

CENTER ON JAPANESE ECONOMY AND BUSINESS

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**INVESTORS UNLEASHED:
THE RISE OF SHAREHOLDER ACTIVISM IN JAPAN**

January 30, 2007

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Alicia Ogawa, director of the Program on Alternative Investments of the Center on Japanese Economy and Business, served as moderator for this event.

This report highlights the speakers' remarks and the following discussion that took place. The Eighth Annual Mitsui USA Symposium was cosponsored by the Mitsui USA Foundation, the Center for Japanese Legal Studies at Columbia Law School, and the Japan Business Association of Columbia Business School.

*Mr. Miller spoke on the condition that his comments were off the record. They do not appear in this report.

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SYMPOSIUM SUMMARY

From the Western point of view, Japanese companies remain mired in tradition and are very inefficient. Given objective measures of efficiency and profitability, it is hard to argue against this characterization, particularly for domestically focused Japanese companies. However, one important change that has been occurring is the recent steep reduction in the number of cross-shareholdings in the Japanese equity market. These new shareholders are anxious to have a say in the actions of management, and they are becoming agents of change in stodgy companies that must evolve in order to survive. Activist investors have proven a successful force for change for U.S. companies, and they are finally making some inroads in Japan. There have been many stumbling blocks, including negative public and government opinion, resistant management, and legal and regulatory issues that previously made it hard for activists to purchase a block of shares. That said, even despite some high-profile prosecutions over the last two years, the tide has begun to change, and the Japanese vernacular media and public have increasingly been backing activist investors in their quest for better management of firms.

Mr. Fusa first explained that private equity firms take control of the company and change the way things are run from the inside, while hedge funds take control over a block of shares and try to shake things up from the outside. His view is that hedge fund players can often earn more money due to the additional management fees charged to clients, as well as the fact that private equity firms usually have to pay a higher entry premium to gain control of a company. Mr. Fusa compared the current Japanese market to where the U.S. market was 20 years ago, which is around the time private equity firms in the United States really shook up an inefficient marketplace and there was a boom for hostile takeovers and, therefore, for the economy. Regarding hedge fund activism, Mr. Fusa expressed the importance of making a large investment in a company if there are prospective strategic buyers willing to purchase at a premium.

Professor Milhaupt remarked on the importance of the legal environment for takeovers. He discussed Japan's embrace of U.S.-style defensive mechanisms for hostile takeovers in the last couple of years and the advent of poison pills. He noted, however, that the city code of London would have been a better style of defensive mechanism for Japan because a board neutrality principle, coupled with a mandatory bid rule, would have done much more to enhance shareholder value. According to Professor Milhaupt, there is reason to be optimistic about the court system's dealing with hostile takeovers and, specifically, its record on striking down poison pills that are harmful to shareholders. He fears that the image that Japan's financial regulators are engaging in selective prosecution is dangerous for the Japanese capital markets.



ALICIA OGAWA
Director, Program on Alternative Investments, Center on Japanese Economy and Business, Columbia Business School

Thank you to all for coming tonight to the 2007 annual Mitsui USA Symposium. This is the eighth year that the Center on Japanese Economy and Business (CJEB) and the Mitsui USA Foundation have cosponsored this symposium at Columbia Business School. This year, the event is also cosponsored by the Program on Alternative Investments of CJEB, the Center for Japanese Legal Studies at Columbia Law School, and Columbia Business School's student-led Japan Business Association. We are here tonight to discuss one of the most far-reaching trends to emerge in Japanese capital markets since the 1960s, and by that I mean the increasing power of value investors to set prices for publicly traded shares of Japanese companies and thereby to set the agendas for managers of those companies. Since the 1960s, an overwhelming proportion of publicly issued corporate shares in Japan have been held by friendly counterparties. These counterparties would typically be creditors, debtors, suppliers, or customers of the issuers of the shares, and the long-term commitment to hold these shares remained intact regardless of whether the share price went up or down. While this might have conferred some benefits to the economy as a

whole, particularly in terms of stability, it also protected corporate management from the discipline of the market. Not only were long-term shareholders largely indifferent to whether or not managers acted to maximize the value of their companies, but also managers themselves were indifferent to their company's share price, since their compensation was not tied to share price performance.

However, with the banking crisis of the early 1990s and the ensuing many years of deflation, the ability of firms to finance this system of cross-shareholding has been severely weakened. Cross-shareholding fell from a peak of above 40 percent of all shares in issue, to about 25 percent today. In many cases, for the first time, it is possible for truly independent shareholders to acquire meaningful stakes in Japanese companies. The need for Japanese companies to adopt aggressive and often painful reforms in order to respond to the emergence of powerful new competitors is encouraging independent investors to become agents of change. The aging population in Japan is another force pushing domestic companies to become more efficient. The need for restructuring has therefore been gradually—perhaps begrudgingly—acknowledged by the general public, where opinion is no longer automatically unfavorable to those activist investors who attempt to forge change. This transition from friendly long-term holders to value investors has not been smooth, nor have all casualties been avoided. One of the first and most aggressive of the hostile activists, Yoshiaki Murakami, is now being investigated by the public prosecutor. Nevertheless, even the most mainstream of the

domestic financial press, the *Nikkei* newspaper, had to admit this about Mr. Murakami: "While Mr. Murakami's exit from the market was an inevitable outcome, his actions as an investor prodded corporate leaders to improve business efficiency and steered industry towards management policies that valued shareholders."

Tonight we are fortunate to have two activists from the front lines in Japan speak with us. They have both come a very long way to be here, and I would like to welcome and introduce them now. Koji Fusa has been an investment banker pretty much since he could walk. Prior to establishing his current company, Sandringham Capital Partners Limited, his most recent position was as head of investment banking for Credit Suisse Tokyo. We first met when he was a senior banker for S. G. Warburg Securities, which later merged into Union Bank of Switzerland (UBS). Tony Miller has had a similarly distinguished career, first as head of corporate finance at Bear Stearns Asia, then as head of Carlyle's Hong Kong office, and now as president of Ramius Capital Group, Japan [Mr. Miller's comments were off the record and do not appear in this report]. We are also fortunate to have our own Curtis Milhaupt, Fuyo Professor of Law and director of the Center for Japanese Legal Studies at Columbia Law School, here to act as a commentator.



KOJI FUSA
Founder and CEO, Sandringham Capital Partners Limited

Thank you very much for the introduction, Alicia, and to everyone for coming tonight. When I was asked to make this presentation in December, I had just appeared at a hedge fund conference where the panel discussed whether activist funds or private equity funds were more profitable. I think this is an interesting topic for a business school as well. Tonight, I will talk about several factors that are influencing Japanese hedge funds as well as private equity funds. Most of these characteristics are similar to those of the United States or the United Kingdom 20 years ago.

There are a lot of private equity players who are moving into hedge funds. The reason for this is simply because in hedge funds, if you are making 1 to 1.5 percent for management fees, there is an additional management fee of 20 percent that comes in every year. Most business school students now want to go into private equity, but if your return for the investor is exactly the same, the management fee for private equity is basically long dated. You have to pay back the investor after you have harvested some successful investment, which is usually between five to seven years. Let us say you have a compound return of two times over your investment. In addition, let us say you have 20 percent on your return. For hedge fund players, not only can you make

this 20 percent return, but you also are making a 1–1.5 percent management fee. If you are private equity player, you are going to make only 20 percent. There are other issues to consider in the case of Japan, but even though private equity deals are fascinating and make headlines in the news, a hedge fund is more advantageous if your primary goal is to earn money.

Japan is a fantastic market in the sense that the interest rates are low and the market is also inefficient, just like the United States was 20 years ago. You can find very interesting companies in the public market, meaning that you can buy shares directly from the market. If you are a private equity player, that is not the case because you need to control the firm, and, unlike hedge funds, you may not be able to accumulate undervalued shares through the public markets. Hedge funds should not go for control. Hedge funds should shake up the company to pay out more dividends, say one times the net asset value. Eventually, hedge funds may want to sell their interest at a higher price to an investor seeking a controlling position, and they can use the existence of such an investor for their own benefit. We saw an example of this a year ago with Mr. Murakami, who was holding a substantial position in Nippon Broadcasting Systems and who, after lobbying for strategic change in the company, decided to sell his stake to Livedoor, which was seeking corporate control. Such a partnership is an example of the most successful way for an activist to exit. Private equity funds can also benefit from shareholder activism, as the path to control becomes apparent if enough shares are accumulated by activist funds.

There are many famous activists, but many activists also fail. When you are initially acquiring shares, you are generally fairly safe because you have been disciplined in making investments at very low multiples. However, as you shake up the company for higher dividends, you end up with a substantial interest in a very illiquid position, at an increasing share price. This creates a very expensive portfolio. If you are not going to have new money, then you are going to be in a very difficult situation. You could get stuck.

In terms of entry price, private equity firms usually have to pay more, since the investment they are making includes a control premium, i.e., a premium above the prevailing market price, because the investor will now have control of the company. In contrast, since hedge funds do not need control of the company, they can ask for a price that is at a discount from the market price, as long as the amount is substantial. Also, hedge funds can borrow money from their portfolios to leverage against certain positions. In the case of the activist manager, however, their position is very concentrated. The leverage they can have is a little bit limited, while in the case of private equity funds, money can be borrowed against the controlling cash flow or the underlying assets of the company. That is a big difference between hedge funds and private equity funds.

Real estate prices in Japan have been rising again after being depressed since the 1990s. The stock market has been performing strongly, and interest rates are still low. Even though the Bank of Japan is aiming to raise rates, they will still stay around 1 percent and will not

reach the level of 4 or 5 percent in the foreseeable future. Under these circumstances, if you can identify an opportunity to get control of a company, then, clearly, private equity deals are going to be extremely profitable, since the cost of debt to finance the purchase of control is negligible. Currently, private equity groups are raising a lot of money globally and are dominating more than half of the emerging equity markets because interest rates around the world are low.

The confidence of Japanese CEOs was restored about two years ago. The stock market reflected this return of confidence, and the Nikkei and other indices have risen about 40 percent since 2005. Stocks lagged last year, particularly because foreign fund managers slightly restricted their investments in the wake of scandals like the one involving Mr. Murakami. There was a perception—in my view, a correct perception—that Japanese regulators did not like hedge funds and that they wanted to penalize those making “too much” money. Mr. Murakami was one of them. I am not sure if the latter is actually true, but that was the perception from the outside. The market the previous year was too strong, so last year money shifted out of Japan to other countries that were lagging. That said, the Japanese market was the only market that lagged behind the United States and Europe last year, and we expect this to be a very strong year.

We should be aware that different activist funds have very different beliefs and theses. Our belief is that we cannot compete with the big investment banks. We want to do small deals, and we want to be good in an area that the banks are not. The problem with large banks is that there

*In the end,
the private equity
players move more
quickly than
Japanese senior
management at
large companies.*

—Koji Fusa

is too much conflict between their research, trading, and sales departments. What we can do is set up either private equity or hedge funds. We can make a lot of money per employee because we employ a small number of smart people, but we also have to borrow money to make high returns.

Japanese banks had a very bad year in 1997. For those of you who do not know, around this time, Alicia was an expert witness on the Japanese banking system before the U.S. Senate. This was when foreign banks made huge inroads in Japan. Currently, the people in Japan have to live with the choice between Japanese banks and foreign banks that have superior lending capabilities. The trend right now is that there is a lot of money to borrow because the banks think that it is less risky to lend to private equity and hedge funds than to companies, as the former calculate risk proficiently before adding investments to their portfolios. Conversely, Japanese banks may not have this analysis ability. Also, our business is buying cheap assets, doing an analysis of underlying cash flow, and turning the business around. We buy blocks of shares, shake up the company, force it to restructure, and then sell the shares to somebody at a higher price. It would be a joke if we could not exit from our expensive position.

In the end, the private equity players move more quickly than Japanese senior management at large companies. Although private equity is not the answer for every company, it is important that the market flourish and be successful. The private equity market is a very small market in Japan because it is still very hard to gain control of a Japanese

company, and we cannot make money unless we gain control.

ALICIA OGAWA

I cannot resist telling you this story. About ten years ago, I had a conversation with a Japanese bank CEO who said he had no idea what his competitor's market valuations were. When I asked him about his view on share prices, he said he just wanted to make sure the absolute share price was higher than that of his competitors. So if for bank A the share price was 1,000 yen, he wanted his share price to be 1,010 yen, regardless of what the market capitalization was. Anyway, here to make comments on what we have heard so far is Professor Curtis Milhaupt of Columbia Law School.



CURTIS MILHAUPT

Fuyo Professor of Law; Director of the Center for Japanese Legal Studies, Columbia Law School

I am very honored to have a chance to comment on the presentations. As a legal academic, I am not qualified at all to comment on Mr. Fusa's analysis of the underlying economic fundamentals driving the business, so my remarks are going to be much closer to Mr. Miller's comments and really touch off on his remarks on the institutional setting. I will retrace some of his steps and push a little bit more on tax securities, corporate law, the courts, and the media.

I will begin with a very brief history of how we got to this point. Alicia has mentioned cross-shareholding as a very important factor. Its rise and decline are important elements of how we got to this point. As Alicia mentioned, during the rapid economic growth in post-war Japan, shareholders were largely passive. There are many reasons for this. Standing behind stable cross-shareholding were legal rules that made it very costly to challenge management. There was a relatively poor public disclosure regime that made it very difficult for minority shareholders to have information about what management was doing and to assess the quality of their business model. Mr. Fusa mentioned that the markets are still inefficient, but they are probably more efficient than they were 30 or 40 years ago. The social norm was to downplay shareholder wealth maximization as a legitimate goal. The norm was to stigmatize hostile takeovers that really promoted a much broader stakeholder view, and the firm instead centered itself on employee welfare. There is nothing wrong with that per se, but I think the cumulative effect of these various rules, institutions, and norms was a strong managerialist model—probably the strongest managerialist model in the world during the postwar period. I think that is the obstacle that people like Mr. Miller and Mr. Fusa have to overcome. It is a very strong tradition that is entrenched, and I think that is why it is such a controversial topic today.

This model began to crack in the 1990s because of a recession, corporate scandals, legal changes that brought a wave of shareholder derivative litigation against Japanese management, increased

foreign ownership of stock, and the gradual modernization of Japan's corporate law to make it more flexible and shareholder friendly. By the early 2000s, there were several hostile takeover attempts, albeit ones that were small and unsuccessful, and a few proxy fights. Mavericks like Mr. Murakami began to appear in the market, and slowly this system began to crack and change. In addition, huge institutional investors, such as the Pension Fund Association in Japan, were getting anxious after years of negative returns. They started to use the proxy process to try to improve corporate governance and enhance their own returns. We have thus arrived at a very interesting moment where the stage has been set for activism, and people can even be, at least cautiously, optimistic about the future of shareholder activism in Japan. The environment has changed quite significantly from where it was 10 or 15 years ago.

Let me touch on a few issues that I think are important going forward. First, the takeover regime in Japan is very important as an exit mechanism, particularly for private equity investors. The environment for friendly takeovers is probably more important than the one for hostile deals, but the hostile deal environment is very important as well. An analogy was drawn to the United States in the 1970s. What was it that shook up management in the 1970s and that broke apart these bloated companies? It was largely the hostile takeover market, so I think the environment for hostile mergers and acquisitions in Japan is very important. Japan has, for better or worse, largely embraced U.S.-style defensive mechanisms for hostile takeovers in the last couple of years. The legal environment,

which is very involved, tracks the developments in the United States. I am not sure that is a good thing, but that is what we have. Thus, we now have the emergence of poison pills in Japan. About 150 public companies have adopted some version of a poison pill since March 2005, which was when Livedoor made its hostile bid for Nippon Broadcasting. That is about 5 percent of the public companies, and surely many more poison pills are on the way. Is this a good development for Japan or not? I would like to hear the comments of the panelists on this development, since in the United States it is largely thought that the poison pill can actually work to the benefit of shareholders. It gives target management leverage versus a hostile bidder and increases share prices or at least buys them time to find a better deal. Do you think that the poison pill is going to work that way in Japan?

My sense is that the courts have done a relatively good job of striking down poison pills that are harmful to shareholders, so I am very impressed and optimistic about the role that the courts have played so far, even though there have only been a couple of cases. I actually think that the city code of London would have been a much better choice for Japan. The code is a board neutrality principle coupled with a mandatory bid rule, which would have done much more to enhance shareholder value than the U.S. style. In any case, it is too late to adopt this now. There is an interesting story behind why Japan gravitated toward the poison pill. It has to do with the influence of American legal and financial advisers for the Japanese government when they were deciding on the public policy

response. Just note in passing that lawmakers in Japan now seem to be considering a mandatory bid rule, which I think would be a disaster because you already have the poison pill. If you introduce a mandatory bid rule, you have double protection for management, and I think that would be a belt and suspenders approach that would virtually kill or cripple the hostile takeover market.

Secondly, we have proxy voting. The Asian Corporate Governance Association recently released a report examining the quality of proxy voting rules in Asia, and Japan ranked dead last, with an overall rating of “poor.” The biggest problems that were identified were the concentration of shareholder meetings in June, short notice of shareholder meetings, little time to vote before meetings, and having insufficient information in the proxy materials for shareholders to cast an informed vote. I would also like to hear more from the panelists about the prospect for proxy contests in Japan. Are the rules workable, and what needs to change to make proxy contests a legitimate threat or opportunity in Japan? There has been a backlash against hostile takeovers due to their awful public image, which I think is very important. Shareholder activism is controversial; it is new to Japanese managers, and people seem to paint it as something that is Western or foreign to Japan. It is still something that is perceived as negative. This is not just a Japanese phenomenon; look at Korea, or the United States; it happens everywhere. However, I think it is more prevalent in Japan than in some other places. Paying some attention to public image is extremely important if shareholder activism is to flourish in Japan. It is interesting to

note that the early shareholder activists in Japan, as in Korea, were actually civil society groups that promoted shareholder activism as a part of good corporate governance transparency and as a way of making Japan better in general. I very much agree with Tony when he mentioned that this cannot only be about money because then it is bound to fail. It is more than about the money; I think it is good for Japan. Paying attention to media portrayals and public relations is very important, and I would like to ask the panelists if they have a media strategy. Do you try to use the media, and what sort of strategies might be used to improve media coverage of shareholder activism in Japan?

My final point is on the regulatory stance of the financial regulators, including the prosecutors, the Tokyo Stock Exchange, and so forth. Obviously, the international competitiveness of the financial market is a very big issue today in the United States and Japan, and the regulatory style of a given country is extremely important. The United States is currently arguing about whether the Sarbanes-Oxley Act has gone too far and whether we have too aggressive a prosecution environment for corporate activities. It is obvious that these issues are very relevant in Japan as well, but I have a slightly different take on the Takafumi Horie and Yoshiaki Murakami prosecutions. I do not think they were targeted because they made too much money. Who knows if they will be convicted or not, but I think there are many other people active in the Japanese market who did the same thing or worse. Everyone knows this, so the question is, why were these two targeted for prosecution? The image that Japan is engaging in

The image that Japan is engaging in selective prosecution is extraordinarily dangerous for the Japanese capital markets.

—Curtis Milbaupt

selective prosecution is extraordinarily dangerous for the Japanese capital markets. Of course, it is possible that this is part of a legitimate effort to improve transparency and regulatory enforcement in the market. That is entirely plausible, but I think there is an element of suspicion that hangs over these prosecutions because of who these people are. I am going to end with that thought and ask a broad question of the panelists. What needs to change in Japan to make shareholder activism more productive?

DISCUSSION

KOJI FUSA

I believe that selective prosecution does not just happen in Japan, but it happens here in the United States and in other developed countries as well. I also think the mentality of the Japanese financial community and authorities needs to change. Everyone says Japan has a capitalist market, but it is not always the case. People still want equal results, not equal opportunity. This mentality exists with most of the regulators as well. In order for Japan to have a U.S.-style capitalist market, first the commercial law must be changed to give more adequate protection to shareholders. Second, the tax law in Japan is so antiquated that if you want to do efficient restructuring of a company you have bought, you have to pay nearly 40 percent of the profit to the tax authority. Changes in both these areas must be made to foster a more shareholder/capitalist-friendly environment.

QUESTION

Other than looking for cash dividends, what are some of the other opportunities

you look for when evaluating prospective investment opportunities? Are there any themes to these opportunities that you are looking for when investing in Japan?

KOJI FUSA

When we take a position, we usually ask ourselves, who will be the strategic buyer that will purchase at a premium? In the case of Myojo Foods, before we started, we sourced it to Steel Partners Inc. Besides Nissin Foods, we also thought that Sanyo Foods might provide our exit for the company. In fact, not only Steel Partners Inc. but also Murakami and Symphony Partners were in the beauty contest. The way Steel Partners got it was that they presented themselves as a friendly activist. They were represented by Mr. Kuroda, who has since left Steel Partners. When sourcing these deals, if you are seen as friendly, you can get a block of shares. In this case, the Okui family, which had a 24 percent interest in Myojo Foods, was happy to sell 12 percent of its interest at the market price, which is a substantial discount compared to the net asset value. And Steel Partners, Murakami, and everyone else were looking to Sanyo Foods as the potential buyer of their strategic stake. And we did the same. In fact, one of our positions in which we made an investment was sold in December to a strategic buyer, and the share price went up three times above the price at which we purchased it. Nonetheless, we make sure that we take a large position if we believe there is a buyer for the business. It does not mean we confirm a buyer before the deal; that would be insider trading. However, if you bet big and



From left to right: Curtis Milhaupt, Alicia Ogawa, Anthony Miller, and Koji Fusa

are successful, then you can make a lot of money.

QUESTION

Mr. Milhaupt, you mentioned that you think the court system is free from corruption. I am wondering if the court system is the big problem, because even if the courts are free from corruption, how can we expect a judge to really understand what is at stake when activism is still new in Japan?

CURTIS MILHAUPT

That is a good question. Traditionally, the courts were not very involved in these types of disputes, but only because there were not very many of them. Some of the rules that they developed were quite lax. For example, let us look at the rule on issuing a block of stock to a white knight. The courts were quite permissive of that, albeit not completely, as they did strike down one or two cases. We have to be careful when we talk about the courts, because it has really been one court, or one judge, in the Tokyo district court who has handled a lot of these cases. The court has

done a very good job so far in hostile takeover cases, of distinguishing between a defense that is legitimate, or designed to enhance the protection of shareholders, and a defense that is designed to entrench management. We are talking about a very short track record thus far, but I think the courts have actually done a remarkably good job. I think there is real reason for optimism. I would say there has not been any corruption. I think they have handled these cases in a very sophisticated manner to this point.

In the United States, there is something called the "Revlon rule," which says that if there are competing bids for a company, target management has an obligation to auction the company off to the highest bidder. When the takeover guidelines were adopted in Japan, lawmakers shied away from incorporating this into the Japanese framework. I think that would have actually been applicable in the cases that you raised, so maybe we will see some pressure develop for the adoption of the Revlon rule.

解き放たれた投資家:日本における株主アクティビズムの台頭

(抄訳)

どのような未来が日本における株主アクティビズムを待ち受けているのか？ 投資収益を最大化させるようとする株主の利益が、自らの立場を守ろうとする経営者の利益を圧倒するのだろうか？ アクティビスト(「物言う株主」)が、日本における企業の経営のあり方を変えるのであろうか？ これらの質問に答え、アクティビストの投資行動の最前線で、今まさに何か起こっているのかを検証するため、コロンビア大学ビジネス・スクール日本経済経営研究所(CJEB)オルタナティブ投資プログラムによる主催で、コウジ・フサ氏(サンドリガム・キャピタル・パートナーズ創業者兼 CEO)、アンソニー・ミラー氏(ラミアス・キャピタル・グループ常務取締役、ラミアス・ジャパン社長)の両氏が招かれた(なお、ミラー氏の発言は非公開のため、このレポートには記載されない)。この討論における議事進行は、オルタナティブ投資プログラム・ディレクターである小川アリシアにより行われた。そして、カーティス・ミルハーブ教授(コロンビア・ロー・スクール日本法学センター所長)がコメンテータを務めた。

初めに、フサ氏から、プライベート・エクイティ・ファームは企業に対する支配権を獲得し経営手法を内部から変革する一方で、ヘッジファンドはある程度の株式シェアを獲得して、外部から揺さぶりをかけようと試みているという説明があった。プライベート・エクイティ・ファームが企業の支配権を獲得するために高い参入プレミアムを支払うことが多いのと同様に、ヘッジファンドはしばしばクライアントに追加的なマネージメントフィーを請求し、収益を上げていると同氏は分析する。さらに、日本の現在の市場と、20年前の米国市場、すなわち、プライベート・エクイティ・ファームによって非効率な市場が揺さぶられ、同時に敵対的買収がブームとなり、結果として好況がもたらされた当時の米国市場との比較がなされた。ヘッジファンドによるアクティビズムの観点から見て、ある企業について、積極的にプレミアム付きの価格で購入することを厭わない戦略的な買い手が現れることが見込まれる場合、その企業に対する大規模な投資を行うことが重要である、という点をフサ氏は強調した。

ミルハーブ教授からは、企業買収をめぐる法的な環境の重要性について言及があった。ミルハーブ教授は、過去数年間において、日本では敵対的買収に対抗する米国方式の防衛策、そして、ポイズン・ピルの導入(米国方式の買収防衛策の一種)が見られるようになったと論じた。しかし、教授は、ロンドンのシティ・コードの方が、全部買付義務(マダトリー・ビッド・ルール)を伴う取締役の中立性の原則を採用し、株主価値を高めるためにより有効であり、日本にとってより適切な防衛の仕組みとなりえたであろうとも述べた。

ミルハーブ教授によれば、敵対的買収を取り扱う裁判所の制度、特に株主の利益を害する防衛策を無効とする判決については、楽観的な見通しを持ちうる根拠があるとのことである。一方で、教授が懸念する点として、日本の金融監督当局が選別的に告発を行うというイメージは、日本の資本市場にとって危険なことであると指摘された。

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