26th December 2024

Corporate Disclosure Division
Planning and Market Bureau, Financial Services Agency (FSA)
Central Government Building No. 7, 3-2-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8967

URL: https://www.fsa.go.jp/

Draft Amendments to the Cabinet Office Ordinance on Disclosure of Corporate Details, etc. (Disclosure of Cross-shareholdings)

Dear Sir or Madam,

We write in response to an invitation for public comments on the revised "Cabinet Office Ordinance on Disclosure of Corporate Details, etc." We appreciate the opportunity to provide our input on the proposed changes. ACGA is firmly supportive of the amendments for greater disclosure on cross-shareholdings to be provided and would like to take this opportunity to make some suggested additions to the guidelines. The guidelines for corporates having shareholdings under pure investment purpose should require those corporates to follow the same rules as asset managers. This means they should commit to fiduciary duty and act as responsible investors. We also need disclosures that demonstrate these commitments Please see below for our comments and suggestions.

The Asian Corporate Governance Association (ACGA) is a non-profit membership association founded in 1999. We conduct research on corporate governance and ESG in 12 markets in Asia-Pacific and advocate at the regulatory and corporate level across the region to improve standards and practices. ACGA is funded by a network of over 100 organisations, of which 80% are institutional investors with more than US$40 trillion in assets under management globally.

1. **Definition of "Pure Investment Purpose":**

We agree with the definition that "pure investment purpose" refers to holding shares solely for the purpose of benefiting from changes in the value of the shares or dividends. It is important to note that shares held under circumstances with restrictions that hinder the company's ability to sell them, such as requiring the issuer's consent for sale, should not be considered as held for pure investment purposes.

2. **Responsible Shareholder Commitment:**

We expect the company to act as a responsible shareholder and adhere to the principles of responsible investment and fiduciary duty. This commitment should reflect the expectation of return and adequate governance oversight, including the rights of minority shareholders. We thus recommend that the Japan Stewardship Code should also be adhered to by investor companies that have pure investment category shareholdings.

3. **Disclosure of Cross Shareholdings:**

For listed companies, we expect, in principle, a detailed disclosure of the rationale for holding cross shareholdings, detailing their purpose and how they support value creation of the investor company that has the investment.

Changes in Investment Purpose:
If there have been changes in the investment purpose from non-pure investment to pure investment, the company should act as a responsible investor, with a commitment to adhere to fiduciary duties, similar to other institutional shareholders. The disclosure and rationale from the company regarding the change in purpose should clearly demonstrate the above commitments in detail.

We believe these amendments will enhance transparency and ensure that the company's actions align with the principles of responsible investment for holding pure investment cross shareholdings.

Please find some proposed additions to the guidelines below.

01. pdf

最近５事業年度（６箇月を１事業年度とする会社にあっては、10事業年度）において保有目的を純投資目的以外の目的から純投資目的に変更したものがある場合、次に掲げる事項を記載すること。 ⅰ (a)に定める事項 ⅱ 保有目的を変更した事業年度 ⅲ 保有目的の変更の理由及び保有目的の変更後の保有又は売却に関する方針 また、少数株主の権利を尊重し、責任ある投資家として行動することを期待する。

Translation
If there have been any changes in the purpose of holding assets from purposes other than pure investment to pure investment purposes in the last five business years (or ten business years for companies with a six-month business year), we recommend that the following items should be stated:

i. The matters specified in (a).
ii. The business year in which the purpose of holding was changed.
iii. The reasons for changing the purpose of holding and policies regarding holding or selling after the change of purpose. Additionally, the company should act as a responsible investor and respect the rights of minority shareholders generally.

02.pdf

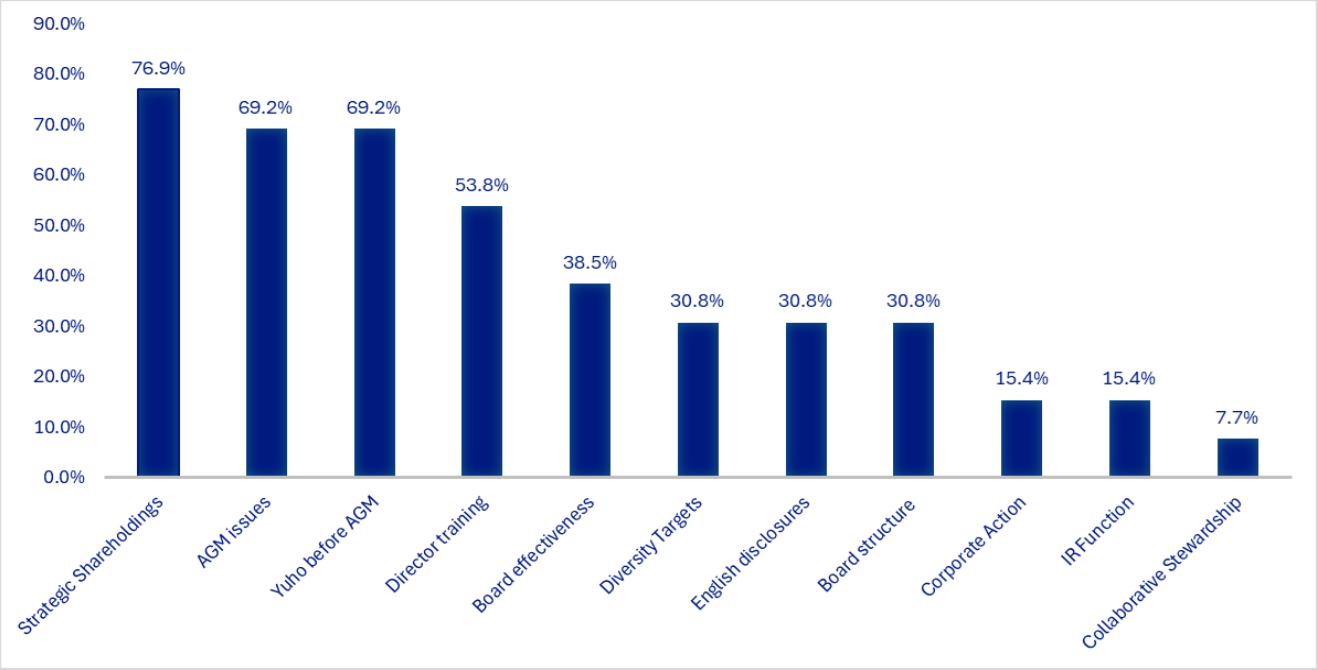
開示府令第二号様式記載上の注意(58)a、e 及び f に規定する「純投資目的」とは、専ら株式の価値の変動又は株式に係る配当によって利益を受けることを目的とすることをいう。例えば、当該株式の発行者が提出会社の株式を保有する関係にあること、当該株式の売却に関して発行者の応諾を要すること等により、発行者との関係において提出会社による売却を妨げる事情が存在する株式は、純投資目的で保有しているものとはいえないことに留意する。また、企業は責任ある株主として行動し、責任投資の原則および受託者責任を遵守することを期待する。このコミットメントは、株式価値の期待と適切なガバナンスの監督、少数株主の権利を含むものであるべきである

Translation

"Pure investment purpose" as stipulated in Notes (58)a, e, and f of Form No. 2 of the Disclosure Ordinance refers to the purpose of solely benefiting from fluctuations in the value of the stock or dividends related to the stock. For example, two corporates that hold stocks in each other (strategic cross holdings) for business relations or stocks that require the issuer's consent for sale, are not considered to be held for pure investment purposes due to circumstances that may hinder the submitting company's sale in relation to the issuer. We reiterate, that the investor companies should act as responsible shareholders, adhering to the principles of responsible investment and fiduciary duty as contained in the Japan Stewardship Code. As these share holdings are purely for investment purpose, the expectations of shareholder value appreciation should be accompanied by appropriate governance oversight.

We would like to refer your attention that ACGA has written extensively on this topic in an open letter on Strategic Shareholdings in Corporate Japan on 26th April 2024 which is available on our website in English and Japanese, highlighting the significant governance, competition and economic efficiency implications of cross-shareholdings. We would like to also refer to the open letter written on 17th October 2024, where the topic of strategic shareholdings was the top matter for potential corporate governance improvement based on member feedback from the ACGA Japan delegation on 24-27 September 2024. The delegation consisted of 31 delegates from 25 asset managers.

ACGA members ranked areas of improvement for Japanese corporates



ACGA thanks FSA for the opportunity to comment on the draft proposals. We would welcome any further opportunity to share our views as the drafts are finalized.

Yours faithfully,

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