



Fair Markets Division
Financial Services Commission
Government Complex Seoul
209 Sejong-daero, Jongno-gu
Seoul (03171)
Republic of Korea

Date: 02.10.26

Re: Consultation on the Legislative Pre-Announcement of the Enforcement Decree of the Capital Markets Act and the Pre-Announcement of Amendment to the Regulation on Issuance, Public Disclosure, etc. of Securities — Change to the Merger Price Calculation Method (Market Price to Fair Value)

We welcome the opportunity to comment on the amendments announced by the Financial Services Commission (FSC) to the Enforcement Decree ("Decree") of the Capital Markets Act ("Act") and the Regulation on Issuance, Public Disclosure, etc. of Securities ("Notification") published on 15 September 2026.

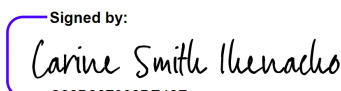
Norges Bank Investment Management (NBIM) is the investment management division of the Norwegian Central Bank. We manage the Norwegian Government Pension Fund Global. At 30 June 2026, the Fund had USD 2.29 trillion (KRW 3,539 trillion) invested across 67 countries. This includes approximately USD 57 billion (KRW 88 trillion) invested in 420 South Korean listed companies.

As a long-term investor with most of our assets in listed equity, we believe board effectiveness and strong minority shareholder protections impact our long-term returns. When mergers and equivalent reorganisations are conducted at a fair price and treat all shareholders fairly, they support a vibrant market for corporate control. Such a market serves as an external governance mechanism and contributes to well-functioning capital markets. Fair pricing and equal treatment matter most where a controlling shareholder is a party.

Relying on market price alone can understate a company's value, such as the realisable value of its real estate and cross-shareholdings. This can disadvantage minority shareholders. We therefore support the FSC's move to a fair value standard based on market price, asset value and earnings value. We also support the accompanying safeguards: a board opinion, an external evaluation and disclosure of conflicts of interest. This reform is part of the FSC's Capital Market Structural Improvement Plan of 18 March 2026. We have also responded, under that plan, to the Korea Stewardship Code consultation.¹

The annex sets out our reasons for supporting the reform's key elements and a small number of points on which we would welcome clarification. We would be pleased to discuss any of these points.

Yours sincerely

Signed by:

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¹ NBIM Response to Korea Institute of Corporate Governance and Sustainability consultation on Amendment to the Korean Stewardship Code (24 June 2026)

Annex: NBIM comments on the draft amendment

Our comments follow the order of substantive items in the FSC's pre-announcement.

1. Support for the shift from a formula-based market price standard to a fair value standard

We support deleting the prescriptive formulas for calculating the price for mergers etc. and the appraisal rights purchase price, and replacing them with a fair value standard that comprehensively takes into account market price, asset value and earnings value. A standard based on market price alone can be distorted by the timing of a transaction and may not reflect a company's substantive value. The change is consistent with the G20/OECD Principles of Corporate Governance, under which transactions should occur at transparent prices and on fair terms that protect the rights of all shareholders according to their category. It is also consistent with our voting guidelines, under which we will not support corporate transactions that fail to create long-term value for shareholders or to treat all shareholders equitably.² Our support depends on the new standard not allowing a price below true value. Part 2 sets out how we suggest securing this.

We welcome that this shift is applied consistently across the regulatory framework. The Decree deletes the old formulas at Article 176-5(1) to (3), the amended Act anchors the fair value standard in Article 165-4(1), and the same definition of earnings value, based on the discounted cash flow and dividend discount models, is carried into the Enforcement Rules of the Inheritance Tax and Gift Tax Act (Addenda, Article 2). We encourage the FSC to retain this change, and this cross-regulatory consistency, without dilution as the amendments are finalised.

2. Clarity on how market price, asset value and earnings value are to be weighted, and disclosure of the underlying assumptions

We support the FSC's addition, in draft Notification Article 5-13(6), of two evaluation items that implement Decree Article 176-5(8)(4): the reasonableness of key assumptions such as financial forecasts and business plans, and the valuation difficulties encountered and the resulting limitations of the evaluation. A multi-factor standard strengthens valuation discipline only if these items are disclosed in a form that shareholders can assess, and not merely asserted. We made a similar recommendation to Japan's Ministry of Economy, Trade and Industry (METI) for its Guidelines for Corporate Takeovers: a board relying on a valuation factor to support a particular outcome should be required to demonstrate, with evidence, the impact of that factor.³ We encourage the FSC to retain both items in full as the Notification is finalised.

We would welcome clarification on two further points. First, we would ask the FSC to issue guidance on how boards and evaluators should reconcile market price, asset value and earnings value when they diverge, for example under the general delegations at Decree Article 176-5(19) and Article 176-6(6). The amendments require fair value to "comprehensively" reflect the three factors, but delete the calculation formulas in Decree Article 176-5(1) to (3) without replacing them. Without guidance, a company could be valued on one factor alone, and the price could fall below what shareholders would receive on the market or on a sale of the assets. We would ask that the guidance set a floor: the price

² OECD (2023), [G20/OECD Principles of Corporate Governance 2023](#), Principle II.H.1; [NBIM Voting Guidelines Section 6.2 Capital Management - Mergers, acquisitions and other corporate transactions](#).

³ [NBIM Response to METI's Consultation on the Draft Key Points of the Guidelines for Corporate Takeovers and the Draft Q&A on the Guidelines for Corporate Takeovers \(15 July 2026\)](#); [NBIM Comments on METI's Draft Guidelines for Corporate Takeovers \(3 August 2023\)](#).



should not be lower than the higher of the market price and a recent, independently verified valuation of the assets held. The current Decree already allows asset value to be used where it exceeds the market price in a merger with an unlisted company (Article 176-5(1)2(a)). We would not want the new standard to give less protection.

Second, we would ask the FSC to confirm that the discounted cash flow (DCF) model and the dividend discount model (DDM) are examples and not prescribed methods for calculating earnings value. We would also ask the FSC to clarify that asset value means the current value of the assets held, not only net assets per share in the accounts. DCF and DDM can understate the value of a holding company, because they capture only the cash flows or dividends received, not the value of the assets behind them. Asset value should be assessed separately and should not be replaced by earnings value. We raised the same issue with METI on Japan's definition of corporate value

3. Independence of the external evaluator and the board opinion statement

We would ask the FSC to require that the external evaluator be wholly independent of the parties to the merger and of their controlling shareholders. Independence in form does not always mean independence in substance. An evaluator paid by a controlling shareholder, or its affiliate, may still feel pressure that a formal rule does not remove. To give effect to this, we would ask the FSC to confirm two points. First, whether Article 165-4(4) requires selection by the full audit committee or also permits selection by a single statutory auditor. Since Korea's audit committees are not always composed entirely of independent directors, we would ask the FSC to consider recommending, in guidance or in the Notification, that this body be composed entirely of independent directors. We took the same position in our responses to METI on Japan's Guidelines for Corporate Takeovers and to the Singapore Securities Industry Council on the Singapore Code on Take-overs and Mergers.⁴ Second, the Decree already restricts external evaluators with a "special relationship" to the parties (Decree Article 176-5(13), Notification Article 5-14); we would ask the FSC to confirm this also extends to a fee contingent on the deal closing, and to an ongoing business relationship short of a formal special relationship.⁵ If not, we encourage the FSC to consider further safeguards along these lines.

We support two requirements: a mandatory board opinion statement on the purpose, expected effects and price appropriateness of a merger, and a mandatory external evaluation whose scope has been expanded. Decree Article 176-5(8) requires evaluation of the valuation method's appropriateness; Draft Notification Article 5-13(6) adds the two items discussed under part 2 above. We welcome one further change. In mergers between affiliated companies, the auditor or audit committee must select the external evaluator. This requirement has moved from Decree Article 176-5(10), now deleted, into the Act itself, at Article 165-4(4), giving it stronger legal force.

We also support draft Decree Article 176-5(6), under which the board opinion statement must set out any measures taken to secure the fairness of a merger. The draft gives examples of such measures: a special committee, external advice, or strengthened shareholder communication. These draw on the directors' duty of loyalty under the amended Commercial Act (22 July 2025) and the Ministry of Justice's Guidelines on the Code of Conduct for Directors in Corporate Reorganisations (25 February

⁴ [NBIM Response to Securities Industry Council consultation on Singapore Code on Take-overs and Mergers \(5 June 2025\)](#).

⁵ NBIM Response to METI's Consultation on the Draft Key Points of the Guidelines for Corporate Takeovers and the Draft Q&A on the Guidelines for Corporate Takeovers (15 July 2026)



2026). As these references are given only as examples, we would ask the FSC to consider citing them directly in Article 176-5(6) or the Notification, to link this disclosure to directors' substantive duties under the Commercial Act. This also supports the cross-regulatory consistency we noted under part 1 above.

4. Scope of the conflict-of-interest disclosure requirement for affiliate mergers

We support the requirement that, in a merger between affiliated companies, the securities registration statement disclose the interests between the company's specially related persons and the counterparty corporation. "Specially related persons" is defined by reference to Article 9(1) of the Fair Trade Act. It covers the de facto controller, persons related to that person (including a spouse and blood relatives within the fourth degree), and persons participating in a business combination for the purpose of controlling management.

This disclosure obligation operates at two levels. Decree Article 176-5(18) itself lists three items: the status of the specially related persons; transactions such as equity investments and debt guarantees; and other matters determined by the FSC. The draft Notification, at Article 5-16(2), uses this basket clause to add a fuller list. That fuller list covers transactional relationships, including provision of collateral, asset transfers, trading in goods and services, and receivables and payables. It also covers share-based compensation paid by the counterparty corporation, interlocking officer positions, and the history of shareholding changes.

We support the breadth of this fuller list, and in particular the inclusion of interlocking officer positions and shareholding history. Both address overlaps at board and ownership level, which are often at the heart of related-party transaction risk in markets with concentrated ownership and multi-tier affiliate structures. This is consistent with the position we set out in our Related-Party Transactions Position Paper.⁶

We would ask the FSC to confirm two points. First, that it intends the Notification list, like the Decree's, to remain non-exhaustive. This matters because the fuller list sits at Notification level: it can be narrowed by the FSC without the more demanding amendment procedure that applies to Decree Article 176-5(18) itself. Second, whether the officer-position and shareholding-history items are important enough to the reform's purpose to be included in the Decree itself, rather than relying solely on Notification-level rulemaking.

5. Alignment of the appraisal rights purchase price with the fair value standard

We support extending the fair value standard to the purchase price payable to dissenting shareholders who exercise appraisal rights, replacing the previous mechanical calculation. We would ask the FSC to provide that this price is the higher of the market price and the fair value. Today, the price falls back to the market price when negotiation fails. The amendment replaces this with an amount that takes market price into account together with asset value and earnings value. Market price is then one input

⁶ [NBIM Position Paper on Related-party transactions; NBIM Voting Guidelines Section 6.3 Capital Management – related-party transactions.](#)



among three, not a minimum, so the result could be lower than the market price. A market price floor protects dissenting shareholders against an artificially low valuation. Fair value protects them against a market price that is depressed or distorted. We made a similar recommendation to the China Securities Regulatory Commission on the price for shareholders who dissent from a delisting.⁷

We also support the related requirement, now set out in Decree Article 176-7(3), that the appropriateness of that price be evaluated by an external institution and disclosed. This is the same evaluation and disclosure obligation that applies to the merger price itself. We welcome that the securities registration statement item list confirms this parity: the evaluation opinion on the appraisal-rights purchase price is disclosed alongside the merger price's own evaluation opinion, the board opinion statement, and the specially related persons disclosure. This is consistent with the G20/OECD Principles of Corporate Governance, which note that some jurisdictions require a controlling shareholder to buy out remaining shareholders at an independently appraised price, and with our own position that shareholders should have effective means of redress where their interests are not adequately protected.⁸

Part 2 above discusses two content items that were added, at Notification level, to the merger price evaluation: the reasonableness of key assumptions, and the valuation difficulties encountered. We would ask the FSC to confirm whether these same two items will also apply to the appraisal-rights evaluation. We believe they should.

⁷ [NBIM Response to CSRC Consultation on the Regulations on the Supervision and Administration of Listed Companies \(1 January 2026\)](#)

⁸ [G20/OECD Principles of Corporate Governance 2023](#), Principle II.G; NBIM Position Paper on Related-party transactions.