

Opinion on the "Draft Concerning the Basic Approach to  
the Corporate Governance Code  
(Excluding the Preamble) "(November 25)

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In addition to the remarks I made at the previous Council of Experts, held on November 25, I would like you to reconsider based on the following points concerning the "Draft Concerning the Basic Approach to the Corporate Governance Code (Excluding the Preamble)", which was handed out on that date.

**1. About General Principle 4**

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| Given its <u>fiduciary responsibility</u> and accountability to shareholders, in order to promote sustainable corporate growth and the increase of corporate value over the mid- to long-term and enhance earnings power and capital efficiency, the board should appropriately fulfill its roles and responsibilities |
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[Opinion] The term "fiduciary" is used in the Trust Act, and the interpretation of "fiduciary responsibility" under the Trust Act have already been stable. So, I'm afraid that interpretation of the term "fiduciary responsibility" in the Code would be affected by the one under the Trust Act, while the Code adopts principle-based approach. Therefore, in order to avoid any misunderstandings, it should be specified that the term "fiduciary responsibilities" employed in the Code means "the responsibilities of persons entrusted with management by the shareholders".

**2. About Supplementary Principle 4.1.1**

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| The board should clearly specify and disclose its own decisions as well as both the scope and content of the matters delegated to the management. |
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[Opinion] The Draft's wording should be revised, as it may be misunderstood as stating that each company is required to disclose its criteria themselves for the matters to be deliberated by and reported to the board .

**3. About Supplementary Principle 4.1.3**

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| Based on the company objectives (business principles, etc.) and specific business strategies, the board should <u>approve a succession plan for the CEO and other top executives</u> and engage in the appropriate oversight. |
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[Opinion] The wording "approve (a succession plan)" risks creating the misunderstanding that companies should prepare specific "succession plans" and obtain the approval of the board. Therefore, I believe that this should be corrected, for example, to "share their basic policy concerning successors".

#### 4. About Supplementary Principles 4.4.1 and 4.8.2

(4.4.1) In addition, the kansayaku board should secure cooperation with outside directors so that such directors can strengthen their capacity to collect information without having their independence jeopardized.

(4.8.2) Independent directors should endeavor to establish a framework for communicating with the management, and for cooperating with the kansayaku board, for example, by appointing the lead independent director from among themselves.

[Opinion] Cooperation with individual *kansayaku* would allow flexibility, but I am concerned that this might not be the case in terms of schedule adjustments, etc. if cooperation with the *kansayaku* board is required. The passage should be corrected to "*kansayaku* or the *kansayaku* board", since the aim can be achieved by having *kansayaku* who are sufficiently capable of communicating with the *kansayaku* board cooperate with the outside directors.

#### 5. About Principle 4.5

The directors, *kansayaku* and the management of companies should recognize that they have fiduciary responsibilities to shareholders respectively, and they should secure the appropriate cooperation with stakeholders and act in the interest of the company and the common interests of its shareholders.

[Opinion] The phrase "The directors, *kansayaku* and the management of companies should recognize that they have fiduciary responsibilities to shareholders respectively" should be corrected. Since *shikko-yakuin* are not directly responsible to shareholders, while (3) of the General Principle 4 states that "management" includes "so-called *shikko-yakuin*".

#### 6. About Principle 4.7

Companies should make effective use of independent directors, taking into consideration the expectations listed below with respect to their roles and responsibilities:  
ii) Monitoring of the management through important decision-making at the board including the evaluation and the appointment and dismissal of the senior management;

[Opinion] Members of senior management can be evaluated through appointments and dismissals, so that mentioning "evaluation" may be unnecessary as the role of the independent directors.

#### 7. About Supplementary Principle 4.11.3

Each year the board should analyze and evaluate its effectiveness as a whole, taking into consideration the relevant matters, including the self-evaluations of each director. A summary of the results should be disclosed.

[Opinion] Since there are various possible ways of analyzing and evaluating the effectiveness of the board, "including the self-evaluations of each director" should

be indicated as one example.

## **8. About Principle 4.14**

Accordingly, companies should provide and arrange training opportunities suitable to each director and *kansayaku* along with financial support for associated expenses. The board should verify whether such opportunities and support are appropriately provided.

[Opinion] In order to secure the effectiveness of the board, the tasks in which the board engages should be limited to key ones. Therefore, the sentence after "The board" may not be necessary, as it is not the board's task to "verify" the provision and arrangement of training opportunities along with financial support for associated expenses, even if "verify" is not intended to mean discussion as an "agenda item".

If verifying by the board is indeed necessary, the wording "should provide and arrange training opportunities suitable to each director and *kansayaku* along with financial support for associated expenses" should be corrected to "should formulate policies for the training of directors and *kansayaku*" or the like in order to reduce the involvement of the board.