

Provisional translation

[Exposure Draft]
Japan's Corporate Governance Code

Seeking Sustainable Corporate Growth and Increased Corporate Value
over the Mid- to Long-Term

The Council of Experts Concerning the Corporate Governance Code

December 12, 2014

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(In Japanese alphabetical order)

Japan's Corporate Governance Code [Exposure Draft]

In this Corporate Governance Code, “corporate governance” means a structure for transparent, fair, timely and decisive decision-making by companies, with due attention to the needs and perspectives of shareholders and also customers, employees and local communities.

This Corporate Governance Code establishes fundamental principles for effective corporate governance at listed companies in Japan. It is expected that the Code's appropriate implementation will contribute to the development and success of companies, investors and the Japanese economy as a whole through individual companies' self-motivated actions so as to achieve sustainable growth and increase corporate value over the mid- to long-term.

Background

1. Japan's initiatives for the corporate governance system have significantly accelerated in recent years.
2. The Japan Revitalization Strategy approved by the Cabinet in June 2013 specified as one of its measures the “preparation of principles (a Japanese version of the Stewardship Code) for institutional investors in order to fulfill their stewardship responsibilities, such as promoting the mid- to long-term growth of companies through dialogue.” This led to discussions starting in August 2013 by the Council of Experts Concerning the Japanese Version of the Stewardship Code established under the Financial Services Agency, which drafted and released the “Principles for Responsible Institutional Investors (Japan's Stewardship Code)” (hereinafter, “Japan's Stewardship Code”) in February 2014. Japan's Stewardship Code is currently in effect.

In addition, the Legislative Council of the Ministry of Justice adopted the “Outlines for the Revision of the Companies Act” in September 2012. Subsequently, a bill was submitted to the Diet as an amendment to the Companies Act, including a provision requiring companies to explain if they do not appoint outside directors. The bill was passed in the Diet and became law in June 2014.

3. Another measure specified in the Japan Revitalization Strategy was the encouragement of “securities exchanges in Japan to take measures that lead to the enhancement of corporate governance, for example, by clarifying listing rules concerning the appointment of outside directors and developing new indices for companies that are highly evaluated for their profitability and management.” This led to the establishment by the Japan Exchange Group, Inc. of the JPX-Nikkei Index 400, a new stock index composed of “companies with high appeal for investors, which meet the requirement of global investment standards, such as the efficient use of capital and investor-focused management perspectives.” The operation of this index began in January 6, 2014.

4. In this context, the Japan Revitalization Strategy (Revised in 2014) approved by the Cabinet in June 2014 specified as one of its measures the establishment of “a council of experts of which the Tokyo Stock Exchange and the Financial Services Agency will act as joint secretariat, aiming to prepare the key elements of the Corporate Governance Code by around autumn 2014 for the Tokyo Stock Exchange to newly prepare the Corporate Governance Code in time for the 2015 season of general shareholder meetings.” This led to the formation of the Council of Experts Concerning the Corporate Governance Code (hereinafter, the “Council of Experts”) in August 2014, with the Financial Services Agency and the Tokyo Stock Exchange serving as joint secretariat. The Council of Experts met eight times since August, and developed its basic thought on a corporate governance code as the “Corporate Governance Code [Exposure Draft]” (hereinafter, the “Code”). The Japan Revitalization Strategy (Revised in 2014) also specified that the formulation of a corporate governance code should be based on the OECD Principles of Corporate Governance. The Council of Experts thus engaged in their discussions by giving due reference to the OECD Principles, and the content of the Code is based on them.

5. The Code is scheduled to receive broad public comments, both domestic and global. Then, in accordance with the Japan Revitalization Strategy (Revised in 2014), the Tokyo Stock Exchange is expected to revise its listing rules and related regulations and formulate a corporate governance code, which is expected to have the same content as the Code.

Objectives of the Code

6. The Code has its foundation in the Japan Revitalization Strategy (Revised in 2014), and is formulated as part of Japan’s economic growth strategy. As noted above, in the Code corporate governance means a structure for transparent, fair, timely and decisive decision-making by companies, with due attention to the needs and perspectives of shareholders and also customers, employees and local communities. On this basis, the Code establishes fundamental principles for effective corporate governance.
7. It is important that companies operate manage themselves with the full recognition of responsibilities to a range of stakeholders, starting with fiduciary responsibility to shareholders who have entrusted the management. The Code seeks “growth-oriented governance” by promoting timely and decisive decision-making based upon transparent and fair decision-making through the fulfillment of companies’ accountability in relation to responsibilities to shareholders and stakeholders. The Code does not place excessive emphasis on avoiding and limiting risk or the prevention of corporate scandals. Rather, its primary purpose is to stimulate healthy corporate entrepreneurship, support sustainable corporate growth and increase corporate value over the mid- to long-term.

Recognizing the board’s fiduciary responsibilities to shareholders and other stakeholder responsibilities, the Code includes language that calls for a certain measure of corporate self-discipline. It would not be appropriate, however, to view them as limits on companies’ business prerogatives and activities. Indeed, quite the opposite: without appropriately functioning corporate governance, the reasonableness of management’s decision-making processes cannot be secured. In such a case, the management may become risk-avoiding due to concerns that their responsibility with respect to business decisions may be put in question. Such a situation would significantly restrict decisive decision-making and companies’ business activities. By calling for appropriate corporate governance disciplines at Japanese companies, the Code aims to have the management free from such restrictions and establish an environment where healthy entrepreneurship can flourish and where the management’s capabilities can be given full force.

8. Given the concerns regularly perceived about the growth of short-term investment activities in capital markets, it is hoped that the Code will also have the effect of

promoting mid- to long-term investing. Market participants who have the strongest expectations for the improvement of corporate governance are usually shareholders with mid- to long-term holdings, and they usually wait until the improvements of corporate governance are achieved. Notwithstanding recent concerns over the growth of short-termism in the market place, such shareholders have the potential to become important partners for companies. The Code asks companies to examine whether there are issues in their corporate governance in light of the aim and spirit of the principles of the Code, and take self-motivated actions in response to those issues. Such efforts by companies will make possible further corporate governance improvements, supported by purposeful dialogue with shareholders (institutional investors) based on Japan's Stewardship Code. In this sense, the Code and Japan's Stewardship Code are "the two wheels of a cart", and it is hoped that they will work appropriately and together so as to achieve effective corporate governance in Japan.

“Principles-Based Approach” and “Comply-or-Explain Approach”

9. The Code specifies General Principles, Principles and Supplementary Principles. The manner of their implementation may vary depending on industry, company size, business characteristics, company organization and the environment surrounding the company. The Code's principles should be applied in accordance with each company's particular situation.
10. Given the above, the Code does not adopt a rule-based approach, in which the actions to be taken by companies are specified in detail. Rather, it adopts a principles-based approach so as to achieve effective corporate governance in accordance with each company's particular situation.

This principles-based approach has already been adopted in Japan's Stewardship Code. The significance of this approach is found in having parties confirm and share the aim and spirit of the principles and review their activities against the aim and spirit, not against the literal wording of the principles, even where the principles may look abstract and broad on the surface. For this reason, the terminology used in the Code is not strictly defined as is the case with laws and regulations. It is anticipated that companies that are accountable to shareholders and other stakeholders will apply appropriate interpretations of the terminology in accordance with the aim and spirit of the Code.

Shareholders and other stakeholders are also expected to fully understand the significance of this principles-based approach in their dialogue with companies.

11. Moreover, unlike laws and regulations the Code is not legally binding. The approach it adopts for implementation is “comply or explain” (either comply with a principle or, if not, explain the reasons why not to do so). In other words, the Code assumes that if a company finds specific principles (General Principles, Principles and Supplementary Principles) inappropriate to comply with in view of their individual circumstances, they need not be complied with, provided that the company explains fully the reasons why it does not comply.

12. While this comply-or-explain approach is also adopted in Japan’s Stewardship Code, it is an approach that may not yet be well known in Japan. It is necessary to bear fully in mind that companies subject to the Code are not required to comply with all of its principles uniformly. Shareholders and other stakeholders should also understand the aim of this approach and should fully respect the particular circumstances of individual companies. In particular, it would not be appropriate to consider the literal wording of each principle of the Code superficially and conclude automatically that effective corporate governance is not realized by a company on the ground that the company does not comply with some of the principles. Of course, when companies explain their reasons for non-compliance, they should do so by explaining the measures they have taken or they will take for those non-compliant principles in a manner that non-compliance will gain full understanding from shareholders and other stakeholders. Offering a superficial explanation using boiler-plate expressions would be inconsistent with the concept of “comply or explain.”

Implementation of the Code

13. The Code is applicable to all companies listed on securities exchanges in Japan (hereinafter, “companies”).¹ For the application of the Code to the companies listed in the markets other than the main market (namely, the Tokyo Stock Exchange First and Second Sections), some consideration may need to be given to the size and characteristics of such companies with respect to the applicability of principles such as governance structure and disclosure. In this respect, it is expected that the Tokyo Stock Exchange will clarify what sorts of consideration will need to be given to which parts of the Code for the companies listed in the markets other than the main market.

14. Companies in Japan may choose one of the following three forms of corporate organization²: Company with *Kansayaku* Board, Company with Three Committees (Nomination, Audit and Remuneration), or Company with Supervisory Committee. The Code does not express a view on any of these forms of company organization. It specifies fundamental principles for corporate governance that should be applicable to whichever form of organization a company may choose.

Given that most Japanese companies are Companies with *Kansayaku* Board, a number of principles specified in the Code are drafted under the assumption that the form of Company with *Kansayaku* Board is chosen. It is anticipated that companies that take a form other than Company with *Kansayaku* Board will apply these principles by making necessary adjustments in accordance with their form of company organization.

15. It is expected that the Code will enter into force on June 1, 2015, after the Tokyo Stock Exchange takes necessary institutional steps.

Depending on their situation, there may be companies that will find it difficult to

¹ For overseas companies that are listed on securities exchanges in Japan, it is generally the case that home country regulations exist and are applicable to their corporate governance. Since the content of such regulations may differ from that of the Code, there may be cases where it will not be appropriate to apply the content of the Code as it exists. For this reason, it is expected that the Tokyo Stock Exchange will clarify how this situation should be handled.

² See [Notes](#) to the General Principle 4 for the explanations for these three forms of corporate organization.

fully implement certain principles of the Code from the implementation date noted above even if they desire to do so, such as the principles on governance structures. In such situations, if companies undertake serious investigations and preparations for the commencement of the Code's application but still find immediate full compliance difficult, these companies' provision of clear explanations on their plans and conceivable schedule for future compliance should not be ruled out as being against the Code.

Moreover, some principles in the Code call for disclosure or explanation, including cases where companies are asked to "explain" the reasons for non-compliance. Since it would be desirable that companies disclose and explain some of these matters in a standardized framework (for example, through the Corporate Governance Report submitted to the Tokyo Stock Exchange), it is expected that the Tokyo Stock Exchange will offer clarification for handling this matter.

Future Revisions of the Code

16. As noted above, while the Code establishes fundamental principles for effective corporate governance, these principles do not remain unchanged. Under rapidly changing economic and social circumstances, in order to ensure that the Code continues to achieve its objectives, the Council of Experts expects that the Code will be periodically reviewed for possible revisions.

General Principles

Securing the Rights and Equal Treatment of Shareholders

1. Companies should take appropriate measures to fully secure shareholder rights and develop an environment in which shareholders can exercise their rights appropriately and effectively.

In addition, companies should secure effective equal treatment of shareholders.

Given their particular sensitivities, adequate consideration should be given to the issues and concerns of minority shareholders and foreign shareholders for the effective exercise of shareholder rights and effective equal treatment of shareholders.

Appropriate Cooperation with Stakeholders Other Than Shareholders

2. Companies should fully recognize that their sustainable growth and the creation of mid- to long-term corporate value are brought as a result of the provision of resources and contributions made by a range of stakeholders, including employees, customers, business partners, creditors and local communities. As such, companies should endeavor to appropriately cooperate with these stakeholders.

The board and the management should exercise their leadership in establishing a corporate culture where the rights and positions of stakeholders are respected and sound business ethics are ensured.

Ensuring Appropriate Information Disclosure and Transparency

3. Companies should appropriately make information disclosure in compliance with the relevant laws and regulations, but should also strive to actively provide information beyond that required by law. This includes both financial information, such as financial standing and operating results, and non-financial information, such as business strategies and business issues, risk, and governance.

The board should recognize that disclosed information will serve as the basis for constructive dialogue with shareholders, and therefore ensure that such information, particularly non-financial information, is accurate, clear and useful.

Responsibilities of the Board

4. Given its fiduciary responsibility 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, including:

- (1) Setting the broad direction of corporate strategy;
- (2) Establishing an environment where appropriate risk-taking by the senior management is supported; and
- (3) Carrying out effective oversight of directors and the management (including *shikkoyaku* and so-called *shikkoyakuin*) from an independent and objective standpoint.

Such roles and responsibilities should be equally and appropriately fulfilled regardless of the form of corporate organization – i.e., Company with *Kansayaku* Board (where a part of these roles and responsibilities are performed by *kansayaku* and the *kansayaku* board), Company with Three Committees (Nomination, Audit and Remuneration), or Company with Supervisory Committee.

Dialogue with Shareholders

5. In order to contribute to sustainable growth and the increase of corporate value over the mid- to long-term, companies should engage in constructive dialogue with shareholders even outside the general shareholder meeting.

During such dialogue, senior management and directors, including outside directors, should listen to the views of shareholders and pay due attention to their interests and concerns, clearly explain business policies to shareholders in an understandable manner so as to gain their support, and work for developing a balanced understanding of the positions of shareholders and other stakeholders and acting accordingly.

Section 1: Securing the Rights and Equal Treatment of Shareholders

General Principle 1

Companies should take appropriate measures to fully secure shareholder rights and develop an environment in which shareholders can exercise their rights appropriately and effectively.

In addition, companies should secure effective equal treatment of shareholders.

Given their particular sensitivities, adequate consideration should be given to the issues and concerns of minority shareholders and foreign shareholders for the effective exercise of shareholder rights and effective equal treatment of shareholders.

Notes

Companies have various stakeholders, including shareholders. Without appropriate cooperation with these stakeholders, it would be difficult for companies to achieve sustainable growth. Suppliers of capital are an important cornerstone, and shareholders are the primary starting point for corporate governance discipline. Companies should secure appropriate cooperation with shareholders and strive toward the achievement of sustainable growth by fully securing shareholder rights and providing for the smooth exercise thereof.

In addition, the Companies Act requires companies to equally treat shareholders based on the class and number of shares they hold. Gaining broad confidence of shareholders that they receive equal treatment will also contribute to strengthening support from the suppliers of capital.

Principle 1.1 Securing the Rights of Shareholders

Companies should take appropriate measures to fully secure shareholder rights, including voting rights at the general shareholder meeting.

Supplementary Principles

- 1.1.1 When the board recognizes that a considerable number of votes have been cast against a proposal by the company and the proposal was approved, it should analyze the reasons behind opposing votes and why many shareholders opposed, and should consider the need for shareholder dialogue and other measures.
- 1.1.2 When proposing to shareholders that certain powers of the general shareholder meeting be delegated to the board, companies should consider whether the board is adequately constituted to fulfill its corporate governance roles and responsibilities. If a company determines that the board is indeed adequately constituted, then it should recognize that such delegation may be desirable from the perspectives of agile decision-making and expertise in business judgment.

[Background]

Japanese companies are generally said to include a broader range of items for resolution at general shareholder meetings than companies in other countries. It is not, however, always desirable to bring all important decisions for companies before shareholders for a direct vote. When a board is capable of adequately fulfilling its fiduciary responsibilities towards shareholders, delegating parts of decision-making to the board – in accordance with the Companies Act – may at times be a rational choice in order to secure agile decision-making and expertise in business judgment. The appropriateness of such delegation depends greatly on whether the board is adequately constituted to execute its corporate governance roles and responsibilities.

- 1.1.3 Given the importance of shareholder rights, companies should ensure that the exercise of shareholder rights is not impeded. In particular, given their particular sensitivities, adequate consideration should be given to the special rights, issues and concerns of minority shareholders with respect to companies and their officers, including the right to seek an injunction against illegal activities or the right to file a shareholder lawsuit.

Principle 1.2 Exercise of Shareholder Rights at General Shareholder Meetings

Companies should recognize that general shareholder meetings are an opportunity for constructive dialogue with shareholders, and should therefore take appropriate measures to ensure the exercise of shareholder rights at such meetings.

Supplementary Principles

- 1.2.1 Companies should provide accurate information to shareholders as necessary in order to facilitate appropriate decision-making at general shareholder meetings.
- 1.2.2 While ensuring the accuracy of content, companies should strive to send convening notices for general shareholder meetings early enough to give shareholders sufficient time to consider the agenda. During the period between the board approval of convening the general shareholder meeting and sending the convening notice, information included in the convening notice should be disclosed by electronic means such as through TDnet³ or on the company's website.
- 1.2.3 The determination of the date of the general shareholder 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.

[Background]

The following points were raised within the Council of Experts with respect to the procedures for holding general shareholder meetings:

- *In order to ensure effective corporate governance, the period between shareholder record date and the date of the general shareholder meeting should be as short as possible. (For reference, the United Kingdom requires that this period be “within two days.”)*

³ TDnet: The Tokyo Stock Exchange operates a real-time internet service (Timely Disclosure network) which distributes the information provided by listed companies on a timely basis in accordance with its listing rules.

- *To allow careful consideration of the agenda, the period between sending the convening notice and the date of the meeting should be as long as possible. (For reference, the UK Corporate Governance Code stipulates this period be “at least 20 working days.”)*
- *There should be a period between the closing of financial accounts and issuance of an audit certification in order to allow for effective auditing aimed at preventing fraud.*
- *Given the above points, if necessary, one possibility that can be considered is companies with fiscal year-ends in March holding their general shareholder meetings in July instead of June (existing practice). However, in order to allow shareholders to base part of their decisions on recent earnings performance, an overly lengthy period between the closing of financial accounts and the date of the general shareholder meeting should be avoided.*

In consideration of the above points, pushing back the provision of audited financial information or the date of the general shareholder meeting is something that can be considered. In this regard, it should be noted that the delivery of timely information through earnings releases (kessan tanshin) will become even more important and that consistency with other existing systems may need to be considered as well.

With respect to this issue, the public comments submitted in relation to the Code will be taken into consideration together with other views, and the Council of Experts may engage in further discussion as needed to determine whether this issue will need to be reflected in the final version of the Code to be issued by the Tokyo Stock Exchange.

- 1.2.4 Bearing in mind the number of institutional and foreign shareholders, companies should take steps for the creation of an infrastructure allowing electronic voting, including the use of the Electronic Voting Platform, and the provision of English translations of the convening notices of general shareholder meeting.
- 1.2.5 In order to prepare for cases where institutional investors who hold shares in street name express an interest in advance of the general shareholder meeting

in attending the general shareholder meeting or exercising voting rights, companies should work with the trust bank (*shintaku ginko*) and/or custodial institutions to consider such possibility.

Principle 1.3 Basic Strategy for Capital Policy

Because capital policy may have a significant effect on shareholder returns, companies should explain their basic strategy with respect to their capital policy.

Principle 1.4 Cross-Shareholdings

When companies hold shares of other listed companies as cross-shareholdings⁴, they should disclose their policy with respect to doing so. In addition, the board should examine the mid- to long-term economic rationale and future outlook of major cross-shareholdings on an annual basis, taking into consideration both associated risks and returns. The annual examination should result in the board's detailed explanation of the objective and rationale behind cross-shareholdings.

Companies should establish and disclose standards with respect to the voting rights as to their cross-shareholdings.

Principle 1.5 Anti-Takeover Measures

Anti-takeover measures must not have any objective associated with entrenchment of the management or the board. With respect to the adoption or implementation of anti-takeover measures, the board and *kansayaku*⁵ should carefully examine their necessity and rationale in light of their fiduciary responsibility to shareholders, ensure appropriate procedures, and provide sufficient explanation to shareholders.

Supplementary Principle

⁴ Cross-shareholding: There are cases where listed companies hold the shares of other listed companies for reasons other than pure investment purposes, for example, to strengthen business relationships. Cross-shareholdings here include not only mutual shareholdings but also unilateral ones.

⁵ *Kansayaku*: See [Notes](#) to the General Principle 4.

- 1.5.1 In case of a tender offer, companies should clearly explain the position of the board, including any counteroffers, and should not take measures that would frustrate shareholder rights to sell their shares in response to the tender offer.

Principle 1.6 Capital Policy that May Harm Shareholder Interests

With respect to a company's capital policy that results in the change of control or in significant dilution, including share offerings and management buyouts, the board and *kansayaku* should, in order not to unfairly harm the existing shareholders' interests, carefully examine the necessity and rationale from the perspective of their fiduciary responsibility to shareholders, should ensure appropriate procedures, and provide sufficient explanation to shareholders.

Principle 1.7 Related Party Transactions

When a company engages in transactions with its directors or major shareholders (i.e., related party transactions), in order to ensure that such transactions do not harm the interests of the company or the common interests of its shareholders and prevent any concerns with respect to such harm, the board should establish appropriate procedures beforehand in proportion to the importance and characteristics of the transaction. In addition to their use by the board in approving and monitoring such transactions, these procedures should be disclosed.

Section 2: Appropriate Cooperation with Stakeholders Other Than Shareholders

General Principle 2

Companies should fully recognize that their sustainable growth and the creation of mid- to long-term corporate value are brought about as a result of the provision of resources and contributions made by a range of stakeholders, including employees, customers, business partners, creditors and local communities. As such, companies should endeavor to appropriately cooperate with these stakeholders.

The board and the management should exercise their leadership in establishing a corporate culture where the rights and positions of stakeholders are respected and sound business ethics are ensured.

Notes

Companies have a variety of important stakeholders besides shareholders. These stakeholders include internal parties such as employees and external parties such as customers, business partners and creditors. In addition, local communities form the foundation for the on-going business activities of companies. Companies should fully recognize that appropriate cooperation with these stakeholders is indispensable in achieving sustainable growth and increasing corporate value over the mid- to long-term. Given the recent and growing interest in social and environmental problems worldwide, taking positive and proactive measures toward ESG (environmental, social and governance) matters may also be included as part of this cooperation.

The appropriate actions of companies based on the recognition of their stakeholder responsibilities will benefit the entire economy and society, which will in turn contribute to producing further benefits to companies, thereby creating a virtuous cycle.

Principle 2.1 Business Principles as the Foundation of Corporate Value Creation Over the Mid- to Long-Term

Guided by their position concerning social responsibility, companies should undertake their businesses in order to create value for all stakeholders while increasing corporate value over the mid- to long-term. To this end, companies should draft and maintain business principles that will become the basis for such activities.

Principle 2.2 Code of Conduct

Companies should draft and implement a code of conduct for employees in order to express their values with respect to appropriate cooperation with and serving the interests of stakeholders and carrying out sound and ethical business activities. The board should be responsible for drafting and revising the code of conduct, and should ensure its compliance broadly across the organization, including the front line of domestic and global operations.

Supplementary Principle

2.2.1 The board should review regularly (or where appropriate) whether or not the code of conduct is being widely implemented. The review should focus on the substantive assessment of whether the company's corporate culture truly embraces the intent and spirit of the code of conduct, and not solely on the form of implementation and compliance.

[Background]

The above code of conduct can also be referred to as "ethical standards" or "rules of behavior."

Principle 2.3 Sustainability Issues, Including Social and Environmental Problems

Companies should take appropriate measures to address sustainability issues, including social and environmental problems.

Supplementary Principle

2.3.1 With the recognition that dealing with sustainability issues is an important element of risk management, the board should take appropriate actions to this

end. Given the increasing demand and interest with respect to sustainability issues in recent years, the board should consider addressing these matters positively and proactively.

Principle 2.4 Ensuring Diversity, Including Active Participation of Women

Companies should recognize that the existence of diverse perspectives and values reflecting a variety of experiences, skills and characteristics is a strength that supports their sustainable growth. As such, companies should promote diversity of personnel, including the active participation of women.

Principle 2.5 Whistleblowing

Companies should establish an appropriate framework for whistleblowing such that employees can report illegal or inappropriate behavior, disclosures, or any other serious concerns without fear of suffering from disadvantageous treatment. Also, the framework should allow for an objective assessment and appropriate response to the reported issues, and the board should be responsible for both establishing this framework, and ensuring and monitoring its enforcement.

Supplementary Principle

2.5.1 As a part of establishing a framework for whistleblowing, companies should establish a point of contact that is independent of the management (for example, a panel consisting of outside directors⁶ and outside *kansayaku*⁷). In addition, rules should be established to secure the confidentiality of the information provider and prohibit any disadvantageous treatment.

⁶ Outside director: A director who satisfies certain requirements such as not holding specific positions, including the position of executive director, in the company or its subsidiaries (Article 2, Paragraph 15 of the Companies Act). Furthermore, matters such as not holding a specific position in the parent company or other subsidiaries and not having specific kinship ties with controlling shareholders will be also required for outside directors after the 2014 amendments to the Companies Act.

⁷ Outside *kansayaku*: A *kansayaku* who satisfies certain requirements such as not holding specific positions, including the position of director, in the company or its subsidiaries (Article 2, Paragraph 16 of the Companies Act). Furthermore, matters such as not holding a specific position in the parent company or other subsidiaries and not having specific kinship ties with controlling shareholders will be also required for outside *kansayaku* after the 2014 amendments to the Companies Act.

Section 3: Ensuring Appropriate Information Disclosure and Transparency

General Principle 3

Companies should appropriately make information disclosure in compliance with the relevant laws and regulations, but should also strive to actively provide information beyond that required by law. This includes both financial information, such as financial standing and operating results, and non-financial information, such as business strategies and business issues, risk, and governance.

The board should recognize that disclosed information will serve as the basis for constructive dialogue with shareholders, and therefore ensure that such information, particularly non-financial information, is accurate, clear and useful.

Notes

Companies are legally required to disclose a wide range of information. The timely and appropriate disclosure of information in accordance with the relevant laws and regulations is essential for investor protection and securing market confidence. The board, *kansayaku*, the *kansayaku* board⁸, and external auditors all bear an important responsibility in this regard, starting with the establishment of an appropriate internal control system as to financial information.

Companies should actively strive to provide information other than what is required by laws and regulations.

It has been noted that while the quantitative part of financial statements of Japanese companies conform to a standard format and therefore excel with respect to comparability, qualitative and non-financial information is often boiler-plate and lacking in detail, therefore less valuable. The board should actively commit to ensure that disclosed information, including non-financial information, is as valuable and useful as possible.

Irrespective of whether the disclosed information is required by law, the appropriate provision of information is an effective means to develop a shared awareness and understanding with shareholders and other stakeholders, in particular given that as

⁸ *Kansayaku* board: See [Notes](#) to the General Principle 4.

outsiders they suffer from information asymmetry. Appropriate information disclosure will also contribute to constructive dialogue based on Japan's Stewardship Code.

Principle 3.1 Full Disclosure

In addition to complying with disclosure laws and regulations, companies should proactively provide the information listed below (along with the disclosures specified by the principles of the Code) in order to enhance transparency and fairness in decision-making and ensure effective corporate governance:

- i) Company objectives (e.g., business principles), business strategies and business plans;
- ii) Basic views and guidelines on corporate governance based on each of the principles of the Code;
- iii) Board policies and procedures in determining the remuneration of the senior management and directors;
- iv) Board policies and procedures in the appointment of the senior management and the nomination of directors and *kansayaku* candidates; and
- v) Explanations with respect to the individual appointments and nominations based on iv).

Supplementary Principles

3.1.1 These disclosures should add value for investors, and the board should ensure that information is not boiler-plate or lacking in detail.

3.1.2 Bearing in mind the number of foreign shareholders, companies should, to the extent reasonable, take steps for providing English language disclosures.

Principle 3.2 External Auditors

External auditors and companies should recognize the responsibility that external auditors owe toward shareholders and investors, and take appropriate steps to secure the proper execution of audits.

Supplementary Principles

3.2.1 The *kansayaku* board should, at minimum, ensure the following:

- i) Establish standards for the appropriate selection of external auditor candidates and properly evaluate external auditors; and
- ii) Verify whether external auditors possess necessary independence and expertise to fulfill their responsibilities.

3.2.2 The board and the *kansayaku* board should, at minimum, ensure the following:

- i) Give adequate time to ensure high quality audits;
- ii) Ensure that external auditors have access, such as via interviews, to the senior management including the CEO and the CFO;
- iii) Ensure adequate coordination between external auditors and each of the *kansayaku* (including attendance at the *kansayaku* board meetings), the internal audit department and outside directors; and
- iv) Ensure that the company is constituted in the way that it can adequately respond to any misconduct, inadequacies, or concerns identified by the external auditors.

Section 4: Responsibilities of the Board

General Principle 4

Given its fiduciary responsibility 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, including:

- (1) Setting the broad direction of corporate strategy
- (2) Establishing an environment where appropriate risk-taking by the senior management is supported; and
- (3) Carrying out effective oversight of directors and the management (including *shikkoyaku*⁹ and so-called *shikkoyakuin*¹⁰) from an independent and objective standpoint.

Such roles and responsibilities should be equally and appropriately fulfilled regardless of the form of corporate organization – i.e., Company with *Kansayaku* Board (where a part of these roles and responsibilities are performed by *kansayaku* and the *kansayaku* board), Company with Three Committees (Nomination, Audit and Remuneration), or Company with Supervisory Committee.

Notes

Companies may choose one of three main forms of organizational structure under the Companies Act (Revised in 2014): Company with *Kansayaku* Board, Company with Three Committees (Nomination, Audit and Remuneration), or Company with Supervisory Committee. A Company with *Kansayaku* Board is a system unique to Japan in which certain governance functions are assumed by the board, *kansayaku* and the

⁹ *Shikkoyaku*: According to the Companies Act, Companies with Three Committees (Nomination, Audit, and Remuneration) must appoint one or more *shikkoyaku* from directors or non-directors by a resolution of the board and delegate business administration to *shikkoyaku*. Also, authority to make certain kinds of business decisions may be delegated to *shikkoyaku*.

¹⁰ *Shikkoyakuin*: There are cases where a Company with *Kansayaku* Board or a Company with Supervisory Committee creates positions with the title of “*shikkoyakuin*” for persons who are delegated by the board a certain range of discretion regarding business administration. Unlike *shikkoyaku* in Companies with Three Committees (Nomination, Audit, and Remuneration), *shikkoyakuin* is not a statutory position.

kansayaku board. Under this system, *kansayaku* audit the performance of duties by directors and the management and have investigation power by law. Also, to secure both independence and high-level information gathering power, not less than half of *kansayaku*, as appointed at the general shareholder meeting, must be outside *kansayaku*, and at least one full-time *kansayaku* must also be appointed. The latter two forms of organizational structure are similar to companies in other countries where committees are established under the board and assigned certain responsibilities with the aim of strengthening monitoring functions. Irrespective of which form of organizational structure is adopted, what is important is that the various institutions within the company effectively and fully execute their responsibilities through creativity and ingenuity.

One of the major objectives of establishing the Code is to promote transparent, fair, timely and decisive decision-making by Japanese companies. The possibility cannot be ruled out that, due to changes in the external environment or other factors, a decision made by a company ultimately results in losses for the company. In such a circumstance, the reasonableness of the decision-making process at the time of the decision is generally considered an important factor in determining whether or not the management and directors should owe personal liability for damages. The Code includes principles and practices that are expected to contribute to such a reasonable decision-making process, and promote transparency, fairness, timeliness and decisiveness as well.

Principle 4.1 Roles and Responsibilities of the Board (1)

The board should view the establishment of corporate goals (business principles, etc.) and the setting of strategic direction as one major aspect of its roles and responsibilities. It should engage in constructive discussion with respect to specific business strategies and business plans, and ensure that major operational decisions are based on the company's strategic direction.

Supplementary Principles

- 4.1.1 The board should clearly specify its own decisions as well as both the scope and content of the matters delegated to the management, and disclose a brief summary thereof.

4.1.2 Recognizing that a mid-term business plan (*chuuki keiei keikaku*) is a commitment to shareholders, the board and the senior management should do their best to achieve the plan. Should the company fail to deliver on its mid-term business plan, the reasons underlying the failure of achievement as well as the company's actions should be fully analyzed, an appropriate explanation should be given to shareholders, and analytic findings should be reflected in a plan for the ensuing years.

4.1.3 Based on the company objectives (business principles, etc.) and specific business strategies, the board should engage in the appropriate oversight of succession planning for the CEO and other top executives.

Principle 4.2 Roles and Responsibilities of the Board (2)

The board should view the establishment of an environment that supports appropriate risk-taking by the senior management as a major aspect of its roles and responsibilities. It should welcome proposals from the management based on healthy entrepreneurship, fully examine such proposals from an independent and objective standpoint with the aim of securing accountability, and support timely and decisive decision-making by the senior management when approved plans are implemented.

Also, the remuneration of the management should include incentives such that it reflects mid- to long-term business results and potential risks, as well as promotes healthy entrepreneurship.

Supplementary Principle

4.2.1 In order for management remuneration to operate as a healthy incentive for sustainable growth, the proportion linked to mid- to long-term results and the balance of cash and stock should be set appropriately.

Principle 4.3 Roles and Responsibilities of the Board (3)

The board should view the effective oversight of the management and directors from an independent and objective standpoint as a major aspect of its roles and responsibilities. It should appropriately evaluate company performance and reflect the

evaluation in its assessment of the senior management.

In addition, the board should engage in oversight activities in order to ensure timely and accurate information disclosure and should establish appropriate internal control and risk management systems.

Also, the board should appropriately deal with any conflict of interests that may arise between the company and its related parties, including the management and controlling shareholders.

Supplementary Principles

4.3.1 The board should ensure that the appointment and dismissal of the senior management are based on highly transparent and fair procedures and reflect the results of company performance.

4.3.2 The establishment of effective internal control and proactive risk management systems for compliance and financial reporting has the potential of supporting sound risk-taking. The board should place priority on the appropriate establishment of such systems and the oversight of whether they effectively operate, and should not limit itself to the examination of compliance with respect to specific business operations.

Principle 4.4 Roles and Responsibilities of *Kansayaku* and the *Kansayaku* Board

Kansayaku and the *kansayaku* board should bear in mind their fiduciary responsibilities to shareholders and make decisions from an independent and objective standpoint when executing their roles and responsibilities including the audit of the performance of directors' duties, appointment and dismissal of external auditors and the determination of auditor remuneration.

Although so-called “defensive functions,” such as business and accounting audits, are part of the roles and responsibilities expected of *kansayaku* and the *kansayaku* board, in order to fully perform their duties, it would not be appropriate for *kansayaku* and the *kansayaku* board to interpret the scope of their function too narrowly, and they should positively and proactively exercise their rights and express their views at board meetings and to the management.

Supplementary Principle

4.4.1 Given that not less than half of the *kansayaku* board must be composed of outside *kansayaku* and that at least one full-time *kansayaku* must be appointed in accordance with the Companies Act, the *kansayaku* board should, from the perspective of fully executing its roles and responsibilities, increase its effectiveness through an organizational combination of the independence of the former and the information gathering power of the latter. In addition, *kansayaku* or 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.

Principle 4.5 Fiduciary Responsibilities of Directors and *Kansayaku*

With due attention to their fiduciary responsibilities to shareholders, the directors, *kansayaku* and the management of companies should secure the appropriate cooperation with stakeholders and act in the interest of the company and the common interests of its shareholders.

Principle 4.6 Business Execution and Oversight of the Management

In order to ensure effective, independent and objective oversight of the management by the board, companies should consider utilizing directors who are neither involved in business execution nor have close ties with the management.

Principle 4.7 Roles and Responsibilities of Independent Directors

Companies should make effective use of independent directors¹¹, taking into consideration the expectations listed below with respect to their roles and responsibilities:

- i) Provision of advice on business policies and business improvement based on their knowledge and experience with the aim to promote sustainable corporate

¹¹ Independent director: The listing rules of securities exchanges provide that the outside directors, as defined in the Companies Act, are independent directors where they satisfy independence criteria of securities exchanges and the company determines that they do not have the possibility of conflicts of interest with its shareholders.

growth and increase corporate value over the mid- to long-term;

- ii) Monitoring of the management through important decision-making at the board including the appointment and dismissal of the senior management;
- iii) Monitoring of conflicts of interest between the company and the management or controlling shareholders; and
- iv) Appropriately representing the views of minority shareholders and other stakeholders in the boardroom from a standpoint independent of the management and controlling shareholders.

Principle 4.8 Effective Use of Independent Directors

Independent directors should fulfill their roles and responsibilities with the aim of contributing to sustainable growth of companies and increasing corporate value over the mid- to long-term. Companies should therefore appoint at least two independent directors that sufficiently have such qualities.

Irrespective of the above, if a company in its own judgement believes it needs to appoint at least one-third of directors as independent directors based on a broad consideration of factors such as the industry, company size, business characteristics, organizational structure and circumstances surrounding the company, it should disclose a roadmap for doing so.

[Background]

While there is a range of debate with respect to independent directors, it would not be appropriate to think that the mere appointment of independent directors will drive corporate growth. Rather, success will depend on whether measures are taken to take advantage of the presence of independent directors and their expected roles and responsibilities. The Companies Act (Revised in 2014) and Listing Rules already refer to the appointment of one or more independent/outside directors, with many companies adopting these provisions. The Code specifies that at least two independent directors should be appointed, taking the perspective that having multiple independent directors will significantly enhance the possibility that their presence will be fully leveraged.

It was noted at the Council of Experts that there are some organizations that undertake the collection, updating and provision of information on candidates for independent directors to support their ready appointment and that it would be desirable for such activity to be broadly promoted.

Supplementary Principles

4.8.1 In order to actively contribute to discussions at the board, independent directors should endeavor to exchange information and develop a shared awareness among themselves from an independent and objective standpoint. Regular meetings consisting solely of independent directors (executive sessions) would be one way of achieving this.

[Background]

The meetings can consist solely of independent directors or can also include independent kansayaku¹².

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

Principle 4.9 Independence Standards and Qualification for Independent Directors

Boards should establish and disclose independence standards aimed at securing effective independence of independent directors, taking into consideration the independence criteria set by securities exchanges. The board should endeavor to select independent director candidates who are expected to contribute to frank, active and constructive discussions at board meetings.

[Background]

With regard to the independence criteria and related disclosure requirements established by securities exchanges, there is a view that their content is abstract and that they present considerable room for interpretation. While on the one hand there is a favorable view that this ensures flexibility in applying the criteria, it is also noted that the varying interpretations of the exchange criteria by institutional investors and proxy advisors results in the adverse effect of companies applying these

¹² Independent *kansayaku*: The listing rules of securities exchanges provide that the outside *kansayaku*, as defined in the Companies Act, are independent *kansayaku* where they satisfy the independence criteria of securities exchanges and the company determines that they do not have the possibility of conflicts of interest with its shareholders.

criteria too conservatively. Moreover, Japan's exchange criteria differ from those of other countries in several regards. The Council of Experts expects that, while taking into account future developments, securities exchanges will undertake appropriate reviews as necessary.

Principle 4.10 Use of Optional Approach

In adopting the most appropriate organizational structure (as stipulated by the Companies Act) that is suitable for a company's specific characteristics, companies should employ optional approaches, as necessary, to further enhance governance functions.

Supplementary Principle

4.10.1 If the organizational structure of a company is either Company with *Kansayaku* Board or Company with Supervisory Committee, and independent directors do not compose a majority of the board, in order to strengthen the independence, objectivity and accountability of board functions on the matters of nomination and remuneration of the senior management and directors, the company should seek appropriate involvement and advice from independent directors in the examination of such important matters as nominations and remuneration by, for example, establishing optional advisory committees under the board to which independent directors make significant contributions.

[Background]

With respect to the expected roles and responsibilities of a board in providing explanations and performing effective oversight, the importance of functions related to audit, nomination and remuneration has been noted. In many other countries decisions in these areas are seen to require a particularly independent and objective standpoint. As a means of strengthening the independence and objectivity of such functions (excluding audit functions that can be fulfilled by the kansayaku board or by the supervisory committee), the use of an advisory committee, for example, can be considered. With respect to Companies with Supervisory Committee the supervisory committee can be used to full advantage, given that the committee has the statutory right to state its opinion in relation to nominations and remunerations of directors at general shareholders meetings. A variety of measures can be taken, taking into consideration the specific circumstances of individual companies; for example, a variety of corporate governance-related matters (e.g. related party transactions or nomination of kansayaku candidates) can be reviewed at the advisory committees.

Principle 4.11 Preconditions for Board and *Kansayaku* Board Effectiveness

The board should be well balanced in knowledge, experience and skills in order to fulfill its roles and responsibilities, and it should be constituted in a manner to achieve both diversity and appropriate size. In addition, at least one person who has appropriate expertise on finance and accounting should be appointed as *kansayaku*.

The board should endeavor to improve its function by analyzing and evaluating effectiveness of the board as a whole.

Supplementary Principles

4.11.1 The board should have a view on the appropriate balance between knowledge, experience and skills of the board as a whole, and also on diversity and appropriate board size. Consistent with its view, the board should establish policies and procedures for nominating directors and disclose them along with its view.

4.11.2 Outside directors, outside *kansayaku*, and other directors and *kansayaku* should devote sufficient time and effort required to appropriately fulfill their respective roles and responsibilities. Therefore, where directors and *kansayaku* also serve as directors, *kansayaku*, or the management at other companies, such positions should be limited to a reasonable number and disclosed each year.

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.

Principle 4.12 Active Board Deliberations

The board should endeavor to foster a climate where free, open and constructive discussions and exchanges of views take place, including the raising of concerns by outside directors.

Supplementary Principle

4.12.1 The board should ensure the following in relation to the operation of board

meetings and should attempt to make deliberations active:

- i) Materials for board meetings are distributed sufficiently in advance of the meeting date;
- ii) In addition to board materials and as necessary, sufficient information is provided to directors by the company (where appropriate, the information should be organized and/or analyzed to promote easy understanding);
- iii) The schedule of board meetings for the current year and anticipated agenda items are determined in advance;
- iv) The number of agenda items and the frequency of board meetings are set appropriately; and
- v) Sufficient time for deliberations.

Principle 4.13 Information Gathering and Support Structure

In order to fulfill their roles and responsibilities, directors and *kansayaku* should proactively collect information, and as necessary, request the company to provide them with additional information.

Also, companies should establish a support structure for directors and *kansayaku*, including providing sufficient staff.

The board and the *kansayaku* board should verify whether information requested by directors and *kansayaku* is provided smoothly.

Supplementary Principles

4.13.1 Directors, including outside directors, should request the company to provide them with additional information, where deemed necessary from the perspective of contributing to transparent, fair, timely and decisive decision-making. In addition, *kansayaku*, including outside *kansayaku*, should collect information appropriately, including the use of their statutory investigation power.

4.13.2 Directors and *kansayaku* should consider consulting with external specialists at

company expense, where they deem it necessary.

- 4.13.3 Companies should ensure coordination between the internal audit department, directors and *kansayaku*. In addition, companies should take measures to adequately provide necessary information to outside directors and outside *kansayaku*. One example would be the appointment of an individual who is responsible for communicating and handling requests within the company such that the requests for information about the company by outside directors and outside *kansayaku* are appropriately processed.

Principle 4.14 Director and *Kansayaku* Training

New and incumbent directors and *kansayaku* should deepen their understanding of their roles and responsibilities as a critical governance body at a company, and should endeavor to acquire and update necessary knowledge and skills. 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 provided.

Supplementary Principles

- 4.14.1 Directors and *kansayaku*, including outside directors and outside *kansayaku*, should be given the opportunity when assuming their position to acquire necessary knowledge on the company's business, finances, organization and other matters, and fully understand the roles and responsibilities, including legal liabilities, expected of them. Incumbent directors should also be given a continuing opportunity to renew and update such knowledge as necessary.
- 4.14.2 Companies should disclose their training policy for directors and *kansayaku*.

Section 5: Dialogue with Shareholders

General Principle 5

In order to contribute to sustainable growth and the increase of corporate value over the mid- to long-term, companies should engage in constructive dialogue with shareholders even outside the general shareholder meeting.

During such dialogue, senior management and directors, including outside directors, should listen to the views of shareholders and pay due attention to their interests and concerns, clearly explain business policies to shareholders in an understandable manner so as to gain their support, and work for developing a balanced understanding of the positions of shareholders and other stakeholders and acting accordingly.

Notes

With the establishment of Japan's Stewardship Code, institutional investors are encouraged to engage in purposeful dialogue (engagement) based on the in-depth knowledge of investee companies and their business environment.

Regularly engaging in dialogue with shareholders to gain their understanding of specific business strategies and business plans and taking appropriate action when there are concerns are extraordinarily useful for companies to strengthen the foundations of management legitimacy and support their efforts to generate sustainable growth. Although the management and directors have opportunities to interact and exchange views with employees, business partners and financial institutions on a daily basis, these stakeholders are all creditors. In contrast, the management and directors typically have limited interactions with shareholders. If the senior management and directors give due attention to the views of shareholders through dialogue, they can absorb views and analyses of business management from the perspective of capital providers. Dialogue with shareholders should also inspire healthy entrepreneurship in the management and directors and thereby contribute to sustainable corporate growth.

Principle 5.1 Policy for Constructive Dialogue with Shareholders

Companies should, positively and to the extent reasonable, respond to the requests from shareholders to engage in dialogue (management meetings) so as to support

sustainable growth and increase corporate value over the mid- to long-term. The board should establish, approve and disclose policies concerning the measures and organizational structures aimed at promoting constructive dialogue with shareholders.

Supplementary Principles

5.1.1 Taking the requests and interests of shareholders into consideration, to the extent reasonable, the senior management and directors, including outside directors, should have a basic position to engage in dialogue (management meetings) with shareholders.

5.1.2 At minimum, policies for promoting constructive dialogue with shareholders should include the following:

- i) Appointing a member of the management or a director who is responsible for overseeing and ensuring that constructive dialogue takes place, including the matters stated in items ii) to v) below;
- ii) Measures to ensure positive cooperation between internal departments such as investor relations, corporate planning, general affairs, corporate finance, accounting and legal affairs with the aim of supporting dialogue;
- iii) Measures to promote opportunities for dialogue aside from individual meetings (e.g., general investor meetings and other IR activities);
- iv) Measures to appropriately and effectively relay shareholder views and concerns learned through dialogue to the senior management and the board; and
- v) Measures to control insider information when engaging in dialogue.

5.1.3 Companies should endeavor to identify their shareholder ownership structure as necessary, and it is desirable for shareholders to cooperate as much as possible in this process.

Principle 5.2 Establishing and Disclosing Business Strategy and Business Plan

When establishing and disclosing business strategies and business plans, companies should articulate their earnings plans and capital policy, and present targets for profitability and capital efficiency. Also, companies should provide explanations that are clear and logical to shareholders with respect to the allocation of management resources and specific measures that will be taken in order to achieve their plans and targets.