



**ICGN**

International Corporate Governance Network

The Council of Experts for the Follow-up of Japan's Stewardship Code and Japan's Corporate Governance Code

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Dear Fellow Council Members,

### **ICGN Response to Draft Guidelines for Investor and Company Engagement**

Thank you for allowing me to comment on the Draft Guidelines for Investor and Company Engagement which is based on our past Council meetings as part of the follow-up of Japan's Stewardship Code and Japan's Corporate Governance Code. From the outset I wish to express ICGN's compliments to the FSA Council on the great strides that are being undertaken to help enhance dialogue between companies and investors, ultimately to achieve long term corporate value and sustainable growth.

I have provided a number of minor editorial suggestions for consideration in the English language version of the document. I have more substantial comments for your consideration as outlined below:

#### **Context of the Guidelines**

I applaud the spirit in which the Guidelines have been produced which will help facilitate constructive engagement between companies and investors taking into account current corporate governance priorities in Japan. I note that specific reference is made to: capital allocation, CEO appointment / dismissal, role of Independent Directors, remuneration, audit committee responsibilities and cross shareholdings. These issues are indeed very important and relevant in the context of current corporate governance reform priorities. However, corporate governance is a broad discipline covering many aspects which are not referred to in the Guidelines. It might be helpful therefore to make clear that the purpose of the Guidelines is to focus on particular issues of concern in Japan today and which should be prioritised. The assumption being that the Guidelines will be subject to review at appropriate intervals to ensure their relevance in the context of corporate governance priorities of the day.

#### **Status of the Guidelines**

I understand that the Guidelines are not intended to be mandatory and instead will be presented within the mechanism of 'comply or explain.' I respectfully suggest that the Guidelines might be presented simply as a tool for dialogue and not as a specific set of reporting criteria. Even in a 'comply or explain' context, the assumption is that investors and companies will be required to report on the specific set of subjects identified in the Guidelines and it is unclear how this will be monitored.

We should also recognise that both investors and companies are likely to prefer to have flexibility in determining what subjects to address in their respective meeting agendas depending on current circumstances relating to each individual investee company. It might be helpful therefore to present the guidelines as a useful tool for dialogue but not a prescriptive set of subjects that must be addressed by every investor in every company engagement.

### **Content of the Guidelines**

I have submitted minor edits to the Guidelines for your consideration and more substantially I would like to suggest that the Guidelines reflect the wider issues discussed as part of our previous Council Meetings. In this regard, I respectfully suggest a number of additional questions for inclusion in the Guidelines for your consideration. This is based on my presentation to you last year and which reflect ICGN Member priorities concerning corporate governance improvements in Japan. The list of additional questions is provided in Annex A.

To conclude, I would like to congratulate the leadership of the FSA Council once again on the progress that is being made in Japan in terms of corporate governance and investor stewardship reform. I hope to see many Council colleagues at the ICGN Conference taking place on the 28<sup>th</sup> February in Tokyo. I wish you a successful Council Meeting on the 15<sup>th</sup> February and respectfully submit this letter for your kind consideration.

Yours faithfully,



Kerrie Waring  
Chief Executive Officer, ICGN

## **Annex 1: Additional Questions for inclusion in the Guidelines for Investor and Company Engagement**

### Section 1: Management decisions in response to changes in the business environment

- Does management disclose how such targets [e.g., ROE] are determined and what progress is being made in order to achieve them?

### Section 3: Appointment / dismissal of the CEO

- Is the incumbent CEO involved in the appointment of his or her successor and, if so, to what extent did this influence the decision-making process?
- Is the CEO also the Chairman / President and, if so, has the rationale for why it is strategically necessary been adequately explained to shareholders? Does the company explain why CEO succession to chairmanship is in the best interests of the company?

### Section 3: Independent Director Responsibilities

- Does the CEO (or any member of the Board) receive advice from former executives who are retained as 'advisors' and, if so, what is the nature of the advice and are any benefits given to the 'advisor'?
- Does the board disclose any factors that may impact on whether or not a director may be considered to be independent, including cross shareholding partners, major client relationships, family ties and so on?
- Is one of the Independent Directors appointed the responsibility to be a main point of contact with shareholders?
- Are all individual directors, including the Independent Directors, as well as the board as a whole, subject to periodic performance evaluation and is the process for such an evaluation disclosed?