

Establishment and meetings of the Council of Experts concerning compliance with Japan's Corporate Governance Code

In respect of the Corporate Governance Code (the "Code") established by the Tokyo Stock Exchange on 1 June 2015, the first meeting of the Council of Experts concerning compliance with the Code was held on 24 September 2015 and two further meetings have been held to date. The council has agreed to continue regular discussions on the compliance status in respect of the Code and any related issues. This briefing note first sets out an outline of the Code and the publication obligations which have already been introduced, and then briefly explains how the newly established council is positioned.

Outline of the Corporate Governance Code and the Publication Obligation

Summary

On 5 March 2015, in order to ensure effective corporate governance in Japanese companies, a final proposal of the Corporate Governance Code was completed by a "Council of Experts concerning the Corporate Governance Code" jointly established by the Tokyo Stock Exchange (the "TSE") and the Financial Services Agency (the "FSA"). The TSE established the Code on 1 June 2015 based on this proposal.¹

The Code is applicable to companies listed on the TSE and requires them to "either comply with the principles set out in the Code or explain their reasons for not doing so" (known as the "comply or explain" approach). Further, the Code does not set out detailed regulations and, accordingly, listed companies are expected to take specific actions in line with the aims and spirit of the Code independently (principles-based approach).

Governance Report: Explanation of Reasons for Failure to Comply with the Principles of the Code

Listed companies are required to comply with the principles of the Code or explain why they do not comply with such principle in governance reports to be submitted to the TSE.² In addition, certain matters which are required to be disclosed under the Code are expected to be disclosed in an appropriate section of the governance report or in the annual securities report, or by other methods that will make the information available to the general public. Also, if statements contained in

¹ The Code stipulates the following as its general principles: (1) securing the rights and equal treatment of shareholders, (2) appropriate cooperation with stakeholders other than shareholders, (3) ensuring appropriate information disclosure and transparency, (4) responsibilities of the board of directors and (5) dialogue with shareholders, and various other principles which listed companies are expected to comply with.

² Companies listed on the main market (namely, the TSE First and Second Sections) are required to comply with all of the General Principles, the Principles and the Supplementary Principles, and companies listed on Mothers or JASDAQ need comply with the General Principles only. Listed companies need to "either comply with the applicable principles or explain their reasons for not doing so" and if they fail, in theory, measures to secure effective compliance (such as designating their stock as stock which requires special caution) will be taken.

the 'reasons for non-compliance' section and the 'matters disclosed under the Code' section of the governance report change in any way, such statements are required to be updated without delay on or after the date of the closest annual general shareholders' meeting held after the occurrence of such change.³ The governance reports submitted or updated in the manner mentioned above are published by the TSE. It is expected that the governance reports will be revised from time to time in the light of feedback received from investors.

Follow-up Council

In addition to the imposition of the disclosure/publication obligations stated above, the FSA and the TSE established a "Council of Experts concerning the Follow-up of Japan's Stewardship Code and Japan's Corporate Governance Code" (the "**Follow-up Council**") for the purpose of observing the prevalence and adoption of the Code as well as discussing, and making suggestions for, necessary measures to further improve the corporate governance of all listed companies. The first meeting of the Follow-up Council was held on 24 September 2015 where the extent to which listed companies were accommodating the Code was reported in detail based on statistical materials. Based on such reports, experts then discussed the issues and problems they foresaw from their various standpoints. Although specific aims and target deadlines of the Follow-up Council have not yet been announced, the Follow-up Council is scheduled to meet once a month for the foreseeable future, and it is believed that the Follow-up Council will continue to observe companies in relation to how they respond to the Code.

Although there is no specific reference to the timing and method of review of the Final Proposal of the Corporate Governance Code, based on which the Code was established, the proposal is expected to be reviewed regularly. In addition, the review is proposed to be flexible, taking into account various facts and circumstances including companies' responses to the Code and the revisions of related laws and regulations. Based on the discussions of the Follow-up Council to date and the opinions of the experts attending, vigorous discussions on methods to make the Code more practical are expected.

To this end, the FSA has decided to collect opinions from the general public on matters which need to be discussed and reviewed at future meetings and on further enhancements of corporate governance. This public comment period started on the date of the Follow-up Council's first meeting. (Comments can be made in English or Japanese at: <http://www.fsa.go.jp/en/news/2015/20150924-1.html>.)

Where Japanese legal concepts have been expressed in the English language, the concepts concerned may not be identical to the concepts described by the equivalent English terminology as they may be interpreted under the laws of other jurisdictions.

³ Listed companies are required to make disclosures at annual general shareholders' meetings; however, listed companies may also update their statements without delay whenever any change occurs.

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