Corporate Governance Code (exposure draft)

# Summary of Public Comments (submitted in Japanese) and the Corresponding Replies

| No. | Summary of comments | Replies |
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| | **●Preamble** | |
| 1 | It is stated in the preamble to the Code that it would not be appropriate to conclude automatically that effective corporate governance is not realized by a company on the ground that the company does not comply with some of the principles included in the Code. We believe that foreign institutional investors and proxy advisors should be properly informed of this point so that they will have a proper understanding of the aim of the Code. | The Financial Services Agency and securities exchanges will disseminate information widely so that companies and investors will deepen their understanding of the aim of the "principles-based approach" and the "comply-or-explain approach". |
| 2 | TSE is conducting a review on disclosure methods based on the Code including disclosure in the corporate governance report, but among the items for which disclosure is required based on the Code, there are also items that are disclosed in other disclosure media such as company website and securities reports. Therefore, for example, if items that correspond to the principles stated in the Code have already been disclosed on a company's website, referring to the URL of the website in the corporate governance report should be regarded as sufficient so as to avoid reduplication of disclosure. | As the result of TSE's review, it is expected that most of the items that calls for "*kaiji*" [*Translator's note: Japanese word meaning "disclosure".*] or "*kohyo*" [*Translator's note: Japanese word meaning "public announcement" or "disclosure".*] are to be described in the Corporate Governance Report in a uniform manner. However, when preparing the report, it is expected that companies can also choose to refer the URL of their website, in addition to directly stating the required information in the Report. Therefore, the reduplication of disclosure that you have pointed out is not expected to occur.<br>Please note that based on the above-mentioned TSE's review, we decided to adjust some of the expressions "*kohyo*" in the Code by changing them to "*kaiji*".<br>*[Translator's note: This discussion is applicable only to the Japanese version. The English version remains unchanged.]* |

| | ●**Section 1: Securing the rights and equal treatment of shareholders** | |
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| 3 | Isn't the expression *subekaraku* [*Translator's note: this word is being used in the exposure draft to mean "in all cases".*] in the *[Background]* of Supplementary Principle 1.1.2 a slang/misuse? | Based on your comment, we decided to delete the expression "*subekaraku"* from the *[Background]* of 1.1.2.<br>*[Translator's note: This discussion is applicable only to the Japanese version. The English version remains unchanged.]* |
| 4 | What is the intention of adding "including" in "the creation of an infrastructure allowing electronic voting, including the use of the Electronic Voting Platform" in Supplementary Principle 1.2.4? Does it refer to the adoption of electronic voting (use of IT) based on the Companies Act? | The phrase "including" was added because "the creation of an infrastructure allowing electronic voting" is not necessarily restricted to the use of the Electronic Voting Platform. The adoption of electronic voting based on the Companies Act that you pointed out is considered to be included within "the creation of an infrastructure allowing electronic voting". |
| 5 | In relation to Supplementary Principle 1.2.5, we, as a trust bank (*shintaku ginko*) which provides asset management services, would like to create a practical environment that allows institutional investors to exercise voting rights on behalf of trust banks (*shintaku ginko*) at the general shareholder meetings so as to contribute to the promotion of dialogue between companies and institutional investors. More specifically, as discussed at the Council of Experts, in cases where institutional investors request in advance, we are considering the possibility of issuing proxy letters to institutional investors. [*partially omitted*]<br>From the perspective of promoting dialogue, in cases where institutional investors request to exercise voting rights on behalf of trust banks (*shintaku ginko*), it would be desirable for them to discuss with companies in advance through the dialogue before the general shareholder meeting. In addition, we consider it rational from the perspective of avoiding confusion in the practices to formulate a set of administrative procedures to prepare for the exercising of voting rights by institutional investors. This may include requiring institutional investors to inform trust banks (*shintaku ginko*) of their request in exercising voting rights by a certain deadline. It may also include requiring trust banks (*shintaku ginko*) to set a deadline for issuance of proxy letters for institutional investors. Is such an understanding correct? | As you understand, in relation to the issue of exercising voting rights by institutional investors as stated in Supplementary Principle 1.2.5, companies are expected to work with trust banks (*shintaku ginko*) to give adequate consideration to various possibilities so that all relevant parties can find reasonable solutions. |

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| 6 | In relation to Principle 1.4, cross-shareholdings should be abolished from the perspective described below unless there are reasonable grounds for cross-shareholdings. In order to abolish cross-shareholdings practice, the government should clarify its policy, conduct a necessary review and create a roadmap.<br>1) Cross-shareholdings result in the hollowing out of capital and violate the principle of capital substantiation.<br>2) Companies should be constantly exposed to the stringent scrutiny of shareholders who seek increased corporate value through performance improvement and management efficiency, and it is only when management is working under this kind of pressure from shareholders that it will lead to an improvement in profitability and growth. A cozy relationship caused by cross-shareholdings will not be able to maintain such a feeling of pressure.<br>3) Japanese companies will be strengthened by creating an open market that can be understood by global investors.<br>---<br>In relation to the cross-shareholdings mentioned in Principle 1.4, there may also be cases where it is not appropriate to disclose the objective and rationale behind cross-shareholdings due to contract or agreements with the other party. We believe that there are a variety of situations concerning distribution of stocks and cross-shareholdings in companies, and information disclosure requirement that exceeds the rational necessity is not appropriate. | Generally speaking, corporate governance discipline and content of business judgment should be discussed separately. In relation to issues surrounding cross-shareholdings, the Code adopts an approach that primarily focuses on finding a rational solution through dialogue with the market by strengthening disclosure requirements. It is from such a perspective that Principle 1.4 seeks disclosure of a company's policy on cross-shareholdings. Based on such a disclosure requirement, after going through the process of dialogue with the market, the question as to whether companies should maintain their cross-shareholdings is ultimately left to the discretion of management, and dialogue with the market should be continued on the decisions of management.<br>Additionally, Principle 1.4 states that the board should provide detailed explanation in relation to "the objective and rationale behind cross-shareholdings" resulted from an "examination" of the mid- to long-term economic rationale and future outlook which takes into consideration both associated risks and returns. It does not require disclosure of the content of "examination" itself. |
| | **●Section 2: Appropriate cooperation with stakeholders other than shareholders** | |
| 7 | When active participation of women is referred in various media such as publications of the Cabinet Office and newspaper articles, the general practice is to use "*katsuyaku*". Therefore, we would like "*katsuyou*" [*Translator's note: this word may be read to mean "making use"*.] in Principle 2.4 to be revised to "*katsuyaku*". | Based on your comment, "*katsuyou*" was changed to "*katsuyaku sokushin*".<br>[*Translator's note: In the English version, both words are translated as "active participation" of women and thus, this discussion is applicable only to the Japanese version.*] |

| | ●Section 4: Responsibilities of the Board | |
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| 8 | We support the content of Supplementary Principle 4.1.2.<br>However, there may be companies that will try to use some other name (other than "mid-term business plan [*chuuki keiei keikaku*]") or even give up on formulating a "mid-term business plan (*chuuki keiei keikaku*)" in order to avoid being obliged to "explain" the non-compliane of this Supplementary Principle. To ensure the effectiveness of this Supplementary Principle, it is necessary to state clearly the formulation of a "mid-term business plan (*chuuki keiei keikaku*)" (or a similar commitment to shareholders) as a prerequisite.<br>(This will mean that if a company does not formulate a "mid-term business plan (*chuuki keiei keikaku*)," it is required to "explain.")<br>-----<br>We think the wording of Principle 4.1.2 needs to be revised.<br>Many companies in Japan announce a mid-term business plan (*chuuki keiei keikaku*) and indicate specific numerical targets such as sales and profits or ROE in 3 or 4 years' time, but this is an extremely unusual practice in other Asian countries or in Europe and the US. [*partially omitted*]<br>In light of a slump in the Japanese market for the last 20 years, it is a fact that there are many investors who are worried about the degree of commitment of Japanese companies. However, the Governance Code is, first and foremost, for the purpose of creating a framework that will allow companies to achieve their set targets, and it does not directly demand companies to commit to numerical targets. Even among the major Corporate Governance Codes in other countries, there is not a single one that mentions mid-term business plans (*chuuki keiei keikaku*). | In Japan, there are many companies that formulate and disclose their mid-term business plans, but considering that it would be desirable to improve the degree of reliability concerning the achievement of such plans, it was decided to include Supplementary Principle 4.1.2 which states, "recognizing that a mid-term business plan (*chuuki keiei keikaku*) is a commitment to shareholders, the board and the senior management should do their best to achieve the plan."<br>On the other hand, the decision of companies not to formulate a mid-term business plan (*chuuki keiei keikaku*) should not be denied, and the above Principle does not apply to such companies.<br>Since the Code adopts the principles-based approach, if the content of a plan can be considered similar to "a mid-term business plan (*chuuki keiei keikaku*)" in substance, the above Principle can be applied regardless of the name of the plan. |
| 9 | With regard to meetings consisting solely of independent officers mentioned in Supplementary Principle 4.8.1, it is not possible to explore deeply into the actual conditions of the company by independent officers alone. Therefore instead of such meetings, it will be more effective to organize a meeting consisting mainly of independent officers with one of them acting as the chairperson. | The organization of regular meetings consisting solely of independent officers was raised as an example in Supplementary Principle 4.8.1 based on the perspective of securing a platform of free and open discussion for independent officers to exchange information and develop shared awareness.<br>However, even with such meetings consisting solely of |

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| | | independent officers, this Principle does not prevent independent officers from, in their own judgment, asking for the participation of internal staff or seeking explanation from internal staff whenever necessary. We believe that independent officers striving to collect information using such a method as necessary, is consistent with the aim of Supplementary Principle 4.13.1. |
| 10 | We have a request concerning the definition of "independent director" in the Code.<br>Our company's outside director is a partner of a major legal firm, and although the person satisifies the TSE's independence criteria, the person cannot be registered as an independent director with the TSE due to the internal regulations of the legal firm. It appears that almost all major legal firms have similar internal regulations, but we would like those who satisfy the independence criteria in substance to be recognized as "independent directors" in the Code even if they cannot be registered with the TSE. | It is our position that a person whose independence is denied based on independence criteria set by a securities exchange does not qualify as an "independent director." On the other hand, as long as the independence of a person can be established, it is not necessary for one to be actually notified to the securities exchange as an independent director (such a person can adequately be regarded as an "independent director" under the principles of the Code). |
| 11 | Corresponding to General Principle 3 that refers to the appropriate disclosure of non-financial information in addition to financial information, Principle 3.2 which deals with external auditors who are mainly responsible for auditing financial information should be followed by a principle, maybe newly establishing Principle 3.3, to specify the maintenance of an internal audit department which serves as the main source of non-financial information in companies.<br>In Principle 4.3 which touches on the appropriate maintenance of internal control and risk management systems as one of the roles and responsibilities of the board, it should be stated clearly that one of the responsibilities of the board is to make use of the internal audit department to monitor the establishment and operation of internal control and risk management systems. | While it is stated in Supplementary Principle 4.13.3 that "coordination between the internal audit department, directors and *kansayaku*" should be ensured, the aim is not to achieve coordination as an end in itself but rather to ensure the sufficient functioning of the board and the *kansayaku* board through coordination. Therefore, ensuring the maintenance and utilization of the internal audit department in companies is a prerequisite to the said "coordination" in the first place. |
| | **●Section 5: Dialogue with shareholders** | |
| 12 | Principle 5.1 is based on the assumption that dialogue with shareholders will be carried out as management meetings, but it is not realistic in terms of time and physical constraints to implement management meetings frequently. If the main purpose for such Principle is to promote | Supplementary Principle 5.1.2 (iii) ask for the disclosure of measures to promote dialogue aside from management meetings (e.g. general investor meetings and IR activities). |

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| | communication, wouldn’t it be better to delete “management meeting” and change it to “dialogue” or “exchange of views”? | On the other hand, Principle 5.1 and Supplementary Principle 5.1.1 focus on “dialogue (management meeting)”. These principles are meant to indicate a certain best practice if one is going to implement “management meetings” considering that companies will have issues in organizing “management meetings” due to time and physical constraints. Moreover, as stated in the said Principle and Supplementary Principle “to the extent reasonable”, these principles do not intend to seek an unrealistic response. |