

JSS Newsletter International

(Vol.2 March 2016)

Process of Appointment of Directors Affected by Corporate Governance Code in Japan! -Impact on this Year's Proposed Resolutions for the Appointment of Directors-

With the introduction of the Corporate Governance Code (the Code), major changes are in process for the board of directors at Japanese listed companies. Discussions on the supervisory role of the board of directors, accelerated appointments of independent directors at listed companies and cases of moving toward the monitoring type in order to realize greater supervisory functions are some examples of these changes.

The Council of Experts Concerning the Follow-up of Japan's Stewardship Code and Japan's Corporate Governance Code of the Financial Services Agency (the Follow-up Council) was held 5 times in total between September of 2015 and January 20, 2016, in which the role of the board of directors has been the central theme. At the fifth Council held on January 20, 2016, a discussion was held with a view to summarize opinions with respect to "issues surrounding the board of directors."

Under these current circumstances, the process of the appointment of directors has been streamlined based on each Principle of the Code. As a result, a major change may be seen in proposed resolutions for the appointment of directors at listed companies for this year's general shareholder meetings. We would like to explain the impact here.

Please also be advised that a similar impact is expected for proposed resolutions for the appointment of *kansayaku* (corporate auditor)'. .

- The Code related to the appointment and nomination of directors is Principle 3-1(iv), which requires appropriate information disclosure, in which policies and procedures on the appointment of senior management and on the nomination of candidates for directors must be disclosed. In addition, Supplementary Principle 4-11 (1) requires the disclosure of an opinion on the balance, diversity and the size of the board of directors.
- In terms of procedures, Supplementary Principle 4-10 (1) requires the use of optional arrangement, and Supplementary Principle 4-3 (1) requires fair and highly transparent procedures regarding senior management based on business performance.
- In addition, under Principle 3-1(v), the reasons for nominating each candidate for director must be disclosed.

[Principle 3-1(iv)]

In addition to appropriate disclosure in compliance with laws and regulations, listed companies should **disclose the following items** (other than the items required under each Principle of the Code), from the perspective of ensuring transparency and fairness in corporate decision-making and realizing effective

corporate governance, and should disclose information proactively.

(iv) Policies and procedures in the **appointment of senior management and the nomination of directors and kansayaku candidates**

(v) **Explanations with respect to the individual appointments of senior management and nominations of directors and kansayaku candidates** based on (iv) above.

[Supplementary Principle 4-11 (1)]

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

[Supplementary Principle 4-10 (1)]

If the organizational structure of a company is either a Company with *Kansayaku* Board or a 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 senior management and directors**, the company should seek appropriate involvement and advice from independent directors in the examination of important matters such as nominations and remuneration by, for example, **establishing optional advisory committees under the board to which independent directors make significant contributions**.

[Supplementary Principle 4-3 (1)]

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

(1) Disclosure status on policies and procedures in the nomination of candidates for directors (Principle 3-1(iv))

- The materials prepared by the Tokyo Stock Exchange, Inc. and presented at the Follow-up Council on January 20, listed the following examples as “procedures on nomination” disclosed in compliance with Principle 3-1 (iv).
 - a. “Appointment by a representative director and approval by the board of directors” (Company with *Kansayaku* Board)
 - b. “Hear opinions from independent directors prior to making decisions at the board of directors” (Company with Audit Committee)
 - c. “Decision by nomination committee” (Company with Nomination Committee)
 - d. “Establish a “nomination and remuneration committee” as an optional advisory committee; the committee gives advice on the proposed nomination by the board of directors, with individual explanations for nomination provided in advance, is involved in the examination and advises and responds to the board of directors with the final result” (Company with *Kansayaku* Board)

- Among Nikkei 225 companies, 98 out of 204 companies who filed a corporate governance report reflecting responses to the Code by the end of December 2015, disclosed that they established “optional advisory committee(s)” to ask for advice or receive proposals on candidates (52.4% of 187 companies excluding companies with nomination committee). (Research by Mitsubishi UFJ Trust and Banking Corporation)
- On the other hand, the Follow-up Council materials from January 20 present the following examples as “policies on nominations.”
 - a. “A person with expertise in corporate management and operations, ... good character and insight” (Company with *Kansayaku* Board)
 - b. “As (the company) is globally engaged in a wide range of businesses, to enable appropriate and flexible decision-making and oversight of business execution for these business activities” (Company with *Kansayaku* Board)

(2) Disclosure status on the balance between knowledge, experience and skills of the board as a whole (Supplementary Principle 4-11 (1))

- The materials by the Tokyo Stock Exchange, Inc. presented at the January 20 Follow-up Council include the following examples as “the balance among knowledge, experience and skills” disclosed in compliance with Supplementary Principle 4-11 (1).
 - a. “Take into account diversity in terms of experience and specialized knowledge that a candidate for director possesses, as well as the ratio of independent directors and directors other than independent directors,” “Ensure that new candidates will not compose all or most of the candidates for directors,” “Take into account the age and the years of service as a director at the company,” and “Do not allow candidates for directors over 75 years of age, as a rule.” (Company with Nomination Committee)
 - b. “It is important to have a more diverse population from both outside and within the company in terms of experience, knowledge, specialization and insight to allow opinions from various perspectives for examination,” “Establish a time gap for the terms of service of independent directors to enable knowledge transfer from existing directors to succeeding directors.” (Company with *Kansayaku* Board)
 - c. “A person with the most knowledge and expertise in the global field, IT and other fields, in which the company strives for future growth.” (Company with *Kansayaku* Board)
- In addition, the materials presented at the January 20 Follow-up Council include the following examples with respect to “diversity.”
 - a. “It is important to ensure diversity, and especially as a manufacturer of cosmetics, women’s values and ideas are highly important.” (Company with *Kansayaku* Board)
 - b. “Policy to actively promote a diverse group of people.” (Company with *Kansayaku* Board)
 - c. “The most appropriate person as a director irrespective of nationality, race, gender and age.” (Company with *Kansayaku* Board)

(3) Impact on proposed resolutions for the appointment of directors at this year's general shareholder meetings

- Since an increasing number of companies have established policies and procedures on the nomination of candidates for directors (Principle 3-1(iv)) and disclose them in the corporate governance report, it is expected that companies who believe that these policies and procedures would be useful for the execution of shareholders' votes will include them in proposed resolutions for the appointment of directors in the convocation notices of general shareholder meetings.
- Similarly, as for the balance between the knowledge, experience and skills of the board as a whole, it is also expected to be included in proposed resolutions for the appointment of directors in the convocation notices of general shareholder meetings, as information disclosed for shareholders.
- One example including the general policies and the balance between the knowledge, experience and skills of the board as a whole is shown below.

【Example including “Composition of the Board of Directors and the Policy for Appointing Nominated Directors” and “Process for Appointing Nominated Directors” by Mitsubishi Corp】

• Composition of the Board of Directors and the Policy for Appointing Nominated Directors

To ensure Mitsubishi Corporation's decision-making and management oversight are appropriate for a sogo shosha involved in diverse businesses and industries in a wide range of fields, several Directors are appointed from both within and outside Mitsubishi Corporation with the depth of experience and high levels of knowledge and expertise needed for fulfilling their duties.

More specifically, in addition to Chairman of the Board and the President & CEO, Mitsubishi Corporation's in-house Directors are appointed from executive officers responsible for companywide management, Corporate Staff operations, and other areas. Outside Directors are appointed from those who possess a practical perspective of highly experienced officers and those who possess an objective and professional perspective with a deep insight on global developments and socio-economic trends.

In principle, the total number of Directors is around 15, with one third or more being made up of Outside Directors.

• Process for Appointing Nominated Directors

Based on the above policy, the President & CEO proposes a list of nominated Directors, which is then deliberated at the Governance & Compensation Committee and resolved by the Board of Directors before being presented at the Ordinary General Meeting of Shareholders.

(4) Disclosure and explanation status on individual reasons for nominating candidates for directors (Principle 3-1(v))

- Research conducted regarding the status of implementation of Principle 3-1(v) on 204 companies in the Nikkei 225, who filed a corporate governance report reflecting responses to the Code by the end of December 2015, showed 156 companies (76.5%) complied and 48 companies (23.5%) offered an explanation. (Research by Mitsubishi UFJ Trust and Banking Corporation)
- Among 156 companies that complied, their disclosure in the corporate governance report revealed that the ways in which they deal with the requirement vary by company, but more or less can be categorized into the following.
 - a. Cases where the “work experience of candidates for directors (and the reasons for nomination for candidates for independent directors) are included in the convocation notices of general shareholder meetings”
 - b. Cases where “reasons for nominating candidates for all candidates for directors are included in the convocation notices of general shareholder meetings”
- On the other hand, out of 48 companies that offered an explanation, 43 companies stated, as a reason not to comply, that they would include the reasons for nominating candidates for directors other than independent directors (in-house directors) in the convocation notices of general shareholder meetings from the next shareholder meeting (89.6% of the 48 companies that offered an explanation).

(5) Impact on proposed resolutions for the appointment of directors for this year’s shareholder meetings

- With respect to individual reasons for nominating candidates for directors (Principle 3-1 (v)), it is expected that “reasons for nominating candidates” for directors other than independent directors (in-house directors) would also be included in proposed resolutions for the appointment of directors in the convocation notices of general shareholder meetings.
- As far as it can be inferred from companies’ reasons not to comply on the previous page, it is expected that proposed resolutions for the appointment of directors that include “reasons for nominating candidates” for directors other than independent directors (in-house directors) would increase considerably among Nikkei 225 companies.
- One example including “reasons for nominating candidates” for directors other than independent directors (in-house directors) is shown below.
- As a reference, among Nikkei 225 companies, 26 included “reasons for nominating candidates” for directors other than independent directors (in-house directors) in proposed resolutions for the appointment of directors at the general shareholder meetings in June of 2015 (13.2% of 197 companies who held general shareholder meetings in June 2015). (Our research)
【“Reasons for nominating candidates” for directors other than independent directors (in-house directors) by Fujitsu Ltd.】

<i>Candidate No.</i>	<i>Name and date of birth</i>	<i>Personal history, positions at the Company</i>
8	Tatsuya Tanaka (September 11, 1956) *New Nominee [No. of the Company's Shares Held] 13,000	Apr. 1980 Joined the Company Apr. 2005 Director of the Board & Vice President, Fujitsu (China) Holdings Co., Ltd. Dec. 2009 Senior Vice President, Manufacturing Industry Business Unit Apr. 2012 Corporate Vice President Apr. 2014 Corporate Senior Vice President , Head of Asia Region (until February 2015) Jan. 2015 Corporate Executive Officer, SEVP (to present)
		[Important positions at other corporations/institutions] None
	[Reasons for Appointment] Tanaka Tatsuya has management experience serving as a board member of an overseas subsidiary and as a Corporate Executive Officer of Fujitsu. In addition, he successfully concluded many large-scale business deals in the Japan Sales Group, and he also exhibited strong leadership as the Head of the Asia Region. Taking into consideration his past achievements and his global-oriented approach, the Company considers him to be an ideal new management leader to drive the Company's growth strategy, and as such proposes that he be appointed as Director. If he is appointed as a Director, it is expected that he will be appointed as President and Representative Director by the Board of Directors.	
	[Comments on Special-interest Relationships] Tatsuya Tanaka has no special-interest relationships with the Company.	

DISCLAIMER

This document has been prepared by Japan Shareholder Services Ltd (JSS).

The views in this document do not necessarily reflect the views or investment opinions of JSS or any of its group entities.

The material in this document is for information only and JSS is not soliciting any action based upon it.

The material is not to be construed as an offer to sell or a solicitation of an offer to buy any investment product or service in any jurisdiction.

This document has been prepared for use by experienced investors only and therefore by persons who are able to make their own assessment of risk.

JSS makes no representation or warranty, express or implied, as to, or assumes any responsibility for, the accuracy, reliability or completeness of any of the material in this document and it should not be relied upon to be accurate, reliable or complete.

Furthermore, JSS shall be under no obligation to update or correct any inaccuracy in the material.

The information and any opinions herein are subject to change without notice.

Forecasts of future events or trends, estimations, projections, views, policies, business strategies, targets, expectations, assumptions and evaluation are inherently susceptible to uncertainties, risks and changes in circumstances and are not guarantees of future performance.

This document may not be reproduced without the prior express consent of JSS.