



For immediate release

ACCJ Submits Public Comments to METI Regarding The Ronten Koukai of the Corporate Value Study Group

May 16, 2005 (Tokyo) – The American Chamber of Commerce in Japan (ACCJ) announced today that it has submitted to the Ministry of Economics, Trade, and Industry (METI) its "public comment" on the *Ronten Koukai* of the Corporate Value Study Group.

The ACCJ commends the substantial efforts of METI and the Corporate Value Study Group to stimulate discussion of the complex issues that arise in the case of hostile M&A transactions from the perspectives of maximizing corporate value and promoting good corporate governance. For the most part, the ACCJ believes that METI's various reports set forth sensible guidelines and excellent general principles for Japanese boards to follow when adopting defense plans.

However, the ACCJ public comment also points out that the ACCJ is concerned by recent unfounded, misleading and speculative reporting of an expected wave of hostile mergers and acquisitions (M&A) by foreign companies as the principal reason why Japan needs to rush headlong to legislate access to, and thereby indirectly to validate and encourage adoption by Japanese companies of, a wide variety of "takeover defenses." METI is not the source of these reports, but they arise constantly. Such false assertions hurt Japan's worldwide image as an advanced and open market competing for investment with countries such as China, and the effectiveness of its policies to expand FDI and improve its capital markets and investor protections.

ACCJ President Debbie Howard commented, "The supposed 'huge threat of foreign takeovers' (*gaishi kyouiron*) is nonsense, an emotional myth. Of course we have no problem with the concept of takeover defenses that increase corporate value. But we are concerned about the impact on Japan's image in the international business and investment markets and the substantial risk of confusion in the stock market from rushing to blame FDI as a scapegoat to justify new corporate defenses enlarging managerial discretion without any improvement of the laws assuring good corporate governance and transparent securities markets."

"The one-sided environment in which legislation is currently proceeding is creating a significant risk of confusion and instability in the stock market. METI's reports are excellent, but there is a limit to what can be accomplished by means of guidelines, which by their nature are not mandatory or detailed. In order to reassure public markets that takeover defenses will not be abused and corporate value will indeed be enhanced by these rules, Japan needs to immediately follow up with changes in its laws that reflect METI's principles, providing legal clarity, compulsory effect, and

mechanisms for better corporate governance practices," President Howard said. "Otherwise, these excellent principles recommended by METI will end up being nothing more than 'pie in the sky' that will be selectively ignored or cannot even be implemented."

Many of the defense mechanisms now being hurriedly considered for adoption are based on U.S. models. The ACCJ points out that it is dangerous to selectively import the complete menu of U.S. style takeover defenses without at the same time fortifying the indispensable other half of the U.S. model, which is corporate governance. Many of these defenses are essentially copying devices like poison pills that have been developed over the past 35 years in the U.S. But the very foundation and logic of that U.S. system - in fact, what permits these defense devices to exist at all in the U.S. - is the presence of a majority of independent outside directors at all publicly traded companies. If, as is the case in Japan, there had been very few independent outside directors on corporate boards, it is impossible to imagine that the U.S. takeover defense system, as shaped by legislation and court decisions, would give as much decision-making authority to boards as it does today.

The ACCJ's public comment contains four pages of detailed suggestions as to the type of specific changes in laws and regulations which would reassure shareholders and public equity markets, including the following.

- A legal requirement for more independent directors
- New reviews toward improving TOB and other securities laws
- Creating an independent Japan SEC with more authority and budget and the specific mandate to protect investors in the Japanese public securities markets
- Improving disclosure about cross-shareholdings
- Protection of shareholders by reinforcement of anonymous voting of shares
- Renewed and detailed efforts toward improving the functioning of the proxy voting system
- Reviewing, clarifying and strengthening the rules for appraisal rights for dissenting shareholders

For more information, please visit <http://www.accj.or.jp/content/advocacy/comment>

About the ACCJ

Established in 1948, the American Chamber of Commerce in Japan (ACCJ) has grown into Japan's most influential organization representing the interests of international businesses in Japan, with close to 3,000 individual members representing more than 40 countries and 1,400 companies. The ACCJ promotes commerce between the United States and Japan, supports measures to benefit and protect the interests of U.S. companies, and presents a variety of programs that keep Chamber members abreast of current business practices and trends. For further information, visit the ACCJ public website, <http://www.accj.or.jp>.

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