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THE TOKYO STOCK EXCHANGE INTENDS TO TOUGHEN MBO RULES IN JAPAN

The Tokyo Stock Exchange (TSE) intends to introduce more stringent regulations for management buyouts (MBOs) by spring 2025 to safeguard minority shareholder interests and ensure equitable acquisition prices. This initiative addresses concerns that major shareholders, such as founding families, might acquire companies at unfairly low prices, thereby disadvantaging minority stakeholders.

The TSE's proposed regulations will necessitate comprehensive disclosures and justifications for the MBO process and pricing. Specifically, companies will be required to adhere to the following key requirements:

1. establish a special committee mandated to clearly articulate the reasons for their opinions;
2. secure approval from a majority of minority shareholders (in terms of the number of votes) as a condition for completing MBO transactions;
3. provide justifications and alternative measures if the above measures are not adopted to ensure fairness;
4. disclose the minutes of special committee meetings and discussions; and
5. enhance transparency regarding the deal price, including the proposed business plan post-transaction, covering revenue and profit estimates, future capital expenditures, and assessments of the business environment.

These new rules are in alignment with the Ministry of Economy, Trade and Industry's 2019 "Guidelines for Fair M&A" but will introduce penalties for non-compliance, such as public disclosure of the company's name and monetary sanctions. The changes come amid a rise in MBOs, with 18 recorded in 2024.

This development is particularly encouraging for financial investors, as the emphasis on the importance of the majority of minority and the requirement to disclose meeting minutes could significantly alter the current landscape. Currently, the majority of minority is rarely used as a condition for MBO transactions in Japan, and meeting minutes are only disclosed during court proceedings initiated by dissatisfied minority shareholders. The new rules will make this information available much earlier—when the tender offer is announced—providing financial investors with considerably more information upfront to assess the fairness and appropriateness of the price and the process.

The rules are expected to take effect this spring, following a public comment period after the submission of the proposed new rules to an expert panel in February 2025.

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CONTACTS

Michihiro Nishi
Partner

T +81 3 6632 6622
E michihiro.nishi@cliffordchance.com

Masafumi Shikakura
Partner

T +81 3 6632 6323
E masafumi.shikakura@cliffordchance.com

Shunsuke Nagae
Counsel

T +81 3 6632 6321
E shunsuke.nagae@cliffordchance.com