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To,
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ACGA Open Letter: Prioritization of Annual Reports before AGMs and alignment of record dates closer to AGMs

Following the public letter that we sent to regulators in Japan on 17th October 2024 providing feedback from our members on regulatory issues, we understand that the Financial Services Agency (FSA) has formed a Council to prioritize Yukashoken Hokokusho report (Yuho report in short, Japanese term for an "Annual Securities Report") to be issued before Annual General Meetings (AGMs). However, the Council Secretariat's December 20 materials suggest a targeted approach to relaxing rules for a select group of progressive companies, rather than implementing uniform changes across the entire market.

The Asian Corporate Governance Association (ACGA) and its undersigned members would like to follow-up on the issue of releasing Yuho reports before AGMs and on the alignment of record dates closer to AGMs. We strongly encourage these changes on the timing of Yuho disclosures in relation to AGMs and realignment of record dates should apply to all companies, with a transition period of three years or less for Tokyo Stock Exchange (TSE) Prime- and Standard Market listed companies, and a longer transition period of possibly up to five years for other companies. Merely allowing progressive firms to voluntarily adopt changes without mandating universal compliance would lead to limited adoption, a missed opportunity for reform and potential market confusion.

**Specific Recommendations**

1. **Prioritization of Yuho disclosure before AGMs**

We strongly support that all listed companies should release their Yuho reports at least 21 days in advance of their AGMs. Additionally, we reiterate from our October 2024 letter that the Yuho be provided in English so that it is easily accessible to global Institutional investors. This would align Japanese companies with global best practises and would ensure investors have ample time to analyse both annual reports and AGM materials.

We believe this recommendation is aligned with FSA's "Action Program for Accelerating Corporate Governance Reform: From Form to Substance," published on April 26, 2023. This is also in line with

TSE's Action on Cost of Capital-Conscious Management and Other Requests issued on March 31, 2023, and will help to enhance corporate value of Japanese companies as a result of improved transparency.

Currently, approximately 80% of Japanese companies publish their Yuho either on the day of their AGM or after the AGM. This practice limits investors' ability to make fully informed voting decisions for AGMs, and they must cast their votes with either limited or outdated information, as the Yuho contains valuable information as discussed below.

**Reporting requirements for Japanese companies**
Japan's regulatory framework governing corporate disclosures and AGMs include the following reports:

- All listed companies in Japan are required to compile and disclose Tanshin flash reports within 45 days from the end of the quarter. Tanshin flash reports offer a quicker snapshot of key financial metrics, focus on headline numbers and immediate results announcement and are not audited. Tanshin flash reports are required by the Japan Exchange Group (JPX) and have no auditing requirements prior to release, as they prioritize speed of disclosure.

- Yuho reports include full financial statements, extensive notes, segment-level data, and detailed information on subsidiaries and affiliates as well as in-depth corporate governance details, risk factors information, management's discussion, and increasingly, ESG-related data that is more reliable than other reports. AGM circulars sometimes include cross shareholding data; while useful this is nowhere near the much fuller picture that Yuho reports provide. Companies must disclose strategic shareholdings in the Yuho, including the rationale for holding these shares and any agreements with the investee company. The Yuho report is mandated by the FSA and is subject to more stringent auditing requirements. Listed companies are very careful in preparing the Yuho report as any misrepresentations (financial or otherwise) could result in a shareholder lawsuit or even criminal liability.

- Public companies in Japan are required to file Jigyo Hokukusho (事業報告書) or "Business Report" annually with the FSA and to disclose it to shareholders. This shorter "company report" is generally the only full-year disclosure investors receive before the AGM (along with the quarterly Tanshin). Moreover, the proxy materials that include these reports, which also include the names and resumes of nominated directors, do not have a standard format and are not machine-readable, which makes it impossible to efficiently construct a database from the information.[1]Japanese companies must prepare both this business report (for the Companies Act) and a Yuho (for the Financial Instruments and Exchange Act), which results in duplication of effort because the two reports have different formats. We recommend combining the business report and the Yuho report into a single (identical) document in a machine-readable format. This will require coordination by different ministries but will clearly save resources and should make it easier for Yuho reports to be released prior to AGMs.

[1] Japan can end its AGM bottleneck by changing the rules - Nikkei Asia

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The Yuho report is a reliable and comprehensive source of information for all investors and would add significant value if released prior to AGMs and also align Japanese companies to global practises as shown in Table 1 below.

Table 1: Notice period requirements for annual report release before AGM across countries

| Country | Notice Period (Days) | Details |
|---|---|---|
| United States | 10 | Public companies must file their annual reports (Form 10-K) with the SEC at least 10 days before the AGM |
| United Kingdom | 21 | Companies must provide annual reports to shareholders at least 21 clear days before the AGM, as per the Companies Act 2006. |
| Australia | 21 | Annual reports must be sent to shareholders by the earlier of 21 days before the AGM or 4 months after the financial year end, as per the Corporations Act 2001. |
| Singapore | 14 | Companies must send financial statements and notices at least 14 days before the AGM, as required by the Companies Act. |
| Hong Kong | 21 | Annual reports must be sent at least 21 days before the AGM and within four months of the financial year end, under the Companies Ordinance. |
| India | 21 | Companies must issue an AGM notice and provide annual reports to shareholders at least 21 days before the meeting, as mandated by Section 96 of the Companies Act, 2013. |
| Korea | 7 | In Korea, annual reports (also known as business reports) and independent auditor reports are required by law to be published one week prior to AGMs (Article 31 (4) of the Enforcement Decree of the Commercial Code). This requirement became effective from January 1, 2021, as part of the revised Enforcement Decree of the Commercial Act. |
| China | 20 | Company Law: Listed companies must publish their annual reports at least 20 days before the AGM. |

Source: ACGA research

## 2. Realignment of record dates

We recommend setting record dates for determining dividends and voting rights closer to the AGM date:

- Propose a maximum 30-day gap between the record date and the AGM
- Shift away from the current practice of setting the record date at fiscal year-end
- Ensure shareholder rights at the AGM reflect more current ownership status.

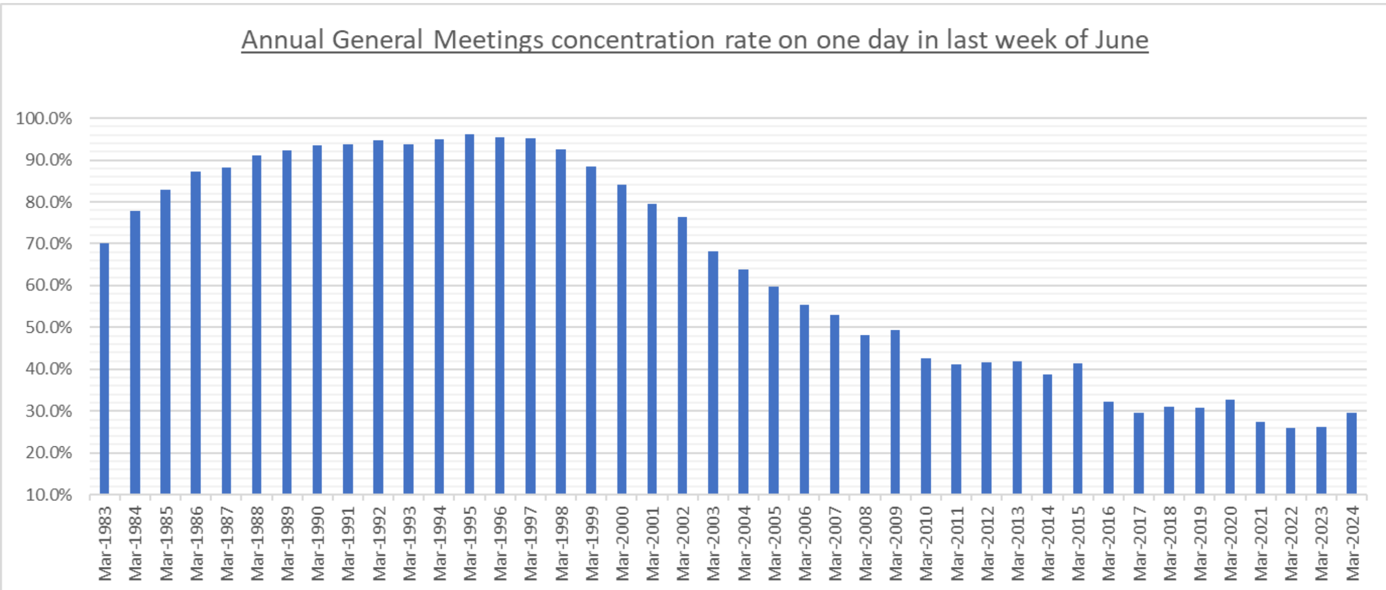
Although current regulations allow Japanese companies the flexibility to adjust the record date by amending their Articles of Incorporation, however very few do so. Hence, we suggest mandating by law to have a maximum 30-day gap between record date and the AGM. This will help the shareholder register reflect current ownership status and bring Japanese companies in line with global norms.

**Current practises by Japanese companies on setting record date**

In Japan, the government's fiscal year runs from April 1 to March 31. The majority of Japanese companies set their fiscal year-end on March 31, aligning with Japan's government fiscal year. The Companies Act allows companies to set their record dates in their Articles of Incorporation. Most companies have record dates that are set in the Articles as the final day of the fiscal year.

The Companies Act requirement is that the AGM be held within three months after the end of the fiscal year and a large number of Japanese companies choose the last week of June for their AGMs. For instance, in 2024 over 1,600 AGMs were held during a single week in late June, with 650 AGMs on 27 June alone. This concentration of AGM is shown in the graph below[2]. While the concentration ratio has reduced since the 1990s, however it has remained at around 30% of companies having their AGM just on one day at the end of June, which results in a rush in proxy voting decisions and makes it difficult for portfolio managers to attend AGMs.

Graph 1: Annual General Meetings concentration rate on one day in last week of June: 1983-2024




Source: TSE

As noted, the majority of Japanese companies have record dates at the fiscal year-end (in most instances, March) and AGMs concentrated at the end of June. The record date for most Japanese

[2] * These statistics are based on Japanese companies listed on the TSE market (excluding TOKYO PRO Market) as of March 31, 2024 and whose fiscal years ended in March 2024.

companies is about three months apart from the AGM date. This means the shareholder register for the AGM will likely not reflect the current ownership status. This is not aligned with global practice as shown in Table 2, despite many companies in Japan having high foreign ownership[3].

Table 2: Record date and AGM practises across countries

- In the United States, record dates for voting rights and dividends are up to 60 days before the AGM and must be at least 10 days before the AGM date.
- In Australia, the annual report must be made available to shareholders at least 21 days before the AGM and listed public companies must provide at least 28 days' notice before the AGM. The AGM itself must be held within 5 months after the end of the company's financial year. The record date for voting rights must be set no more than 48 hours before the AGM.
- In the United Kingdom, the Companies Act 2006 requires public companies to lay their accounts before shareholders at the AGM. Specifically, public limited companies (PLCs) must hold an AGM annually within six months of their financial year-end; annual accounts and reports must be sent to shareholders at least 21 days before the AGM. The record date for voting rights cannot be set more than 48 hours before the time of the meeting (non-working days can be excluded from the calculation).
- In India, under the Companies Act 2013, companies must hold their AGM within 6 months from the end of the financial year. Annual reports must be sent to shareholders at least 21 days before the AGM. Listed companies must fix the record date for AGM voting at least 7 days before the date of the AGM.

Source: ACGA Research

Rationale for change

We believe these changes would significantly enhance Japan's corporate governance practices and unlock shareholder value in line with recent reforms initiated by Japanese regulators, by ensuring that:

- Investors have ample time to analyze both annual reports and AGM materials
- Institutional shareholders will have time to engage with the company before making voting decisions
- Buying, selling, and voting decisions can be made with comprehensive information
- Improved transparency, risk management and investor confidence should lead to higher valuations for Japanese companies.

Addressing potential concerns

We are aware that there are significant challenges in implementing these recommendations, including legislative amendments that may be required. Specifically, the requirement that the AGM be held within three months after the end of the fiscal year is a Companies Act requirement. Changing the three

[3] As at March 2025, foreigners held 58,531,887 shares directly, which translates to a direct holding ratio of 24.99% in certain contexts: https://www.jasdec.com/en/description/less/for_pubinfo/for_pubinfo.html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months requirement to four or five months will require an amendment to the Companies Act. Yuho reports are currently published just before or soon after AGMs; if AGMs are moved later in the year by one or two months, the Yuho report will then be available for investors ahead of AGMs.

If, however, AGMs remain within three months of the year-end, the deadline for submission of the Yuho report would have to be shortened from three to two months after the close of the fiscal year (requiring amendment of FSA regulations) to be available for investors to examine and use for AGM voting. It is unclear whether audit firms in Japan can complete their review and audit of a company's financial statements within two months after the fiscal year close. Additional resources will be needed for timely English translations as well. Hence for Yuho reports to be available before AGMs, it would appear more feasible for AGM deadlines to be pushed to later in the year, rather than Yuho preparation to be brought forward.

The release of Yuho reports before AGMs will mean more information to investors with higher transparency and better disclosures. Investors are supportive of AGMs being held later in the year. This will also help resolve the AGM concentration issue shown in Graph 1 above.

The Companies Act allows companies to set their record dates in their Articles of Incorporation. Most companies have record dates that are set in the Articles as the final day of the fiscal year. Requiring a record date closer to the AGM would require thousands of companies to amend their Articles of Incorporation or an amendment of the Companies Act itself. ACGA recommendation is for regulators to propose amendment in the legislation to introduce these changes in tandem with appropriate regulations so that there is more consistent alignment with global best practice.

To facilitate a smooth transition, we suggest introducing a gradual implementation period and applying the new schedule progressively across different market segments. We propose a transition period of three years or less for Tokyo Stock Exchange Prime- and Standard Market listed companies, and a longer transition period of up to five years for other companies. This should give companies adequate time to reallocate resources and make organizational changes needed to implement the new rules.

The FSA could consider providing educational seminars for corporates to understand the importance of releasing annual reports before AGMs and aligning record dates closer to AGM dates in line with global practises (as shown in Table 1 and Table 2). These proposed changes are crucial to continue attracting international investors as Japan advances corporate governance practices. They will align Japanese companies to global best practice and support improved corporate and market valuations.

**Conclusion**

ACGA and its undersigned investors and their representatives believe there is still great potential for market value enhancement in the next phase of corporate governance reforms in Japan. We provide a list of our key recommendations for your convenience in the box below.

<u>ACGA recommendations</u>

- We strongly support that all listed companies should release their Yuho reports in English at least 21 days in advance of their AGMs
- We recommend combining the business report (Jigyo Hokukusho) and the Yuho report into a single (identical) document in a machine-readable format
- We propose a maximum 30-day gap between the record date and the AGM

Thank you for the opportunity to provide these recommendations. We look forward to discussing these recommendations at a suitable time to elaborate on any of the points herein.

Yours sincerely,

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