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Observations on the Current State of Corporate Governance in Japan*

Robert Grondine
Partner, White and Case LLP
Tokyo, Japan

This paper is a draft that was written for the May 29, 2007 conference "Operational Restructuring: New Strategies of Japanese Corporate Leaders" organized by the Program on Alternative Investments of the Center on Japanese Economy and Business at Columbia Business School.

Abstract: This paper discusses recent positive and negative developments related to Japanese corporate governance. It first offers the good news in the M&A market and makes note of some general improvements in Japanese corporate governance, including a reduction in the size of boards, different terms of office for board members, and better transparency, reporting, and accounting. Further, it is noted that recent corporate scandals have increased awareness of the need for internal risk management controls and systems, though Japanese corporations still must distinguish more clearly between corporate governance and internal risk controls. Activist investors will stimulate and challenge management, but Japanese companies must develop better strategies for responding to them. Three activist cases are discussed to elucidate recent trends. Finally, a number of worrisome trends are analyzed. They include triangular mergers, Japan's diminished status as a global financial center, the number of defensive measure proposals, evidence of "MBO bad behavior," and the Nikko Cordial delisting. Japanese corporations still must do much more to integrate outside directors and allow them to perform their function efficiently.

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*This paper does not necessarily represent the views of White and Case LLP

Introduction

There have been numerous regulatory reforms in Japan over the past several years which have affected the behavior of Japanese managements, from tax code changes to revisions in the Commercial Code to changes in the takeover rules, and numerous others. At the same time, the erosion of the traditional system of cross-shareholdings has allowed the rise of activist investors and private equity firms. In addition, the demise of the administrative guidance system has left corporate managers scrambling to replace the traditional role of bureaucrats as corporate risk managers with their own risk management and compliance systems.

It should come as no surprise that these changes have been met with confusion, resentment, and resistance by those who perceive their own interests threatened, while being heartily embraced by those who see in these developments the possibilities of positive change and opportunity. Below, I examine the opposing forces at work as Japan adjusts to the new realities that its business leaders face in the ongoing globalization of the economy.

My views represent an international perspective, reflecting my position as a non-Japanese but long-term resident of the country involved for the past 25 years in assisting both domestic and foreign companies in understanding the expectations and directions of the other.

There is good news and bad news on the Japanese M&A market, so I will discuss both.

I. The M&A market in Japan: The good news

A. Market trends

1. Strong transaction flow and healthy domestic development

First, the market itself is very active. It is very stable. Every year, we are seeing a significant increase in the number of M&A transactions in Japan. In the 1990s, cross-border M&As

accounted for most of the cases, and certainly all of the large cases, but these days we are seeing steady growth in the overall market and particularly in the domestic M&A transaction activity. In any country, among total M&A activity, 80 percent to 90 percent needs to be in the form of domestic transactions in order to see healthy and stable growth and development. In the past five years, we have actually seen that in Japan. We have seen very healthy, good growth year on year. Of course, M&A activity was down in 2003 and into 2004, but that was more a reflection of the global M&A dip resulting from the bursting of the IT bubble than anything attributable to Japan or any other one country, and the dip in Japanese activity was very much in line with the global decline.

Some non-Japanese commentators note that cross-border transactions account for only four percent of the total, and view this as a negative element of the current Japanese market. On the contrary, one can easily argue that just such a low cross-border percentage is a very healthy development in the Japanese market, as it signals that that M&A is finally now considered as a normal business tool among Japanese managements, which is a good trend for the future.

2. Strong economy

Second, we have since last year seen a sustained strong economy in Japan growing in excess of 2-3% per annum and put to rest the impression of the "lost decade" of the 1990s that Japan could never again achieve economic growth beyond the anemic 0.5-1.0% percent average of the 1990s. This strong economy has enabled the Japanese financial institutions and major corporates to regain strength and repair their balance sheets. They are now once again thinking aggressively about how to improve their competitive positions in Japan and globally. The healthy environment and healthy balance sheets have now led to many positive M&A transactions in the Japanese domestic market between Japanese companies as well as another new wave of outflow Japanese acquisition transactions globally to rebuild and expand competitive positions in the global economy.

3. Increased impact of globalization

Third, the impact of globalization on Japan is inevitable and already dramatic. In order to compete in the global market, everyone needs to have international strategies. For Japanese companies, that will and must stimulate greater competition and rationalization among Japanese companies and integration among larger international corporate groups in order to expand logistics and procurement efficiencies as well as customer base.

4. New JFTC merger guidelines

Fourth, the new Japan Fair Trade Commission (JFTC) guidelines on M&A have been issued just recently this spring. These new regulations have not had very large immediate impacts yet, but this will be a good trend to enhance the competitiveness of Japanese companies. As for the detailed impacts, we will need to wait for some additional months to see the actual implementation before making more specific commentary.

5. Development of MBO/Going private market

Fifth, there have been very interesting developments in the field of Management Buyouts (MBO), or going private transactions, and this could be both good news and bad news. Toshiba Ceramics is mentioned as a positive example. Here is an example of a Japanese company clearly distinguishing between core and non-core businesses, and choosing to focus far more strictly on its core competencies and strategies. Other successful MBO examples have been seen in the past 24 months, and that trend is a good thing for the market and for Japanese companies.

In addition, the recent trend for Japanese companies to de-list subsidiaries that had been taken public some years ago by using share exchanges to return those companies into 100 percent subsidiaries in order to better control them within the corporate group should also have a positive impact on the market. Although this is rather the opposite of the MBO trend—in the sense that the further abandonment of the past academic adherence to the theory that minority shareholders were considered to have an inalienable right to continue as minority shareholders—it is a positive step in the rationalization of the Japanese market. Taking companies private by de-listing should also be viewed as simply an objective business decision controlled by the majority of the company's shareholders, while of course protecting the minority interests with fair and transparent valuation procedures.

B. Corporate governance developments

1. General corporate governance improvements

There is much to say in relation to the rapid developments concerning improved corporate governance in Japanese companies generally in the past ten years. The size of Japanese boards has been reduced drastically. Terms of office of directors of Japanese companies have been reduced in many cases to all directors being elected every year. Reporting and transparency have been improved. Accounting standards and practices also continue to improve, especially after some of the recent accounting scandals for Kanebo, Livedoor and Nikko Cordial have shined greater light on these issues. Management focus on improving the corporate emphasis on legal and regulatory compliance has been improving, albeit this improvement is being driven by the examples of extreme market destruction to companies recently caught in scandals exposing illegal activities. Fear of corporate value destruction and director liability are having a salutary effect on corporate behavior. This is not unusual to Japan – corporate governance improvements in many countries come in waves for just this same reason, witness the United States SOX Act and other corporate governance improvements mandated from the Enron, Tyco and WorldCom scandals of recent years.

However there are many issues still to address in order for Japan to achieve an adequate overall level of good corporate governance and the institution of effective internal risk control structures and procedures. Do Japanese companies actually understand the meaning and necessity of internal risk controls and management systems? What are the differences between corporate governance and internal controls? These are key concepts and it seems that there is still much confusion in Japan regarding them.

Corporate governance is an interface between the board of directors and the top-level strategic planning functions on the one hand and vis-à-vis the shareholders on the other. In the case of internal controls, this corporate function should be more focused on internal risk management and compliance, how to assure and enhance the culture of legal compliance within the company and its employees.

2. Internal risk management: The disconnect between the foreign and Japanese views

Japanese companies tend to have the view that they already have good corporate governance and internal risk management, but foreign observers have an opposite view. Why are these two perspectives so divergent? This can be explained from the perspective that until the 1980s, the Japanese government practice of administrative guidance was the biggest risk for all Japanese companies, and that the Ministry of Finance and other bureaucracies played important roles in that risk profile. Since Japanese companies had to that date not become so global and were not broadly exposed to litigation and compliance risk outside Japan, and no substantial litigation or legal risks existed in Japan domestically to that date, the risk of changes in Japanese domestic government policy and interpretations through administrative guidance represented the single most significant potential threat to the continued operations of Japanese companies at that time.

Commensurate with that primary risk, Japanese companies indeed had created a sophisticated and well funded risk management program focused precisely on monitoring and managing that government bureaucracy risk. This system included: hiring former bureaucrats in the "amakudari" system; assigning senior personnel specifically to interact with and monitor on a continuous basis all developments within the ministries having jurisdiction over them ("MOF-tans" and other ministry management specialists in each company), and very critically a significant budget for extensive entertainment of bureaucrats in all manner of venues such as golf, international junkets, and entertainment at Ginza hostess bars. This risk management system in fact was quite successful in controlling these risks to company operations at all levels, even though it was very expensive and in some cases less than ethical.

That system started to change, however, with the "demise" of administrative guidance after the late 1980s and a newer emphasis on open and transparent Japanese government, as well as the perception of the failures of Japan's bureaucracy represented by the bursting of the Japanese bubble and the "lost decade" of the 1990s. With this perceived and actual reduction in the power and scope for discretion in the Japanese bureaucrats, Japanese companies seemingly decided en masse that they did not need this "old" administrative guidance risk management system any longer. So companies drastically reduced their budgets for this system in the 1990s, which was very convenient timing since they were also drastically reducing other discretionary spending at that time to cope with the losses and economic stresses of that decade.

This drastic reduction in their prior "risk management" structure was never fully understood in that functional manner by the Japanese companies themselves, but rather was viewed in a much more parochial Japanese domestic fashion narrowly as simply cost reduction. The Japanese company planning or legal departments did not at the same time, or even at any time since then, stop to examine what other systemic operating risks may be increasing in their businesses that required a different or new risk management system and budget. Despite the dramatic trends in globalization, significantly increased exposure to international litigation and compliance risks (such as global recalls in the auto and parts industries, for example Bridgestone Tire/Ford Explorer) and the ubiquitous influence of the internet making access to and sharing of information globally a cost free exercise, very few Japanese companies have taken any effective steps to analyze, monitor and control those massive new potential risk factors to their businesses. Why did they need to worry about risk management any longer because the "traditional" risks in their domestic market had supposedly declined? Japanese managements lost focus on risk management, and their internal risk management structures were not developed to identify and manage the new global risks and did not work well at all in relation to them. Substantially no new funds have been allocated by almost any Japanese companies (with a very few exceptions) to develop these essential risk management functions to cope with these times of drastic change. As we all know, once Japanese companies reduce budget for any corporate function, it is always extremely difficult then to restore that budget later, and we have seen that phenomenon in relation to internal legal and other risk management controls and systems.

More recently, general talk has turned to the need for internal controls and improved legal compliance culture in the face of continuing Japanese domestic scandals involving corporate violations of Japanese laws and regulations. This new emphasis on compliance could be approached dramatically by good Japanese company managements—in the context of major

Japanese companies being destroyed in short periods of time by such illegal behavior—as indispensable for the long term survival of their companies.

It is a very healthy development that Japanese managements have now become more aware and focused on this increased need for internal risk management controls and systems. In this sense the “bad news,” or recent scandals in Japanese corporate governance and internal risk management, is leading to “good news” in momentum toward improvement. Clearly, this trend will have a positive impact on Japan as a whole. Improvement in corporate governance and disclosure has continued steadily for the past 10 years, and has increased dramatically in the last 2-3 years with the new emphasis on internal risk management systems.

3. Active investors

Active investors have arrived in Japan. They stimulate and challenge management. In order for Japanese companies to become stronger, it is very important for them to develop better strategies for responding to active investors.

The long period during which Japanese managers could exist in the certainty that they would virtually never face any challenges coming from outside has led to many inefficiencies, which are thankfully now being raised by activist investors and other outsiders. Such stimulants are necessary in order for the companies to make progress. Japanese corporate managers should be and are challenged daily by the dramatic rise of China and India. In fact, the whole world is full of challenges. Japanese management should therefore not be complacent about challenges from outside their own boardrooms. It is a dangerous world today for business everywhere, and Japan is no exception.

Japanese management needs to listen better to the views of all investors, institutional, active or other, as well as the other stakeholders in the company, something that they seem still to be rather reluctant to do. Instead of focusing on poison pills and anti-takeover defense measures, they should be building IR strategies and talking to the market, considering more reasonable and responsive dividend policies, and better cash management. We have seen in Japan the rise of several excellent private equity companies. Good management and operational ideas are provided by private equity funds at no cost to the invested companies. The private equity players are not always only hostile; these experienced investors and managers can be very friendly and supportive to management. They should be regarded as such by Japanese managers.

4. Pentax-Hoya

The Pentax and Hoya case is an illustrative example about the conflict of new and old regimes in Japan; it symbolizes both progressive and reactive trends. At the beginning 2006, a merger of the two firms was announced.. At that time, bad corporate governance was presented as a good thing when the then president one-sidedly decided to merge and announced the merger without any prior consultation at all with the Board. The Board of Directors resisted the president. That was an example of modern responsible corporate governance overcoming bad past practice of unilateral behavior by overbearing presidents. The era of the president unilaterally running the firm seemed then already in the past. Afterwards, however, the effort toward better corporate governance behavior went downhill. The Pentax Board replaced the President, and then waffled on its response to the Hoya offer. Pentax announced at one point that they would reject Hoya, and instead announced their own five year business plan and requested "understanding" from the market and their main shareholder Sparx. However, the market did not evaluate the "new"

Pentax plan positively and the share price came under heavy pressure. Very quickly Pentax then capitulated and accepted in principle to proceed with the Hoya offer on a friendly basis. This shows that it can be very difficult to determine who is friendly or hostile, and that view can change quickly over time depending on price and circumstances.

5. Sapporo Holdings-Steel Partners tango

Another key case illustrating recent trends is that of Sapporo Holdings and Steel Partners. Sapporo proposed and gained shareholder approval for a poison pill defense to stop Steel Partners from gaining an even greater control share in the company than that which the fund had already built up. The "tango" here is used to refer to whether Steel Partners' method is positive or negative in challenging the market. They do activate the market and increase share values from increased trading. But can there be a White knight for Sapporo? How will Steel Partners otherwise find a successful conclusion of its strategy? Steel Partners may have made an error in choosing this target because the Japanese beer industry is already too concentrated, and the Japan Fair Trade Commission (JFTC) has said publicly that neither Kirin nor Asahi, the two most obvious potential white knights, would be permitted to buy Sapporo. We need to wait and see how this situation develops. If any activist fund is pursuing this kind of strategy in order to scare Japanese management into inviting a friendly (Japanese) white knight into control at a higher price, the activist needs to choose an industry segment (such as was done in the first noodles foray in 2005) where the target can easily find a white knight. The market will need to wait and see what happens in this case, but this example could also easily become an example of bad news instead of good news. There could be interesting developments here.

6. Osaka Steel-Tokyo Kohtetsu proxy fight

The Osaka Steel and Tokyo Kohtetsu situation represented the first successful proxy fight in Japan. This appears to have been a great development vis-à-vis the market to demonstrate that active and well organized shareholders can lead a focused fight to defeat unreasonable management proposals, especially in a merger or MBO proposal context where a super majority shareholder approval requirement will apply. The next step may be for active shareholders to engage in direct proxy fights to control the Boards of listed companies without ever actually needing to engage the takeover bid to purchase majority control. In taking board control, how great a percentage of ownership is required? That will vary by company and voting patterns in each case, but it certainly should be feasible in many cases to gain full control of the Board by majority vote of shares present and voting where the active shareholder seeking control only owns 30-40% of the company's shares. This new market element could be another stimulant for the Japanese managements to worry about.

II. Negative trends

A. Triangular mergers

The most significant negative development for imposing market discipline on Japanese corporate management is the outcome of the debate on triangular mergers. There have been numerous hysterical projections in the Japanese media for the past 18 months of a huge wave of foreign takeovers that were expected based on the availability of this new transaction structure from May 1, 2007. In fact, May 1 has come and gone and nothing has happened; many who understand the international point of view predict that the "tsunami" initially predicted is not going to come. The poor response to the new takeover guidelines is because of the very difficult and unclear hurdles imposed by the Japanese tax authorities for any such triangular merger to qualify for tax deferral to the target company shareholders. The only primary reason for using a triangular merger structure, which is technically very difficult, time consuming and expensive to implement, is to achieve tax deferral for the target company shareholders. Without that primary benefit, there would be no reason to undertake the difficult other issues and challenges posed by this structure. Attempting to overcome those hurdles will be very risky, therefore I have been predicting that no one will undertake this structure.

There are still significant other accounting, legal and administrative issues as to how one would be able to implement triangular mergers in the Japanese corporate environment. These structures work in the United States because tax and accounting are very flexible and do not require direct correlation as in the Japanese system. In fact in a triangular merger in the United States it is not even required that the parent company shares actually be put into the acquisition vehicle special purpose company (SPC) subsidiary; most often those parent company shares are in fact transferred directly from the parent company to the target company shareholders. After the acquisition in the United States, it is a very simple procedure then to merge the SPC acquisition vehicle company into the target; again in this respect Japanese procedures will not be simple. The legal, accounting and tax aspects of putting the parent company shares into the Japanese acquisition vehicle, which cannot be a specially formed SPC entity, will be very difficult, time consuming and expensive.

At the recent Bush/Abe summit in late May 2007, triangular mergers was one of the topics discussed. That this could not have been discussed at their prior meeting is extremely unfortunate, because discussion at the end of May 2007, after the Ministry of Finance (MOF) had already decided this excessively narrow deferral qualification criteria, meant that nothing could be done. Accordingly, it was too late for this discussion to preserve the potential utility for triangular mergers to help Japan and Prime Minister Abe meet his announced goal of doubling inward Foreign Direct Investment to about 5% of GDP by 2010. Given the probable inability of anyone who might have wanted to try the triangular merger structure to qualify for tax deferral, certainly from this point until 2010 it would not be surprising if there were to be no triangular mergers at all.

B. Japan as a global financial center

As for current discussions toward reinstating Japan as a global financial center, unfortunately the Japanese government seems to have no sense of crisis. In New York there is a keen sense of crisis because of the recent perceived strength of London. Even New York might lose to London and be left behind, so what can be said about Japan? Financial Services Agency Minister Yamamoto has spoken publicly on this issue and has asked for recommendations from a study group that were recently published. If everything would be implemented quickly and effectively, these steps could much improve the global and regional position of the Tokyo financial markets. The capital market in Japan needs to be much more active and needs to be globalized, including a much more active and open M&A market including even hostile takeovers. For that, different perspectives need to be studied. If the world financial flows continue to concentrate ever more in London, a great opportunity will have been missed by New York as well as Japan, so Japan should do its best.

C. Nikko Cordial delisting kabuki: Another example of bad news

The recent scandals surrounding Nikko Cordial, Japan's number two securities company, suggest another step backwards in regulatory transparency. Ultimately, a good decision was made. However, the method by which that decision was achieved has left the market confused and with perceptions of a lack of transparency in the decision-making process of the Tokyo Stock Exchange (TSE). In 2006, Livedoor was delisted abruptly and automatically, although in that case the accounting irregularities were far smaller than in the case of Nikko Cordial. Kanebo also was automatically delisted for its accounting irregularities; both cases seemed to show little consideration of the damage that the delisting would do to the public shareholders.

The TSE should be held to account to explain these decisions and their standards for such de-listings. Does delisting harm the company and the managers who engaged in the irregularities, or does this punishment in fact mostly hurt the public shareholders? The shareholders need greater consideration. From that perspective, the need for delisting Nikko Cordial was not clear and the TSE's decision was a good one in the end, but in creating such confusion by first indicating publicly that Nikko Cordial would be delisted, the TSE effectively caused many small and institutional shareholders to sell in a panic into a very bad market. This depressed prices and cause the company to take unnecessary and significant losses before the final decision not to delist was made. The delisting standards and criteria have become very uncertain as a result of this case and now need to be improved, and that is why this case is mentioned under bad news.

At the same time however, in terms of the positive impact of a very large foreign investment into the Japanese securities industry, this is quite good news. This case is also very good news from the perspective of how Citigroup could (a) recoup its position in the Japanese market after the lows it had suffered only just two years ago in having its private banking license revoked for serious regulatory violations, (b) be viewed by the (Financial Services Agency) FSA and Japan as a White Knight rescuing the Nikko Cordial business and employees, (c) manage this TOB so smoothly and effectively, responding to the TSE announcement of the decision not to delist and the resulting recovery in the Nikko Cordial share price by raising their TOB offer price and completing the TOB successfully, (d) issuing a very large bond in Japan to fund the acquisition and (e) generally carrying of what will likely be the Deal of the Year for 2007 very efficiently and impressively.

D. Venture business: The Livedoor overhang

Regarding venture businesses, there is a continuing “Livedoor overhang” that casts a pall on the start up and small cap high tech markets. When will this be eliminated? The continuing depression of stock prices in that sector is one of the ongoing concerns in the market.

E. Rakuten/TBS melodrama

The Rakuten and TBS melodrama continues to be a fascinating and long running saga about the corporate governance of Japanese companies, corporate defenses evolving in the face of a “hostile” bid, and generally creating new precedents in interesting aspects of Japanese Company Law. As observers, we do not know whether this case will end well or badly, but certainly we should be watching very closely.

F. Tsunami of defensive measure proposals

One clear wave that does give rise to significant concerns by international investors is the rapid trend of defensive measures announcements. See Chart I (page 20) for a list of recently announced defensive measures and poison pills that will be submitted to the Annual General Meetings (AGM) at the end of June 2007. Already there have been more than 150 announcements (the actual final number was closer to 300). If all managements do this together, they will be subject to less individual criticism. Whether these measures are necessary or not is one issue, but clearly relying solely on these new toys is not the answer. Japanese managements need to first think more basically about bringing in more outside directors, improved investor relations and increased dividends. They need to think about many things, and it seems that there is now excessive focus on defensive measures. Management should really be giving serious consideration to these other pressing issues, rather than focusing virtually exclusively on the defensive measures.

G. MBO Concerns

Under the heading of bad news, there is also evidence of “MBO bad behavior”. In several going private transactions, significant market criticism has arisen that the managements were misinforming the markets about their projections for the profitability of the company before making their TOB, clearly a conflict of interest in their positions as directors of the targets with complete inside knowledge. In several of these cases, within six months after the successful MBO the profitability of the companies has soared in a way that could have been predictable at the time of the TOB. These perceived abuses have led to calls for far greater scrutiny and disclosure obligations in MBO circumstances to preserve the balance and fairness in the market for the public shareholders.

H. Corporate governance

Recent developments in corporate governance show evidence of both progressive and regressive tendencies, with implications for the fairness and transparency of Japan’s capital markets. As was mentioned earlier in the discussion about the roles of outside directors in Japan, Japanese companies really still have not implemented and do not have proper information systems or any mechanism or system for integrating outside directors. The lack of early provision of the Board discussion materials is a major problem. The outside directors are in fact still considered outsiders and are generally therefore not trusted with the company’s confidential information, even though as directors of the company they have a clear fiduciary duty, or loyalty, and confidentiality with the company's information and are bound to work for the benefit of the company. Without getting sufficient information, however, they clearly cannot be effective directors. There is still a lot of room for improvement of corporate governance by Japanese companies.

Of course, corporate governance needs to be improved in many different countries. Clearly the United States is not perfect, given the examples of Enron, WorldCom and other recent scandals which show that there will always be a need and room for improvement in corporate governance and transparency in all countries.

The example of Teijin's restructuring in the face of the new global competitive landscape is exemplary: in global competition, Japanese companies need to become more global and in doing so can be strategically effective. In this global economy, if the management of the company does not become more global the company itself cannot become a global company. From the corporate governance perspective, there needs to be more diversity in Japanese company management, both in other countries but also fundamentally here at the head offices in Japan. Japanese companies need to think very seriously about this problem for the future. Beyond utilizing more outside directors, they should generally bring more women and international personnel into key management positions.

The last point illustrating why Corporate Governance is listed among the "bad news" of the day is that it appears Japanese managements have now discovered its effective use as a defensive measure. In looking at the Steel Partners-Sapporo Holdings case, typical of many of these poison pill defensive measures, Sapporo Holdings claims the right to ask the bidder all manner of questions concerning its bid and future intentions, justified on the basis that management needs this information to determine if the bid is constructive at a reasonable value, or “hostile.” There is no objective review here; the management seems to believe that they can simply say “no” whenever they wish without any consequence or responsibility to the shareholders at all. The “independent” committees of outside professionals, handpicked and paid by the managements, to date appear to have no legal basis and no loyalty except to the managements who have picked and paid them. The managements take this information supplied by the bidder, and continue to pose effectively endless questions. Without ever really justifying why or how they themselves are protecting corporate value or even enhancing corporate value into the future, they simply conclude that the public offer will destroy corporate value. There is no balance or appropriate accountability to the managements in these procedures. As mentioned earlier, there is an example of how these dynamics play out in the case of Pentax-Hoya, where Pentax rejected the Hoya bid and announced its own five year plan but then had to retreat when the market review and reaction to that plan was completely negative. At least Pentax announced their plan publicly, which certainly has not been true in most other cases.

Clearly these defensive measures are already going too far and will very likely have a chilling effect on the Japanese M&A market and general market valuations. Several of these defensive measures are likely to be legally challenged in this AGM season, so global investors will be watching Japan very closely to see if the investor friendly judicial decisions of 2005 and 2006 in the UFJ, Livedoor and Nireco cases, among others, will be continued or if the tide has now turned much more heavily in favor of management protection.