

## **RULE CHANGES PROPOSED FOR UPGRADING REGULATION ON CORPORATE MERGERS AND ACQUISITIONS**

- Regulatory improvements on disclosure duties, external evaluation process and the method for calculating merger price will help to make M&A rule more consistent with global standards and increase protection for general shareholders.
  - Upgraded rules will take effect in the third quarter of this year.
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The Financial Services Commission issued a preliminary notice of rule changes being proposed for improving regulations on corporate mergers and acquisitions under the Financial Investment Services and Capital Markets Act (FSCMA). The revisions being proposed for the enforcement decree of the FSCMA and its subordinate regulation on the issuance and disclosure of securities contain measures to strengthen disclosure duties, improve the process of external evaluation, and upgrade the method for calculating merger prices.

First, with regard to enhancing disclosure duties, the revision proposal mandates listed companies to disclose written statements about their board of directors' meetings with details regarding what has been discussed and decided on M&A related issues. This will ensure that general shareholders can have access to information regarding corporate M&A activities. The board of directors' written statement should contain information about the purpose of merger, its anticipated effect, merger price and ratio, as well as any dissenting opinion. The board of directors' written statement about M&As should be disclosed as an attachment to the securities registration and material disclosure for that particular year. This will help to ensure more responsibility from boards of directors and increased fairness and transparency in the process of M&As.

Second, regarding rules on the external evaluation process, the revision proposal establishes a code of conduct for external evaluation agencies to bolster fairness and credibility. In this regard, external evaluation agencies will be required to maintain their own quality management standards, or otherwise be barred from serving as an external evaluator. Their quality management standards should address issues relating to the maintenance of autonomy, objectivity, and fairness, conflicts of interest, confidentiality, and actions to be taken for misconduct. An external evaluation agency offering third-party evaluation service to a particular company will not be able to get involved in deciding a merger price for the same company. In mergers between affiliated entities, the revision proposal requires companies to get an approval from their audit committees for selecting an external evaluation agency to ensure fairness.

Third, regarding the method for calculating merger prices, the capital market regulation currently provides a specific method for calculating standard market prices of listed companies, thereby directly regulating how merger prices are calculated. However, to promote more market-driven restructuring and make domestic regulations more consistent with global standards, M&As between non-affiliated companies will no

longer be subject to the merger price calculation method specifically stated under the capital market regulation.

These rule changes have been prepared after having thorough discussions with various economic and finance industry groups, external evaluation agencies, and related authorities. The FSC expects that these rule changes will help to make domestic M&A rules more consistent with global standards and increase protection for general shareholders.

The revision proposals will be put up for public comment from March 5 to April 15, and will take effect in the third quarter of this year after going through a legislative review and an approval process.

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