(Provisional Reference Translation)

Summary of Comments Submitted in the Public Consultation Procedure Regarding "Development of Listing Rules for the Implementation of the Corporate Governance Code" (Related to Comments made in English)

Tokyo Stock Exchange, Inc. (hereinafter "TSE") released the outline of "Development of Listing Rules for the Implementation of the Corporate Governance Code" on February 24, 2015 and sought public comment until March 26, 2015. A summary of the comments gathered and TSE's response to each comment are as follows. Please note that this document contains content related to comments submitted in English. Comments made in Japanese and their corresponding responses are omitted.

No.	Summary of Comments	TSE Response
	1. Development of Rules for the Implementation of the Code	
	(1) Explanation of reason for non-compliance with the Code	
1	・ We note that the proposed Listing Rules suggest that companies listed on Mothers and JASDAQ boards be required only to disclose non-compliance with "General Principles" of the Code. We do not believe that this is appropriate. The Code itself is structured so as to provide flexibility by virtue of the 'comply or explain' basis. Smaller companies may be afforded greater flexibility to deviate from all elements of the Code by their owners (i.e., shareholders) but should not, we believe, be granted flexibility in disclosing and describing their corporate governance practices. (Aberdeen Asset Management Asia Ltd)	* The reason for treating companies listed on Mothers and JASDAQ differently from those listed on the 1st and 2nd Sections is due to consideration of the actual situations in foreign countries where a similar code has already been adopted. For example, for markets for emerging companies, etc., such as AIM in the UK, the "comply-or-explain" is not required. * Meanwhile, as you mentioned, even for small-sized listed companies, enhancement of corporate governance is deemed to be beneficial. As such, we will require them to respect the aim and spirit of the Code in the same way as companies listed on the 1st and 2nd Sections. Furthermore, to prevent significant deviations from such aim and spirit, we will require Mothers and JASDAQ-listed companies to explain the reasons for non-compliance with the General Principles.
2	・ Item 1(1) on the Development of Rules for the Implementation of the CG Code stated that Mothers and JASDAQ companies shall be required to explain the reasons for non-compliance with only the "General Principles" of the Code. Given there is inherent flexibility in the concept of "comply or explain" which allows companies to choose what they are in a position to comply and what timeframe (same approach taken for the Japan Stewardship Code implemented last year), it may not be necessary to dispense with applicability of Code principles to these companies. Requiring them to adhere to higher governance standards will benefit them more in the long-term. A	

(Provisional Reference Translation)

No.	Summary of Comments	TSE Response
	different approach in explaining non-compliance with "General Principles" only may also confuse investors in discerning good disclosure. ・ We are also concerned that the so-called "global trend" in encouraging new industries and "innovative companies" by dispensations with good governance requirements may lead to a "race to the bottom" on quality of companies listed in regional exchanges, an intense debate already in Singapore and Hong Kong. (ACGA)	* Moreover, Mothers and JASDAQ-listed companies are already subject to the minimum level of discipline required of listed companies, such as the independent directors/auditors system, in addition to the Code. As such, the level of discipline required of Mothers and JASDAQ-listed companies will not be lowered.
3	・ Corporate governance standards exist to help companies become successful and resilient in different market conditions. The exception to the application of the Code granted to the Mothers and JASDAQ companies may inherently disadvantage them from maximising their business potential. Given there is inherent flexibility in the concept of "comply or explain" which allows companies to choose the extent of what to comply with and what timeframe, we do not believe it is necessary to dilute with applicability of Code principles to these companies. (Legal & General Investment Management Ltd)	
	(2) Means for providing explanation of reason for non-compliance with the Code	
4	・ With regard to the timing of the release of a company's corporate governance report, we strongly believe that shareholders should be able to make reference to this report well in advance of an AGM. The proposed amendments to Listing Rules would appear to suggest that such a report be released after an AGM. We would advise the exchange to require that corporate governance reports be made available to shareholders sufficiently in advance of an AGM so as to allow investors (including international investors) to make informed voting decisions based on all relevant information. (Aberdeen Asset Management Asia Ltd)	* Principle 3.1 (ii) prescribes that the listed companies should proactively provide information on their basic views and guidelines on corporate governance based on each of the principles of the Code. Furthermore, Supplementary Principle 1.2.1 states that "Companies should provide accurate information to shareholders as necessary in order to facilitate appropriate decision-making at general shareholder meetings."
5	・ On the timing of submission of the corporate governance report, we note that the TSE would require companies to submit the corporate governance reports shortly after the AGMs (from 2016). The feedback from our global investor members is that they would welcome the opportunity to review the corporate governance reports well ahead	* As such, where the listed company deems it necessary, explanations of reasons for non-compliance with the principles and disclosure items based on the principles will be, for example, posted on the listed company's website,

(Provisional Reference Translation)

No.	Summary of Comments	TSE Response
	of the AGMs in the current year (as their usefulness for the AGMs in the following year would be limited). (ACGA)	included in the notice of general shareholders meeting, or explained to investors. In any case, the listed company should determine the form, media, and timing of providing the information in light of the circumstances, etc. * On the other hand, investors call for matters regarding the Code to be disclosed in a form that offers an overall view to the greatest extent possible. To accommodate this request, the listing rule revision requires listed companies to separately describe these matters in the corporate governance report in a standard manner. Descriptions in the report include not only the explanations of reasons for non-compliance with the principles and disclosure items based on the principles, but also the wide range of matters that are not directly related to the Code and continue to be required in the report. In consideration of the fact that many matters involving corporate governance are actually revised and fixed at the AGM, it is deemed appropriate that the time of submission of the corporate governance report remains without delay after the AGM. Such submission will also contribute toward encouraging dialogue between listed companies and shareholders throughout the year toward the next AGM.
6	・ We would strongly encourage the exchange to require such disclosures to be made in English. (Aberdeen Asset Management Asia Ltd)	* The Code prescribes in Supplementary Principle 1.2.4 that companies should take steps for provision of English translation of the notice of general shareholders meeting. It also prescribes in Supplementary Principle 3.1.2 that, bearing in mind the number of foreign shareholders,
7	・ With regards to the requirement in item 1(2) for listed companies to provide reasons for non-compliance in the corporate governance report, there are no references to English translations. As we pointed out to the FSA in our submission of comments to	

(Provisional Reference Translation)

No.	Summary of Comments	TSE Response
	the exposure draft of the CG Code, given the fact that global investors will be very interested, the corporate governance report and the explanations should be made available in English, and on the companies' websites. Supplementary Principle 3.1.2 of the CG Code encourages companies to provide English language disclosures. Further, having the same information available at the same time and with the same level of accuracy is a pre-condition for equal treatment of shareholders, a core principle enshrined by General Principle 1 of the CG Code. (ACGA)	companies should, to the extent reasonable, take steps for providing English language disclosure. As to the provision of English language disclosures including English translation of the corporate governance report, it is expected that listed companies will take appropriate measures in accordance with such Principles.
8	・ Disclosure of vital information regarding the board, strategy, and financial background on the company should always be disclosed in English. Shareholders need to be treated equally with the same amount of information provided as domestic investors. Provision of information in English is the most important element of attracting foreign investors and valuing their shareholding. ・ We ask for the listing rule to specifically state that the reporting be provided in English, unless the company can demonstrate the lack of business case to do so. (Legal & General Investment Management Ltd)	
	2. Revision of Information Disclosure on Independence of Independent Directors/Auditors	
9	・ Item 2 on Revision of Information Disclosure on Independence of Independent Directors/Auditors provides some enhancements on disclosure, "[t]o prevent listed companies from being overly conservative in their judgment" on the independence of directors and auditors. However, as stated in the "Handbook on Practical Issues for Independent Directors/Auditors" (published by the TSE), the current formulation of the independence criteria is whether (i) the director/auditor is likely to be significantly controlled by the management, or (ii) the director/auditor is likely to significantly control the management. We are concerned that this may not be entirely sufficient in providing good disclosure to investors on director and auditor independence, and global investors are keen to see a clear and precise definition of "independence." (ACGA)	* The TSE independence criteria further defines persons who are significantly controlled by the management of the listed company and those who are likely to control the management of the listed company. The following persons are not recognized as independent: a) a person who executes business of the parent company or fellow subsidiary of said company; b) a person for which said company is a major client or a person who executes business for such person, or a major client of said company or a person who executes business for such client; c) a consultant, accounting professional or legal

(Provisional Reference Translation)

No.	Summary of Comments	TSE Response
10	・ We believe that the Listing Rules should include more detailed discussions of independence, and relationships that may lead to an individual being classed as "non-independent." The Listing Rules should make reference to, and require disclosure of, a broader set of relationships, including but not limited to business partners, former executives, suppliers, customers, substantial shareholders, providers of debt financing (including banks), and personal (familial) relationships. ・ The listing rules should also make reference to materiality thresholds, either in terms of a dollar amount or revenue contribution. In the case of the latter, this may include relationships where the listed corporation is responsible for a majority of an entity's revenue, with the management of that entity being deemed non-independent (were they to serve on the listed corporation's board). The Singapore code of corporate governance, for example, has a useful discussion of relationships that may impact independence. The exchange should also make reference to time limits, and whether the independence of an individual who has served on a board for more than 9 years is compromised. (Aberdeen Asset Management Asia Ltd)	professional (in the case of a group such as a juridical person or association, including persons belonging to such group) who receives a large amount of money or other asset other than remuneration for directorship/auditorship from said company; d) a person who has recently fallen under any of a) to the preceding c), and e) a person who is a close relative of such persons. In addition, listed companies are required to disclose whether a person falls under any of the cases in the past, is a major shareholder of the listed company, has a business relationship, holds concurrent outside director positions, or makes donations, and the outlines of such relationships. * Whether a person is a "major" client or not is judged by the listed company in accordance with "an entity who is a major client of said stock company" referred to in Article 2, Paragraph 3, Item 19, Sub-item (ii) of the Ordinance for Enforcement of the Companies Act. For judgment criteria of individual companies, while there are no provisions that the criteria must be based on either monetary amounts or the ratio of transactions with the major client to sales, such quantitative criteria can be seen among listed companies that voluntarily disclose their criteria.
11	・ We are pleased to see the introduction of the term 'independence' in the outside director requirement in the Corporate Governance Code. ・ As investors, we look to the composition of the board to gain confidence in its ability to oversee management, develop strategy, manage risk, and ensure high standards of business practice. This is for the benefit of not just shareholders but all stakeholders. To	* Even under the current independent directors/auditors system, the listed company is required to disclose whether it has a transactional relationship with outside directors/auditors and/or any entity to which they belong or had belonged as an executive director or an employee.

(Provisional Reference Translation)

No.	Summary of Comments	TSE Response
	be effective, it is crucial that the board comprises a balance of executives and non-executives who are independent from management. This balance ensures that no single individual, or group of individuals, dominates decision-making to the detriment of others, and helps providing the diversity needed to cultivate a healthy debate in the board room. ・ A truly independent director can bring fresh ideas and opportunities as a result of external experience and challenge management constructively without the constraint of a vested interest in the business. We also look to independent directors to represent our interests as minority shareholders who, like management and company employees, are committed to ensuring the long term success of Japanese companies. ・ The current independence criteria set out by the Stock Exchange allows for loose interpretation in assessing the level of affiliation of non-executive directors. The absence of a requirement to disclose the level of business relationships (such as the % of revenue impact from the affiliated entity) means that we, the investors, are not able to distinguish one appropriate outsider from another who may pose conflicts of interest. ・ Due to this opaqueness, we are noticing that companies are starting to come up with their own definition of independence. As global and universal investors, this is not conducive to assessing companies in a standardised manner and can disadvantage some over others. ・ In order to create a level playing field for all market participants, we strongly advocate that TSE: 　・ Reviews its independence criteria to be in line with international markets 　・ Mandates listed companies to disclose business relationships/tenure/time lapse in a consistent manner ・ We would like to emphasise that the success of corporate governance reforms resides in the quality of the new outsiders joining company boards in Japan. We hope TSE will	If it does, the outline of such relationship has to be disclosed. When disclosing such outline, the listed company is required to describe the type, amount, and timing, etc. of transactions to the extent that shareholders and investors can appropriately understand the relationship. * The tenure of board members are disclosed in, among others, the biography section for candidates for board members in the notice of general shareholders meeting.

(Provisional Reference Translation)

No.	Summary of Comments	TSE Response
	ensure that this extremely important element is addressed through appropriate disclosure guidance. (Legal & General Investment Management Ltd, ACGA)	
12	・ The TSE may wish to make reference to the New York Stock Exchange rules, where the independence test is that the independent director has "no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organisation that has a relationship with the company)"; and also take into account the approach in the United Kingdom, Singapore, South Africa, and Hong Kong, where 9 years has been adopted as a benchmark – if a listed company decides that a director with more than 9 years' service is still independent, it will be required to explain to members why it has reached that conclusion. We would strongly support the TSE in implementing requirements for listed companies to disclose the business relationships and tenure of independent directors in a consistent manner. (ACGA)	* Whether a uniform span of the tenure at the listed company should be included in the TSE criteria for independent directors will be considered in the future. * Under Principle 4.9, the listed company should establish and disclose independence standards aimed at securing effective independence of independent directors. As such, if the listed company deems it necessary, it may set forth a limit on the tenure of board members in its independence standard.
13	・ The exchange should also make reference to time limits, and whether the independence of an individual who has served on a board for more than 9 years is compromised. (Aberdeen Asset Management Asia Ltd)	
	Others	
14	・ Finally, as we have emphasised to the FSA, the TSE should explore conducting a disclosure review within a year (and in the future regularly) to evaluate the quality of the disclosures by listed companies in their corporate governance reports, and whether these disclosures are in line with the spirit and requirements of the CG Code. (ACGA)	* Your comment will be used as a reference when we consider measures related to the Code in the future.