

**Public Comment on Revisions to Listing Rules Regarding Corporate Governance to Restore Confidence in the Securities Markets**

The American Chamber of Commerce in Japan (ACCJ) appreciates the opportunity to submit the following comments in response to the invitation to comment on the "Revisions to Listing Rules Regarding Corporate Governance to Restore Confidence in the Securities Markets" (hereafter, the Proposed Revisions) released by the Tokyo Stock Exchange (TSE) in February of 2012.

In light of the recent corporate scandals in Japan, we agree whole-heartedly that this is the appropriate time to take bold action to reform Japanese corporate governance in order to restore both domestic and international investor confidence in Japanese corporations.

Our comments on the Proposed Revisions are as follows:

**I. "Purpose" and Overall Comments**

The ACCJ agrees with the proposals that require additional disclosure about independent directors and statutory auditors, and seek to improve the environment for such board members so they can function. However, from both a structural and psychological standpoint, we believe that additional measures are needed to materially influence decision-making processes on a company's board of directors. The reasons for this are as follows:

- The Proposed Revisions do not change the current requirement of "one independent board member". Therefore, they are inevitably based on the unrealistic assumption that only one such board member (who can be a non-voting statutory auditor) is enough to restore the desired "confidence in securities markets". However, in the real world, when there is only a single board member, he or she is likely to not receive full information and be marginalized. The chance that such a board member will be able to have much impact on the actual workings of the board is low.
- The Proposed Revisions do not encourage any mechanisms whereby key decisions will be determined by "special committees" comprised solely of independent outside directors in cases where executive (inside) directors have an inherent self-interest that conflicts with the interests of shareholders; and
- The Proposed Revisions do not include any actually mandatory suggestions that will be effective in "fortifying the environment to facilitate independent board member functions". For example, the Proposed Revisions would only encourage companies to improve systems to furnish information to independent outside board members, and to provide such board members with a handbook to be published by the TSE.

The ACCJ believes that in order for market participants to conclude that reforms to improve corporate governance have been implemented, it is necessary to require disclosure about the knowledge level – specifically, about the duties of those who serve as directors or statutory auditors - of the numerous executive (inside) board members at Japanese listed companies.

## **II. "Creating an Environment to Facilitate Independent Director / Statutory Auditor ("ID/A") Functions"**

The ACCJ agrees with the proposed suggestions to "fortify the environment to facilitate independent board member functions" by encouraging companies to improve systems to furnish information to independent outside board members, and to provide such board members with a handbook to be published by the TSE. However, the Proposed Revisions do not include any actually mandatory suggestions that can be effective in achieving the stated purpose.

Because the Proposed Revisions do not attempt to improve the knowledge level, training, and environment for executive (inside) board members, they are likely to be interpreted as implying that: (1) "currently, all board members except the independent board members (ID/As) are receiving sufficient training"; and (2) "encouraging the improvement of systems to furnish information and 'increasing understanding about the role and duties of directors or statutory auditors' only needs to be done in the case of independent board members, but not in the case of the inside board members who comprise the vast majority of board members in Japanese listed companies." The fact that the wrongdoing in all of the of very value-destroying incidents referred to in the Proposed Revisions was committed by inside directors, however, makes it clear that improving the knowledge level and environment with regard to the *inside* board members who make up a majority is immensely important.

**Therefore, to address these issues, the ACCJ recommends that the TSE require all listed companies to disclose their corporate policies with regard to director training, both with respect to training of executive directors before nomination, and continuing education of all directors.**

Under the present listing rules, in order to restore domestic and international investor confidence in Japanese corporations, it is essential to tackle these important issues as part of the process of improving corporate governance. .

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