

Background to the Discussion

- ❑ At the general meeting of the Financial System Council on March 2, 2023, the following consultation was delivered: the tender offer rule and the large shareholding reporting rule should be reviewed based on the recent environmental changes in the capital market.
- ❑ The Working Group on Tender Offer Rule and Large Shareholding Reporting Rule of the Financial System Council (the “Working Group”) has deliberated in 6 meetings since June 2023 and published a report on December 25, 2023.

Background
to the
discussion

- ❑ Based on the following environmental changes in the capital market in recent years, diverse issues have been pointed out regarding the tender offer rule, the large shareholding reporting rule, and the transparency of beneficial shareholders.
 - ✓ Increase in cases of hostile acquisitions through market trades (on-floor transactions)
 - ✓ Diversification of M&A
 - ✓ Increase in passive investments
 - ✓ Expansion of collective or collaborative engagement
 - ✓ Greater importance of constructive dialogue between companies and investors

Matters for
consultation

- Consideration of what the tender offer rule and the large shareholding reporting rule should be
Based on the recent environmental changes in the capital market, the tender offer rule and the large shareholding reporting rule should be reviewed in light of securing transparency and fairness of the market and promoting constructive dialogue between companies and investors.

Report of the Working Group (Overview)

1. Tender Offer Rule

- For the tender offer rule, the working group recommends as follows.

Overview of the current tender offer rule

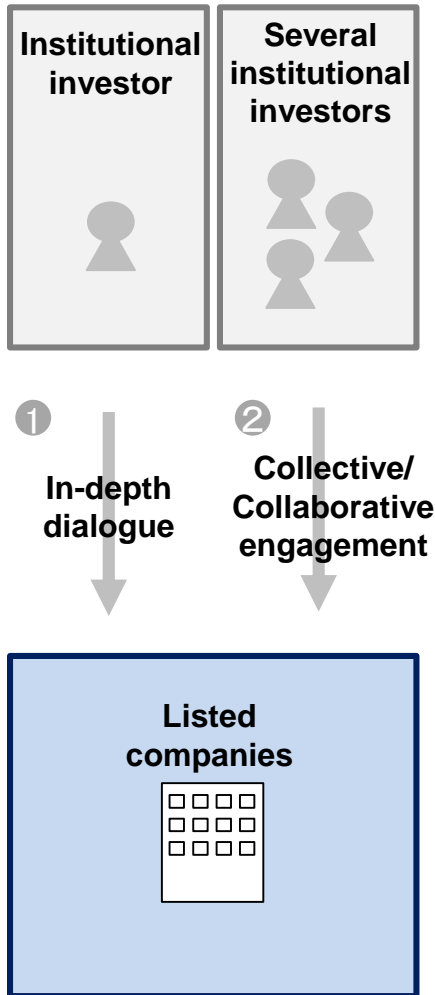
	(Voting rights ratio after the acquisition)			
	Over 5%	^② Over 1/3	Majority	2/3 or more
Off-market trades		The 5% rule ^③ (A tender offer is required. Partial tender offer is allowed.)	The 1/3 rule	The 2/3 rule (Partial tender offer is not allowed.)
Market trade (on-floor transaction)		^① In principle, not subject to rules		

- To ensure transparency and fairness of securities transactions**, transactions through **market trade (on-floor transaction)** that have a material impact on corporate control **should be made subject to the application of the one-third rule**
- The threshold to determine whether the transactions have a material impact on corporate control should be lowered from “**1/3 of the voting rights**” to “**30% of the voting rights.**” in light of the actual ratios of voting rights exercised and the levels in foreign countries
- For the partial tender offer (tender offer with an upper limit), **the offerors should fulfill their accountability for measures to address the conflict-of-interest structure with minority shareholders after the tender offer**
(※) In addition, whether the offer is with or without an upper limit, the offeror should be allowed to voluntarily set an additional tender offer period after the tender offer is completed successfully
- To avoid an excessively rigid operation of the system that does not take into account the actual situation, **a system that permits exceptional treatment on a case-by-case basis should be established**, and an operational structure in which the authorities are responsible for a substantial judgement function should be developed

Report of the Working Group (Overview)

2. Large Shareholding Reporting Rule

- For the large shareholding reporting rule, the working group recommends as follows.



- 1 In order for passive investors to have in-depth dialogues with companies, the rules should be clarified to allow investors to use the special reporting rule,* if all of the following conditions are satisfied**
 - the **purpose** of the engagement **is not directly related to corporate control****
 - the **manner** of the engagement **leaves the adoption or refusal up to the company's management**

* See next page for details of the current rule

** For example, suggested changes regarding dividend policy and capital policy
- 2 In order to promote collective/collaborative engagement,* even in cases where institutional investors agree on voting rights, if the investors' aim of agreement is not to jointly engage in the act of material proposal, and the agreement is not for the continuous exercise of voting rights, they should not be required to aggregate their ownership ratio as "joint holders"**

* The efforts to engage in dialogue with individual companies in collaboration with other institutional investors
- 3 Cash-settled equity derivatives that entail a potential impact on management or have an effect of circumventing the large share holding reporting rule should be subject to the rule**

(Reference) Overview of the current Large Shareholding Reporting Rule

General Reporting

Obligations of Large Shareholders

1. If an investor becomes a large shareholder (**over a 5% shares**):
 - The investor must **submit a "large shareholding report" within five business days** of acquiring over a 5% stake in a company.
2. If there are any material changes, such as **a 1% or more increase/decrease** in the ownership ratio following the submission of the large shareholding report:
 - The investor must **submit a "change report" within five business days of the change.**

Special Reporting

Outline of the Special Reporting Rule

The rule allows institutional investors who repeatedly and continuously execute buy/sell transactions of shares in their daily operations to report under relaxed frequency of submissions.

<Details of the relaxation>

Only to **judge whether it is necessary to submit a "large shareholding report" and a "change report" on the reference dates pre-registered twice in a month** and submit the report within five business days of the reference dates.

<Eligibility to use special reporting system>

1. The investor's ownership ratio does not exceed 10%.
2. **The purpose of shareholding is not to engage in the act of "Material Proposal."**

Joint Holders

Treatment of Joint Holders

A shareholder is required to calculate its shareholding ratio by including the shareholding of a person that corresponds to any one of the following ("Joint Holder").

1. A person that **has agreed to obtain or assign shares in cooperation with the shareholder**
2. A person that **has agreed with the shareholder to jointly exercise voting rights** and other shareholder rights.
3. A person that has a special relationship with the shareholder, such as a certain capital relationship or a family relationship.

Report of the Working Group (Overview)

3. Transparency of beneficial shareholders

- ❑ For the transparency of beneficial shareholders, the working group recommends as follows.

Overview of the current rule

- ❑ Under the current rule, companies and shareholders can ascertain the status of nominal shareholders through disclosure of the status of shareholders, such as the shareholder registry under the Companies Act and annual securities reports.
- ❑ On the other hand, there is no system under which companies and shareholders can ascertain the status of beneficial shareholders,* except for those who are subject to the large shareholding reporting rule (holding over 5%).

* Shareholders who are not a shareholder on the shareholder registry (nominee shareholder) but who have the authority to give instructions on voting rights or the authority to invest in relevant shares

- From the viewpoint of promoting dialogue between companies and shareholders/investors, in order to efficiently identify the beneficial shareholders, **relevant authorities should consider taking the following measures**;
 - (1) Call on **institutional investors to respond when issuer companies ask them** about the status of their holdings by clearly stating principles of conduct for institutional investors, and
 - (2) **Make the above responses mandatory under law**