Norges Bank Investment Management

Public Comment Desk
Corporate System Division
Economic and Industrial Policy Bureau
Ministry of Economy, Trade and Industry
1-3-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8901, Japan

Date: 15.07.26

Re: Comments on the Draft of the Key Points of the Guidelines for Corporate Takeovers and the Draft of the Q&A on the Guidelines for Corporate Takeovers

We refer to the invitation from the Ministry of Economy, Trade and Industry (METI) to comment on the draft Key Points of Guidelines for Corporate Takeovers ("Key Points") and the draft Q&A on the Guidelines for Corporate Takeovers ("Q&A"). We appreciate the opportunity to contribute our perspective.

Norges Bank Investment Management (NBIM) is the investment management division of Norges Bank — the Central Bank of Norway — and manages the Norwegian Government Pension Fund Global. As of 31 December 2025, we managed USD 2.11 trillion (JPY 329.27 trillion) in assets, of which USD 96.22 billion (JPY 15,012 billion) was invested in shares of 1,096 Japanese listed companies. Japan is our second-largest country allocation. The framework governing acquisitions of corporate control has been a consistent focus of our engagement with Japanese regulators, including our comments on METI's original draft Guidelines in 2023 and on the Financial Services Agency's revisions to the tender offer and large shareholding reporting rules that same year.

We understand METI's perspective that it may be too soon to amend the 2023 Guidelines for Corporate Takeovers ("Guidelines"). We appreciate the clarification provided through the updated Key Points and Q&A. We welcome the restated principle that target company management should not use the concept of corporate value as a tool to defend against acquisitions it has not rigorously evaluated, as well as the restated principle that shareholders retain the final say on whether an acquisition proceeds, even where the board itself has not endorsed it. METI's expectation that boards increase corporate value during the "normal phase", as reflected in market capitalisation, is also important in supporting the Tokyo Stock Exchange's "Action to Implement Management that is Conscious of Cost of Capital and Stock Price".

At the same time, several passages in the draft materials risk widening, rather than narrowing, a target board's discretion to resist bona fide, well-priced offers. Our detailed comments, and our recommendations for closing this gap, are set out in the Annex.

We believe the definition of corporate value itself should be revisited when the Guidelines are next amended. In the meantime, we highlight below the five recommendations we consider most important. Further detail on these, and on our other comments, is set out in the Annex.

In summary, we recommend that METI:

- Require the fair value of material non-operating assets, such as land and cross-shareholdings, to be included in corporate value - alongside discounted future cash flows, thereby reflecting the value these assets can unlock through restructuring;

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- require any qualitative corporate-value factor a board relies on — including a claimed harm to the interests of business partners — to carry a quantified, evidenced impact on future cash flows or the discount rate;

- subject any divergence between the value-maximising and price-maximising proposal to independent verification, not board self-certification, and require a board recommending independence to explain how and when it will deliver superior value;

- require boards to be majority independent as a matter of course, and special committees to be composed solely of independent directors, formed on a timely basis with their own independent advisers; and

- extend the same discipline to takeover response policies and countermeasures that the Key Points already apply to corporate value.

We remain available to discuss any of the views expressed in this response and look forward to continued engagement on Japan's takeover framework.

Yours sincerely

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ANNEX – NBIM Detailed Comments

1. Quantifying corporate value

Non-operating assets and corporate restructuring

We support METI's definition of corporate value as fundamentally a quantitative concept. The Key Points define it as the sum of the present values of discounted future cash flows.[1] We recognise that METI does not intend to revise the Guidelines themselves. We believe, however, that the definition of corporate value should be revisited when the Guidelines are next amended.

In the meantime, our recommendation works within the same interpretive frame the Key Points already use. Some assets, such as land and other real estate carried at historical cost, do not themselves generate the cash flows core to a company's operations, but carry significant realisable value. A cross-shareholding in another company may generate cash flow, through dividends, however the market value of the underlying stake, including any latent unrealised gain, is not captured by discounting that dividend stream alone.

More broadly, a non-operating asset may generate little cash flow today, but could generate significant cash flow through restructuring — for example, disposal, a sale-and-leaseback arrangement, or unwinding a cross-shareholding. That potential value should also be reflected in a discounted cash flow analysis. This has been a live issue in a number of recent Japanese takeover situations, where the treatment of real estate and cross-shareholding value within the offer price has attracted investor scrutiny.

A restructuring plan of this kind should not, in itself, be treated as reducing corporate value or as evidence of an acquirer acting against the company's interests. This is consistent with our 2023 response to the draft Guidelines, where we noted that disposing of high-value non-core assets is generally a sign of rational management, not the contrary.[2]

The Key Points or Q&A could instead expect an acquirer to be transparent about such plans, in particular how any impact on employees will be managed. This is consistent with our recommendation below that claims of harm to the interests of stakeholders, including employees, be assessed on an evidenced basis rather than assumed.

We recommend the Key Points or Q&A confirm that corporate value should be understood as the sum of (i) the present value of discounted future cash flows from operations, and (ii) the fair value of material non-operating assets, net of any cash flow already captured in (i).

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[1] Key Points of the "Guidelines for Corporate Takeovers" (Draft), METI, 18 June 2026, Section 2(2) "Meaning of Corporate Value."

[2] NBIM response to METI's Draft Guidelines for Corporate Takeovers, 3 August 2023, comments on Footnote 80 of the Guidelines and Principle 1.4 of the Corporate Governance Code (cross-shareholdings).

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The quantitative concept and its qualitative exceptions

We support the accompanying caution, that target company management should not obscure the concept of corporate value by overly emphasising qualitative value, nor use it as a tool to defend themselves.[3]

This caution needs stronger operative force. The Key Points and Q&A list three categories of qualitative factors that may be treated as increasing corporate value, even where they cannot readily be measured: stakeholder contributions; governance and risk mitigation; and economic security.[4] Listed without a corresponding disclosure obligation, these factors could give a target board too much latitude to assert that corporate value exceeds a bona fide, well-priced offer.

We recommend the final Key Points and Q&A close this gap directly. A board relying on a qualitative factor to reject or resist an offer should have to disclose, with evidence, how that factor affects future cash flows or the discount rate. The burden of proof should rest with the company. Where quantification is genuinely not possible, the board should have to explain why. It should not simply default to a qualitative narrative.

Harm to the interests of business partners

The same Q&A answer separately lists factors that may indicate an acquisition will not enhance, or will reduce, corporate value – including where "the interests of stakeholders (employees, major business partners, etc.) will be harmed."[5] We recommend METI clarify what "harming the interests" of a business partner means and how a board should assess and explain such harm to shareholders.

As drafted, this criterion could be read to treat any acquirer's plan to change a business partner or supply chain counterparty as inherently negative. We do not think this is the intended reading. Changing a supply chain counterparty for legitimate financial or strategic reasons should not automatically be treated as harming corporate value. Nor should it, without further analysis, be used to justify rejecting a bona fide offer. This is particularly true where the existing relationship is maintained in part through a cross-shareholding.

We recommend the Key Points or Q&A make this distinction clear. A board relying on this factor must distinguish two things: genuine harm to the company's own future cash flows, and the loss of a relationship that a cross-shareholding was designed to preserve against a change of control.[6]

Purchase price as an indicator of corporate value

We welcome the statement that a purchase price considerably above the historical share price level can reasonably be expected to enhance corporate value.[7] We recommend this be framed as a rebuttable presumption. Where the acquirer's price is considerably above the historical trading range, a board that nonetheless concludes corporate value is not enhanced should bear the burden of demonstrating why. It should use the same quantified, evidenced standard described above.

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[3]Q&A on the "Guidelines for Corporate Takeovers" (Draft), METI, 18 June 2026, Question 4, Answer 3.
[4]Q&A, Question 4, Answer 1.
[5]Q&A, Question 4, Answer 2.
[6]OECD Principles of Corporate Governance (2023), Section IV.A.3, noting that cross-shareholdings can allow shareholders to exercise control disproportionate to their equity ownership; NBIM response to the FSA/TSE Corporate Governance Code Consultation, 12 May 2026, comments on Principle 1.4 (cross-shareholdings).
[7]Key Points, Section 2(3) "Relationship between Corporate Value and Purchase Price."

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2. Divergence between the value-maximising and price-maximising proposal

No Revlon-style duty, but the exception needs safeguards

The Key Points and Q&A confirm that Japanese law does not impose Revlon-style duties: a board is not required to maximise purchase price once a company is in play.[8] A board may exceptionally support the proposal that most enhances corporate value over the highest-priced proposal, provided it fulfils "sufficient accountability to shareholders."

We accept that this is a legitimate policy choice, consistent with the UK Takeover Code, which likewise does not treat price as the sole determining factor.[9] We are concerned, however, that this could become the rule in practice rather than the narrow exception it is intended to be. We recommend three safeguards.

First, "sufficient accountability to shareholders" should require independent verification of the board's value assessment. In practice, this means a reasoned, published opinion from a special committee of independent directors, rather than the board's own certification.

Second, the quantified, evidenced disclosure standard we recommend in Section 1 should apply directly here. Shareholders should be able to see, in figures, why the board believes the lower-priced proposal enhances corporate value by more than the difference in price.

Third, where a board recommends that the company remain independent rather than accept a bona fide offer, it should be required to explain its rationale to shareholders. This should include the basis for the board's view that the company is worth more than the offer price and the board's plan to realise, measure and disclose the achievement of this additional value during independence.

Shareholder primacy and the Business Judgment Rule

We welcome, and ask METI to retain, the statement that shareholders may still complete an acquisition on terms different from the board's preferred proposal. The statement that the rational intent of shareholders should govern matters of corporate control is also a critical check on board discretion and should not be diluted in the final materials.[10]

The Q&A notes that a board has broad discretion to decide whether to accept an acquisition, by reference to the Business Judgment Rule.[11] METI should confirm that this discretion neither narrows nor substitutes for directors' duty of care under the Companies Act, which grounds our accountability and disclosure safeguards outlined above.

Environmental and stakeholder factors: consistency with SSBJ disclosures

The Key Points list sustainable business activities that consider stakeholders, local communities, and the global environment as one of the factors that can increase corporate value by reducing risk.[12] The Q&A separately allows a board to prefer a lower-priced proposal where an acquirer would unfairly

[8]Key Points, Section 5(1); Q&A, Question 6.
[9]UK Takeover Code, Rule 25.2; Q&A, Question 6, footnote 35.
[10]Q&A, Question 6, Answer 4.
[11]Q&A, Question 7, Answer 2.
[12] Key Points, Section 2(2)

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reduce the interests of stakeholders, business partners, local economies, or the global environment to increase shareholder returns.[13]

We recommend that both references be defined consistently with the dependencies, risks, and opportunities a company has already identified in its own disclosures under Japan's Sustainability Disclosure Standards (SSBJ).[14] This would anchor "corporate value" and "stakeholder interests" to a single, company-specific factual record, rather than leaving each open to being defined anew whenever an acquisition proposal arises.

We recognise that a target board will rarely be able to quantify, in advance, exactly how an acquirer would unfairly reduce stakeholder or environmental interests. We do not think this should excuse the board from justifying the claim. At a minimum, the board should be required to explain — ideally using SSBJ's own definitions — why the interests said to be unfairly reduced are expected to have a negative financial effect on the company. A generalised assertion of harm, without this link to anticipated financial effects, should not be sufficient grounds to prefer a lower-priced proposal.

3. Board composition, special committees and adviser independence

Majority independent boards as a baseline

We welcome METI's acknowledgement that a majority independent board is critical to increasing corporate value that is reflected in market capitalisation, and METI's articulation of its expectations of such boards.[15] A majority-independent board, as a matter of ordinary course, is better placed to assess a takeover proposal on its merits, and to recognise promptly when a special committee should be convened.[16]

We have made this recommendation in our engagement with the Financial Services Agency and Tokyo Stock Exchange on Japan's Corporate Governance Code. We reiterate it here in the specific context of takeover readiness.[17]

We recommend the Key Points make clear that a special committee should be established as soon as the board identifies a potential conflict of interest, rather than after key terms have already been discussed with management.

Special committee composition

The Key Points confirm that a director registered as independent under exchange listing rules may still lack independence from the outcome of a specific acquisition.[18] We made the same point in our 2023 response to the draft Guidelines.[19]

Special committees examining an acquisition proposal should be composed solely of directors independent of the transaction, not merely a majority of outside directors as current practice allows.

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[13] Q&A, Question 5, Answer 2
[14] Sustainability Standards Board of Japan (SSBJ), Sustainability Disclosure Standards (based on IFRS S1 and S2), disclosure of anticipated financial effects of sustainability-related risks and opportunities.
[15] Key Points, Section 1, footnote 2.
[16] NBIM Position Paper on Board Independence.
[17] NBIM response to the FSA/TSE Corporate Governance Code Consultation, 12 May 2026, comments on board independence.
[18] Key Points, Section 6(1) and 6(4).
[19] NBIM response to METI's Draft Guidelines for Corporate Takeovers, 3 August 2023.

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We do not believe that this is unduly burdensome: it reflects common practice among developed markets, and is proportionate to the significance of the decision being reviewed.

Investor access to the special committee

Where a special committee is established to examine an acquisition proposal, we recommend that one or more of its independent members be made available, subject to appropriate information barriers, to discuss the committee's process and reasoning directly with significant shareholders. This gives investors a means of testing whether the committee's independence was genuine in substance and not only in form.

Independence of advisers

We recommend that independent advisers to a special committee be selected and engaged by the committee itself, not by management. METI should also look beyond whether an adviser's business relationship with the company is material to the adviser's overall business, since this measure may not capture the risk in practice: an independent adviser should have no ongoing business relationship with the company or its board members, and should not have a fee interest tied to the transaction's closing. This is consistent with the position we set out in our June 2025 response to the Securities Industry Council's consultation on the Singapore Code on Take-overs and Mergers.[20]

4. Disclosure of competing proposals to shareholders

We support the Key Points' list of information that an acquiring party and target company should disclose to shareholders, and the emphasis on giving shareholders sufficient time to consider an offer.[21]

We renew a recommendation from our 2023 response to the draft Guidelines: where a target company has received more than one bona fide offer, it should disclose to all shareholders the price and material terms of each offer, not merely the fact that competing proposals exist.[22]

This disclosure is particularly important given the exception discussed in Section 2 above. If a board supports a lower-priced proposal on value-enhancement grounds, shareholders can only assess that judgment if they can see the price and terms of the proposal the board did not support.

5. Takeover response policies and countermeasures

The Key Points and Q&A do not address Chapter 5 of the Guidelines, which covers takeover response policies and countermeasures. We recommend METI extend equivalent interpretive guidance to this chapter. As we noted in our cover letter, the Key Points caution against using the concept of corporate value as a tool for management to defend against an acquisition. An active market for corporate control depends on this same discipline also being applied to formal anti-takeover measures.

We renew the recommendation from our 2023 response to the draft Guidelines: shareholder approval, by a majority of non-conflicted shareholders, should be required both for a company to adopt a takeover response policy, and separately to invoke a countermeasure under an adopted policy in

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[20] NBIM response to the Securities Industry Council's Consultation on the Singapore Code on Take-overs and Mergers, 5 June 2025.
[21] Key Points, Section 7(1).
[22] NBIM response to METI's Draft Guidelines for Corporate Takeovers, 3 August 2023, comments on Sections 4.2.

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response to a specific proposal.[23] We also recommend that a company's takeover response policy be reflected in its articles of association.

6. Enforcement and predictability

We recognise that the Key Points and Q&A are explanatory materials and do not alter the legal status of the 2023 Guidelines as best practice rather than binding law.[24] We nonetheless renew the recommendation we made in 2023, and in our response to the Financial Services Agency's consultation on the tender offer and large shareholding reporting rules: Japan should consider establishing an independent body with authority to interpret and enforce takeover-conduct standards, as the UK, Ireland, Singapore, Hong Kong and Australia have done.[25] A body of this kind would give the principles restated in the Key Points and Q&A the consistent, predictable application that reliance on court proceedings alone cannot provide. This would benefit acquirers, target companies and shareholders alike. Smaller investors - particularly retail investors – are often unable to use the court process because of the associated costs and informational disadvantages, in contrast to large institutional investors. Such a body would help ensure equal treatment for all shareholders and strengthen the investor-protection safeguards needed to support the continued expansion of the Nippon Individual Savings Account programme.

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[23] NBIM response to METI's Draft Guidelines for Corporate Takeovers, 3 August 2023, comments on Section 5 (Takeover Response Policies and Countermeasures).

[24] Q&A, Question 7, "Positioning of the Guidelines".

[25] NBIM response to the Financial Services Agency's consultation on the tender offer rule and large shareholder reporting rule, 17 October 2023.

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