



**ICGN**

International Corporate Governance Network  
*Inspiring good governance & stewardship*

Mr. Hideki Ito  
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10 October 2023

Dear Mr. Hideki Ito,

**Subject: Large shareholding reporting rule and beneficial shareholder transparency**

The International Corporate Governance Network (ICGN) welcomes the Japan Financial Services Agency (FSA)'s efforts to promote the need for a constructive dialogue between companies and investors. In this regard, we welcome the revision of large shareholder reporting rules to enable effective investor collaboration and also see the benefits of enhancing transparency related to beneficial shareholders of companies.

Led by investors responsible for assets under management of US\$77 trillion, ICGN is an authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 40 countries - largely in Europe and North America, with growing representation in Asia. The ICGN Global Governance Principles and Global Stewardship Principles, written from an investor perspective, are widely used by our members in their company assessments and voting decisions, and by regulators when developing corporate governance rules.<sup>1</sup>

**Large shareholder reporting rule**

We welcome the FSA's efforts to remove any perceived barriers for investors to collaborative engagement with companies in Japan. According to ICGN Global Stewardship Principles, Principle 4:

*Investors should engage with investee companies with the aim of preserving or enhancing value on behalf of beneficiaries or clients and should be prepared to collaborate with other investors to enhance engagement outcomes.*

The Japan Stewardship Code also highlights:

*In addition to institutional investors engaging with investee companies independently, it would be beneficial for them to engage with investee companies in collaboration with other institutional investors as necessary.*

We encourage the FSA to ensure the alignment of shareholding reporting and concert party rules with the Japan Stewardship Code. This would bring needed reassurance to investors that they can engage jointly with companies on important governance and sustainability matters, without facing increased reporting burdens or being perceived as acting in concert with other investors.

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<sup>1</sup> [ICGN Global Governance Principles \(2021\)](#), [ICGN Global Stewardship Principles \(2020\)](#)

Under the current large shareholding reporting rule in Japan, a special reporting rule has been established for institutional investors to ease the frequency of their reporting submissions. To be eligible, the investors need to show that the purpose of shareholding is not to engage in "**the act of a material proposal**" with investee companies. To avoid any ambiguity, we believe it would be helpful to clarify in regulation that engaging with companies in the context of stewardship activities is not considered as an "act of a material proposal".

We believe investors should be free to discuss important governance and sustainability issues, as they fulfil their fiduciary and stewardship responsibilities, without fear that they will be subject to onerous reporting requirements that ultimately have a chilling effect on discussions.

When reporting their holdings, shareholders are required to calculate their shareholding ratio, including the shareholdings of '**joint holders**'. Although the Japan Stewardship Code provides some reassurance, there is still a need to further clarify in regulation that investors participating in a collaborative engagement on governance and sustainability matters will not be seen as 'joint holders' (i.e. there needs to be a safe harbour).

We note that some regulators have clarified that concert party rules are not meant to capture stewardship activities. For example, the UK Takeover Panel explicitly states that it does not regard the action of shareholders voting together as an indication that such shareholders are acting in concert. Shareholders must be seeking board control to be considered a concert party. Furthermore, the European Securities and Markets Authority (ESMA) has established a whitelist of activities, in which shareholders may engage together to exercise their stewardship rights and responsibilities, without being seen as acting in concert.

### **Identifying beneficial shareholders**

It is increasingly important for companies - and the board of directors in particular - to be able to identify their beneficial shareholders, i.e., those who can make voting and investment decisions, rather than intermediaries holding the shares on their behalf. Investors might also want information about their co-owners.

We see the benefits of introducing more transparency in Japan, especially below the large shareholding threshold of 5%. We recommend that the FSA introduces a rule comparable to the UK Company Act, Section 793. This would allow a company to ask anyone who it believes to hold shares in the company to disclose whether the shares are held in their own account or held for someone else. Companies would thereby be able to obtain the level of transparency needed throughout the global custody chain and have a comprehensive picture of its actual shareholders. We observe that this system works well in the UK and could be implemented in Japan.

### **Tender offer rule**

ICGN supports the idea of expanding the scope of application of the tender offer rule to market trades, to ensure that regardless of the types of transactions used to acquire voting rights, a tender offer will be required once 1/3 of voting rights is acquired by an investor. This would contribute to the protection of existing shareholders. We also recommend that Japan aligns its rule with other regions of the world where partial tender offers are not allowed (such as the EU and the UK).

Thank you again for the opportunity to share our perspective. If you would like to follow up with questions or comments, please contact ICGN's Global Policy Director, Séverine Neervoort ([severine.neervoort@icgn.org](mailto:severine.neervoort@icgn.org)) or ICGN's Japan Advisor Amane Fujimoto ([amane.fujimoto@icgn.org](mailto:amane.fujimoto@icgn.org)).

Yours faithfully,



**Kerrie Waring**  
**Chief Executive Officer, ICGN**