GUIDELINES CONCERNING AUTHORIZATION OF ACQUISITION AND HOLDING OF VOTING RIGHTS BY BANKING AND INSURANCE COMPANIES UNDER THE PROVISIONS OF SECTION 11 OF THE ANTIMONOPOLY ACT

November 12, 2002
Fair Trade Commission

In order to prevent an excessive concentration of economic power or other unfair trade practice by a company engaged in banking and insurance (hereinafter referred to as "banking and insurance") and to promote fair and free competition, acquisition or holding (hereinafter simply referred to as “holding”) of voting rights on management of a domestic company by a banking and insurance company is prohibited under Section 11 of the Antimonopoly Act (hereinafter referred to as “the Act”) from exceeding five percent (or ten percent for the insurance company; the same applies hereinafter) of the total amount of voting rights belonging to stockholders of the company (under Section 11 (1)).

On the other hand, there may be cases in which banking and insurance companies may require holding of voting rights beyond such a limit due to the nature of their business or as a means of safeguarding their claims and, at the same time, such holding has no possibility of inviting an excessive concentration of economic power. For this reason, holding of voting right beyond the aforementioned limits can be permitted in exceptional cases as provided for under Section 11(1)(i) through (vi) of the Act or subject to authorization in advance by the Fair Trade Commission under a provision of the same Paragraph.

Holding of voting rights under Section 11(i) to (iii) and (vi) of the Act, when it continues to do so beyond one year, necessitates authorization in advance by the Fair Trade Commission under Section 11(2)(NOTE 1).

The Fair Trade Commission's point of view of authorization under Section 11 (1), (2) of the Act is the following.

Besides, these guidelines shall enter into force from November 28, 2002 and the Fair

Trade Commission shall abrogate "Guidelines Concerning Authorization of Acquisition and Holding of Voting Rights by Financial Companies Under the Provisions of Section 11 of the Antimonopoly Act (issued on March 26, 2002, Fair Trade Commission)".

(NOTE 1) In the interpretation of Section 11(1)(iii) of the Act, those cases where trustors or involving the said trust can exercise their voting rights or can order their trustees to do so are excluded. The same applies hereinafter.

I. Authorization Under the Provision of Section 11 (1) of the Act

1. In the event that a banking or security company comes to own more than five percent of total voting rights of other domestic company by merging with other banking or security companies or other business activities, it should in principle dispose of the said exceeding voting rights by the date of the said merger. However, any of the following cases either (1), (2) or (3), authorization will be granted under a condition that such situation should be dissolved within a designated period of time (NOTE 2) according to the proviso of Section 11(1) of the Act:

(1)When it is acknowledged that a domestic company has been suffering from a long slump and there is a need to maintain credit standing of the company by being held more than five percent of its total voting rights of stockholders by a banking or security company where the banking or security company is applying for authorization of its holding more than five percent of total voting rights of the said company (hereinafter referred to as "stock issuing company") and it has been in a slump in business for a long time;

(2) When it is supposed to take considerable time for selling the said exceeding stocks being so large amount where the applicant plans to sell stocks corresponding to the marginal voting rights of a stock issuing company exceeding five percent of its total in the market; and

(3) When it is supposed to take considerable time for selling the said exceeding stocks being so large amount by settling even where the applicant plans to sell stocks corresponds to the marginal voting rights of a stock issuing company exceeding five percent of its total but it is difficult to sell in the market because of the reason such that the said stocks are not listed and other conditions caused by the company (including the case that stock transfer is restricted by municipal bylaws).

(NOTE 2) The time period will be determined taking account of the cases above and other individual circumstances but shall not exceed five years. In the case of exceeding one year, the applicant shall dispose at least a half of the stocks

corresponds to the marginal voting rights of a stock issuing company exceeding five percent of its total within the first half of the designated time period (if a half of the designated time period is shorter than one year, within one year).

2. Applications for authorization not falling under the aforementioned 1 shall be examined on a case-by-case basis taking the following into account:

(1) The indispensability of holding of the voting rights concerned for the applicant company;

(2) The existence or absence and, if existent, the extent of the likelihood of an increase in the economic power of the applicant company due to holding of the voting rights concerned; and

(3) The impact on competition in the market where the stock issuing company operates.

II. Authorization Under Section 11(2) of the Act

1. Authorization under Section 11 (2) of the Act will be granted to holding of voting rights which falls under Section 11(1)(i) to (iii) and (vi), among voting rights exempted from the application under Paragraph 1, and which the applicant company intends to continue holding them for a period exceeding one year. For detail, the authorization will be granted to the acquisition or holding of stocks (hereinafter simply referred to as "stockholding") resulting the possession of voting rights as the following:

(1) Stockholding as the result of enforcement on lien, pledge or mortgage (Paragraph (i));

(2) Stockholding as a result of receipt of payment in kind (Paragraph (i)).

(3) Stockholding of its own (Paragraph (ii));

(4) Stockholding in the course of trust fund management (Paragraph (iii); and

(5) Other activities which would not restrict other domestic company as stipulated by FTC notification (Paragraph (vi)).

2. With regard to trust fund, it is managed for the benefit of trustors or beneficiaries and the separate management between trust account and banking account obligated by regulation. In this circumstance, where applicant comes to hold voting rights by stockholding in the course of its trust fund management (However, the cases are excluded where the trustors or beneficiaries can exercise their voting rights or can

order their trustees to do so.) and all of the following (1) to (3) apply, the authorization will be granted under a condition that such situation shall be dissolved within a designated time period (NOTE 3):

(1) When a ratio of the voting rights related to the stocks subject to stockholding by the applicant but for those held for its trust fund management against total voting rights belonging to all stockholders of the said stock issuing company is five percent or lower;

(2) When a ratio of the voting rights related to the stocks subject to stockholding by the applicant for its trust fund management (The cases where the trustors or beneficiaries can exercise their voting rights or can order their trustees to do so are excluded: the same applies in (3) below) against total voting rights belonging to all stockholders of the said stock issuing company is ten percent or lower;

(3) When a ratio of the voting rights related to the stocks subject stockholding by the applicant for its trust fund management against total voting rights belonging to all stockholders of the said stock issuing company increases per year by one percent or lower; and

(4) When the stocks subject to stockholding in the trust account of the applicant is managed separately from those in its banking account and it has developed an organizational system so that this separation is ensured.

(NOTE 3) The time period will be determined taking account of the purpose and situation of fund management involving the said stockholdings and other individual circumstances but will not in principle exceed five years upon giving authorization.

3. With regard to the treatment of voting right holding in the securitization of debt, "Guidelines Concerning Authorization of Stockholding Related to the Securitization of Debt under the Provisions of Section 11 of the Antimonopoly Act" (issued by the Fair Trade Commission on November 12, 2002) apply.

4. Applications for authorization other than that falling the provisions of 2 or 3 above shall be examined on a case-by-case basis taking the following into account:

(1) The reason for difficulty in disposing of the stocks relating to voting rights held;

(2) The existence or absence and, if existent, the extent of the likelihood of an increase in the economic power of the applicant company due to the holding of voting rights concerned; and

(3) The impact on competition in the market where the stock issuing company

operates.

5. Incidentally, since it is prescribed that cases falling under Section 11(1)(i), (ii) and (vi) of the Act among authorization under Section 11 (2) “shall be granted on the condition that the company engaged in financial banking or insurance business promptly dispose…,” (excerpt of the latter part of the Paragraph), the authorization should, in principle, be granted with a condition that such situation shall be dissolved within a limited time period of not more than one year.