



**Press Release**

**報道参考資料**

***For Immediate Release***

**ACCJ Urges Disclosure for all M&A Transactions to Protect Investors and Avoid "Evisceration" of New Company Law**

**December 7, 2005 (Tokyo)** --- The American Chamber of Commerce in Japan (ACCJ) today released a policy Viewpoint entitled "Apply Consistent Disclosure and Investor Protections for Non-Cash M&A Transactions" and urged that the Government of Japan to adopt adequate and consistent disclosure requirements for all merger, stock swap and triangular merger transactions that use stock as consideration.

The ACCJ also expressed concern about recent reports that Ministry of Justice is under pressure to draft the implementing regulations of the new Company Law to make many triangular mergers using stock virtually impossible for foreign companies, which are listed abroad but not in Japan.

The Viewpoint recommends that all merger, swap and triangular merger deals utilizing stock as consideration should have to satisfy the registration and disclosure requirements of one of the presently permitted categories of "public offering."

Under the current Securities and Exchange Law and its regulations, offering disclosure standards are not required for mergers or stock swaps by Japanese listed companies in which shareholders receive securities of a different issuer and are effectively asked to make an "investment decision" by voting on the transaction. This is because the transaction is not considered an offer or sale of securities. The only disclosure required under the SEL is a brief extraordinary report (*rinji hokokusho*) by the issuer, containing no detailed disclosure of up-to-date financial information, risk factors, and other material information.

"We are concerned first, that the present disclosure rules for these transactions are completely inadequate; and second, that proposals for so-called 'investor protection' by means of the regulations new Company Law would selectively discriminate against foreign companies while leaving gaps in disclosure for domestic deals completely unaddressed. Rather than eviscerating Japan's FDI policy and triangular merger provisions, we think there should be appropriate and consistent disclosure, under the securities laws and to the entire market, for *all* transactions", said ACCJ Chairman Robert Grondine.

Grondine added, "Investors are disturbed whenever disclosure is insufficient, but particularly so when serious governance issues are also raised. Under the concept that has been proposed, the new Company Law would impose a mandatory and

prohibitively difficult approval standard on triangular mergers with foreign companies, simply because existing management does not wish to have to consult with shareholders about proposals for such friendly transactions, and are not confident of getting approval for amending their Articles for defensive devices. This has very troubling implications for the market.”

The Viewpoint, “Apply Consistent Disclosure and Investor Protections for Non-Cash M&A Transactions” is available from the following webpage.

- <http://www.accj.or.jp/content/advocacy/viewpoints>

### **About the ACCJ**

The mission of the American Chamber of Commerce in Japan (ACCJ) is to further the development of commerce between the United States of America and Japan, promote the interests of U.S. companies and members, and improve the international business environment in Japan. Established in 1948 by representatives of 40 American firms, the ACCJ has grown into one of the most influential business organizations in Japan, with close to 3,000 individual members representing more than forty countries and 1,400 companies.

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