

Minutes of the 3rd Council of Experts
Concerning the Corporate Governance Code

1. Time and date: 3:30–5:30 pm, September 30 (Tuesday), 2014
2. Place: Financial Services Agency

[Ikeo, chairman] Now it's already the scheduled opening time, and all the prospective attendees are here, so I'd like to open the third Council of Experts Concerning the Corporate Governance Code. Thank you very much for taking time from your busy schedule for the Council.

I would like to start the proceedings. First, I would like to explain how the discussion of this Council will proceed. We have so many topics to be discussed at this Council, but the time for the discussion is limited. Therefore, to ensure the efficiency of the discussion, as the secretariat may have informed you in advance, I would like you to go through all the items described in the OECD Principles in the coming few Councils: we will cover all the topics in two or three more sessions. In case a consensus is reached on a certain topic, no more discussion will be made on it. For the items which require additional discussion – which are controversial items – we will have in-depth discussion later. I would like to proceed with the discussion in such an order. So, for the items which require additional discussion, we will discuss them again on a later occasion. Thank you for your understanding.

While we go through all the items in the OECD Principles, today we will focus on Rights of Shareholders and Equal Treatment of Shareholders, and Relationship with Stakeholders. First, the secretariat will provide an explanation on Materials, and then we will have the member discussion.

So I'm handing over to the secretariat for the explanation of Rights and Equal Treatment of Shareholders, and then, Relationship with Stakeholders.

[Yufu] Let me start the explanation. First, I'd like to announce that there are some additions to translations of the codes of other countries, which we distributed to you as the reference material. The first one is concerning the UK Corporate Governance Code, which was just revised about 2 weeks ago. As for the revised parts, it seems there are some additions regarding the remuneration of directors and how the board of directors should discuss on going concerns. We distributed a Japanese translation with the editing history. From now on, please refer to this version.

Furthermore, in addition to the UK, German, and French codes, we included Singapore's code in the materials. In a certain sense, Singapore is competing with Japan in the same Asian region. We prepared a translation of Singapore's code, which is, in general, highly appreciated by institutional investors.

Another addition is ICGN (International Corporate Governance Network) Principles. ICGN is an international, global organization of institutional investors, and has principles on corporate governance, which was also just revised. Of course, this is not a code established with the involvement of any national government or public sector. However, the total assets under management by participating institutional investors amount to approx. 1,800 trillion yen, although we assume that there are some cases of double counting and that this amount also includes debt securities. Anyway, the organization has a significant global influence, so we are attaching a translation of their code for your reference. I don't intend to distribute any more translations of other codes in the future.

From the secretariat, we prepared three reference materials, all in the horizontal format, for today's Council - Material 1, Material 2, and Material 3. Due to the time constraint, I'll start the explanation from Material 1 in order of precedence.

Please turn to page 1. Page number is printed on the right bottom of each page. As for the format of this material, the left column shows all of what is called Principles of the OECD Principles from Chapter II, Chapter III, to Chapter IV. However, those descriptions which are rather pertaining to recommendations for lawmaking, and not directly linked to this discussion on the corporate governance code, we indicated them in a different font to distinguish from other parts. Anyway, we basically quoted all the descriptions in the respective order in the left column and the right column shows the corresponding point of discussion. These points are provided as examples for points of considerations, and of course, our discussion will not be limited to these points. We just thought it would not be easy to discuss without this kind of structured guidance, and hence raised these points.

Page 1 is related to the part which concerns shareholders' rights in the OECD Principles. In the right column, as a rather general question, we are asking what points should be included in the Code with regard to protecting and facilitating the exercise of shareholders' rights. We are asking a general question here.

Please turn to page 2. From here, several points are raised in connection with general shareholders' meetings. The first bullet point in the right column on page 2 is also a general

question, asking what kind of considerations should be taken into account in order to establish an environment which allows for shareholders to exercise their voting rights effectively. Then more specific points follow. The second bullet point is about the issue of so-called concentration of general meetings of shareholders. Some argue that further efforts are encouraged for spreading out the dates of general meetings. Your comments are invited. The third bullet point is about dispatch of convocation notices of general meetings. The Companies Act requires that convocation notices should be dispatched 2 weeks prior to the general meeting date. While quite a few Japanese companies attempt to dispatch the notice earlier than that, it seems that there are some countries which require companies to dispatch such notices earlier. We would like to hear your views on this point. In the meantime, there is a viewpoint that sufficient time for auditing should be secured. Then, the next bullet point is for a slightly more detailed discussion. Nowadays, even in the case where shares are held in the names of trust banks, etc. some companies allow institutional investors who are the actual shareholders to participate general shareholders meetings. We would also like to hear your views on this point as well.

Please turn to page 3. The left column on page 3 describes what is called ‘Say on Pay’ related to remunerations, and the right column has two corresponding bullet points. The first bullet point is a consideration on general adoption of advisory resolutions for matters including but not limited to, remunerations. The next one is about remunerations of directors and officers. The Companies Act stipulates that the upper limit of aggregate remunerations should be resolved by the shareholders’ meeting, while the amount of individual remuneration is left to the discretion of the Board of Directors. Given that, the question is how to pave the way to summarize the issue about adopting advisory resolutions for matters such as a policy to determine remunerations for directors and officers.

Next, the OECD Principles states that impediments to cross border voting should be eliminated. In light of such statement, two points are raised in the right column in order to provide foreign investors with sufficient time for consideration, as we often hear that they are especially suffering from a very short timeframe for the preparation. The first one is to encourage English translations of the convocation notice; and the second one is that after the resolution of the board of directors, while printing the notice or before the dispatch of the notice, companies could disclose the notice on TSE’s TDnet or their own websites. Or alternatively, companies could do so on the same day as the dispatch. We would like to invite your opinions.

Please turn to page 5. These points are about the procedures of shareholders’ meetings. We would like to seek comments about efforts for enabling the electronic exercise of voting rights.

In the left column on page 5, the OECD Principles stipulate that arrangements enabling certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. In this connection, the right column - the format here is a little different from other parts - shows an excerpt from “Japan Revival Vision” by the ruling party, which we distributed as a reference material for the first Council. There are two white bullets. The first white bullet point starts from the phrase - crossholdings of equities for “policy” reasons. I’ll skip the middle part. The paragraph concludes that “unless there is a rational reason, such policy stockholdings should be drastically reduced”. The next white bullet point provides examples of rational reasons. Therefore, we included the excerpts in this material.

Please turn to page 6. Three bullet points on page 6 are about how we should consider and explain cross-shareholdings for policy reasons from the viewpoint of the economic rationality. The first point is that there is the standpoint to seek for strategic partnership through such cross-shareholdings, yet it is also criticized from other standpoints such as to ensure corporate governance. We would like to hear your views on this point.

The second bullet point questions about specifically what reasons can be considered as rational reasons for cross-shareholdings for policy reasons. On the previous page, a few examples are shown by the Liberal Democratic Party (LDP). We would like you to consider other possible reasons.

The third bullet point: cross-shareholdings for policy reasons involve risks associated with fluctuations in stock prices. It is pointed out that no clear explanation is given regarding whether cross-shareholders secure or anticipate to earn a fair return relative to the risks. We would like to hear your views on this point.

Below these points, the LDP’s policy recommendation is again excerpted with regard to cross-shareholdings. Here, mainly from the standpoint of ‘shareholders’ voices’, listed companies which own shares of other listed companies also owe a fiduciary duty to the shareholders, as shown in the underlined part. They are investing in other listed companies for policy reasons with funds provided by their own shareholders. In this sense, while the Stewardship Code was recently established, there is no fundamental difference between those companies and institutional investors: that’s the point raised.

With regard to this point, we wrote out two bullet points mainly from the standpoints of the exercise of voting rights and engagement. This part questions how we should consider listed companies’ fiduciary duty toward the shareholders in relation to cross-shareholdings for policy reasons. The next bullet point is asking how we should consider the roles of such a

listed company in terms of continuously raising corporate value of the counterpart company and facilitating its growth, when the former company exercises its voting right as a shareholder.

In the bottom half of page 8, you can see the descriptions regarding takeover defense measures in response to the OECD Principles. After peaking around 2008, the number of companies which adopt what are called takeover defense measures has been gradually decreasing. Under such a circumstance, it is pointed out that upon adoption/administration of such measures, companies should fully consider the necessity of and rationale for such measures to ensure that adequate procedures are in place, and provide sufficient explanation as written on page 8. We would like to hear your views on this point.

Please turn to page 9. An excerpt again from LDP's "Japan Revival Vision" is included here, although some parts may not be directly relevant to this discussion. Three points are itemized with dashes, and the third point is especially relevant here. Specifically, it is written that while shareholders should responsibly exercise their rights, issuers of listed shares should disclose adequate information for these purposes.

In response to this proposal, the bullet point on page 10 is written. It is pointed out that issuers of listed shares should adequately disclose information necessary for shareholders to exercise their rights. We would like to hear your views on this point.

Then you can see that some items of the OECD Principles are printed in different and smaller font in the left column. This is because we consider that the excerpts from the Japan's Stewardship Code in the right column pretty much cover these items.

At the bottom of page 10, the OECD Principles refer to the equitable treatment of shareholders. In the right column, we raised a question: what points should be included as a general statement, in order to secure the equitable treatment of shareholders?

Please turn to page 11. The OECD Principles expect the protection of minority shareholders' rights. In the corresponding right column, a question is raised in response to the representation that a company should thoroughly consider a capital policy involving a change in control and ensure that adequate procedures are in place, and provide sufficient explanation. We would like to hear your views on this point.

Please turn to page 12. The left column quoted the OECD Principles concerning what is called related party transactions. In response, the right column shows two bullet points. The

first bullet point is about related party transactions between a director of a company and the company. With this regard, it is pointed out that directors should notify the Board of Directors of their interests in the company beforehand. We would like to hear your views on this point. The next bullet point is about transactions between a company and its controlling shareholder, not a director. Please take a look at the “(Reference)” at page 13 first – rules under the current Companies Act. Under the Companies Act, the execution of certain important operations, including transactions involving a transfer of property for example, requires a resolution of the board of directors. The second item is a stipulation that a transaction between a company and its director requires an approval of the board of directors. The third item is mainly about a related party transaction between a company and its controlling shareholders, to which neither of the above applies. This kind of transaction is not a matter for the statutory resolution under the Companies Act.

Given that, the second bullet point on page 12 states that in practice, when a company trades with its controlling shareholder, there are some cases where such company obtains an approval of the board of directors in relation to certain transactions. We would like to hear your views on this point.

Please turn to page 14. This is about the Relationship with Stakeholders, including those who are not shareholders. In the left column on this page, instead of the OECD Principles, an excerpt from Japan Revitalization Strategy approved by the Cabinet is shown first. It reads “with due regards to the views of shareholders as well as customers, employees, local communities and other stakeholders.” In response, the right column raises a question about what we should consider of the view that providing sufficient explanation of the concept that corporate efforts in making various decisions with due regards to the presence and roles of diverse stakeholders other than shareholders will lead to generation of medium to long-term corporate value.

Please turn to page 15. Based on the OECD Principles in the left, questions are raised: how should we consider the following points, for example, from the viewpoint of respecting stakeholders’ rights? Then five points are itemized. The first item is efforts to protect stakeholders’ rights and develop active cooperative relations – this is a rather general statement. The second item is how we should consider the establishment of what is called Code of Conduct or Ethical Standards to ensure proper implementation of corporate ethics. The third item is how to respond the growing social demand for ESG, etc. The item at the bottom of page 15 is how to ensure diversity within a corporate structure including the better use of female talent.

Finally, the item on page 16 is about employing the whistleblowing system and securing protection of whistleblowers. Again, an excerpt from the LDP's proposal is shown here. That's all from me.

[Ikeo, chairman] Thank you very much. Now I would like to proceed to the free discussion. Although the secretariat explained Rights and Equal Treatment of Shareholders and Relationship with Stakeholders at once, I would like to have discussions on these two topics separately. Please discuss Rights and Equal Treatment of Shareholders first.

And, prior to the discussion, I would like to refer to the memo from Mr. Toyama, who is absent today. You can find the memo on the table, and I believe the members already received the memo via e-mail yesterday. So I will not read it out due to the time constraint. Yet please take into account the opinion of Mr. Toyama during the discussion.

Well, let's start the discussion on Rights and Equal Treatment of Shareholders first. Actually, the list of points in question is rather long. So I would appreciate it if you could voice your opinions roughly in order of the list, if possible. Anyway, let's start the free discussion on Rights and Equal Treatment of Shareholders. Mr. Mori, please go ahead.

[Mori, member] Thank you. As Chairman Ikeo said "in order of the list," I'd like to start from page 2, about shareholders' rights. Item C states that shareholders should have the opportunity to effectively participate and vote in general shareholder meetings, and 3 points are raised in the right column. The first point about establishing an environment which allows shareholders to exercise their voting rights effectively is also an objective of this Council, so this is a must. I think the next two bullet points help us to find specifically how we should consider the first point.

One of the issues is the concentration of general meeting dates. I think the concentration of such dates means we do not have a sufficient environment to allow investors to participate in general meetings. Certainly, some progress has been made to avoid holding general meetings on a certain peak day, yet it is obvious that most of general meetings are held in late June, as shown in Material 3. I believe further efforts for spreading out dates of general meetings are required.

The concentration of general meeting dates in the last week of June is a procedural problem, specifically relating to how to fix a record date for determining shareholders entitled to receive rights. At present, if companies close their accounts at the end of March for example, most – or all, as far as I know – of them determine the record date to be the last day

of March. Thus, they are supposed to hold general shareholders' meetings within 3 months from that date, which means by the end of June. However, under the Companies Act, there is no such requirement to designate the last day of March as the record date to allot shareholders' rights. For example, if the record date is fixed to be end-April, companies will have to hold general meetings by end-July. If the record date is fixed to be end-May, companies will have to hold general meetings by end-August. I think this practice where a record date is set on the last day of March in connection with the account closing procedures is a cause of the concentration of general meeting dates.

Anyway, in order to establish an environment which allows investors to participate in general meetings, such a problem should be considered and corrected. This is my first point. I think this is a problem concerning the first bullet point. I believe further efforts for spreading out meeting dates are necessary.

I'd like to refer to the third bullet point about the dispatch of the convocation notice. To establish an environment which allows shareholders to exercise their voting rights effectively, I believe it is crucial to specify what kind of information investors can obtain before they exercise their voting rights, what quality of information is provided, and whether investors have sufficient time to examine the information.

The Stewardship Code contains a principle that institutional investors should clearly understand the situations of investee companies so that they can appropriately fulfill their stewardship responsibilities. In order for this principle to be observed, it is necessary to provide investors with sufficient time for consideration. There is an argument that further improvement in earlier dispatch is needed. In fact, companies also have very big responsibilities for information disclosure. Accordingly, companies need time in order to responsibly disclose sufficient information.

Furthermore, as for the quality of information which I mentioned earlier, the quality and reliability of information is secured by accounting audit and audit by *kansayaku* (Audit & Supervisory Board Member). Only upon completing such audits, companies can responsibly disclose information to investors or the public. Thus, given the current practice, the earlier dispatch would be rather unreasonable. Nonetheless, in order to exercise voting rights effectively, it is necessary to secure sufficient time to analyze information after obtaining it. This is related to the issue of the concentration of general meeting dates which I mentioned earlier. I think companies can provide sufficient time for investors to adequately understand the situation by setting general meeting dates later than the current practice.

In Japan, companies typically dispatch the notice 2 weeks to 20 days prior to the meeting, as clearly shown in Material 3. Anyway, I agree that it is necessary to secure no less than 1 month for investors' consideration.

As for the overseas cases, we can see many cases where companies dispatch convocation notices after filing their annual reports. The annual report there is equivalent to the securities report in Japan. After filing securities reports, overseas companies dispatch the convocation notices, and the general meetings take place in 1 or 2 month(s) in many cases. Therefore, if the account is closed in December, the general meeting could be held in May or June in some cases. If the convocation notice is dispatched after the issuance of the annual report or the securities report – such a report is the most informative under the current system in terms of the volume of information to be disclosed externally – investors will be able to count on more information. I believe it will lead to the establishment of an environment which allows shareholders to exercise their voting rights effectively. I agree with the second and third bullet points for these reasons. That's all from me.

[Ikeo, chairman] Thank you very much. Mr. Oguchi, please.

[Oguchi, member] Thank you very much. There are some overlaps with Mr. Mori's comments, but I'd like to discuss the current situation where the concentration cannot be physically avoided because of the practice to fix the record date on the account closing date. As Mr. Mori just pointed out, at present, there is no legal requirement to fix the record date on the account closing date, or to hold general shareholders' meetings within 3 months from the account closing date. The only requirement is that general meetings should be held within 3 months from the record date.

As for the securities reports just mentioned, I understand that the reports should be filed within 3 months from the fiscal year end. According to the Cabinet Office Ordinance in December 2009, it is also possible to file the report prior to the general shareholders' meeting. Given that, how should we consider the record date, the general meeting date, and the date of dispatching the convocation notice? First, I understand that the period from the record date to the general meeting date is currently approx. 3 months. The longer the period is, the fewer shareholders are actually holding shares at the time of the general meeting. In other words, the "shareholders" who sold their shares after the record date may exercise their voting rights at the general meeting. Due to the possibility of such sale of shares prior to the meeting, in theory, the general meeting will become more active with more shareholders who currently own shares, when the record date is as close to the meeting date as possible.

On the other hand, naturally if the convocation notice is dispatched earlier, shareholders will be able to exercise their voting rights based on sufficient information. The EU, therefore, announced the Directive with this regard in June 2007. The Directive requires EU member countries to legislate rules within 2 years that the general meeting must be held within 30 days from the record date, and the convocation notice must be dispatched no later than 21 days prior to the general meeting. I'd like to repeat that the record date should be closer to the meeting date, and the convocation notice should be dispatched as early as possible.

In Japan, the Companies Act stipulates that shareholders on the record date may exercise their rights only up to 3 months from the record date. And as for the convocation notice, Article 299 requires companies to dispatch the notice no later than 2 weeks prior to the meeting date. Accordingly, first of all, companies should postpone the record date. By setting the record date later than the account closing date, even under the current legislation, it would be possible to shorten the period from the record date to the general meeting date, and to dispatch the convocation notice earlier. Also if companies fix the record date later than the account closing date, general meetings will be held after companies release securities reports. So postponing the record date would be one of essential points.

Furthermore, rules for postponing the date could be established to a certain degree. For example, different rules will apply to different groups of companies based on their securities codes: one group will postpone their record date until April, and another group until May and so force. If the meeting dates are scattered, institutional investors who diversify their investments can exercise their voting rights by allocating sufficient time for each investee company. And if the meeting dates are scattered, companies will bear less burdens such as those to secure meeting venues - this is what I have suggested to companies. Some were against this idea stating that they need to secure their summer vacations. Be that as it may, I think this kind of initiatives would be possible.

I fully understand it is not that simple - it cannot be easily done -because of their practice. Yet as Mr. Mori said earlier, I believe the effective exercise of voting rights would be beneficial to both shareholders and companies. I heard that the Ministry of Economy, Trade and Industry also started discussions on postponing record dates and spreading out general meeting dates. I do hope such ideas will be realized.

[Ikeo, chairman] Thank you very much. Ms. Nakamura, please go ahead.

[Nakamura, member] Now there are various discussions on record dates and the dispatch of convocation notices, etc. I'd like to express my opinions from the standpoint of the

corporate legal affairs. First of all, with regard to these points for consideration, overall, what companies do is based on the Companies Act and other regulations, and we pay full attention to complying with the law. When we discuss these matters in this Council, I hope you take such a standpoint into account, and also reconfirm what is stipulated by laws and what is not.

On that premise, I'd like to express my view on the earlier dispatch of convocation notices, as this would be the easiest one. I'm in charge of with the administration of the general shareholders' meeting. Under present circumstances, although we have been making the maximum efforts, the notices can be sent 3 weeks prior to the meeting at best. This is because we have to go through a whole process such as making the announcement of the summary of accounts at TSE toward the account closing and finalizing the financial results to begin with, and then having an audit by an auditing firm, and sorting out and confirming various legal issues. After such a process, we confirm the final wording of the convocation notice to ensure there is no mistake, by checking word by word to ensure legal compliance. After such a step, the notice is finalized and printed. We have to go through such procedures. Sorry to mention too much in detail, but even a mere enclosing of notices in envelopes requires significant time. We have to go through the entire process, so dispatching the notice 3 weeks prior to the general meeting would be the earliest possible timing. By the way, we hold the general shareholders' meeting in May, not in June. I heard that other companies share the same concern.

The members have just discussed that the record date could be set on a day other than the account closing date or at least it is legally possible. Yet while Companies with Three Committees may separate the agenda of dividends of surplus from the matters to be resolved by the general meeting when to the provisions of the articles of incorporation permits, Companies with the Board of Corporate Auditors (*kansayaku*) may not do so except in certain limited cases. Accordingly, at least as a mindset of corporations, there is a fundamental understanding that financial figures at the account closing date should be approved by shareholders who are registered on the said date, and dividends should be distributed based on the decision by them. This may be a traditional way of thinking, but it is naturally considered as a consensus that this is to be the right thing to do for shareholders. Thus, I think that companies would hardly consider the separation of the account closing date and the record date. Therefore, unless companies share the common view that there are no such requirements to set the record date on the account closing date, companies will not overcome this issue. I think we should separately discuss the issues from one another.

In this connection, I'd like to refer to the next point: the attendance of the general shareholders' meeting by institutional investors who actually own the shares but not

officially registered as shareholders. I think it would be good in theory. Nonetheless, at least we cannot permit the attendance of a person who simply claims he/she is an actual owner of shares. Companies do not have appropriate measures to confirm that such a person is truly the actual owner of shares at the moment. I think this is the reality.

There is a concern. If a company allows a person to enter the meeting venue without confirming he/she is a shareholder, it might hamper the validity of the meeting, or even could become a cause for invalidating the resolution. Without due confirmation, it would be difficult for companies to do so.

Furthermore, as for advisory resolutions, companies will face difficulties with how to treat them, unless the Companies Act stipulates the effect of the advisory resolutions. I hope this Council members would discuss these matters, taking into account the issues I have just mentioned.

Our company uses the electronic voting platform, and provides English translations. As for the online disclosure of the convocation notice, I support the disclosure on the same day of the dispatch. I'm aware that there is a demand for the disclosure before the dispatch, but we consider it would not necessarily be appropriate to create a situation where the convocation notice becomes available to the general public before our individual shareholders, who do not use the Internet, obtain the notice. That's why we disclose on the same day of the dispatch.

As for defense measures against takeovers, I'd like to express my opinion after I hear opinions of other members about what information companies need to disclose adding to what is stipulated by the laws and regulations. That's all for now.

[Ikeo, chairman] Additional comment? Please go ahead.

[Oguchi, member] The member just discussed the attendance of the general meeting by institutional investors. In my opinion, as we act on behalf of institutional investors, we have discussed this issue with companies several times. Under the current laws, it is stipulated that shareholders may exercise their voting rights by proxy, and a stock company may restrict the number of proxies who may attend the general shareholders' meeting. Therefore, it is becoming common among stock companies to set the qualification of proxies as other shareholders who have their own voting rights and to limit the number of proxies to one. It seems that 96% of the companies revised their articles of incorporation in that way at general meetings in June 2006. If we strictly interpret this qualification requirement, in order for beneficial owners of shares to attend the general meeting, they have to purchase extra shares

by themselves so that their names are recorded on the shareholder registry on the record date. They have to be the owners of at least one share for that purpose.

Furthermore, in case a nominee shareholder is a trust bank, the bank can designate only one proxy. Even if the shares in the name of the bank are substantially owned by multiple institutional investors, the bank cannot designate multiple proxies pro rata to the number of shares owned. It is necessary to have a separate account only for the shares an institutional investor owns, by bearing extra costs. In fact, some institutional investors are doing so in order to participate in the general meeting.

Having said that, I understand there are two cases for the beneficial owners of shares owned in the name of trust banks to participate in the general meetings as written on Material 1. Probably some companies interpret the law more flexibly and allow the beneficial owners' attendance. Or the beneficial owners already exercised their proxy voting rights prior to the general meeting – I would call it “prior exercise” – and then attend the general meeting in the capacity of observers. I assume these are the cases.

Let me tell you what I've been thinking for a long time. Institutional investors can exercise their proxy voting rights prior to the general meeting. It is like absentee voting in elections. However, when they try to vote at the voting station, they are refused. This is unreasonable. There may be various legal problems, but in fact, beneficial owners of shares exercise their voting rights in the capacity of proxy prior to the general meeting. I've been thinking that, for instance, if such a beneficial owner prints out the screenshot of website for the prior exercise and bring it to the general meeting, he/she should be allowed to attend the general meeting. Rights to participate in the general meeting, or rights to propose the meeting agenda... such rights granted to nominee shareholders are not something companies can arbitrarily grant to friendly beneficial owners by adopting flexible interpretation of the law, and/or refuse to grant to unfavorable beneficial owners by applying the strict interpretation of the law. I believe that rights of beneficial owners of shares should be guaranteed.

Actually, the EU Directive, which I mentioned earlier, stipulates the abolishment of excessive formal requirements for the qualification of proxies. The designation of the proxy is becoming relatively flexible. Probably something like certification may be required. I assume something can be done, for example, by adopting what I mentioned earlier.

The general meeting of shareholders is the most important decision-making venue for companies. Similarly to elections, even though the voting result is obvious, all votes should be counted and the final figures should be disclosed. I think that is a democratic procedure.

Currently, the disclosure of only the proxy voting results is considered to be sufficient. There has been a demand from foreign institutional investors to disclose the aggregated voting results including the votes on the general meeting day. This may fall under the category of the equal treatment of shareholders. I think the complete disclosure of the voting results is necessary.

Further to my previous comment on the general meeting of shareholders, I was surprised at one meeting. As soon as I entered the venue, I was asked to fill in and present my voting form before the meeting started. I attended the general meeting, because I wanted to make a judgment after listening to discussions at the general meeting. I thought presenting a voting form in that way was the same as a prior exercise. Considering best practice for holding the general meeting, the normal way should be that the attendees of the general meeting vote only after listening to explanations and discussions during the meeting.

I'd like to make my last comment from the viewpoint of beneficial owners of shares. Recently, companies have been actively promoting hospitality programs for shareholders to increase the number of individual shareholders. I think this is not bad. However, looking at an increase of hospitality programs for shareholders which are not effective for institutional investors and beneficial owners of shares, I'd like to make a suggestion. From the perspective of the equal treatment of shareholders, if companies go for such programs, I think we should require an adequate explanation. I wanted to add this comment.

[Ikeo, chairman] Well, Professor Kanda, please.

[Kanda, member] Thank you. With the task of drafting the Code in mind, I would like to discuss three matters from the viewpoint of shareholders or investors. I'm afraid that I will discuss in reverse order as written on the material. Yet I think it would be logically easier to understand my points.

Let me take cross-shareholdings as an example, even though the same could be said about transactions involving conflicts of interest, or takeover defense measures. As for cross-shareholdings, as introduced earlier, there would be good and bad cross-shareholdings. It depends on who looks at them. Companies judge whether cross-shareholdings are good or bad for themselves. Shareholders judge whether cross-shareholdings are good or bad for themselves. Therefore, whether we write what is good and what is bad in the Code comes into question. From the viewpoint of companies or shareholders, probably we will be able to obtain consensus to a certain degree, regarding what is good and what is bad, I think.

However, what I want to tell you today is that even though we can describe those things abstractly, it would often be difficult to make a judgment in a specific case. In a specific case of a certain company's cross-shareholding, often people cannot tell whether it is good or bad. It depends on who makes the judgment. Thus we should write about it in the Code. As for the question of who makes the judgment and how, there are various options. Such judgment could be made by shareholders and investors in the market place, or at the general meeting of shareholders. Alternatively, outside directors who speak for shareholders could play a central role in the decision-making at the board of directors. There would be various specific mechanisms for that to happen, and it would be related to our discussion topics of the coming meetings.

This applies not only to cross-shareholdings but also to other matters. We can describe what is good or bad and, it would be desirable that the Code further shows who should make a judgment in a specific case. This is the first point I would like to share with you.

The second point. The members just expressed various opinions on this. From the viewpoint of shareholders, there are three ways of involvement. The first way is sale and purchase of shares in the market place. The underlying assumption is that sufficient information on the company is disclosed. The second way is the declaration of views in the form of exercising voting rights at the general meeting of shareholders. And the third way is – what shall we call it? – "indirect" democracy. A company can establish a mechanism to speak for the interests of shareholders within the company, typically within the board of directors. If outside directors serve as such a mechanism, they make judgments. Shareholders make direct decisions on the election of such directors, a remuneration policy and similar kinds of matters, but leave other matters to indirect democracy.

Out of the three ways of involvement, I would like to talk about the general meeting of shareholders, which we are discussing today. Arrangements to hold a general meeting impose a heavy burden on companies. They have to dispatch the convocation notice as well as reference materials. In general, they have to decide the agenda for the general meeting in advance. What can be resolved by the general meeting of shareholders is stipulated by law. As for the right to submit proposals, there is a certain procedure to submit a proposal in advance. Furthermore, earlier today we discussed who should be regarded as a shareholder. As for the question who are entitled to exercise voting rights, there is a very complicated procedure including proxy voting.

Therefore, even if it is preferable, a general meeting cannot be held so often. We cannot simply say that companies should inquire about the shareholders' views regarding all matters.

We need to consider what limited matters are recommended to inquire about the shareholders' views through the general meeting.

Another big issue with the general meeting is the record date. I hesitate to repeat the same points raised by other members earlier, but I have to refer to it. Shareholders as of the record date exercise voting rights at the general meeting. As Mr. Oguchi pointed out earlier, there are cases where shareholders change by the meeting date. People whose names were written on the shareholders registry three months ago exercise voting rights. In other words, people who do not anymore have economic interests exercise voting rights. This phenomenon has been generally referred to as "empty voting" in the past several years. The general meeting of shareholders is the system which cannot avoid such a phenomenon.

That is generally undesirable. As Mr. Oguchi said earlier, we can generally say that it is preferable to shorten an interval between the record date and the general meeting date as much as possible. In the past, companies used to close their account twice a year and such an interval was two months. Why is it maximum three months in Japan today? Because companies must undergo their account closing procedures and audit procedures, they cannot shorten the interval to two months, although in practice it is usually shorter than three months today as pointed out by other members earlier. Therefore, in my opinion, issues with the general meeting should be considered by separating out account closing and auditing. For instance, if companies consider appointments of directors or decisions on a remunerations policy, companies could set the record date on a day three weeks prior to the meeting, and dispatch the convocation notices two or three weeks prior to the meeting. This should be feasible. If you consider all of them as a set, because of the account closing and audit procedures, it would be difficult. So we should consider whether it would be possible to separate out those parts involving accounting and auditing.

I have to repeat that companies cannot often hold the general meeting of shareholders, because it would involve costly procedures. Accordingly, on which matters do companies need to inquire about shareholders' views in the form of the general meeting? Who should make a decision on such matters? I think this way of thinking is necessary. If so, it is related to my next point.

My third point is rather general. Actually, this is a discussion topic for the future meetings. Yet I'd like to briefly mention it, as it is related to today's discussion. Mr. Toyama may have also referred to this point in his opinion paper. When we consider corporate governance, especially that of listed companies, there is a request, if not a complaint, from investors and shareholders that Japanese companies lack a mechanism to evaluate business performance

from the viewpoint of shareholders. Therefore, to put it simply, they call for the establishment of such a mechanism under the initiative of outside directors, I think. If so, although that would be a topic to be discussed at the future meetings, in connection with our today's discussion, companies which already have such a mechanism do not have to ask shareholders' views each time. What should be done at the general meeting are the election or re-election of directors, and the determination of remunerations, if applicable – this would rather be for the remunerations of executive officers – or approval on a basic remunerations policy, expressed as 'say on pay'.

However, if companies do not have a sufficient mechanism, or no mechanism at all, there is no choice but to complement it with direct democracy. So it should be considered that in that case, there must be more opportunities to ask shareholders' views at the general meeting. I think matters are linked to each other. If one model does not work for everything, we need to ensure such a linkage and present a mechanism to protect and secure shareholders' rights, in the context of the today's topic.

I discussed three points. I think probably the Code should show the best practices on these points. Of course, for the matters on which these members agree, we can show the best practices. Yet in some cases, we may not be able to reach an agreement. In such cases, instead of showing the best ones, we could show several practices. If we show practices in such a way, I emphasize that we write the linkage between the relating matters. Specifically, if a company has a mechanism to speak for the interests of shareholders at the board of directors, opportunities to directly ask shareholders' views via direct democracy will decrease. On the other hand, if that is not the case, a company needs to improve the environment such as the general meeting of shareholders to ensure opportunities of direct democracy. Each company should make such efforts. I feel there is such a relationship among relevant matters. Sorry for taking a long time. That's all I wanted to say.

[Ikeo, chairman] Thank you very much. Mr. Uchida, please go ahead.

[Uchida, member] First, regarding spreading out general shareholders' meeting dates, I have no objection to such a direction. I understand the earlier dispatch of convocation notices is desirable. However, as Ms. Nakamura mentioned earlier, looking at the reality under the current legal framework, while the law requires a 2-week prior dispatch, a 3-week prior dispatch would be the earliest feasible dispatch despite the maximum efforts. There is a limit in spite of the current earnest efforts of the companies.

By its nature, this limitation is caused by the conformity of the record date with the

account closing date. There is an argument that these two dates should be separated. Then why have companies set the record date on the account closing date? Maybe it was based on the general consensus that dividends of surplus corresponding to financial results of particular fiscal year should be distributed to the corresponding shareholders. I understand there are various opinions. In any case, if companies continue to operate the current practice, the preparation period for the convocation notice is very much limited. Companies can dispatch the notice 3 weeks prior to the general meeting at the earliest. Therefore, it is necessary to improve the system.

Next, as for the convocation notice, the issues of English translations and usage of the electronic voting platform, I think the situations vary from company to company. Some companies are listed on overseas markets. Some companies have a higher ratio of foreign shareholders; while other companies have only limited number of foreign shareholders. Such initiatives incur costs, and so uniform requirement would cause problems. These issues should be addressed by individual companies, and we should respect their efforts.

Prof. Kanda just referred to the issue of cross-shareholdings. I think each company may have a different idea. I am going to discuss the matter with a variety of corporations in the near future. After such discussions with the corporations, I'd like to share my findings at this Council.

I'd like to share my current opinion on good cross-shareholdings and bad cross-shareholdings, as Prof. Kanda said. Naturally, we need to limit possible cross-shareholdings to good ones. Basically, good cross-shareholdings may be a strategic alliance, such as joint development, joint research, or joint business partnership. Through such an alliance, each company works together for mutual benefit, and establishes a Win-Win relationship. Probably many companies hold the counterpart company's share in this way. Therefore, in terms of governance, it would go together in that sense.

Another point is how to explain good cross-shareholdings. Though today's reference material mentions the returns relative to the costs should be explained, there may be more complicated issues. For example, shareholdings for policy reasons are related to certain business and make a contribution to earnings through such relations. There is a question of whether it is appropriate for disclosure. In this regard, I'm going to listen to various corporate opinions and hope to share my findings with you.

[Ikeo, chairman] Yes, please.

[Callon, member] Thank you. I have three points. The first one is with respect to the AGM schedule – the meeting date, the convocation notice dispatch date, and the record date. With regard to possible improvements in this area, there is no question we can get things done if there is a will to do so. Although I'm an American, in terms of corporate governance, I consider the UK best practice. So I'd like to refer to the UK's cases. In the UK, the general meeting of shareholders must be held within 6 months from the end of companies' fiscal periods. Thus, UK companies have plenty of time to ready for AGMs. Therefore, as Mr. Mori and Mr. Oguchi mentioned earlier, Japanese companies could also have more time, such as 3 months or 6 months.

The next point is the dispatch date of the AGM convocation notice. In the UK, the notice is dispatched no later than 3 weeks prior to the AGM. On the other hand, when Japanese companies dispatch the notice 2 weeks prior to the AGM, global investors who are overseas in reality receive the notice only 1 week prior to the AGM. Considering the time needed for translating the notice into English, global investors have little time for consideration, let alone discussions with the management. One possibility is for Japanese companies to send the AGM notice in English, but it would be best if the AGM notice was sent, for example, approx. 6 weeks prior to the meeting.

However, as Ms. Nakamura said earlier, it is impossible given the tightness of the current Japanese AGM schedule to achieve this goal of sending notices six weeks before the AGM. Thus, we have to be creative. For instance, companies could first dispatch the AGM agenda without financial results, and then send information related to the financial results later. Under the current system, 3 weeks prior to the meeting is in reality likely the earliest possible dispatch date, given that companies spend 2 months to finalize the financial results. If Japanese companies are given an extra month of time such that the period from the record date to the general meeting is extended to 4 months, 3 weeks plus 4 weeks equal 7 weeks, meaning companies could dispatch the AGM notice 7 weeks prior to the meeting. I'd like to see such an improvement that will enable shareholders to exercise their voting rights after thorough consideration of the AGM agenda.

Next, I'd like to discuss the record date. As Mr. Oguchi mentioned earlier, in terms of joint shareholder rights, the most important right for shareholders is the voting right. There is no guarantee that shareholders always receive dividends, and shareholders do not have a management participation right. Shareholders being third party outsiders are in a vulnerable position with respect to the company. Shareholders are in the strong position only in terms of their ability to exercise their voting rights in electing directors, etc. In Japan, because the cut-off date of the shareholder registry is usually the fiscal period closing date, the exercise of

voting rights is permitted only to those shareholders who owned the shares 3 months prior to the AGM. Because an ordinary AGM is generally held once a year, shareholders who buy shares within 3 months of the AGM have no voting rights for these 3 months, which is one-fourth of a year. That's a big problem.

Therefore, as Professor Kanda mentioned earlier, a shorter interval between the AGM and shareholder record date would be an improvement. The interval in the UK is only 2 days. To repeat, in the UK, the period which creates the situation where shareholders who own shares but cannot exercise their voting rights on the general meeting date is just 2 days, which is one-fiftieth of Japan's. In the UK, because voting is such a fundamental right which should be protected, efforts are made to protect shareholders. In Japan also, we can do this. Japan is after all an economic giant with a can-do spirit.

I'd like to touch upon the order of the dispatch date of the AGM convocation notice and the shareholder record date. I'd like to refer to the UK and Germany as good examples. In the case of Germany, companies dispatch convocation notices no later than 4 weeks or approx. 30 days prior to the AGM. Then the record date is 21 days prior to the AGM, which means the record date is fixed after the dispatch date. In case of the UK, the dispatch date is 3 weeks prior to the AGM, and the record date is 2 days prior to the AGM. In the UK, shareholders can check the proposals which they receive 3 weeks prior to the AGM, and make a decision whether or not they continue to be the shareholders. In Japan, the management looks at the composition of the shareholders first, prepares proposals, and submits the proposals to the shareholders 2 weeks prior to the AGM. Thus, shareholders in Japan are in a weak position. Looking at the fact that the management, not the shareholders, plays the main role at Japanese AGMs, I feel they should be called management meetings, not shareholder meetings.

Therefore, to remedy the situation, companies should dispatch the notice to show the proposals to the shareholders first in the similar manner as in the UK and Germany, and then fix the record date to determine the shareholders entitled to receive the rights. By doing this, dialogue between shareholders and management, which is required by the Japan's Stewardship Code, will naturally become more active. That is because management will need to consult with the shareholders in advance or it is possible that votes could swing away from them and management's proposals could be defeated. So I would suggest that Japan should adopt the UK-style system, or alternatively, set the record date to be 2 weeks prior to the AGM, while dispatching the notice 6 weeks prior to the general meeting. As a measure to encourage Japanese-style dialogue between shareholders and the management, I would like you to consider this proposal. Apologies and thank you for listening to this long statement.

[Ikeo, chairman] Please go ahead.

[Ota, member] I reviewed the reference materials which the Secretariat sent me in advance. I'd like to share my first impression of Material 1, or raise an issue. As this is the first substantive discussion, the Secretariat quoted the OECD Principles in the left, and provided corresponding points of consideration, as explained earlier. I understand we will discuss major points of consideration or perspectives, but... Although the Secretariat did not explain its content, Material 2 specifically shows the current situations of corporate governance codes in other countries in detail. Considering the objectives of this Council, I'd like to express my opinion from the viewpoint of how we should draft Japan's Corporate Governance Code. I think we still have to consider how to proceed with our discussion. Concerning these points of consideration raised in comparison with the OECD Principles, as many members pointed out, there are many things which I can agree with, including how to proceed with our discussion, and some points of discussion themselves. I wanted to mention it first.

However, upon drafting Japan's Corporate Governance Code, we have to consider the circumstances unique to Japan. As Mr. Toyama also referred to it, the Code should not be compromised by the current circumstances. I believe that we should clearly describe various benefits from the current institutional design, as well as points which need to be improved. Otherwise, the Code will look like a Japanese translation of the OECD's Principles for Corporate Governance. That is not what we intend. I think we should incorporate such matters into our discussion.

Specifically speaking, I'd like to talk about three points. I think that in fact, there are various angles to look at corporate governance, such as the relationship between the board of directors and the supervisory board, or the relationships between the board of directors and the general shareholders' meeting, between executive officers and the supervisory board, or between shareholders and the supervisory board, etc. as other members discussed. Therefore, although this will be discussed on a later occasion, I think it is desirable that the output fully covers our evaluations or comments on those matters.

I'd like to mention two more points regarding the general statements or "awareness of the problems". I'm not going to discuss the particulars. The first point is what the Code should be, as Mr. Kanda pointed out earlier. I think the Code should present principles concerning corporate governance with substantial messages to promote constructive dialogue or engagement with institutional investors. Therefore, as for the evaluation of an individual company's ability for disclosure as well as attitude, maybe we should give it over to the market. Conversely, an individual company has the accountability to the market,

comprehensively considering its own circumstances. I think this point should not be omitted.

While we proceed with our discussions based on ‘Comply or Explain’ – I support this stance –, it is essential to discuss what should be complied with. The Code is a set of norms of desirable governance, not rules. According to Mr. Kanda, it is best practice showing what companies should follow, or ideals. That is also fine. The essence of the Code is to articulate norms of governance. This is one of the points.

Another point. Many members have discussed outside directors. I hear there are opinions from this perspective. I’m also aware that we will have time for sufficient discussion at a later date. And I believe we share the recognition that it is, of course, necessary and important to ensure the management oversight and supervisory functions from outside the company as well as the perspective of supervisors. However, the most important factor for the growth strategy of a company – in terms of earning power – is a mechanism enabling people from outside the company to fulfill their functions effectively, or clear definitions of roles to be played by people such as outside directors and non-executive officers including *kansayaku* (Audit & Supervisory Board Member), in my opinion.

Consequently, or concurrently, we should discuss how we incorporate the inclusion of outside directors into the Code, ensuring companies’ comprehensive consideration of professional skills, work experience, insights and knowledge of the company, and last but not least, independence of the members on the board of directors. At the moment, I will not be discussing details, but I thought I should share my point with you in this first discussion.

[Uchida, member] I have almost the same opinion as Mr. Ota just mentioned. When I read this reference material, which I think was prepared for the discussion purpose, I felt that many items are listed, including many items which refer far into specifics.

As for such specific points, I’m aware that there are opinions stating it is necessary to request for detailed explanation and disclosure. Nonetheless, as I said in the previous Council, we are working on the premise that the Code should help companies’ autonomous initiatives. Therefore, I truly believe that we should avoid practically imposing certain specific form of action on companies. If we stipulate specific rules or means, they will actually become almost like obligations or requirements. In other words, they contradict our basic stance toward companies’ initiatives or autonomous efforts. The Code should describe high-level principles. With regard to the means for achieving that goal, we should secure flexibility for companies. We should not present excessive restrictions. At the final stage, I hope such a point will be considered.

[Ikeo, chairman] Thank you very much. The points of consideration listed on Material 1 are raised at various levels. Some points refer to very specific measures. Some points are more abstract. Considering the nature of the Code, I don't think we will actually write such details into the Code, but we will proceed with our discussions, taking into account such specific points – indeed, considering the current circumstances in Japan. That's the whole idea. So the points of consideration include very detailed, less abstract points, as well.

Well, Mr. Takei, would you like to share your opinion?

[Takei, member] I'd like to share my opinion. I totally agree with what Mr. Kanda mentioned earlier. Upon drafting the Code, basically the biggest issue would be basically how we motivate the management to work towards increasing corporate values – in other words, the incentive structure and the associated accountability. In this connection, we should always think about the role-sharing between shareholders including the meeting of shareholders, and the supervisory board which is explained under the topic of the Board in the OECD's Principles. We should think about the role-sharing of the supervisory board and shareholders. It would be inefficient if everything were to be decided by shareholders, and Europe and the US are not doing that. I think what Mr. Kanda said earlier is about this point. Making decisions at the general meeting of shareholders involves inefficiencies in many areas, thus the supervisory board should play a more active role. I believe this perspective is very important for this Council.

The supervisory board always contains non-executive officer members, including outside directors. By making the supervisory board more active, gaps listed on the Material will be filled in many areas of discussion, I think. This is the first point.

In this regard, my second point is related to the general meeting of shareholders, which the member discussed earlier today. I think, as our premise, we need to have an understanding of various Japan-specificities vis-a-vis shareholders meetings in Europe and the US. Let me point out some specificity. First of all, Japanese companies have a larger percentage of individual shareholders. The fact that there are many individual shareholders itself is welcomed. In Japan, many efforts have been made to protect individual shareholders' rights. The Companies Act also has provisions for that purpose. For example, the Act stipulates that companies must send the convocation notices by postal mail, unless otherwise agreed upon by an individual shareholder. They must ensure the shareholders obtain the notice for certain. There are various protection measures. If electronic communications are available, it will be easier to create an environment where shareholders come to acquire the information, rather

than companies dispatch the information. Yet Japan's legal system has not moved toward the electronic voting, because there still is a digital divide people issue. In that sense, we need to consider individual shareholder-conscious measures. This is the first specificity.

The second specificity is that the scope of matters to be resolved by the general meeting of shareholders is too wide. This is related to the fact that the supervisory board has not yet played a sufficient role in Japan, as mentioned earlier. The Companies Act leads Japanese companies to tend to decide everything by the resolution of the general meeting of shareholders. Although Professor Kanda mentioned the separation of the finalization of financial results and audits from the ordinary general meeting, same problem arises where dividends are still decided by the resolution of the general meeting. In other countries, directors' remunerations are decided by the supervisory board, because remuneration matter is an indispensable part of evaluation function at the supervisory board. "Say On Pay" practice at the EU or the US is a sort of a compromise of this premise. Yet in Japan, it is stipulated as the matter subject to the resolution of the general meeting in Japan. Furthermore, even the daily operation matters which should be decided by the management board may be decided by the resolution of the general meeting through a proposal to change the articles of incorporation. In Japan, the issue we are facing is whether we leave a wide scope of the matters subject to the resolution of the general meeting. In view of the Japanese history associated with this issue, I feel we should sort out what should be corrected now and what should be considered in the future. This is the second point.

The third specificity is that in Japan the general meeting of shareholders is a decision-making institution, and various legislation and business practice are based on this decision-making function. It would be sufficiently reasonable to argue that the ordinary general meeting of shareholders should rather serve as a communication opportunity between shareholders and management, and the decision-making there should be limited to personnel affairs and other related evaluation matters. Nonetheless, we cannot completely get rid of the premise as a decision-making institution. In this connection, I'd like to refer to the fact that Japan adopted the form of direct ownership, under which the actual owners of shares are required to be recorded on the shareholders registry. Europe and the US adopted the form that enables direct communications between actual owners and the company. Japan adopted the direct ownership system, under which we should first examine whether this difference may cause any influence, then consider how the actual owners can reflect their intention to the general meeting. As Mr. Callon mentioned earlier, it is better to search for creative idea that enables an actual owner to be present at the shareholders meeting under the current legal system, but at the same time we need to ask foreign investors to understand the difference in the legislative premises.

In sum, if companies delegate more functions to the supervisory board, in other words, if indirect democracy functions better, it will work as the governance system without placing that much weight on direct democracy.

[Ikeo, chairman] Please go ahead.

[Oguchi, member] I'm sorry to speak up many times, but the member just referred to direct democracy and indirect democracy, and I believe it is an important point. I do not at all think everything must be determined by the shareholders. I think what is necessary for the shareholder is explanations from investee companies. Based on the concept of indirect democracy, shareholders need to obtain explanations from the board of directors which executes operations of the company as a representative of the shareholders. It may lead to dialogues, or the exercise of voting rights. In that context, cross-shareholdings, as discussed earlier, would be a typical example. From the viewpoint of investors, eventually the investee company purchases shares of other companies. It could be an investment for strategic reasons or pure investment. Alternatively, there may be the case of purchasing shares for M&A.

What investors can find regarding such an investment in equity is, after all, "the dividend yield of the purchased share is only this much? It's less than capital costs." They may consider it seemingly isn't an efficient investment, and say, "The company should sell these shares. We invested in the company because we expected them to accomplish good results in their core business. We did not invest in them to purchase shares of another company. So they should sell the shares and invest the fund in their core business in order to increase the corporate value." I think the investors naturally feel this way.

Therefore, if the investors are asked what needs to be explained, their answer is not a qualitative explanation such as "for these reasons, our company holds these equities." Investors want the companies to show numerical goals such as a certain percentage of ROE, or a certain percentage of operating profit margin, and provide a quantitative explanation about what this particular investment in equity means in that context, regardless of whether it is a "strategic investment" or pure investment. A member stated earlier that it would be difficult, but without such a qualitative explanation, the investors will come to wonder how they should judge this particular investment in equity. So the company should provide a convincing quantitative explanation in that sense, and then the investors can understand why.

In that sense, I think the takeover defense policy would be the same. Let me briefly tell you the actual situation. According to the Nikkei online dated August 28, ICJ, an electronic

voting platform operator, conducted a survey of 395 companies which held the general shareholders' meeting in June, and analyzed the objection rate against their takeover defense measures among 60 domestic institutional investors and 500 foreign investors. ICJ found that 89.6% of foreign investors were against the measures, and 51.3% of domestic investors were against the measures.

ICJ operates the platform which covers almost all the beneficial owners of shares. Looking at the gap in the final results, I thought that the voices of such foreign and domestic institutional investors are washed out by other shareholders who do not use the platform, as a result. I referred to corporate responsibilities earlier, and I think this falls under the category of the investors' accountability and disclosure. I mentioned this at the Council for the Japan's Stewardship Code. Institutional investors who accepted the Stewardship Code are expected to disclose their voting as a principle, and also to aggregate the voting records into each major kind of proposal, and publicly disclose them. Even though a takeover defense measure is extremely important, in terms of the proposal categories, it is classified as other proposal, not as major kind of proposal. Some investment management companies consider that the takeover defense measure is important, and thus make disclosure separately from other proposals. And some companies disclose such information as a part of another proposal. As the parties who exercise their precious voting rights, I think they should separately disclose their voting records on the takeover defense measure as one kind of proposal.

I have discussed this topic with a certain company representative. The Stewardship Code has not defined the border of institutional investors from the very start. So it may be written somewhere in the reference material - if a listed company has a fiduciary duty to its shareholders, the listed company can accept the Stewardship Code. I won't say that the company should accept all the principles, but maybe the company can at least make a disclosure concerning voting rights specified in Principle 5. I think there is such an option.

As for the takeover defense measures, although it was not explained today, I'd like to refer to the description of the OECD Principles in Material 2. At the bottom of page 12, it reads "In implementing any anti-takeover devices and in dealing with take-over proposals, the fiduciary duty of the board to shareholders and the company must remain paramount." In the context of today's discussion, it could be rephrased that under indirect democracy, the fiduciary duty of the board must remain paramount. This is the OECD's concept. Although we need to discuss whether this concept can be applied to Japan as it is, when we consider responsibilities of the board of directors, a higher level of fiduciary duty would be required.

I wondered how other countries address this point, and reviewed other materials. In the

UK Corporate Governance Code (September 2014) in Reference Material 1, at the bottom of E.2.2 on the last page, which is page 26, it reads “When, in the opinion of the board, a significant proportion of votes have been cast against a resolution at any general meeting, the company should explain when announcing the results of voting what actions it intends to take to understand the reasons behind the vote result.” Under the voting system, if a proposal wins the majority vote, even by just 1 vote, the resolution will be adopted. Yet from the viewpoint of accountability of the board of directors, this provision is very interesting, as it requires an explanation in case where a significant proportion of votes have been cast against a resolution. If the Japan’s Code incorporates this idea, shareholders will be more motivated to exercise their voting rights, and companies will listen to shareholders’ voices and fulfill their relevant accountabilities, instead of focusing on whether or not the resolution for their proposal is adopted through narrow victory. So I referred to it, hoping that we consider this kind of provision for the Code.

[Ikeo, chairman] Thank you very much. Time is running out. I’d like you to discuss another topic, Relationship with Stakeholders in corporate governance. I understand that you still have plenty to talk about as far as Rights and Equal Treatment of Shareholders are concerned, yet I’d like to have your opinions on Relationship with Stakeholders as well. Professor Kanda, please.

[Kanda, member] Let me briefly cover two more points regarding shareholders. One is takeover defense measures, and the other is transactions involving conflicts of interest shown on page 12 of Material 1. When we talk about takeover defense measures or anti-takeover measures, it is necessary to specify what we mean by those words. I assume what Mr. Oguchi just mentioned is what is called "advance warning defense measures" in Japan. When the reference material describes how many companies adopted defense measures, it refers to advance warning defense measures in Japan. Indeed, they are Japan-specific measures, which are not observed in other countries, as far as I know. The current OECD Principles 2004 refer to anti-takeover devices, but Japan did not have them when the relevant provision was stipulated in 2004, although Japan participated in the drafting process. Advance warning defense measures – what we currently call takeover defense measures in Japan – did not exist at the time of stipulating the OECD Principles. So they are not reflected in the OECD’s Principles.

I’m sorry to go into details, but the words “anti-takeover devices” used by the OECD or other countries, and the words “takeover defense measures” written in the right column have very different meanings, although the same words may be used in the Japanese language. What these two words specifically mean is different. We should keep this in mind in our

discussion. Are we discussing narrowly-defined advanced warning takeover defense measures in Japan? Or are we discussing defenses that are defined functionally as in the notion of anti-takeover devices in the OECD Principles? As for the latter, various mechanisms are possible in Japan, and some companies have actually adopted them. We need to be aware of this gap.

Another point is about related party transactions. They are described on page 12. Under the Companies Act, many of such transactions are recognized as important transactions which require the resolution of the board of directors, or as transactions involving conflicts of interest which also require the resolution of the board of directors. Speaking of the way of thinking, the approach is universal: Japan and the OECD share a common position. These transactions are considered more likely to harm shareholders' interests. Given that, if confirming shareholders' views imposes a burden, companies could consider obtaining an approval by a certain function which represents the interests of shareholders: such a function could be assumed by the board of directors as shown in this material. I think we can consider the issue this way. Thank you. That's all.

[Ikeo, chairman] Mr. Oba, please.

[Oba, member] I just want to express my opinion on one point. I already mentioned it the other day, but the basic stance of this Council of Experts is to develop the conditions toward sustainable growth. That's a key theme, I think. From such a stance, as Professor Kanda pointed out, it would be essential to incorporate the perspective to reinforce a mechanism for the evaluation by shareholders in the general statement of the Code. Specifically speaking, as Mr. Ota expressed his opinion earlier, some people argue that it is necessary to set conditions enabling independent people outside the company to fulfill their functions effectively. Business insights, independence, and work experience would be important conditions. Beyond that, I think they assume an important function in dialogue with shareholders.

Specifically, our company has established and manages engagement funds. Where an outside director serves as a shareholder contact, it works very effectively. We have actually seen such cases. Therefore, in addition to the requirements for outside directors, if the Code incorporates a provision that people outside the company assume the role of contact persons with investors, I think it will work very effectively. This is also related to the Stewardship Code. That's all.

[Ikeo, chairman] Thank you very much. Mr. Horie, please.

[Horie, member] In connection with Mr. Oba's comment, this might be slightly off the course of our discussion, but I do hope the Code includes the topic of dialogue with shareholders. We haven't discussed, and may not discuss it in the future, so I'd like to take this opportunity.

Today and in the next meeting, we will cover points of consideration based on the OECD Principles. Yet the topic of dialogue with shareholders is not included in the OECD Principles, while the UK, ICGN, and Singapore codes cover the topic. Various things are written in the latter codes. There, as Mr. Oba just mentioned, I think there are some provisions stating that leading independent directors should be involved in communication with shareholders. I believe that the general meeting of shareholders and continuous dialogue are essential like two wheels of a cart. Of course, it is absolutely necessary to discuss the general meeting, but I hope our discussion will incorporate the perspective of dialogue with shareholders. For the coming meetings, although it is not included in the OECD Principles, I'd like to discuss dialogue with shareholders as an important topic.

[Ikeo, chairman] I see. Regarding Relationship with Stakeholders, does anybody have more comments? Yes, please.

[Uchida, member] As written in the material, I think it is very important to recognize the roles of various stakeholders and it leads to generation of medium to long-term corporate value. We should provide sufficient explanation of this concept in the Code. The end of corporations is to create customers, or creating value for customers. Only in doing so, the corporation has a meaning of continued existence. Then shareholders, employees, business partners, and communities get involved in the activities of creating value for customers. Basically, sustainable growth can be achieved by constantly creating value for customers through innovation. To this end, various stakeholders gather around corporations. I believe that corporations have a role to generate and reinforce such a virtuous cycle. We should include sufficient explanation in this regard.

In the next section on the material, there are several bullet points in response to the OECD Principles. I think each bullet point shows the ideal situation. I presume corporations will go forward to this direction, yet depending on types and categories of business, there are various phases. So I believe we should secure an individual corporation's discretion or flexibility concerning specific issues. I support the suggested desirable direction.

[Ikeo, chairman] Thank you very much. Let me summarize today's discussion. We need to reinforce the mechanism for evaluation by shareholders. In this regard, it is critical to

reinforce the functions of the general shareholders' meeting: this is a key issue. However, it is not adequate that everything should be done by the general shareholder' meeting. Instead, the board of directors or a similar body within a company should be reinforced, so that it plays a role regarding indirect evaluation by the shareholders. Based on such architecture, we will consider the matters. I assume this is our overall direction. Is this correct? Do you agree? We still have some remaining time. Yes, please go ahead.

[Takei, member] Thank you. I believe this part referring to the stakeholders is very important part for corporate governance in Japan. As just pointed out, corporate value stems from creating innovation and providing added value to the society, in the context of the Japan Revival Strategy which is the starting of this Council. As Mr. Toyama pointed out, we should describe Japanese governance to prevent the rise of short-sighted arguments under shareholder capitalism where shareholders pursue short-term profits. In that sense, I think we should write about stakeholders in an early section of the Code, in case of Japan. I think it would be better to obtain consensus on it prior to further discussion so that everyone can easily understand the Code. That is my first point.

And I forgot to mention something earlier. This is an addition to my previous comment on dialogue with shareholders. Dialogue with shareholders is surely important. It is said that 20 days period from the dispatch of the convocation notice until the general shareholders' meeting is not sufficient for fruitful dialogue between the shareholders and the company. Under the direct ownership system in Japan instead of the Western-style direct communication system, we need to consider the method of access, specifically how companies may access to institutional investors and shareholders. When companies cannot identify actual owners of their shares, even if the companies want to have the necessary dialogue prior to the general meeting, the companies are not sure with whom they should have the dialogue. They are not sure who has the actual power to exercise the voting rights. Many institutional investors prefer anonymity. As two wheels of a cart, from the viewpoint of increasing medium to long-term corporate value, companies' access to shareholders should be another point of discussion in Japan.

[Ikeo, chairman] Please go ahead.

[Callon, member] If time permits, I'd like to add to my previous points. One is about cross-shareholdings. I'm sorry if this is outspoken, but you mentioned "good cross-shareholdings" and "bad cross-shareholdings," which to me is like distinguishing between "good traffic accidents" and "bad traffic accidents." In purely economic terms, I understand that "good cross-shareholdings" can exist. However, in voting rights terms,

cross-shareholdings are fundamentally conflict-of-interest transactions and barter arrangements: e.g., “Our company holds shares in your company in order to vote for your company.” In short, cross-held shares are “collusion shareholdings,” not “policy shareholdings,” and therefore severely damage the interest of non-conflicted, “pure” shareholders and minority shareholders. Despite joint shareholder rights existing for pure shareholders and minority shareholders and requiring exercise to protect these rights, cross-shareholdings are used for the barter exchange with business transactions by the owner of “collusion shares.” As Mr. Toyama pointed out, a cross-shareholder votes for the investee company’s proposals, regardless of any scandals or management problems, as a “silent stable shareholder of the ruling party.” Such exercise of voting rights involving conflict of interests has a significant adverse effect on shareholder democracy and should be restricted.

For example, if shares are held by related parties, we could prohibit the exercise of their voting rights. Alternatively, we could require them to disclose the rationality of their decision-making with regard to their votes. Instead of accepting vague explanations such as “The cross-shareholdings support our business alliance,” we should require a proper explanation such as “We can obtain more than sufficient returns to cover shareholders’ cost of capital” so that minority shareholders can be convinced. This is my first point.

Another point is going back to the topic of the actual owners of shares. I have little knowledge compared to Mr. Takei, but I would like to address these legal issues. What we see right now is a tail-wagging-the-dog situation, that the actual owners of shares cannot participate in the AGM. While individual investors own the shares in their own names, institutional investors usually custody the shares at trust banks. If the institutional investors want to exercise their voting rights or attend the AGM, the current problem is that their names are not recorded on the shareholders registry. Instead, the name of the trust bank is recorded. Even though the trust bank in Japan certified with its seal that the institutional investor is the actual owner of the shares, the actual shareholder cannot attend the meeting. Accordingly, I would propose that AGM attendance by a party who presents a certificate issued by a trust bank stating that the investor in question is the actual owner of the shares under the Japanese laws should be accepted. I would be grateful if you could please take this point into account.

[Ikeo, chairman] Mr. Mori, please go ahead.

[Mori, member] Chairman Ikeo summarized today’s discussion earlier, and I agree with it. I believe that dialogue between companies and investors should be one of the key topics and that one of the subjects of today’s discussion was about what roles each party takes to have dialogue. It is necessary to establish a mechanism to promote such a dialogue. As mentioned

earlier, information disclosure is required for the dialogue, and we discussed what should be disclosed, how we secure the quality of information, and when information is disclosed to ensure sufficient time for investors to analyze the information. These three are indispensable to secure in-depth dialogue between companies and investors, as we discussed today. I assume we will discuss this topic at a later occasion. I'm looking forward to further discussion on them.

[Ikeo, chairman] I think we have covered the items in a general discussion. If there is no objection, we will be closing today's discussion. Although we have many more points to be discussed, we will go through all items in the OECD Principles first. With regard to Rights and Equal Treatment of Shareholders as well as Relationship with Stakeholders, I would like to close the discussion now.

Although we had a very active discussion today, if you have any additional comments, requests and so on, please send them via e-mail to the Secretariat. Thank you for your cooperation.

Finally, I would like to ask the secretariat to make any necessary announcement.

[Yufu] The next Council is tentatively scheduled to begin from 16:30 on Monday, 20 October, although the secretariat is still coordinating the schedule. We will inform you of the details later. Thank you in advance for your cooperation.

[Ikeo, chairman] Thank you. And now I declare this Council closed. Thank you very much for attending.

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