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Professor Yasuhiro Osaki
Chairperson
Study Group on General Shareholders' Meeting Processes
The Council of Experts Promoting Dialogue between Companies and Investors for Sustainable Growth
The Ministry of Economy, Trade and Industry
1-3-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8901
Japan

By email: hatakeyama-tamon@meti.go.jp

Dear Professor Osaki,

ACGA Response to METI Study Group on Japanese AGMs

Thank you for the opportunity to respond to your questions regarding the challenges facing foreign investors when voting shares in the Japanese market. We discussed these questions in our most recent ACGA Investor Discussion Group meeting in early December 2014 and received useful feedback from members.

Our answers below draw from both member feedback and a new survey we are undertaking on proxy voting standards and practices in Asia (to be published in Q1 2015). This report follows our first benchmark study of shareholder voting in the region in 2006.

Our responses to your specific questions are as follows:

Q1. Reconfirm that the short timeframe for making voting decisions (caused by AGM clustering and the short period between proxy materials release and voting date) is indeed a problem and it has negative effect on perception about governance in Japan?

The environment for voting in Japan has improved in many ways since the mid-2000s. A new regulation from the Financial Services Agency (FSA) in March 2010 required mandatory publication of voting results on resolutions at general shareholder meetings. There has been a gradual trend towards less clustering of meetings in late June. And some leading companies are releasing their convocation notices (ie, final AGM agendas and full meeting materials) before the legal deadlines. Japan was also the first market in Asia to create an electronic share voting system for institutional investors (ICJ) and is still one of the few in the region with such infrastructure.

Nevertheless, the consensus among our institutional investor members is that the timeframe for voting in Japan remains relatively short and does have a negative effect

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on perceptions of corporate governance in Japan. These issues are compounded by the lack of availability at many listed companies of AGM meetings materials in English.

The key challenges in Japan are well-known:

- The minimum **two-week rule** under the company law for release of AGM agendas and materials.

  This was a common standard in Asia in the mid-2000s, but as the table below indicates more markets today in Asia have moved to a 21-day rule and/or a minimum 28-day best practice guideline. Indeed, 28 calendar days has been a best-practice guideline in the region since at least 2006.[1]

Deadlines for final AGM notices & materials		
	2006	**2014**
China	20 days	20 days
Hong Kong	21 days	28 days (20 business days)
India	21 days	21 days
Indonesia	14 days	14 days
Japan	14 days	14 days
Malaysia	14 days	21 days
South Korea	14 days	14 days
Singapore	10 market days	14 days
Taiwan	10 days	21 days
Thailand	7 days*	7 days*

* In Thailand the CG Code states 28 days and is treated more a rule than a "comply or explain" guideline. Thailand's AGM checklist recommends 30 days.

Source: Asian Corporate Governance Association: *Forthcoming report titled ACGA Asian Proxy Voting Report 2015,* compiled with the assistance of Asia Research & Engagement.

Actual practice in Japan is better than the rule implies. According to research by the Financial Research Center of the FSA Japan, only about 14% of listed companies with June AGMs sent their convocation notices on the legal deadline in 2013. The average was 19 days in advance and many companies achieved up to 22 days.[2]

[1] See the *ACGA Asian Proxy Voting Survey 2006 (Inaugural Report),* p20.
[2] R. Ueda, "Corporate Governance in Japan: Developments in Listed Companies and Roles of Institutional Investors", p69. A product of the Financial Research Center of the FSA, this paper was also published by the OECD in October 2014.

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While these trends are indeed positive, it is worth noting that many listed companies in certain other Asian markets, notably Hong Kong, Singapore and Thailand, are now sending out their final notices and meeting materials four to six weeks earlier. ACGA analysis of listed companies in Hong Kong found that large caps published 45 days before AGMs on average in 2014, while for small caps it was 40 days. In Singapore, the respective figures were 23 days for large caps and 21 for small caps. The shorter lead time in Singapore is a function of both its shorter deadline of 14 days for notices and a tighter four-month deadline for the holding of AGMs. In Hong Kong, companies have up to six months. Meanwhile, in Thailand, it is common for the larger listed companies to send out their AGM agenda and meeting materials around four to six weeks before their meetings. The tight 7-day rule still exists and has some impact on sub-custodian banks who collate voting results, but no longer dictates the behaviour of listed companies.

- **Custodian-bank voting deadlines**: Unless their custodian bank is linked to the ICJ system, which allows shareholders to vote up to a day before general meetings, global investors must typically cast their votes around eight days before AGMs in Japan (although experience varies). This clearly shortens the voting window for investors It is also worth noting that only around 460 firms are registered with ICJ, hence this additional time benefit applies to only a minority of issuers by number (albeit who represent a majority of the market cap).

- **Clustering:** While the severity of this situation has lessened somewhat, there continues to be a large number of companies holding their AGMs in the latter half of June, especially the last week. Around 80% of listed companies have March year-ends and choose to hold their AGMs within three months. The Financial Research Center paper indicates that while the number of AGMs on the peak day in late June (the last Thursday of the month) has fallen from around 56% of all meetings in 2006 to 41% in 2013, the vast majority of companies (75%) still hold their AGMs in that last week.[3]

These problems are compounded for global investors because of the significant position of Japan in their investment universe. A large global investor could typically own shares in more than 500 companies in Japan (sometimes more than 1,000) compared to only a couple hundred or less in other Asian markets. Voting across such a wide spectrum of firms becomes commensurately more difficult—and is exacerbated if there is also a lack of material translated into English.

The short timeframe and clustering particularly affects investors who take a "risk-based" approach to voting. That is, of several hundred company meetings at which they will be voting, they focus special attention on the 40-50 that pose the most risk from either a business or governance perspective. If there is a controversial item on the AGM ballot and an investor wishes to seek clarification from a company, there is usually not enough time to do so. This then forces them to rely even more on proxy voting advisors.

[3] R. Ueda, p68.

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Q2. What would be a desirable situation (eg, AGMs should be widely spread by one to two months like the UK and US, the interval between proxy release date and AGM dates should be 4-5 weeks at least, etc.)?

Our members would welcome a range of initiatives to provide more time for AGMs and voting. For example:

- **Extending the AGM season through later record dates:** As we understand, there is no hard company law regulation in Japan mandating a three-month deadline for AGMs. However, it is common practice for companies to set their record date (or "base date") for determining voting eligibility according to their fiscal year-end, which means they must hold their AGM within three months. Our members support the idea of setting later record dates, which would allow for an extended AGM season, such as over a four-month period.

  It is worth noting that Japan and Korea are the only two markets in Asia with tight AGM deadlines. Most other markets range from four months (Singapore, Thailand) to six months (China, Hong Kong and Taiwan).

  We should emphasise, however, that we are not calling for any change in the rule requiring companies to submit their annual audited securities report within three months. We envisage a situation where the deadline for the securities report and the AGM are delinked, as is the case in most markets we cover in the region.

  Shorter record dates: A related issue is the length of the record date itself, which is long by international standards, as METI's own research shows.[4] Global investors would welcome a much shorter record date period in Japan of three to four weeks at the most. Given the IT technology available today, a three-month record date appears hard to justify.

- **Earlier notice deadlines:** There is also widespread support for extending the two-week deadline for sending out convocation notices (which in Japan typically include both the final AGM agenda, with detailed resolutions, and the business report with the annual financial statements). Global investors would welcome at least a 28-day deadline, which is in line with minimum best practice standards in other developed markets, and for all materials to be translated into English. If material is not available in English, foreign investors would generally need at least an additional week to have the relevant information translated before they can make an informed voting decision.

  If amending the company law proves difficult, other options would be the adoption of a new TSE rule or a "comply or explain" guideline in the new CG Code encouraging companies to meet the 28-day best practice standard.

[4] See the recent METI research in the reference material of the study group (p.8 and p.9)
http://www.meti.go.jp/committee/kenkyukai/sansei/kabunushi_soukai/pdf/002_03_00.pdf

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- **Daily meeting quotas:** An idea used to limit clustering quite effectively in some markets is the daily meeting quota. That is, allowing no more than, say, 200 AGMs on any one day. Companies would register for their preferred dates and then quotas would be allocated on a first-come, first-served basis.

  Unfortunately, this would not totally stop clustering in the last week of June in Japan, since a daily quota of 200 would still allow 800 meetings to be held over the last Monday to Thursday of the month. The quota would either need to be set lower—say 150 per day—or a weekly quota imposed.

  Another idea would be to require or encourage large cap companies or those with a certain percentage of foreign shareholding to spread out their AGM dates over a longer period of time (say one to three weeks).

  A genuine concern of foreign investors is that any move to later or shorter record dates may not help a great deal if companies still choose to cluster their meeting dates.

Q3. Whether there are any other concerns regarding AGMs?

Members do have some other concerns or suggestions regarding AGMs in Japan. These include:

a. Meeting attendance: A particular challenge faced by institutional investors who wish to attend general meetings in person is the difficulty of being recognised as a shareholder, because their fund is usually not the legal or registered owner of the shares. It is often difficult to get sub-custodian banks to organise the required proxy attendance forms and some listed companies do not recognise "beneficial ownership" status. This situation also exists in certain other Asian markets, but is largely on the way to being resolved.

b. Vote confirmation: The lack of proper vote confirmations (ie, listed companies confirming they have received proxy votes from specific shareholders and that these votes have been counted) is an increasing cause for concern among global investors. Unfortunately, the same challenge pertains in all markets. Given that Japan is more advanced in the area of electronic voting, it is possible that it could also be at the forefront of finding an international solution to this problem.

c. AGM webcasts: It is becoming quite common in other markets for companies to arrange webcasts of their AGM. This allows shareholders who cannot attend to follow the discussion, vote their shares and ask questions. Our members would welcome webcasts of Japanese AGMs also.

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As a final comment, we believe that the recent adoption of the Stewardship Code and METI's work on encouraging greater company-investor dialogue both lend strong support to the work of your Study Group on enhancing shareholder meeting processes in Japan. We are very encouraged that METI is reviewing this area of corporate governance and look forward to any further assistance we could provide.

Yours truly,



Jamie Allen
Secretary General

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