which those arrangements may affect other shareholders. In the *Ownership Structure* section of the CFA Institute Corporate Governance Manual, we state a company that assigns one vote to each share is more likely to have a board that considers and acts in the best interests of all shareholders. Conversely, a company with different classes of common shares in which the majority or all of the voting rights are given to one class of shareowners is more likely to have a management team and board that are focused on the interests of only those shareholders. The rights of other shareholders may suffer as a consequence. The Manual further states that shareholders should have the following voting rights: **Proxy Voting.** Shareholders should be allowed to vote on their shares regardless of whether they are able to attend the meetings in person. They should also be given an appropriate notice of shareholder meetings, within a time frame that is reasonable enough to allow foreign shareholders to prepare to exercise their franchise. **Confidential Voting and Vote Tabulation.** Shareholders should be able to cast confidential votes, and we believe that voting by poll on all resolutions is the best practice in terms of giving all shareholders a fair treatment. The result of the voting should be published in full, including the total number of votes for, against or withheld. Confidentiality of voting insures that all votes are counted equally, and that the Board Members and management cannot re-solicit the votes of individuals and institutions who vote against the positions of these insiders until the votes are officially recorded. **Cumulative Voting.** Shareholders should be able to cast the cumulative number of votes allotted to their shares for one or a limited number of Board nominees. The ability to use cumulative voting enables Shareowners to vote in a manner that enhances the likelihood that their interests are represented on the Board.

Issues	Opinions
	Voting for Other Corporate Changes. Shareowners should be able to approve changes to corporate structures and policies that may alter the relationship between Shareowners and the Company, such as those pertaining to the following: • articles of organization, • by-laws, • governance structures, • voting rights and mechanisms, • poison pills, and • change-in-control provisions.
j. Other issues (if any)	A comprehensive discussion of key corporate governance issues investors should be aware of is available from the CFA Institute *Corporate Governance of Listed Companies: A Manual for Investors.*

Nothing follows.