Norges Bank Investment Management

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# Tender offer rule and large shareholder reporting rule

We refer to the work undertaken by the Japan Financial Services Agency to revise the tender offer rule and the large shareholder reporting rule, as part of its broader action programme on corporate governance reform published in the spring this year.

Norges Bank Investment Management (NBIM) is the investment management division of the Norwegian Central Bank and is responsible for investing the Norwegian Government Pension Fund Global. NBIM is a globally diversified investment manager with ¥176,770 billion at year end 2022, ¥8,479 billion of which invested in the shares of Japanese companies. As a long-term investor, we support well-functioning financial markets that facilitate the efficient allocation of capital and promote long-term economic growth.

We welcome the planned revisions to the tender offer rule, aimed at ensuring an equal treatment of shareholders and in turn transparency and fairness of transactions that may have an impact on corporate control. Enforcement of the rule is currently only possible through the courts, which can be costly and time consuming; we suggest consideration of an alternative such as an administrative procedure. For example, in our experience we find the existence of an institution with legal authority to enforce the rule and oversee takeover cases to be useful in other jurisdictions.

We strongly support the expansion of the tender offer rule to both market trades (on-floor transactions) and third-party allotments (issuance of new shares). We believe that the tender offer rule should apply to any offers being made irrespective of the means of acquisition, and thus also include acquisition through use of derivatives. We also agree with lowering the 1/3 threshold which triggers a tender offer requirement to the 30% threshold used in other major markets such as the UK, Singapore, Germany and France. More broadly, we support moving towards the European approach, where the tender offer is required after the acquisition of control rather than prior to the purchase itself. One of the features of the European approach which we support is the fact that partial offers are not allowed. We believe that this approach better protects minority shareholders, as it means that all shareholders have the opportunity to sell all their shares to the new controlling shareholder at a fair price.

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Regarding measures against coercive tender offers, we support the proposal to require tender offer periods to be divided into a normal tender offer period and an additional tender offer period, which can be helpful in reducing the risk of undue pressure. We note that many jurisdictions have this system, and in some cases, it is a legal requirement. We also support the requirement for a uniform tender offer price across all categories of shares, and agree that the tender offeror should be allowed to lower the tender offer price by an amount equivalent to the dividends. In relation to the prior consultation policy on the tender offer statement, we suggest that the administrative guidance policy used by Kanto Local Finance Bureau in cooperation with the Financial Services Agency should not only be explained to companies and lawyers, but also made publicly available to all shareholders.

We welcome the FSA's intention to remove possible barriers for investors to collaborative engagement with Japanese companies. Under the large shareholding reporting rule, a specific requirement has been established to allow institutional investors to ease the frequency of their reporting submissions. However, to be eligible, investors need to show that the purpose of their shareholding it not to engage in "the act of a material proposal" with investee companies. We believe that "the act of a material proposal" Is no longer necessary in the modern Japanese capital market and conflicts with the spirit of the Japan Stewardship Code, which encourages investors to engage with their investee companies.

Similarly, we encourage the FSA to clarify that investors participating in collaborative engagements are not considered "joint holders" under the rule. We note that concert party rules are not meant to address stewardship activities or cover the exercise of voting rights, and this has been clarified by some regulators. Notably, the UK Takeover Panel explicitly states that it does not regard the action of shareholders voting together as an indication that such shareholders are voting in concert. Shareholders must be seeking board control to be considered a concert party.

Lastly, we support the introduction of measures allowing companies and shareholders to identify beneficial shareholders, beyond the intermediaries holding the shares on their behalf.

We thank you for considering our perspective and remain at your disposal should you wish to discuss these matters further.

Yours sincerely

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