



January 30, 2015

Financial Services Agency
Corporate Accounting and Disclosure Division
Planning and Coordination Bureau
Kasumigaseki 3-2-1
Chiyoda-ku, Tokyo 100-8967

RE: Comments on the Exposure Draft of Japan's Corporate Governance Code

To Whom it May Concern:

I am writing on behalf of the Council of Institutional Investors (CII), a U.S.-based nonprofit, nonpartisan association of pension funds and other employee benefit funds, foundations and endowments with combined assets of more than \$3 trillion. CII's mission is to educate its members, policymakers and the general public about corporate governance, shareowner rights and related investment issues and to advocate on our members' behalf.

Thank you for the opportunity to offer comments on the Exposure Draft of Japan's Corporate Governance Code (the "Draft Code") based on the English translation.

First and foremost, CII applauds the efforts of the Abe administration to create a robust and effective Corporate Governance Code for Japan. A code that meets global expectations, discourages "boilerplate" explanations and evolves as necessary will create a virtuous circle of stewardship and governance that will protect shareholders in Japanese companies and strengthen investor confidence in Japan's capital markets. For the code to be most effective, however, the stock exchange listing standards that reflect the code's principles should require *meaningful* disclosure, as noted in Item 12 (page 5) of the "Background" section of the Draft Code.

CII's membership, which includes some of the world's largest institutional investors, has approved a comprehensive set of Corporate Governance Policies (attachment) that CII believes provide best-practice guidelines appropriate in most situations. These policies illuminate many of the key standards and practices that our members expect portfolio companies to adopt. Incorporating these elements in Japan's new corporate governance code will help the code gain global acceptance, a stated goal of the Japanese government.

Comments on specific sections of the Draft Code in relation to CII policies on some of the most vital governance issues follow:

1. **Disclosed Corporate Governance Policies and Ethics Code:** The Council believes every company should have its own written, disclosed governance procedures and policies, an ethics code that applies to all employees and directors, and provisions for the strict enforcement of both.

Section 3 and in particular Principle 3.1 of the Draft Code ("Full Disclosure") set the baseline for this level of disclosure, depending on how this section is interpreted and reflected in the stock exchange listing standards. Consistent with CII policies, we recommend that the final listing standards clearly require companies to disclose their corporate governance policies and ethics codes. Such disclosures should cover all of the comply-or-explain items in the code and any other company governance-related policy or practice.

2. **Independent Board:** CII policies call for at least two-thirds of the directors on a corporate board to be independent; their seat on the board should be their only non-trivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive

officer. Further, the company should disclose information necessary for shareowners to determine whether directors qualify as independent. This information should include all of the company's financial or business relationships with and payments to directors and their families and all significant payments to companies, non-profits, foundations and other organizations where company directors serve as employees, officers or directors.

CII recognizes that a two-thirds-independent standard may be difficult to implement in Japan immediately, given the historically low percentage of independent directors on Japanese boards. The Draft Code's requirement that Japanese companies appoint at least two independent directors is a step in the right direction. But two is insufficient to form an independent committee—as suggested as a possible best practice in Supplemental Principle 4.10.1—to advise the board on nominations and compensation (remuneration), where objectivity is most critical. Further, the existence of independent committees is not subject to comply-or-explain disclosure because Principle 4.10 refers only to “optional” approaches.

To promote clear disclosure and further progress toward greater board independence, the Draft Code should require companies to disclose whether they have an independent board committee or explain their rationale for not having one.

3. **Executive Sessions:** CII welcomes the suggestion in supplementary Principle 4.8.1 that independent directors meet regularly in executive session. CII's governance policies state that independent directors should hold regularly scheduled executive sessions without any of the management team or its staff present.

To be truly effective, the code should at least require companies to disclose whether independent directors meet in executive session on a consistent basis. And in time, the code should require executive sessions, which foster a candid exchange of views.

4. **Informed Directors:** CII policies state that directors should receive training from independent sources on their fiduciary responsibilities and liabilities. CII believes that directors should be independently familiar with company operations; they should not rely exclusively on information provided to them by the CEO to do their jobs. Directors should also have reasonable access to management to discuss board issues.

We note that the requirement that companies provide appropriate training for directors and *kansayaku* (Principle 4.14; Principles 4.4, 4.8, 4.12 and 4.13) is broadly consistent with CII policies.

5. **Evaluation of Directors:** CII believes that boards should review their own performance periodically. That evaluation should include a review of the performance and qualifications of any director who received “against” votes from a significant number of shareowners or for whom a significant number of shareowners withheld votes.

We believe that the provisions relating to board effectiveness (Principle 4.11 and its Supplementary Principles 4.11.3 and 1.1.1) are broadly consistent with CII policies.

6. **Board Size and Service:** CII policies state that absent compelling, unusual circumstances, a board should have no fewer than five and no more than 15 members (not too small to maintain the needed expertise and independence, and not too large to function efficiently).

January 30, 2015
page 3 of 3

Shareowners should be allowed to vote on any major change in board size. Companies should establish and publish guidelines specifying on how many other boards their directors may serve. Absent unusual, specified circumstances, directors with full-time jobs should not serve on more than two other boards. Currently serving CEOs should not serve as a director of more than one other company, and then only if the CEO's own company is in the top half of its peer group. No other director should serve on more than five for-profit company boards.

Principle 4.11 and its Supplemental Principles touch upon these general issues of board size and director time allocation, but leave it up to companies to determine what is appropriate. CII recommends that at minimum, Japanese companies should be required to explain their policies on board size and directors' service on other boards. To ensure that such disclosure is meaningful, companies should explain their rationales in detail.

I hope that the views expressed here and CII's Corporate Governance Policies are a useful reference as you complete the important task of creating Japan's first corporate governance code. We are encouraged by the direction of the Draft Code and the broad range of issues that it addresses.

Sincerely,

A handwritten signature in blue ink that reads "Ann Yerger". The signature is fluid and cursive.

Ann Yerger

Executive Director
Council of Institutional Investors