

Report by
“Working Group on Corporate Disclosure”
of the Financial System Council
- Promoting Constructive Dialogue -

April 18, 2016

List of Members of Working Group on Corporate Disclosure
(Titles omitted, in order of the Japanese syllabary)

As of April 18, 2016

Chairman:

Hideki Kanda, Professor, Law School, Gakushuin University

Members:

Hidekazu Ishida, Former Investment Officer of Osaka Gas Corporate Pension Fund

Hidetake Ishihara, Executive Officer, Head of Accounting and Finance Division, Nippon Steel & Sumitomo Metal Corporation

Toshiro Ueyanagi, Attorney, Tokyo Surugadai Law Offices

Sadakazu Osaki, Head of Research, Center for Strategic Management & Innovation, Nomura Research Institute, Ltd.

Yo Ota, Partner (Nishimura & Asahi)

Akiyoshi Oba, President & CEO, Tokio Marine Asset Management Co., Ltd.

Yoshiharu Obata, Director, Business Infrastructure Bureau, KEIDANREN

Chihiro Kawashima, Executive Director, Department of Economic and Social Policy, Japanese Trade Union Confederation (JTUC-RENGO)

Hiroyuki Kansaku, Professor of Graduate Schools for Law and Politics, The University of Tokyo

Goro Kumagai, Senior Fellow, Markets Strategic Intelligence Dept., Mizuho Securities Co., Ltd.

Etsuro Kuronuma, Professor, Waseda University, Waseda Law School

Kazuhisa Koashi, General Manager of Planning and Coordination Department, Sumitomo Mitsui Trust Bank, Limited

Shigeo Sakase, Former Senior Advisor, Finance Group, Hitachi Ltd.

Masaki Shizuka, Director Executive Vice President, Tokyo Stock Exchange, Inc.

Aiko Sekine, Deputy President, The Japanese Institute of Certified Public Accountants

Yumiko Nagasawa, Executive Director, Foster Forum

Takashi Hashimoto, Professor, Graduate School of Professional Accountancy, Aoyama Gakuin University

Kimie Harada, Professor, Faculty of Commerce, Chuo University

Kimiaki Yamauchi, Director, Chief Officer for Rules and Regulations, Japan Securities Dealers Association

Observers:

Toshikazu Takebayashi, Counsellor, Civil Affairs Bureau, Ministry of Justice

Toshiya Takano, Director, Financial System Stabilization Division, Minister's Secretariat, Ministry of Finance

Junko Hioki, Director, Corporate Accounting, Disclosure and CSR Policy Office, Economic and Industrial Policy Bureau, Ministry of Economy, Trade and Industry

I. Introduction

In the midst of the globalization of corporate business activities, the development of information communication technology, declining birth rates and an aging population, the business environment of companies is also undergoing significant changes, and management challenges are growing increasingly complex and diverse. Shareholder composition is likewise undergoing major changes. For example, the ratio of shareholders of listed companies accounted for by foreign institutional investors is on the rise. Against the backdrop of these changes in the corporate environment, it will be necessary to promote constructive dialogue between companies and their shareholders/investors, so as to ensure their cooperation toward sustainable corporate growth and increased corporate value over the mid- to long-term.

The disclosure of corporate information serves as the basis for such constructive dialogue. For this reason, it has been suggested that we reconsider the way in which information is currently disclosed in Japan, thus promoting constructive dialogue. For example, in terms of the information that is disclosed, the following suggestions have been made:

- Increase flexibility by making it possible to unify entries across different mandatory disclosure documents and rationalizing by eliminating duplicated contents across different disclosure documents, thus ensuring that the information required by investors can be provided to them in a generally more timely and effective/efficient fashion;
- Improve the disclosure of business policies/strategies as well as Management's Discussion and Analysis of Financial Condition, Results of Operations and Cash Flows;

Or, in terms of the timing and procedure of disclosure,

- Make information available earlier and establish appropriate dates for annual general meetings, thus further enhancing review and dialogue on the agenda items of annual general meetings;
- Push forward with the electronic provision of materials pertaining to convening notices of annual general meetings

Also, recently it has been pointed out that steps should be taken in order to guarantee the fairness and equality of information disclosure, taking into account recent instances in which measures were taken against securities companies, and, further, that we should develop environments that promote mid-to long-term-oriented investments by investors and counteract short-termism.

Bearing this situation in mind, last October the Financial System Council was asked to consider extensively how information should be disclosed so as to ensure that it reaches investors in an effective and efficient manner, taking into account the need to promote constructive dialogue between companies and investors. In response, the Financial System Council has established a Working Group on Corporate Disclosure (the "Working Group"), and has held five deliberation sessions since last November concerning the information that is disclosed, the timing and procedure of disclosure, and how to enhance the disclosure of non-financial information. This Report contains the results of the above review by the Working Group.

II. Disclosure toward promoting constructive dialogue

1. Basic approach

In order to promote constructive dialogue between companies and their shareholders/investors, sufficient corporate information required by shareholders/investors should be provided in a timely, effective and efficient fashion. Three systems currently regulate the way in which corporate information is disclosed; these systems are based on the listing rules of Stock Exchanges (the "Stock Exchange Rules"), the Companies Act, and the Financial Instruments and Exchange Act. Let us look at the typical practices entailed by mandatory disclosure throughout the business year. Many companies will announce the Earnings Releases early on following the end of the business year, providing relatively detailed information in accordance with the Stock Exchange Rules; subsequently, Business Report and Financial Statements will be provided around three weeks prior to the annual general meeting as prescribed by the Companies Act. After the annual general meeting, Annual Securities Reports will be disclosed in accordance with the Financial Instruments and Exchange Act. In addition to mandatory disclosure in a creative manner, companies also disclose information on a voluntary basis, and are thus endeavoring to diversify their information output.

On the other hand, looking at the typical practices entailed by mandatory disclosure for a given business year in the United States and some European nations, the following becomes apparent:

- In the United States, earning releases prepared in an arbitrary format are published early on; subsequently, setting aside a sufficient period of time

leading up to their annual general meeting, companies release in-depth Form 10-K annual reports in accordance with securities law, and provide proxy materials for the annual general meeting prepared based on the Form 10-K annual reports.

- In Europe (United Kingdom, France, Germany), earning releases prepared in an arbitrary format are likewise published early on; subsequently, a single document is prepared virtually that includes the contents of materials for the annual general meeting prepared in accordance with the Companies Act as well as those of the annual report prepared pursuant to securities law. A sufficient period of time is set aside leading up to the annual general meeting, and in-depth information is disclosed.

Taking into account the need for promoting constructive dialogue and the situations in some European nations and the United States, institutional investors have voiced the following opinions with regard to the current state of disclosure in Japan:

- In order to enhance the information listed companies provide to their shareholders, they should disclose their Annual Securities Report before the annual general meeting.¹ Disclosing the Annual Securities Report at the same time as the Business Report and Financial Statements—prior to the annual general meeting—will also make audit procedures more efficient.
- In the United Kingdom, for example, a period of four weeks or more elapses between the mailing of convening notices to the date of the annual general meeting, and a similar period is also secured in other Western countries. When listed companies set the schedule pertaining to their annual general meeting, they should take into account these international standards.²
- The date of the annual general meeting should be set so that shareholders have enough time to review agenda items; if necessary, for example, the annual general meeting can be postponed to July.
- In some European nations and the United States, the scope of information on business policies/strategies as well as analysis of financial conditions and operating results that is disclosed by companies is extensive; the scope of such

¹ A survey carried out by the Japan Institute of Business Law has shown that 48 of the listed companies that held an annual general meeting between July 2014 and June 2015 disclosed their Annual Securities Report before the annual general meeting (Commercial Law Review No. 2085, p. 136).

² Based on the Companies Act, public companies should send out convening notices no later than two weeks prior to the date of the annual general meeting.

information should also be broadened in Japan, thus improving the quality of dialogue

- In particular, from the perspective of foreign investors, the number of disclosure documents - including both mandatory and voluntary disclosures - is large, and there is a language barrier to overcome. It is therefore desirable that an easy-to-understand, concise version of these documents is provided.

Representatives of listed companies, for their part, have voiced the following opinions:

- At the annual general meeting, the appointment and dismissal of officers is decided alongside the approval of business plans, in view of performance up until the previous business year; it is inappropriate for corporate decision-making to be delayed due to an excessive lengthening of the period from the end of the accounting period to the annual general meeting.³
- Earnings Releases contain a lot of information and are often far from brief; therefore, it may be necessary to rationalize them by trimming down the quantity of information contained.
- Quarterly Earnings Releases and Quarterly Securities Reports contain many overlapping passages; therefore, it may be necessary to consider eliminating duplication and integrating the two.

In view of the request to enhance dialogue between companies and their shareholders/investors, in Japan, too, it will be necessary to revise the current disclosure system with reference to the European and US systems and practices, and it is important to increase flexibility as pertains to disclosure, so that information can be released in a more timely, effective and efficient fashion as a whole. Specifically:

- Rearranging, unifying and rationalizing information subject to mandatory disclosure while keeping in mind the purpose of the system and increasing flexibility would allow clearer, more effective and more efficient disclosure vis-a-vis the investors; for example, this may be achieved by disclosing information upon unifying the contents of the Annual Securities Report and the materials for the annual general meeting or as a single set of those documents in Japan as well as is done in some European nations and the United States.

³ It was also pointed out that dialogue must not only be intensified at the time of the annual general meeting, but must also carry on throughout the year.

- For example, such as by releasing the materials for annual general meetings upon setting aside a sufficient period before the meetings, thus disclosing information for promoting dialogue in a more timely fashion.

Also, in conjunction with these efforts, it will be appropriate to enhance the disclosure of information in such a way as to promote dialogue. As a result of such initiatives, the current disclosure practices and customs of listed companies could be revised in a direction that encourages constructive dialogue; for example, in Japan, too, the practice of disclosing information upon setting aside a sufficient period before the annual general meeting by unifying the contents of Annual Securities Reports and the materials for annual general meetings or as a single set of those documents is on the rise, and it would be desirable for the Ministry of Justice, the Financial Services Agency and the Keidanren (Japan Business Federation) (“Keidanren”) and other involved parties to work consistently to ensure that more comprehensive corporate information is provided to shareholders/investors in a more timely fashion.

2. Rearranging, unifying and rationalizing disclosed information

(1) Approach to rearranging, unifying and rationalizing disclosed information

As mentioned under "Basic approach," we believe it would be appropriate to take the following steps in order to increase the flexibility of disclosure, ensuring that information subject to mandatory disclosure is provided in a timelier, clearer, more effective and efficient fashion as a whole, and in turn promoting constructive dialogue between companies and their shareholders/investors:

- Rearrange contents among different disclosure documents in view of their respective aims and roles;⁴
- Unify the parts of (i) Business Reports and Financial Statements and (ii) Annual Securities Reports that indicate the same disclosure items and contents;
- Rationalize requirements that overlap or are too burdensome in disclosure documents.

At the same time, in conjunction with these steps, we believe it would be appropriate to enhance the disclosure of corporate information disclosed with a view to promoting dialogue.

(2) Specific direction taken in making revisions

1) Earnings Releases and Quarterly Earnings Releases

Due, in part, to the relative lateness of the disclosure of Annual Securities Reports in disclosure practice, the items contained in Earnings Releases and Quarterly Earnings Releases have been increasing in order to satisfy the needs of investors. It has therefore been pointed out that, in spite of their role as prompt reports, the workload for the preparation and release of such documents has become excessive, and that their contents have overlap in places with those of Annual Securities Reports. For this reason, it would be appropriate to rearrange and rationalize these documents as follows, so that they may be better suited to the aim and role of providing the information that

⁴ The three disclosure systems have the following aims and roles:

1) Stock Exchange Rules (Earnings Releases)

By providing investors with important corporate information in a timely and fair fashion, Earnings Releases contribute to forming a healthy securities market, and therefore to protecting investors.

2) Companies Act (Business Report and Financial Statements)

For shareholders, it is generally difficult to get a grasp of a company's financial conditions, etc. due to the separation of ownership and management. The Business Report and Financial Statements provide a report on the progress and results of the company's accounting and business activities, and serve as important materials informing the shareholders' decisions in exercising voting and other rights. Corporate obligees, for whom corporate assets generally serve as the only security, must be provided with information so as to enable them to correctly grasp the company's financial conditions, etc., thus helping protect shareholders and corporate obligees.

3) Financial Instruments and Exchange Act (Annual Securities Reports)

Providing the information that is necessary and important for investors in making investment decisions can ensure fairness in transactions of financial instruments, etc. and facilitate smooth distribution of securities; additionally, the information promotes fair price formation of financial instruments, etc. through full utilization of functions of the capital market, thus helping protect investors.

is important for investors in making investment decisions in a prompter, fairer way, and that disclosure may be more effective and efficient.

i. Clearly indicating that audits and quarterly reviews are unnecessary

Information concerning the settlement of accounts at listed companies is one of the most important pieces of corporate information, serving as the basis of the investors' investment decisions. Listed companies bear a duty to immediately disclose their settlement of accounts once this is completed. On the other hand, about 40% of listed companies release Earnings Releases after audits,⁵ and it has been pointed out that, in many cases, Earnings Releases are not released even though the information on the settlement of accounts, which should be released promptly, is ready.

There are also instances in which the dates of the disclosure of the Quarterly Earnings Releases and of the Quarterly Securities Report are close to each other. While some have remarked that it would be necessary to integrate the two, in some cases the proximity of the dates is due to waiting for verification in the course of quarterly review. It has been pointed out that it may instead be necessary to encourage the early submission of Quarterly Earnings Releases, which require timeliness.

We must remember that the disclosure of information through Earnings Releases and Quarterly Earnings Releases has meaning inasmuch as it is timely. We should make it clear to companies that disclose their Earnings Releases upon waiting for audits and quarterly reviews that there is no need for these to be completed before releasing the Earnings Releases, and that it would be desirable for information to be disclosed in a timely fashion once settlement data is ready.

ii. Rationalizing by trimming down document contents with a focus on timeliness

In order to encourage companies to submit their Earnings Releases and Quarterly Earnings Releases early on, these should only be made to include entries that require timeliness; on the other hand, entries that do not require particular timeliness should be indicated in Annual Securities Reports and Quarterly Securities Reports.

⁵ "Advice on the Disclosure and Audit System - Toward the Centralization of the Disclosure/Audit System Under the Financial Instruments and Exchange Act and the Companies Act " (November 4, 2015), The Japanese Institute of Certified Public Accountants

For example, the business policy indicated on Earnings Releases is, at present, a valuable piece of information in determining whether a given company matches the intent behind an investor's mid- to long-term investments; such information, however, does not necessarily need to be provided as early as possible, and we believe it would be appropriate to include it in the Annual Securities Report.

iii. Increasing the flexibility by limiting requested entries, etc.

In view of the fact that the disclosure of information in the form of Earnings Releases and Quarterly Earnings Releases makes sense inasmuch as it is made in a timely fashion, the flexibility allowed in determining the contents of such documents should be increased as far as possible. To this end, the entries requested by the stock exchange for inclusion into Earnings Releases and Quarterly Earnings Releases should be limited to summary information, operating results, financial conditions, an overview of future prospects (Earnings Releases only)⁶ and consolidated financial statements (or quarterly consolidated financial statements in the case of Quarterly Earnings Releases; the same applies in 1) iii)) and main notes.⁷ Reducing as far as possible the number of compulsory and requested entries, such as by leaving the inclusion of other information to the discretion of companies, would allow tailoring the extent of disclosure to the specific conditions of individual companies.

Furthermore, taking into account timely disclosure rules, etc., the system will not require consolidated financial statements to be disclosed in conjunction with Earnings Releases and Quarterly Earnings Releases in cases where there is no risk of misleading investors in their investment decisions, instead allowing companies to disclose their consolidated financial statements when these are ready.

These revisions are intended to allow companies to disclose their information early on in accordance with their individual circumstances.

⁶ In Quarterly Earnings Releases, the inclusion of operating results, financial conditions and an overview of future prospects is already considered as voluntary.

⁷ Specifically, such information consists of notes on the going concern assumption, changes to accounting policies, segment information (Earnings Releases only) and per share data (Earnings Releases only), etc.

For this reason, any company that does not disclose its consolidated financial statements will be expected to provide the financial information required by investors voluntarily.⁸ Furthermore, it would be appropriate to release consolidated financial statements as soon as they are ready.

2) Business Report and Financial Statements

Business Report and Financial Statements provide shareholders and creditors with the information they require to exercise their rights; much of the information thereof is the same in kind as that which is provided to investors in Annual Securities Reports to help them make investment decisions.

The Keidanren offers a template of Business Report and Financial Statements in the form of the "Template for Documents of Public Companies Based on the Ordinance for Enforcement of the Companies Act and Rules on Corporate Accounting (Revised Edition)" (March 9, 2016) (the "Keidanren Template"). In certain parts, the Keidanren Template and the Annual Securities Report may be at variance in terms of the contents listed for similar entries⁹; representatives of listed companies have pointed out that it should be made possible to unify entries across Business Report and Financial Statements, and Annual Securities Report.

The Ordinance for Enforcement of the Companies Act and Rules on Corporate Accounting, which stipulate the information to be disclosed in the Business Report and Financial Statements, do not establish any details with

⁸ Following system changes, it would be desirable to provide the investors with the financial information they require in a timely fashion through dialogue between companies and investors, while keeping in mind the intent behind said system changes. Besides, the opinion has been voiced that, given the fact that Quarterly Securities Reports are disclosed early on after the release of Quarterly Earnings Releases, in-depth financial information is less required at the time of release of Quarterly Earnings Releases, while such in-depth financial information is more necessary when releasing Earnings Releases, considering that there is a considerable period of time from the release of Earnings Releases to disclosure of Annual Securities Reports.

⁹ For example, the Ordinance for Enforcement of the Companies Act establishes "Information on Significant Parents and Subsidiary Companies" as part of Business Reports; given that companies are required to include this information in the Annual Securities Report's "Overview of Affiliated Entities" section, describing the contents of the Annual Securities Report in both documents would allow unifying entries thereof from a legal standpoint. On the other hand, as a specific example, the Annual Securities Report indicates the ownership rate of voting rights, including indirect ownership by affiliated companies, while the Keidanren Template indicates equity ratio; if the entry in the Annual Securities Report is compiled with reference to the Keidanren Template, both the ownership rate and equity ratio will need to be included for the purpose of unification. Moreover, the Ordinance for Enforcement of the Companies Act establishes "Information on Employees as of the End of Business Year" as part of the contents of Business Reports; given that companies are required to additionally describe annual average salary under "Employee Data" in the Annual Securities Report, in this case, too, describing the contents of the Annual Securities Report at both documents would allow unifying entries thereof from a legal standpoint. On the other hand, the Keidanren Template indicates change in workforce compared with the end of the previous term as a specific entry, and in cases where the Keidanren Template is referred to by the Annual Securities Report, companies are required to include these entries of the Keidanren Template for the purpose of unification as well.

regard to the formats of both documents and the entries of the Business Report. For this reason, it would be appropriate to clearly indicate that, if a company does not follow the Keidanren Template, it would nevertheless be acceptable for its Annual Securities Report to have shared entries with those required under the Ordinance for Enforcement of the Companies Act and Rules on Corporate Accounting.

In this way, the company may compile its Annual Securities Report by making reference to the contents of its Business Report and Financial Statements, or compile its Business Report and Financial Statements by making reference to the contents of the Annual Securities Report, thus making it easier to prepare and disclose both as virtually a single unit. Unifying the time of disclosure will also make it easier to release the two as a single set of documents.

Furthermore, it would be desirable for the Financial Services Agency, the Ministry of Justice, the Keidanren and other concerned parties to make sure that individual companies are aware of these points, facilitate corporate initiatives geared toward the unification of disclosed information and releasing the two as a single set of documents, and make continued efforts toward further unification and releasing the two as a single set of documents.

3) Annual Securities Report

The Annual Securities Report provides investors with necessary and important information required for investment decisions, such as detailed description of business. In view of this role, there are certain pieces of information that it would be preferable to include in the Annual Securities Report rather than in other documents as is currently done. Also, until the present moment, disclosure requirements in the Annual Securities Report have been increased and added on an as-needed basis. However, some of these requirements include contents that we believe to now be duplicative; further, certain information has not been disclosed as contemplated at the time of the formulation of disclosure requirements.

In view of the current needs for disclosure, it would therefore be appropriate to rearrange and rationalize disclosure requirements, and improve disclosure contents to promote dialogue as follows, thus encouraging companies to disclose in a more systematic and understandable way:

i. Adding of business policies/strategies

The information on business policies which was decided to be deleted from Earnings Releases is necessary and material for investors to make investment decisions, and is also important for promoting dialogue. It is therefore appropriate to include in the Annual Securities Report disclosure requirements of business environment, business policies and business strategies in addition to the current requirement of challenges facing the company. For example, this could be done by revising the current item of "Challenges Facing the Company" to the new item of "Challenges Facing the Company and Business Policy".

ii. Eliminating duplication and enhancing disclosure to promote dialogue in relation to "Management's Discussion and Analysis of Financial Condition, Results of Operations and Cash Flows"

(i) Current disclosure requirements

In their Annual Securities Reports, companies are currently required to:

- a) Describe their operating results and cash flows analytically, by segment and in comparison with the results of the previous year in the item of "Overview of Operating Results";
- b) Provide information on actual figures of production, orders received and sales in connection with respective segment information and in comparison with the results of the previous year in the item of "Overview of Production, Orders Received and Sales," and describe special matters, if any, that may be required in the event of significant changes to production capability, or the purchase/sales price of main products; and
- c) Provide information about analysis and discussion of financial conditions, operating results and cash flows ("Operating Results, etc."), such as analysis on factors materially affecting operating results, in the item of "Management's Discussion and Analysis of Financial Condition, Results of Operations and Cash Flows" ("MD&A") so that investors can make appropriate decisions about business performance.

Although these requirements have been added on an as-needed basis, it is pointed out that there are duplicative disclosures. For example, it is said that there are many cases where "MD&A" makes reference to the

"Overview of Operating Results," or where the "Overview of Operating Results" contains the same information as the "Overview of Production, Orders Received and Sales."

On the other hand, it has been pointed out that, in some cases, the contents of the "Overview of Operating Results" are not analyses but are a mere summary of financial information, and that special matters required to be described in "Overview of Production, Orders Received and Sales" are not discussed sufficiently. Also, companies are expected to provide in "MD&A" thorough analysis and discussion of Operating Results, etc. that enable shareholders/investors to see the companies through the eyes of management. "MD&A" is also important information for promoting constructive dialogue between companies and their shareholders/investors. Nevertheless, it is argued by some that Japanese companies tend to offer "MD&A" disclosures using boiler-plate expressions, and that their "MD&A" lack usefulness.

(ii) Direction taken in making revisions

In view of the above discussions, whilst eliminating the duplication of items "Overview of Operating Results," "Overview of Production, Orders Received and Sales" and "MD&A," measures should be taken to improve the level of disclosure of these items up to the expected level and make disclosure in a clearer and more systematic way, thus contributing to dialogue between companies and their shareholders/investors. To this end, we believe it appropriate to take the following steps:

- a) The "Overview of Operating Results" and the "Overview of Production, Orders Received and Sales," which, in parts, overlap with the "MD&A," can be regarded as providing the information serving as the basis of analysis and discussion in the "MD&A." In order to reorganize the contents, the former two items will be integrated into the latter "MD&A," which will contain:
 - An overview of Operating Results, etc. (including the "Overview of Production, Orders Received and Sales")
 - Analysis and discussion of Operating Results, etc.
- b) The "Overview of Operating Results, etc." should require companies to provide information on financial conditions, operating results and cash flows in an objective fashion (in the form of actual figures) both

for the whole business and for specific segments.

- c) To achieve the purpose of the "MD&A," that is, to provide specific and clear information that enables shareholders/investors to see the companies from management's perspective, the "Analysis and Discussion of Operating Results, etc." should require companies to provide, for instance, management-level perception and analysis regarding factors which materially affected Operating Results, etc. both for the whole business and for specific segments. Also, in order to encourage mid- to long-term investing, it should be made clear that companies can describe in the MD&A how management analyzes and evaluates Operating Results, etc. in view of the mid- to long-term targets such as business policies and strategies.

iii. Eliminating duplication on description of stock acquisition rights

The items of "Information on Stock Acquisition Rights, etc.," "Description of Shareholder Rights Plan" and "Details of Stock Option Plans" are all disclosure requirements intended to clarify the likelihood of dilution of equity. The reason why the items of "Description of Shareholder Rights Plan" and "Details of Stock Option Plans" were added separately was to make it clear for investors that the former item was focused on stock acquisition rights issued as an anti-takeover measure and the latter item was focused on stock acquisition rights issued for the remuneration of officers and employees, although these two items partially overlapped with the content of "Information on Stock Acquisition Rights, etc."

However, given the subsequent prevalence of shareholder rights plans and stock option plans, it is considered at the present that it is less likely to mislead investors about the nature of these two types of stock acquisition rights even without providing the items separately from the item of "Information on Stock Acquisition Rights, etc." Therefore, it would be appropriate to rationalize disclosure requirements by integrating these three items and requiring to describe the shareholder rights plan and stock option plans in a single item.

4) Other disclosure requirements that can be unified

In the item of "Information on Top Ten Shareholders" in Business Reports, since the focus is on the voting rights of major shareholders, treasury shares are deducted from the total number of issued shares which serves

as the basis for calculating ownership percentages. On the other hand, treasury shares are not deducted from the total number of issued shares in the item of "Major Shareholders" of Annual Securities Reports from the perspective of providing information for the secondary market. However, in view of the fact that information pertaining to the number of treasury shares is also disclosed under the item of "Information on Voting Rights," it would be appropriate to unify the item of "Major Shareholders" in the Annual Securities Report and the item of "Information on Top Ten Shareholders" in the Business Report by deducting treasury shares from the total number of issued shares in the former item.

3. Timing and procedure of disclosure toward promoting constructive dialogue

(1) Timing of disclosure and annual general meetings toward promoting constructive dialogue

The determination of the date of the annual general meeting and any associated dates should be made in consideration of facilitating sufficient constructive dialogue with shareholders and ensuring the accuracy of information necessary for such dialogue. Listed companies should provide accurate information to shareholders as necessary in order to facilitate appropriate decision-making at annual general meetings. (Supplementary Principle of the Corporate Governance Code 1-2-1) and 1-2-3)). With regard to this point, institutional investors, as mentioned under "Basic approach", have made the following remarks:

- In order to enhance the information they provide to their shareholders, listed companies should disclose their Annual Securities Reports before the annual general meeting.
- In the United Kingdom, for example, a period of four weeks or more elapses between the mailing of convening notices to the date of the annual general meeting, and a similar period is also secured in other Western countries. When listed companies set the schedule pertaining to their annual general meeting, they should take into account these international standards.
- The date of the annual general meeting should be set so that shareholders have enough time to review agenda items; if necessary, for example, the annual general meeting can be postponed to July.

In view of such remarks as well as of international trends, it would be desirable for listed companies to intensify constructive dialogue with their shareholders; for example, this could be done by:

- Disclosing their Annual Securities Reports with as much advance as possible before the annual general meeting;
- Setting an appropriate date for the annual general meeting and providing Business Report and Financial Statements early on in order to secure a sufficient period for considering the annual general meeting's agenda items.

In order to aid listed companies in such efforts, it will be necessary to give more flexibility in how the timing and procedure of disclosure are set in relation to annual general meetings, thus promoting constructive dialogue. To this end, appropriate measures may be taken to broaden the scope of options available to companies in setting the date of the annual general meeting - for example, concerning entries of disclosure documents that may be a hindrance for a company settling its accounts in March and holding its annual general meeting in July.¹⁰ Moreover, in terms of the procedures, we believe that reducing the time required to print/send documents would allow more time for preparing and auditing Business Report and Financial Statements, and that prompting the electronic provision of Business Report and Financial Statements would allow securing a sufficient period between the provision of information to shareholders and the annual general meeting. Also, it will be important for the parties involved to make consistent efforts toward ensuring that listed companies engage in such initiatives.

(2) Revising disclosure in order to ensure the flexibility of annual general meeting

For example, in cases where a company settles its accounts in March and then holds the annual general meeting in July, the voting record date will be

¹⁰ It has been pointed out that holding the annual general meeting in July offers the following advantages: 1) promoting dialogue by having companies submit their Annual Securities Report before the annual general meeting and securing a sufficient period for considering the annual general meeting's agenda items; 2) enabling listed companies to prevent annual general meetings from concentrating in the same period; 3) allowing companies to postpone the provision of Business Report and Financial Statements, thus helping secure accounting audit hours.

Disadvantages include: 1) at the annual general meeting, the appointment and dismissal of officers is decided alongside the approval of business plans, in view of performance up until the previous business year; holding the annual general meeting in July may result in delays in corporate decision-making based on performance; 2) efforts made by management to speed up the settlement of accounts would be nullified.

later than the date of the settlement of accounts;¹¹ the Annual Securities Report and the Business Report must list "Major Shareholders" and "Information on Top Ten Shareholders" as of the date of the settlement of accounts. As a result, shareholders must be determined for the purpose of indicating major shareholders on the disclosure documents, separately for the purpose of the exercise of voting right, and it has been pointed out that this risks increasing the overall burden of office work sustained by companies.

A possible way to avoid this type of burden may be to release information on major shareholders on the voting record date instead of on the date of the settlement of accounts. We believe that Annual Securities Reports and Business Reports are intended to provide information on shareholders that can exert a major influence on the decision-making of listed companies at annual general meetings in order to ensure that shareholders exercise their rights and investors make investment decisions appropriately. Accordingly, we believe that it would be desirable to enable companies to disclose information on major shareholders as of the voting record date in the Annual Securities Report and the Business Report.¹²

(3) Promoting the electronic provision of Business Report and Financial Statements

In addition to setting an appropriate date for the annual general meeting, another possible way of securing a sufficient period for considering the annual general meeting's agenda items is to reduce the time required for printing and mailing documents, so that the Business Report and Financial Statements can be provided to shareholders early on.

Under the current mandatory disclosure, providing the entire Business Report and Financial Statements by electronic means is allowed on condition of obtaining the prior consent of shareholders. In the absence, however, of said consent, only a part of the documents—namely, the statement of changes in net assets and the tables of explanatory notes on unconsolidated financial statements—can be provided by electronic means.

¹¹ Under the Companies Act, record dates that can be set by stock companies are limited to dates enabling shareholders to exercise their rights within three months from the record date mentioned above (Article 124, Paragraph 2 of the Companies Act). This means that, if the date of the annual general meeting is set to later than three months after the day following the settlement of accounts, it will not be possible for the date of the settlement of accounts to coincide with the record date, as the period from the date of the settlement of accounts until the annual general meeting will exceed three months.

¹² Information on major shareholders that is current as of the voting record date cannot be provided in the Business report if the voting record date is later than the date on which the Business Report is provided, and the increased office workload due to determination of shareholders twice must be noted.

It has been pointed out that expanding the scope of documents that can be provided by electronic means without prior consent of shareholders and promoting the electronic provision of Business Report and Financial Statements would offer several advantages, among which: reducing the time required for printing; securing a sufficient period for considering the annual general meeting's agenda items; and making more time for preparing and auditing the Business Report and Financial Statements. On the other hand, it has been pointed out that, depending on its scope and method, expanding the scope of electronic provision could cause disadvantages of the decline in voting rates and digital divide issue in relation to individual shareholders

In view of these points, it would be desirable to expand the scope of documents that can be provided by electronic means without prior consent of shareholders; we believe that possible disadvantages should be considered based on the specific situations of individual companies and their shareholders.¹³

III. Enhancing disclosure of non-financial information

Non-financial information includes a wide array of information such as governance, social and environmental matters as well as business policies/strategies and MD&A. In recent years, there has been further growing interest in such non-financial information in response to the initiatives to bolster corporate governance and the increasing demand regarding social and environmental issues.

Companies are required to disclose in their Annual Securities Reports information that is necessary and appropriate for the public interest or protection of investors. Accordingly, for example, in cases where social or environmental issues have a material impact on the business or performance of the issuing companies, they are required to disclose such issues in the "MD&A" and "Risk Factors" of the Annual Securities Reports. Also, in recent years, in addition to the improvement of disclosure requirements of governance information in Corporate Governance Reports, a substantial number of companies have taken to disclosing diverse and technical non-financial information in the form of CSR reports and Environment Reports in order to satisfy the wide-ranging information needs of investors and other stakeholders.

¹³ For example, it has been suggested that companies change their Articles of Incorporation to allow for electronic provision, or that companies providing their materials by electronic means give shareholders who wish to have documents delivered in writing the right to do so.

To ensure that companies provide non-financial information which meets stakeholders' needs through creativity and ingenuity, it could be one option to encourage companies to provide non-financial information through voluntary disclosure.¹⁴

Also note that it might be necessary in the future to make some non-financial information subject to mandatory disclosure requirements; therefore, it is important to make clear the approach to take for information whose disclosure should be obligatory. In view of the criminal punishments and other heavy sanctions applied to false statements in the Annual Securities Reports, and of the necessity to concisely disclose the information that is truly material for investment decisions, we believe that it would be appropriate to take into account the following elements holistically when considering whether certain non-financial information should expressly be made obligatory:

- Whether the information is truly necessary for investors in making investment decisions;
- Whether the information has become prevalent in the securities market, and has been provided to investors to keep them from being misled;
- Whether the cost borne across the market would be considerable, including, for example, the cost borne by disclosing companies as a consequence of making the information disclosure mandatory, and the cost borne by investors to acquire and evaluate the information;
- Whether the request to disclose non-financial information will adversely discourage companies from disclosing useful information, and as a result the overall quality and quantity of information disclosure will decline;
- Whether the disclosure of non-financial information is required by other laws.

Also, as mentioned under "Basic approach," in order to improve accessibility to corporate information, there are the needs of those investors, especially overseas institutional investors, that companies compile the information that is released across multiple disclosure documents into a single document in an

¹⁴ It has been pointed out that there is a trend in some European nations and the US toward improved disclosure of non-financial information, and that it is necessary to monitor this trend. It is desirable to continue considering the disclosure of non-financial information in light of such remarks.

easy-to-understand fashion. In order to address investor needs of this kind, we believe that it is important for companies to consider the way of voluntary disclosure through creativity and ingenuity; some examples may be to unify the information contained in multiple disclosure documents into a single document, or to systematically include hyperlinks to multiple disclosure documents on a single web page.

IV. Other matters

1. Voluntary application of IFRS in individual financial statements

In Japan, since fiscal year 2010, the Financial Instruments and Exchange Act has allowed preparing and submitting consolidated financial statements in conformity with International Financial Reporting Standards (IFRS). Since that time, the number of companies that have voluntarily applied IFRS to their consolidated financial statements has been steadily on the rise, with 109 listed companies having either begun voluntary application or issued a press release announcing plans to do so as of March 31, 2016 (accounting for about 20% of the market capitalization of the tradable shares of all listed companies).

Under the Financial Instruments and Exchange Act that is currently in effect, even companies that have voluntarily applied IFRS are still required to prepare their individual financial statements in accordance with J-GAAP. Some companies that have voluntarily applied IFRS have expressed a desire to have IFRS recognized for the preparation of individual financial statements and financial statements required under the Companies Act in order to reduce the burden of office work. It has been pointed out that, in doing so, it may be necessary to take measures for other systems as well in view of differences between IFRS and J-GAAP, from aspects such as restriction on dividends and the handling of taxation, and we believe that the needs of listed companies will have to be taken into account.

In view of the fact that sustained efforts toward the "further expansion of the number of companies voluntarily applying IFRS" are required in the context of the Japan Revitalization Strategy (2015 revision), it would be desirable for involved ministries and government offices to proceed with review on recognizing the voluntary application of IFRS to individual financial statements and other financial statements, keeping in mind the needs of listed companies.

2. Rules on fair and equitable information disclosure

In order to promote constructive dialogue with shareholders/investors, in turn ensuring sustainable growth and increased corporate value over the mid- to long term, it is important for companies to be proactive in providing information to their shareholders/investors. On the other hand, fair and equitable information disclosure is an essential element in ensuring the sound development of the securities market. If a company provides, without reasonable cause, important information to a specific party only, this may harm the trust of market participants, and hinder the sound development of the securities market.

In order to ensure the market's trust in the fair and equitable disclosure of information, in foreign countries, rules are in place to ensure that when companies disclose inside information to a specific third party, such information is made public simultaneously (Fair Disclosure Rules), as well as rules to ensure that company release information in a timely manner. For example, in the United States a rule (Regulation FD) is in place stating that when an issuer discloses material nonpublic information regarding that issuer or its securities to certain recipients, the issuer shall make public disclosure of that information, either simultaneously in the case of an intentional disclosure, or promptly in the case of a non-intentional disclosure; the EU's Market Abuse Directive also contains similar provisions.

In Japan, on the other hand, while the stock exchange has provided a system for timely disclosure, there is no rule stipulating that when a company provides inside information to a third party before timely disclosure, that information must also be provided to other investors simultaneously.¹⁵

Previously, in response to remarks to the effect that Fair Disclosure Rules should be introduced, the opinion was voiced that the problems that would require the introduction of Fair Disclosure Rules have not occurred prominently in Japan.

¹⁵ In Japan, Financial Instruments Business Operators, etc. are forbidden from inducing customers by providing nonpublic material information that may influence investment decisions (Article 117, Paragraph 1, Item 14 of the Cabinet Office Ordinance on Financial Instruments Business, etc.); however, companies are not forbidden from providing the same information.

Also, in order to prevent insider trading, corporate insiders of listed companies are forbidden from communicating material facts concerning business "with the purpose of securing profits for other persons or preventing said persons from incurring losses" (Article 167-2, Item 1 of the Financial Instruments and Exchange Act); however, communications that take place without the aim of securing the profits or avoiding the losses of other persons are not restricted, and the persons providing information are only subject to penal provisions and administrative monetary payments if the recipients of the information have actually engaged in trading (Article 175-2, Item 1 and Article 197-2 of the Financial Instruments and Exchange Act).

On the other hand, recent years have seen cases of administrative dispositions imposed on securities companies engaging in inducement upon providing their customers with inside information, where issues emerged of listed companies providing the analysts of such securities companies with unreleased performance information. Also, foreign investors have pointed out that a certain number of major countries have introduced Fair Disclosure Rules from the perspective of equality and transparency, and that, in order to earn the market's trust, it may be necessary to introduce similar rules in Japan as well.

In view of this situation, we believe that in Japan, too, it is necessary to specifically discuss the possibility of introducing Fair Disclosure Rules to ensure the fair and equitable corporate information disclosure, and, in turn, promote constructive dialogue with shareholders/investors and earn the trust of market participants.

On the other hand, remarks have also been made to the effect that the introduction of Fair Disclosure Rules may cause companies to become reluctant to disclose information, and that this may hinder the fair collection of information by media organizations and analysts alike.

As we consider the introduction of Fair Disclosure Rules to Japan, it is necessary to sufficiently take such remarks into account and discuss system design in detail, encompassing practices in foreign countries in order to ensure the fair and equitable disclosure of inside information; discussion will include the scope of rule application, exceptions where the disclosure of information to third parties should be allowed, and enforcement when the rules are violated.

3. Investment decisions made from a mid- to long-term perspective

In order to ensure that the corporate disclosure of information leads to sustainable growth and increased corporate value over the mid- to long term, it will be necessary to take further steps encouraging investors to use the information disclosed by companies to make investment decisions grounded in a mid- to long-term perspective.

Such steps may include the following:

- Discuss dialogue between institutional investors and the investee companies of investment, as well as the way in which voting rights are exercised at the Council of Experts Concerning the Follow-up of Japan's

Stewardship Code and Japan's Corporate Governance Code, so as to make stewardship responsibility more effective in boosting corporate value over the mid- to long term and ensuring sustainable corporate growth.

- Individual investors are generally expected to have the mid- to long term in mind, with shareholders holding shares for over three years on average accounting for about 70%.¹⁶ In view also of the expansion of the defined-contribution pension system and NISA (Nippon Individual Savings Account: a system for the tax exemption of small investments), further intensify education toward mid- to long-term-oriented investing in the context of the initiatives undertaken by the Japan Securities Dealers Association and other organizations to improve the literacy of individual investors.^{17,18}

V. Conclusion

The above is the result of this Working Group's discussion of the way in which information should be disclosed in order to encourage constructive dialogue between companies and their shareholders/investors. It is our hope that the Financial Services Agency and other concerned parties will promptly take steps to implement the recommendations contained in this Report.

It is essential that the promotion of constructive dialogue between companies and their shareholders/investors does not end with the recommendations made in this Report, but that concerned parties instead engage in continued efforts. We hope that the users of the disclosure system—namely, companies and their shareholders/investors—will look for ways to encourage constructive dialogue on a routine basis, and create better practices. Also, concerned parties will need to follow up on the progress made in implementing the recommendations made in this Report and on their effects, as well as continuously consider necessary initiatives.

¹⁶ "Awareness Survey on Securities Investments by Individual Investors" (October 2015), Japan Securities Dealers Association

¹⁷ In order to take investment decisions from a mid- to long-term perspective, we believe that education on accounting concepts will also be important, making sure that investors understand Financial Statements.

¹⁸ An additional way to encourage mid- to long-term-oriented investments would be to consider setting the publication period for securities registration statements employing the reference method, which is currently one year from the date of receipt (Article 25, Paragraph 1, Item 2 of the Financial Instruments and Exchange Act), to five years as is the case with regular securities registration statements (Article 25, Paragraph 1, Item 1 of the Financial Instruments and Exchange Act).