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Institutional Investors Collective Engagement Forum (IICEF)

Public Comment on 2024 Financial Instruments and Exchange Act Amendment

Public Comment on the Draft Cabinet Order and Cabinet Office Ordinance Related to the 2024 Amendment of the Financial Instruments and Exchange Act

The Institutional Investors Collective Engagement Forum submitted the following public comment in response to the Financial Services Agency's "Draft Cabinet Order and Cabinet Office Ordinance Related to the 2024 Amendment of the Financial Instruments and Exchange Act and Related Acts, etc."

As an organization conducting Collective dialogues among institutional investors in Japan, we welcome this amendment as a measure that promotes constructive engagement between investors and companies.

1. Clarification of Requirements for "Non-Joint Holders"

- The FSA has long indicated that mere discussions among investors about the exercise of voting rights at a shareholders' meeting do not constitute "joint holding." However, in practice, investors have often refrained from discussing agenda-related matters before shareholder meetings, out of concern that such exchanges might be regarded as "joint agreements" on voting decisions.

- We therefore welcome the inclusion of more concrete examples in Q&A on Large Shareholding Reports, Question 26, which clarify conditions under which parties are not considered joint holders.

- In Q&A Question 23, it is stated that when all the following three conditions are met, investors are not regarded as joint holders:
  1. They are financial instruments business operators, banks, or equivalent institutions;
  2. Their cooperation is <u>not</u> for the purpose of conducting material proposal acts; and
  3. Their agreement pertains only to the exercise of individual rights on a case-by-case basis.

- Based on this, we would like to confirm the following point:

[Question] Regarding item (3) above, even if institutional investors, during a Collective engagement with a company, discuss a specific shareholder meeting agenda item and express their opinions (for or against) to the company, would it still be correct to understand that such participation does not make them "joint holders"?

2. Clarification of the Scope of "Material Proposal Acts"

- The acts enumerated under Article 14-8-2(1) of the Cabinet Order have long been cited as obstacles that discourage investors from freely expressing opinions during dialogues with companies. In particular, in Collective engagements, such acts could trigger "joint holder" classification, which has had a chilling effect on investor communication.

- We appreciate that *Q&A Question 36* now provides concrete examples to clarify what constitutes a "significant proposal act." We believe this will promote richer dialogue between investors and companies.

We would, however, like to confirm the following three points:

[Question 1] In the explanation of criterion (ii), item (v), the Q&A states that requesting an increase in the number of independent outside directors to comply with the Corporate Governance Code does not constitute a material proposal act.
Does this understanding also apply to cases where investors, in response to corporate scandals or within owner-led companies, request an increase in independent outside directors to enhance governance—provided that no specific candidates are proposed? Similarly, would requests encouraging companies to meet requirements set by the Tokyo Stock Exchange (e.g., appointment or increase of female directors) or to align with an investor's own voting guidelines also be excluded from the scope of material proposal acts? If so, we respectfully suggest that this clarification be explicitly included in the official guidelines.

[Question 2] In Q&A Question 36, criterion (iii), note (3) states that matters "other than those listed in note (2)" are considered to have a relatively low impact on the issuer's business activities.
Dividend policy revisions are included among the items listed in Article 14-8-2(1), but since they are not mentioned in note (2), is it correct to understand that expressing opinions about dividend policy falls under matters with "relatively low impact" as described in note (3)?

[Question 3] Item (vi) of Q&A Question 36 refers to the review of business portfolios—a topic of high interest among investors and frequently discussed in engagement settings. Although business portfolio reviews may often fall under "transfer, suspension, or discontinuation" of key businesses (as listed in Article 14-8-2(1)), would it be correct to understand that, as long as the final decision remains at the discretion of management, investor statements expressing concerns about continuation of certain businesses or requesting disclosure of decision-making criteria and rationale do not constitute material proposal acts?

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