

1-1-1993

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### Recommended Citation

Hideaki Sudo, *Japanese Business Disclosure and Accounting Requirements*, 16 HASTINGS INT'L & COMP.L. Rev. 205 (1993).  
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# Japanese Business Disclosure and Accounting Requirements

By HIDEAKI SUDO\*

## I. INTRODUCTION

Due to the recent enactments and revisions of Ministerial Ordinances and reforms of the Japanese Securities and Exchange Law<sup>1</sup> (Exchange Law), the current business disclosure system in Japan is closer to the American system than it has been in the past. This report introduces and clarifies the details of recent reforms of the Exchange Law. Sections two through five of this article address disclosure for business enterprises; sections six and seven focus on the disclosure requirements for major holdings and public takeover; section eight describes the integrated disclosure system; and section nine deals with the market price information of financial commodities and securities.

International coordination of accounting and auditing standards relating to the disclosure requirements is necessary in the global securities market. Section ten contains a brief discussion of the developments towards harmonizing international accounting standards.

## II. THE 1986 INTERIM REPORT OF THE FINANCIAL ACCOUNTING DELIBERATION COUNCIL

In recent years, Japanese business activities have become more internationalized and diversified. Diversification came through the increase of capital investments by Japanese companies in other businesses. In an attempt to provide better disclosure of business information, the First Sectional Committee of the Financial Accounting Deliberation Council published, in October 1986, an interim report titled "Completing Financial Information in the Disclosure System Based on the Securities and Exchange Act." This interim report addressed four key issues and made the following recommendations.

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1. Shoken torihiki-ho (Securities and Exchange Law), Law no. 25 of 1950.

### **A. Introduction of a Quarterly Reporting System**

- (1) Since Japan does not have a quarterly dividend system or a practice of announcing business plans and results on a quarterly basis, the introduction of a quarterly reporting system is unnecessary.
- (2) The present semi-annual reporting system should be improved by shortening the filing period and changing the contents of such reports.

### **B. Improvement of Cash-Flow Information**

- (1) The scope of cash-flow information must be expanded to include marketable temporarily-held securities and should not be limited to current deposits.
- (2) Cash-flow information disclosure should be classified as "Revenues and Expenditures of Business Activities" and "Revenues and Expenditures of Capital Financing Activities."
- (3) Reports should be standardized in order to make comparisons among businesses more effective.

### **C. Handling of Consolidated Financial Statements**

- (1) Generally, a one-month deferment of the period for filing has been permitted. This deferment of the filing period should be abolished.
- (2) The disclosure of certain information, such as a summary of enterprise group performance, is appropriate.
- (3) Since consolidated financial statements are supplementary to individual financial statements, they should be treated as appended reports.

### **D. Disclosure of Segment Information**

- (1) Many questions have been raised regarding the disclosure of segment information. At first, the usefulness of such information may appear dubious. Further, requiring such disclosure may place additional cash burdens on business entities. Despite these potential drawbacks, however, the importance of international harmonization requires that the disclosure of segment information be investigated and, if prudent, implemented.
- (2) One possibility is to include segment information in consolidated financial statements. In adopting categories of segment units, special attention should be paid to the common practice of Japanese companies.

### III. CONSOLIDATED FINANCIAL STATEMENTS

#### A. The February 1987 Revision of the Ministry of Finance's Ordinances and Releases

Two proposals set forth by the 1986 interim report were adopted by the 1987 revision of the Ministry of Finance's Ordinances and Releases. First, the deferment of the filing period was abolished. Documents containing consolidated information must now be filed at the same time as securities reports and notices, that is, at the end of the first full business year (beginning April 1, 1988). Additionally, certain information, such as summaries of the circumstances and performances of enterprise groups, must also be disclosed. Note that reports in which incidental information is added to a traditional consolidated financial statement are termed "Reports Noting Consolidated Information."<sup>2</sup> The disclosure of incidental information has been required since the business year ending on January 1, 1988.

#### B. Incorporation of Appended Reports into the Securities Reports

Because consolidated financial statements are supplementary to individual financial statements, section 1(c) of the interim report required that such statements be handled as appended reports. However, the final report of the Japan-U.S. Structural Impediment Initiative talks (June 1990) reflects an agreement concerning *keiretsu*-related disclosure. The agreement mandates the incorporation of consolidated financial statements into securities reports.

Consequently, the "Ministerial Ordinance Concerning Business Disclosure" eliminated provisions requiring consolidated information in the form of appended reports. Instead, consolidated information is required to be included in securities notices and reports.<sup>3</sup> This requirement has been in effect since the business year beginning April 1, 1991.

Following the U.S. financial standards, the traditional way of preparing and disclosing consolidated financial statements involves approval by special measures.<sup>4</sup> However, the reform of consolidated financial statements has eliminated these special measures. Future consolidated financial statements will have to be prepared in compliance with Japanese standards, after a five-year grace period which ends in 1995.<sup>5</sup>

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2. These appended reports are required by Exchange Law arts. 5(4), 24(3).

3. This change makes the basic provisions for consolidated financial statements the same as Exchange Law arts. 5(1), 24(1), concerning securities notices and reports.

4. Consolidated Financial Statements Regulations, additional clause, item 2.

5. Ministry of Finance Ordinance, revised additional clause, item 8.

### C. Survey Results for Consolidated Financial Statements

Prior to the implementation of the above reforms, the Tokyo Stock Exchange conducted a survey of consolidated financial statements. The survey focused on 859 business entities whose fiscal year ended in March 1986.<sup>6</sup>

According to the findings of the survey, 395 companies did not file consolidated financial statements (including eighty-two companies that did not have subsidiaries). Among these 395 firms, 309 violated the principle of importance (ten percent standard). In the release from the Director of Securities Bureau of Finance Ministry, a ten percent standard is applicable to every subsidiary that accounts for less than ten percent of the assets and sales of the retailing sections of the enterprise group.<sup>7</sup> The above 309 non-filing companies did not conduct consolidated calculations in compliance with this ten percent standard.

The ten percent standard also applies to the investments accounted for under the Equity Method. Of all companies that applied the domestic standards when preparing consolidated financial statements, only 24.3% applied the ten percent standard. On the other hand, 73.1% of the sixteen companies that used the U.S. accounting standards when preparing their financial statements applied the ten percent standard. Since application of the ten percent standard has not been uniform or mandatory, it is desirable to require that business enterprises actively disclose their consolidated calculations.

## IV. FINANCIAL REPORTING FOR SEGMENTS OF A BUSINESS ENTERPRISE

### A. Introduction of Segment Information Disclosure in Japan

The October 1986 interim report proposed that the disclosure of segment information be investigated from the perspective of international harmonization. In May 1988, the Financial Accounting Deliberation Council published an "Opinion Concerning the Disclosure of Segment Information," calling for disclosure of such information. In September of the same year, the "Ministerial Ordinance Concerning Reporting of Solicitation and Sales of Securities" (retitled "Ministerial Ordinance Concerning Business Disclosure") was rewritten to secure the disclosure of segment information beginning April 1, 1990.

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6. Saito, *Investigation About Consolidated Financial Statements of March 1986 Year-End Companies*, Shoji Homu No. 1106, item 15, No. 1107, at 23-27.

7. Auditing Treatment on Applying the Principle of Importance, Ministry of Finance certificate No. 1584, Apr. 1981.

In the same month, the Financial Accounting Deliberation Council published the "Disclosure Standards for Segment Information." Moreover, the Ministry of Finance Securities Bureau also published the release "Regarding the Disclosure of Segment Information in the Securities and Exchange Act." In addition, the Japanese Institute of Certified Public Accountants received an investigation request from the Financial Accounting Deliberation Council. In response, the Institute presented a report titled "Accounting Methods Concerning the Disclosure of Segment Information - Interim Report" in November 1989.

## B. Rules of Disclosure

In Japan, segment information is disclosed in the consolidated financial statements or in the notes and is not considered part of the financial statement of the individual firm.<sup>8</sup>

The segment information which must be disclosed is divided into three categories: (a) assorted revenue and management profits and losses of the business; (b) revenue and business profits and losses by location and (c) foreign revenue.<sup>9</sup>

Item (a), assorted information of the business, refers to product series information which is grouped together based on the similarities of the classification and quality of products or services, production methods, and sales markets. Determination of these business classifications is left to management's discretion. However, management disclosure must follow the principle of importance: disclosure is required if the revenue of a segment exceeds ten percent of the total revenue from all segments, or if the revenue of the segment exceeds ten percent of the absolute value of the greater of A or B, where:

A = total business profits from the segments producing business profits;

B = total business losses from the segments producing business losses.

Alternatively, if the revenue of one segment exceeds ninety percent of the total revenue of all segments and if the profit of that segment also exceeds ninety percent of the greater of the absolute value of A or B, then disclosure of assorted information of the business (item (a)) is not required. On the other hand, if the loss of a segment exceeds ten percent of the total business profits (of all segments producing business profits), dis-

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8. Ministerial Ordinance Concerning Business Disclosure, Form 2, No. 6, 2(3).

9. *Id.* art. 1(22-4).

closure is still required even if the profit of that segment exceeds ninety percent of the greater of the absolute value of A or B.

According to the Ministry of Finance Securities Bureau Release mentioned above, information per location (item (b)) pertains to all subsidiaries, whether located in the same country as the headquarters or main office of the parent company or in other countries. Revenue and profits/losses of the former are to be disclosed in the domestic segment of the parent company (home country). The latter is disclosed in the overseas (outside the home country) segment. However, these domestic and overseas classifications are not sufficient. A preferable alternative disclosure method would require classification by overseas zones such as an Asian zone, a North American zone, and a European zone.

### C. Examples of Segment Disclosure in Japan

An example of the three categories of segment information is found in the consolidated financial statements of the Toray Corporation from April 1, 1990 to March 31, 1991. In these statements, the assorted segment information disclosure (item (a)) was divided into four classifications: textiles business, chemicals business, home and engineering business, and communications business. Information per location (item (b)) was divided into two categories: home country and overseas. For overseas proceeds (item (c)) the percentages of money and consolidated proceeds were disclosed.<sup>10</sup>

In contrast, Nippon Electric Company is involved in the business of communications, computers, and semiconductors and focuses on developing those areas as a single line of business. The segment information of the company's revenue and profits, which exceeds ninety percent of the total for the enterprise group, was not disclosed.

### D. A Final Word on Segment Disclosure

As noted above, the classifications of domestic and overseas under item (b), information per location, are insufficient. At a minimum, such information should be based on the American practice of "information per zone." With respect to item (a), assorted business information, the method of dealing with joint expenses which are not apportionable must be made clear. In other words, it is necessary to substantiate the joint expenses when auditing the accounts to avoid any arbitrary apportionment.

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10. Ito Kunio, *Disclosure of Segment Information*, Jurist No. 986, at 13.

## V. DISCLOSURE OF *KEIRETSU*-RELATED TRADING INFORMATION

### A. U.S.-Japan Structural Impediment Initiative Talks and *Keiretsu* Disclosure

The U.S.-Japan Structural Council was founded in September 1989 as a result of the July 1989 Bush-Uno Talks. The Council focused on correcting the marked imbalance of trade and international revenues and expenditures. A "Final Report" was issued by the Council and was approved by the Presidential Cabinet in June 1990.

The disclosure of *keiretsu*-related (or business families) trading information was agreed upon in section 5 of the Final Report. The stipulated goals of this provision were to strengthen the Fair Trade Commission's supervision of the *keiretsu* and regulate any unfair trading practices between business people affiliated with *keiretsu* groups. However, the disclosure of *keiretsu* information under the disclosure system can only be used as supplemental information to financial statements.<sup>11</sup>

In December 1990, this disclosure system was officially termed the "Ministerial Ordinance Concerning Business Disclosure." It went into effect in the business year beginning April 1, 1991.

### B. The Concept of "*Kanren-Tojisha*" (Related Parties)

In the "Final Report" of the U.S.-Japan Structural Impediment Initiative Talks, the scope of disclosure regarding trading information was agreed to be the same as that of the American Financial Accounting Standards. For instance, the term "*Kanren-tojisha*" referred to in the above Ministerial reform has the same definition as "related parties" in the Financial Accounting Standards Board (FASB) statement No. 57 of the American Financial Accounting Standards.

In the past, Japanese commercial law recognized the concepts of only "parental company," "affiliated company,"<sup>12</sup> and "controlling shareholders."<sup>13</sup> The Exchange Law added the concept of "*Kanren-kai-sha*" (related companies)<sup>14</sup> to the concept of "parent company and affiliated company." "*Kanren-kaisha*" refers to companies possessing

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11. Tatsuo Uemura, *Disclosure of Keiretsu-Related Trading Information*, Jurist No. 986, at 25.

12. Shoho (Commercial Code), Law No. 48 of 1899, art. 211-2.

13. Accounting Documents Rules, the Ministerial Ordinance of the Minister of Justice to the Commercial Code, art. 9(2).

14. Financial Statements Rules, the Ministerial Ordinance of the Minister of Finance to the Exchange Law, art. 8(4).



between twenty and fifty percent of the voting rights and having significant influence over the financial and business directions of another company. The Exchange Law also incorporates the concept of "*Kankei-kaisha*"<sup>15</sup> which includes the parent company, the affiliated company, *Kanren-kaisha* and adversaries. Also, the Exchange Law includes the concept of "principal shareholder."<sup>16</sup> This refers to a shareholder who has control over not less than ten percent of the total issued shares. The concept of *Kanren-tojisha* was thus expanded substantially beyond that of *Kankei-kaisha* and "chief shareholder" by incorporating the concepts of close relatives and joint subsidiaries.<sup>17</sup>

A greater problem is found in Article 1, item 27-5(i) of the Ministerial Ordinance. It defines the "other party" as a filing company that can "control" business and financial decisions of another party through a relationship of financing, personnel affairs, assets, technology, or trading, and thus have an "important influence." The meaning of "control" and "important influence" as used above can be found in the release by the Director of Securities Bureau sections 2(6) and (7) and in the guidelines presented by the Japanese Institute of Certified Public Accountants in March 1991.

### C. Disclosed Details and Problems

As prescribed in the section, "Notice on How to Describe" of the Ministerial Ordinance No. 2, seven items must be disclosed: (a) titles of related parties; (b) relationship of filing company and related parties; (c) details of trade; (d) amount of classified transactions; (e) trading policies and terms; (f) the beginning balance, amount of transactions, and ending balance for the period with respect to assets and obligations in the operation of trade; and (g) modifications to trading terms.

Item (d), the amount of classified transactions, refers not to the amount of individual transactions but to the total amount classified by types of trade. This is different than FASB Statement No. 57, which requires disclosure for trading of even nominal amounts of money.<sup>18</sup> The trading policies and terms, item (e), may consist of terms in conflict with the inherent operation of the business. When the specific trading terms deviate substantially from the general terms of trade, the specific terms must be directly disclosed.<sup>19</sup>

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15. *Id.*, art. 8(5).

16. Exchange Law, art. 188(1).

17. Ministerial Ordinance Concerning Business Disclosure, art. 1(27-5).

18. Uemura, *supra* note 11.

19. *Id.*

Moreover, although it is common to disclose consolidated and segment information, *keiretsu*-related trading is not mentioned in the Ministerial Ordinance No. 2, Form 5 "Circumstances of Accounting," but in Form 6 "Circumstances of the Enterprise Group." As a result, it does not become an object of the audit certificate.<sup>20</sup>

## VI. DISCLOSURE OF INFORMATION CONCERNING MAJOR HOLDINGS

### A. Securities and Exchange Council Report

In May 1989, the Securities and Exchange Council published a report entitled "Regarding the Existence of a Disclosure System for Information Concerning the Circumstances of Major Holdings of Stock Certificates." As stocks are collected and transferred, dramatic fluctuations of stock prices often occur. These unexpected fluctuations sometimes result in immeasurable losses to general investors who have insufficient market information. In order to increase market fairness and awareness and to increase protection to investors, a disclosure system targeted at major holdings of stocks should be established.

### B. The Newly Established Article 27-23 of the Securities and Exchange Law

Following the above report, in June 1990 the Diet amended the Exchange Law. As a result, chapter 2-3 of the report, "Disclosure Concerning the Circumstances of Major Securities Holdings," was implemented in article 27-23 of the Exchange Law. The following changes were included:

Major shareholders—parties who hold over five percent of the total issued shares of a listed company—must file a report listing the percentage of securities held with the Minister of Finance. The report must be filed within five business days of the day when the parties became major shareholders. Copies must also be sent immediately to the Stock Exchange (or to the Security Business Association for over-the-counter registered issues) and to the issuing company. Additionally, when the percentage of shares held varies by more than one percent, resulting in a change in the major holding report, major holders must file an amended report within five business days and send copies to the Stock Exchange.

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20. *Shigeru Sakai*, *Shoji Homu*, No. 1253, at 8, concluding that trading with related parties is not itself an object of the audit certificate, but since it forms the base of individual financial statements which are audited, there is a great necessity for the auditors to pay reasonable attention to it.

### C. Information Required to Be Disclosed

Information to be disclosed in the major holding report is determined by Form 1 of the "Ministerial Ordinance Concerning the Disclosure of Circumstances of Major Stock Holdings" (November 1991). The most important provisions are as follows.

Form 1(c) Holding objective: Objectives such as "pure investment," "policy investment," "management participation," or "acquisition of control" must be stated in detail.

Form 1(f) Important agreements: When there are important agreements concerning securities, such as pignorative contracts (contracts of pledge), the name of the party for whom the securities are held must be disclosed.

Form 1(g) Acquisition capital for holding securities: Acquisition of capital and borrowing objectives must be disclosed in detail. Capital includes capital owned, borrowed, or acquired by other means.

### D. Punitive Provisions

When a false statement is made in a major holding report<sup>21</sup> or an amended report,<sup>22</sup> the submitting party can be held liable. A violator is subject to a sentence of up to one year's imprisonment or a fine of up to ¥1 million.<sup>23</sup> These penal provisions are stricter than those for insider trading (up to six months imprisonment or a fine of up to ¥500,000).<sup>24</sup>

The new disclosure system contributed to T. Boone Pickens' (Boone Company) withdrawal from Koito Seisakusho. When he tried to guarantee payment for liabilities concerning the share purchases, in an attempt to become a major shareholder of Koito Seisakusho (K.K.), it was ascertained that a pignorative contract had been made with Azabu Tatemono, the seller of all the shares.<sup>25</sup> As a result, this system led to Pickens' withdrawal from Koito Seisakusho.<sup>26</sup>

## VII. DISCLOSURE OF INFORMATION CONCERNING TAKEOVER BIDS

### A. Details of the Reform

In Japan, the takeover bid system was established by the 1971 re-

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21. Exchange Law, art. 27-23(1).

22. *Id.*, art. 27-25(1).

23. *Id.*, art. 198(4).

24. *Id.*, art. 200(4).

25. The major holding report was filed in December 1990.

26. Mitsuhiro Kamiya, *Examination of the Legal Problems in the Pickens-Koito Incident (II)*, Shoji Homu, No. 1259, at 36.

form of the Exchange Law. However, it has rarely been used. Over the past twenty years, similar systems have been reformed in other countries. Considering that Japanese businesses have actively pursued mergers and acquisitions in other countries, the system in Japan should be reformed to be consistent with foreign regulations.

In June 1990, "Chapter 2-2 Disclosure Concerning Takeover Bids" was codified in Articles 27-2 to 27-22 of the Exchange Law. This was followed by the revision of the Ministerial Ordinance (Enforcement Ordinance for this act) in October. In November, a general revision of the "Ministerial Ordinance Concerning Notification of Takeover Bids of Securities" took place.

## B. Applications of Takeover Bids

The purchase of stock outside the market must closely follow the regulations for takeover bids.<sup>27</sup> The range of securities subject to the regulations clearly includes potential equity securities such as convertible securities, preemptive rights bonds, and preemptive rights securities. Securities issued by foreign corporations are also included. Non-voting rights stock, according to article 242 of the Commercial Code, are excluded from the regulations.<sup>28</sup>

The five purchases exempted from the regulation are listed in article 27-2(1) of the Exchange Law. Paragraph 1 refers to the over-the-counter market trade. Paragraph 3 applies if the share of securities held, after the purchase, is less than five percent when combined with the share of securities held by "special related parties." Special related parties are defined in paragraph 7 of the Article. The formal disclosure standard, according to article 9 of the Government Ordinance, is determined more broadly by "joint holding parties" regarding major holdings.<sup>29</sup>

Paragraph 4 exempts purchases from a "markedly small number of people." According to article 7(4) of the Ordinance, a "markedly small number of people" means there are less than ten partners purchasing securities outside the market. However, there is no exemption when the shares of securities held by a purchaser after the purchase exceed thirty-three percent because the purchaser could then exercise great control

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27. Exchange Law, art. 27-2(1).

28. Government Ordinance, art. 6(1); Ministerial Ordinance, art. 2.

29. Not only spouses, but relatives within the first degree of relationship by blood are included. Also, not just stock relations of over 50%, but "special capital relationships" holding over 20% of shares are included.

over the object company.<sup>30</sup>

### C. Formalities of Takeover Bids

In the past, takeover bid notification reports had to be filed at least ten days before the commencement of the takeover. This system of notification has been abolished. Now, if there is public notice of the takeover bid, purchase price, probable number of shares purchased, and the takeover period, the takeover bid can begin immediately.<sup>31</sup> Public notice can be achieved by printing the preceding information in more than two daily papers. The takeover bid notification report is filed with the Minister of Finance on the day of public notice, and copies must be sent to the targeted company and the Stock Exchange.

The period of the takeover bid, traditionally twenty to thirty days, has been increased to a period of twenty to sixty days.<sup>32</sup> Amendment to the takeover terms may be made by public notice in a newspaper. An amendment that is clearly disadvantageous to applicant shareholders, such as a reduction in the purchase price, is prohibited.<sup>33</sup> The party making the takeover bid cannot withdraw the takeover proposal until after the initial takeover bid notice.<sup>34</sup> In cases where the purchasing price has risen, the party is required to purchase at the higher price. Conversely, since the release of the takeover by the applicant is allowed at any time during the period of the takeover,<sup>35</sup> switching to another profitable proposal is permitted.

If a party fails to file takeover bid notification reports or if the party makes any untrue statements, the party must indemnify any injured party for resulting damages.<sup>36</sup>

## VIII. SIMPLIFICATION OF FORMALITIES FOR PUBLISHING DISCLOSURES

### A. Details of the Reform

For companies continuously disclosing securities reports, gathering and disclosing the same information included in prior securities reports is redundant. In the U.S., the "Integrated Disclosure System" has been

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30. This exclusion does not apply in the case of purchasing new companies which already have over 50% of the shares and has control.

31. Exchange Law, arts. 27-3, 27-4.

32. *Id.*, art. 27-2(2).

33. *Id.*, art. 27-6.

34. *Id.*, art. 27-11.

35. *Id.*, art. 27-12.

36. *Id.*, arts. 27-16 to 27-20.

used since 1982. In addition to the Form S-1, a cut-in type of notification report in the Form S-2 is used for companies who have continuously disclosed for a period of over three years. Furthermore, a reference type of notification report in Form S-3 is used for companies satisfying certain conditions. In Japan, there has been a similar simplification of formalities for publishing disclosures.

## B. Use of the Cut-In Type Report

The February 1987 revision of the Ministerial Ordinance which provides for a cut-in type of notification report became effective immediately. The use of the cut-in type was originally intended to be limited to companies who had continuously disclosed for five years.<sup>37</sup>

## C. Use of the Reference Type Report

The use of the reference type report was brought about by the May 1988 reform of the Securities and Exchange Act.<sup>38</sup> At the same time, the cut-in type of notification was also incorporated into the legal regulations.<sup>39</sup> In September 1988, the title of the "Ministerial Ordinance Concerning the Notification of Subscription or Sales of Securities" was changed to "Ministerial Ordinance Concerning Disclosure of Business." Yet, in articles 9-2 and 9-3 of this Ministerial Ordinance, Form 2-2<sup>40</sup> was defined as a cut-in type of notification report and Form 3<sup>41</sup> was defined as a reference type of notification report.

The reference type report is designed for companies who have filed securities reports continuously for three years. These published securities are listed on the Japanese stock exchange and must satisfy one of the following conditions:<sup>42</sup> (a) for issued shares, the total value of shares traded in the past year on the securities exchange must be greater than ¥100 billion and the aggregate market value must be over ¥100 billion; (b) for issued shares, the aggregate market value must be over ¥500 billion; or (c) general guaranteed straight bonds must have already been issued.

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37. Ministerial Ordinance, art. 8(3), concerning the notification of subscription or sales of securities. This period of five years was later amended to three years.

38. Exchange Law, art. 5(3).

39. *Id.*, art. 5(2).

40. Form 7-2 for foreign companies.

41. Form 7-3 for foreign companies.

42. Ministerial Ordinance, art. 9-3(3).

## D. Introduction of an Issue Registration System

Since December 31, 1983, the "block registration system" has been generally used in the U.S. This is true even for stocks offered for public subscription. Following the U.S. system, Japan's May 1988 Reform Act introduced an "issue registration system."<sup>43</sup> This system can be used by parties to satisfy the conditions of eligibility for the "reference type" reporting requirement.

An issue registration report,<sup>44</sup> stating the amount scheduled to be issued within a fixed period<sup>45</sup> and the type of securities, is filed with the Minister of Finance. When this report is filed, an issue registration supplemental report stating only the securities information, such as terms of issue, can be filed without any new notification at the actual time of issue.<sup>46</sup>

## IX. DISCLOSURE OF MARKET PRICE INFORMATION FOR SECURITIES

### A. Importance of Market Price Information

The importance of market price information is illustrated by the following points.<sup>47</sup>

(1) The adjustment of interests between present shareholders and future shareholders is undertaken by impartial settlement of the transfer price of the shares. In order to impartially determine the transfer value, information concerning market price of company assets must be made clear.

(2) By knowing the information regarding the market price information of the debtor company, company creditors can better judge the possibility of bankruptcy.

(3) Knowledge of the market price is also helpful for preventing profit manipulation. By evaluating assets based on market price, profit manipulation by changing the disposition period for bad assets and selling off securities and fixed assets is made impossible.

### B. Reform of the Ministerial Ordinance

In May 1990, the Financial Accounting Deliberation Council pub-

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43. Exchange Law, art. 23-3.

44. Ministerial Ordinance, Form No. 11.

45. One or two years, according to Ministerial Ordinance, art. 14-5.

46. Exchange Law, art. 23-8.

47. Masao Iyanaga, *Disclosure of Market Price Information for Securities, Futures, and Option Trading*, Jurist No. 986, at 17.

lished "A Written Opinion Concerning Accounting Standards for Futures and Options Trading." This report established the use of market price information for trading futures and options and the standards for disclosing market price information of marketable securities. Following this report, in December 1990, the "Ministerial Ordinance Concerning Business Disclosure" was revised by the Ministry of Finance Ordinance No. 41. This led to the disclosure requirements of market price of securities for the business year beginning March 1, 1991. At the same time, notification from the Securities Bureau Director titled "Regarding the Disclosure of Market Price Information for Marketable Securities, Futures, and Options Trading" was published.

### C. Disclosure Methods

The Ministerial Ordinance No. 2 requires disclosure of securities notification reports and securities reports for "Market Price Information for Securities" (Form 3) and "Circumstances of Accounting" (Form 5). Securities which must be disclosed include: (a) listed securities; (b) securities registered with the Securities Business Society or designated as over-the-counter securities; (c) bonds reflecting the market expectations and securities benefitting from an investment trust showing standard value; and (d) bonds for which the market price can be rationally estimated by using either the market price corresponding to generally publicized prices, the trading price, or market trends.<sup>48</sup>

The purpose of market price disclosure in futures and options trading is to limit the risk taken by investors. Disclosure requirements for futures trading cover securities futures trading, financial futures trading, and product futures trading as well as similar foreign trading. Disclosure requirements for options trading apply to securities options trading, financial options trading, and product options trading. For securities, the current balance sheet value, the market price at the end of the term period, and the difference between them must be disclosed. For securities options trading, required disclosure includes the sum of the current balance sheet value and the market price at the end of the term period, and the difference between them.

### D. Disclosure of Market Price Information for Financial Commodities in the U.S.

In the U.S., FASB Statement No. 12 requires disclosure of market

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48. The Securities Bureau Director notification "Regarding the Disclosure of Market Price Information for Marketable Securities, Futures, and Options Trading."



price information for marketable securities. FASB Statement No. 80 requires disclosure for currency futures. Furthermore, FASB Statement No. 105 requires disclosure of information concerning financial commodities with off balance sheet credit risk, and information concerning credit risk by industry, area, and customers.

The disclosure of information concerning the concentration of credit risk, as required by FASB Statement No. 105, appears to have a broader objective than solely monitoring business management. Accordingly, it is desirable that such a requirement be introduced in Japan.

## **X. INTERNATIONAL ACCORD OF ACCOUNTING STANDARDS**

### **A. IASC and the Comparability of Financial Statements**

In order to further internationalize the world's stock markets, the filing requirements for financial statements by businesses must be comparable in each country. In January 1989, the International Accounting Standards Committee (IASC) published Exposure Draft (ED) 32 entitled "Comparability of Financial Statements." This draft proposes cutting back or eliminating twenty-nine alternative accounting treatments, which are permitted under the current IASC regulations.

Since the founding of the IASC in June 1973, the Japanese Institute of Certified Public Accountants has participated in the Founding Committee. In January 1993, Eiichi Shiratori, the Standing Director of the Japanese Institute of Certified Public Accountants, will assume the office of IASC President.

In February 1985, the U.S. Securities and Exchange Commission, in an effort to internationalize the world's stock markets, requested that the U.S., England, and Canada consider the following options: (a) taking a "reciprocal approach" (reciprocally recognizing the market applications of partner countries as the market applications in one's own country); and (b) taking a "common prospectus approach" using common market applications. Similarly, the IASC recommended an agreement between Japan and the European countries which advocated that IASC be used as the standard of disclosure.

In November 1988, FASB became a member of the IASC Consultative Group and attended the meeting of the board of directors as an observer. In January 1991, IASC established terms to harmonize international accounting standards in order to achieve comparability of

financial statements.<sup>49</sup>

### B. Course of Proposals in Exposure Draft 32

ED 32 was well received throughout the world and more than 160 comments were returned. In July 1990, IASC published a "Prospectus" based on these comments. Of the twenty-nine items proposed, twenty-one will be added to the IAS in the beginning of 1993. This will be done without actually changing the ED 32 proposals.

The IASC Board of Directors attempted to improve three former standards by: (a) eliminating the last-in first-out method, (b) allowing funding for research and development expenses that meet fixed conditions, and (c) allowing asset appropriation for borrowing expenses. In response, the IAS Revision Drafting Committee published ED 37, ED 38, and ED 39 in August 1990.

Conclusions are being withheld regarding another five standards, but the IAS Revision Drafting Committee has prepared an exposure draft. This draft is anticipated to present a completely new set of international accounting standards at the beginning of 1993.<sup>50</sup>

IOSCO is a global organization consisting of securities monitors from each country. In Japan, the Ministry of Finance Securities Bureau has been a member since November 1988. IOSCO fully supports the initiative of IASC in all aspects, stating that "[t]he main impediment to an international public offering of stock is that each country has different accounting standards. The final goal is [to incorporate] mutually approved international accounting standards."<sup>51</sup>

### C. Conclusion on International Accounting Standards

Clearly, harmonization of accounting standards is desirable. True, the present accounting standards were developed according to each country's commercial and management ideologies. Also, businesses are established in each country's unique social, economic, and legal environments. Given such diverse origins, it is difficult to harmonize the resulting accounting practices.<sup>52</sup> However, if financial statements are to provide useful information for decisions concerning economic objectives, the harmonization of accounting standards cannot be avoided. This is especially true given the current development of global stock markets.

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49. Tadaaki Tokunaga, *International Standardization of Accounting Standards*, Shoji Homu No. 1227, at 8.

50. *From the IASC Delegation*, JICPA J., Jan. 1992, at 16.

51. IASC News, Vol. 18, No. 1, Jan. 1989.

52. Tokunaga, *supra* note 49.

The trend towards standardizing accounting methods is encouraged because standardized methods will require significantly less time than other treatment methods and will allow meaningful comparisons among different financial statements.