(Reference Translation)

Interim Report of Review of Minority Shareholder Protection or Other Framework of Listed Companies with Controlling Shareholders or Quasi-Controlling Shareholders

September 1, 2020

Study Group to review Minority Shareholder Protection and other Framework of Quasi-Controlled Listed Companies

Tokyo Stock Exchange, Inc.

Contents

1. Introduction

The financial instruments markets operated by Tokyo Stock Exchange (hereinafter referred to as "TSE") provide platforms for fair price discovery and furnish investors with opportunities for sound asset building through the participation of a large number of unspecified investors who make diverse investment decisions. They also serve to furnish listed companies with fund-raising opportunities and distribute funds efficiently throughout the economy. In order to appropriately perform these functions, it is imperative for TSE to foster trust in the fairness of Japan's capital markets and improve the environment to protect the legitimate interests of a large number of unspecified investors so that investors can participate in the market with confidence.

In this regard, among listed companies with Controlling Shareholders,[1] there is the risk that the Controlling Shareholder may act to undermine the interests of minority shareholders[2] by exercising its influence for its own benefit (risk of structural conflicts of interest).[3] When such conflicts of interest arise, laws and regulations, including the Companies Act, and the courts have a primary role in reconciling the interests of related parties. With respect to listed companies, meanwhile, TSE as a market operator is expected to play a role in establishing a framework to protect the interests of minority shareholders appropriately through adding rules to the laws and regulations applicable to both listed companies and unlisted companies so that a large number of unspecified investors can participate in the market with confidence. Therefore, TSE has been steadily improving the listing system and operations to protect the legitimate interests of minority shareholders of listed companies with Controlling Shareholders (see Appendix).

Recently, however, in some cases that were brought to our attention, there was opinion that minority shareholders were not afforded sufficient protection under the current listing system. The cases were found mainly among listed companies that came to have a shareholder who gained substantial control over the company without holding a majority of the voting rights (hereinafter referred to as "Quasi-Controlling Shareholder(s)").

Therefore, the Study Group held four meetings between January 7, 2020 and August 25, 2020 to discuss how to coordinate the interests of Controlling Shareholders or Quasi-Controlling Shareholders with those of minority shareholders and the framework for minority shareholder

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[1] "Controlling Shareholder(s)" includes any parent company (including an unlisted company) or individual who holds a majority of the voting rights (Rule 2, item 42-2 of the Securities Listing Regulations and Rule 3-2 of the Enforcement Rules for Securities Listing Regulations).

[2] "Minority shareholder(s)" is assumed to be a shareholder who is not a Controlling Shareholder (or Quasi-Controlling Shareholder as described later) and has neither direct nor indirect control over company management (decision-making body).

[3] A typical case of minority shareholder interests being undermined is when a transaction that is unfavorable to the listed company with a Controlling Shareholder is approved due to a situation where the directors of the listed company are unable to ignore the intentions of the Controlling Shareholder, who, in effect, appoints them.

protection necessary for investors to participate in the market with confidence. The Study Group has summarized the issues that require further discussion in this interim report.

2. Clarification of Issues

(1) Background

TSE categorizes the issues regarding structural conflicts of interests in listed companies with Controlling Shareholders into two types: (i) cases of subsidiary listings (i.e., listing of a company with a parent company, hereinafter the same), where TSE actively engages in the listing of a company with a Controlling Shareholder during the listing examination process, and (ii) cases where a Controlling Shareholder emerges after listing through the acquisition of shares, etc. For both types of cases, TSE has been improving the listing system by conducting reviews as needed when such issues have surfaced.[4]

Specifically, with respect to subsidiary listings, while it is not appropriate to uniformly prohibit subsidiary listings in light of their significance to the Japanese economy and the role expected of stock exchanges to provide investors with a wide array of investment instruments, a subsidiary listing is not necessarily a desirable capital policy for investors and other market participants. Therefore, TSE has maintained the stance that it is advisable for a subsidiary aiming to list and its parent company to determine their approach after sufficiently considering the characteristics of a subsidiary listing.[5] Based on this view, TSE implements measures in listing examinations of subsidiaries, including reviewing whether the subsidiary is able to make management decisions on its business independently and what is the parent company's policy on operations in the corporate group.

On the other hand, with respect to cases where a Controlling Shareholder emerges after listing, although it is required, as in the case of a subsidiary listing, to preclude the adverse effects of conflicts of interest between the Controlling Shareholder and minority shareholders, it is difficult to examine the independence of management in the same way as in the listing examination of a subsidiary listing. Therefore, TSE has been implementing minority shareholder protection through improving the listing system and operations, mainly through information disclosure regarding transactions with Controlling Shareholders and regulations on decision-making procedures. Furthermore, TSE has enhanced the independence criteria for

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[4] "Interim Report of Advisory Group on Improvements to TSE Listing System" (March 27, 2007) by TSE, Advisory Group on Improvements to TSE Listing System, "Report by the Financial System Council's Study Group on the Internationalization of Japanese Financial and Capital Markets" (June 17, 2009) by Financial Services Agency, Financial System Council, and "Summary of Deliberations on 'Listing System Improvement Action Plan 2009 (Matters to consider for actual implementation)'" (March 31, 2010) by TSE, Advisory Group on Improvements to TSE Listing System, among other materials.

[5] "TSE stance on the listing of companies which have parent companies" (TSE Listing No. 11, June 25, 2007) (only available in Japanese)

independent directors/auditors because it is important to establish a governance system to ensure independent decision-making in listed companies with Controlling Shareholders and appropriately protect minority shareholder interests.

(2) Issues Highlighted by Recent Cases

However, in some recent cases that were brought to our attention, there was opinion that previous improvements to the listing system and operations did not appear to function appropriately to protect minority shareholders. These mainly involve cases where a Controlling Shareholder or Quasi-Controlling Shareholder emerges after listing.

- In a case at a company with a Quasi-Controlling Shareholder, a dispute with the Quasi-Controlling Shareholder revealed that prior agreements had been made with the Quasi-Controlling Shareholder regarding the composition of the company's board of directors and the sale of the company's shares, etc. There is opinion that although whether agreements with shareholders regarding the appointment of directors, etc. exist is an important factor for investment decisions, information on such agreements is not sufficiently disclosed.[6]
- In another case, a listed company with a Quasi-Controlling Shareholder stated that the Quasi-Controlling Shareholder had pressured the listed company to transfer its core business to a group company of the Quasi-Controlling Shareholder. There is opinion that it is not clear how business opportunities and business fields are coordinated and allocated in a corporate group when group companies have overlapping businesses.[7]
- In a case at a listed subsidiary, the board of directors expressed an opinion endorsing a tender offer by its Controlling Shareholder but did not recommend shareholders to tender

[6] Under the current listing system, (a) a listed subsidiary is obliged to (i) disclose guidelines regarding measures for minority shareholder protection in executing transactions, etc. with a Controlling Shareholder, (ii) disclose the status of compliance with the measures for minority shareholder protection, etc., and (iii) disclose approaches and measures to ensure independence from its parent company (including unlisted companies), and (b) a listed company with any listed subsidiary is obliged to disclose the significance of having the listed subsidiary and measures to ensure the effectiveness of the listed subsidiary's governance system, based on approaches to and policies on management of the corporate group. However, (a) a listed subsidiary is not obliged to disclose its parent company's approaches to and policies on the management of the corporate group, and (b) neither a listed subsidiary nor listed company with a listed subsidiary is obliged to disclose details of contracts related to the matters that should be described as the approaches to and policies on the management of the corporate group.

[7] Under the current listing system, if the decision-making body of a listed company makes the decision to conduct a material transaction, etc. involving a Controlling Shareholder (including a third-party allotment, merger and other corporate reorganization, and expression of an opinion on a tender offer, among other decisions that require timely disclosure), the company is obliged to obtain an opinion from an entity that has no vested interest in the Controlling Shareholder that states that the decision will not undermine the interests of minority shareholders and to perform necessary and sufficient timely disclosure on the opinion. However, such rules do not cover cases where any transaction does not exist, such as when coordinating and allocating businesses in the corporate group or when group companies compete for business opportunities.

their shares mainly because the tender offer price proposed by the Controlling Shareholder was below the minimum of the price range calculated by the DCF method in a stock valuation report obtained by a special committee. There is opinion that although the board of directors of the listed subsidiary obtained a report from the special committee stating that it is appropriate for the board of directors to express an opinion that (i) the board endorsed the tender offer by the Controlling Shareholder and (ii) the decision on whether to tender shares was left to its shareholders,[8] the board of directors cannot be considered to have obtained an opinion that actively expresses that "the interests of minority shareholders will not be undermined."

- In another case, at a general meeting of shareholders of a listed company with a Quasi-Controlling Shareholder, proposals for the reappointment of all three independent directors were rejected as a result of a Quasi-Controlling Shareholder voting against the proposals. As such, the listed company was left with no independent directors. There is opinion that the possibility of ending up in a situation where a company has no director to represent general shareholder interests is a problem in terms of corporate governance.
- While the current listing system do not apply to shareholders who do not fall under the definition of "Controlling Shareholder," there have been some cases, as mentioned above, where the adverse effects of structural conflicts of interest have emerged in listed companies with shareholders who did not fall under a Controlling Shareholder and had strong influence backed by the share of voting rights or pressure over the board of directors. There is opinion that the interests of minority shareholders of such listing companies should be appropriately protected.

The adverse effects, which are pointed out above in the cases where a Controlling Shareholder or Quasi-Controlling Shareholder emerged at a listed company after listing, result from structural conflicts of interest. From the perspective of Controlling Shareholders and Quasi-Controlling Shareholders, on the other hand, there is opinion that having a listed subsidiary bears significance and brings advantages, including synergy for maximizing the corporate value of a consolidated corporate group or a transitional phase of restructuring the business, such as carve-out or incorporation into the corporate group.[9] Moreover, there is

[8] The risk of conflicts of interest between a Controlling Shareholder and minority shareholders is most apparent in a tender offer by the Controlling Shareholder. Therefore, in order to prevent the Controlling Shareholder from abusing its position and to appropriately protect minority shareholders, TSE requires the listed company to obtain "an opinion that the decision will not undermine the interests of minority shareholders" from "an entity that has no interest in the Controlling Shareholder" and to perform necessary and sufficient timely disclosure (Rule 441-2 of the Securities Listing Regulations).

[9] With regard to the benefits of the structure of a subsidiary or an equity method affiliate from a Controlling Shareholder's or Quasi-Controlling Shareholder's perspective, there is opinion that a subsidiary is preferred when it is important to share the business strategy, while an equity method affiliate

opinion that if a listed company with a Controlling Shareholder or Quasi-Controlling Shareholder meets the level of information disclosure and governance required of listed companies and actively pursues management to satisfy its stakeholders with a sense of urgency, it will lead to the enhancement of the corporate value of not only the listed company but also the entire corporate group. Meanwhile, there is also opinion that a listed company with a Controlling Shareholder or Quasi-Controlling Shareholder can benefit in ways such as injections of management resources and supervision from the Controlling Shareholder or Quasi-Controlling Shareholder. For investors, keeping companies listed leads to an advantage of a greater variety of investment options. Since the significance and advantages for market participants may outweigh the adverse effects caused by structural conflicts of interest, it is not appropriate to uniformly prohibit listed companies from having Controlling Shareholders or Quasi-Controlling Shareholders after listing.[10]

From the perspective of investors, in contrast, there is opinion that investors particularly emphasize supervision and control over structural conflicts of interest, which is the root of the adverse effects, and that this view does not align with the view of Controlling Shareholders and Quasi-Controlling Shareholders at present. Controlling Shareholders and Quasi-Controlling Shareholders focus on synergies toward achieving overall optimization for the corporate group, but this view is not necessarily consistent with the interests of the listed company with a Controlling Shareholder or Quasi-Controlling Shareholder. As such, there is opinion that the discount due to the risk of structural conflicts of interest between the Controlling Shareholders or Quasi-Controlling Shareholders and minority shareholders outweighs the value derived from business synergies, and so listed companies with Controlling Shareholders or Quasi-Controlling Shareholders have lower market valuations. Furthermore, there is opinion that while Controlling Shareholders or Quasi-Controlling Shareholders structurally have an incentive to exert influence to achieve overall optimization for the corporate group, it is not clear to what extent Controlling Shareholders or Quasi-Controlling Shareholders impact substantial decisions at the listed companies. Based on the recent cases, there is the risk that minority shareholder interests may be undermined if Controlling Shareholders or Quasi-Controlling Shareholders disregard the

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is preferred when the investment ratio is relatively high, such as in the case of being the top shareholder, or when there is a significant business alliance or business relationship.

[10] In this regard, there is opinion that even though Japan has a relatively higher percentage of listed companies with Controlling Shareholders or Quasi-Controlling Shareholders than other countries, other countries also see a certain number of such companies listed as part of the group strategy. Moreover, there is opinion that it is not unusual for listed companies in Europe and some other countries to have unlisted Controlling Shareholders or Quasi-Controlling Shareholders, and in such cases, there is greater concern that conflicts of interest could lead to adverse effects because, by nature of being unlisted, the Controlling Shareholders or Quasi-Controlling Shareholders do not conduct much information disclosure and have less consideration for reputational risk.

interests of minority shareholders. Thus, it is essential to have a stronger framework for minority shareholder protection.

In this report, based on these concerns and opinion from investors, the Study Group has clarified the issues to be considered regarding the framework for and scope of minority shareholder protection under the current listing system in order to ensure trust in the overall market and to realize a more attractive market for domestic and foreign investors by appropriately protecting minority shareholder interests.

3. Framework for Minority Shareholder Protection

(1) Information Disclosure

Under the current listing system, TSE has enhanced information disclosure on listed companies with Controlling Shareholders or Quasi-Controlling Shareholders so that investors can properly assess the associated risks in their investment decisions. However, there is opinion that long-term investment in listed companies with Controlling Shareholders or Quasi-Controlling Shareholders is discouraged by, among others, (i) inability for investors to understand how Controlling Shareholders or Quasi-Controlling Shareholders influence the decision-making process of the management of the listed company, (ii) insufficient explanation and disclosure by Controlling Shareholders or Quasi-Controlling Shareholders concerning the fundamental approaches to management of the corporate group and business portfolio reviews, and (iii) inadequate information disclosure by Controlling Shareholders or Quasi-Controlling Shareholders regarding conflicts of interest and related supervision and controls.[11] Moreover, there is opinion that, in the first place, inadequate consideration for the risk of conflicts of interest and minority shareholder interests by Controlling Shareholders or Quasi-Controlling Shareholders results in the inadequate information disclosure on conflicts of interest and related supervision and controls.[12]

On the other hand, there is opinion that in the framework for minority shareholder protection, in the case where the overall optimization of the corporate group and the partial optimization of the listed company with a Controlling Shareholder or Quasi-Controlling Shareholder are incompatible, partial optimization should not always be prioritized over overall optimization; the interests of minority shareholders and investors should not be considered as undermined so

[11] In addition, there is also opinion that although listed companies should be required to conduct a level of disclosure that earns investors' trust by virtue of using the capital market, which is a platform open to the public, listed companies in fact disclose only matters required by laws and regulations.

[12] There is opinion that it is important to examine the need to consider the risk of conflicts of interest and minority shareholder interests based on the preface of "Japan's Corporate Governance Code [Final Proposal]" that states "it is important that companies operate themselves with the full recognition of responsibilities to a range of stakeholders, starting with fiduciary responsibility to shareholders who have entrusted the management."

long as (i) an approach that overall optimization will be prioritized over partial optimization is appropriately communicated to investors, (ii) such information is factored into the stock price of the listed company with the Controlling Shareholder or Quasi-Controlling Shareholder, and (iii) investors are able to make investment decisions based on the stock price that has been reasonably discounted.

Therefore, in order to increase foreseeability for minority shareholders and investors and to ensure informed investment decisions, information disclosure can be enhanced in ways including disclosure regarding (i) agreements on the governance of listed companies and (ii) approaches to and policies on conflicts of interest and related supervision and controls. Specifically, disclosure can be improved concerning (i) contents of agreements between the Controlling Shareholder or Quasi-Controlling Shareholder and the listed company with respect to, among others, the right to nominate directors, maintenance of shareholding ratio or further share purchases by the Controlling Shareholder or Quasi-Controlling Shareholder, and sale of the listed company's shares held by the Controlling Shareholder or Quasi-Controlling Shareholder, and (ii) approaches to and policies on how the Controlling Shareholder or Quasi-Controlling Shareholder operate the listed company's business. In addition, if a Controlling Shareholder or Quasi-Controlling Shareholder emerges at a listed company after listing, the corporate group may end up having multiple companies with overlapping business fields.[13] In such cases, disclosure can be enhanced regarding (i) agreements on and implementation of coordination and allocation of business opportunities and business fields within the corporate group, and (ii) approaches to and policies on minority shareholder protection when such coordination and allocation is made.[14]

Based on the above, it is appropriate for TSE to enhance information disclosure as the framework for protecting minority shareholders upon understanding and reviewing the actual situation so as to (i) increase foreseeability for minority shareholders and investors and (ii) develop the environment to allow for investment decisions based on an adequate level of information disclosure, as well as (iii) urge Controlling Shareholders and Quasi-Controlling Shareholders to give greater consideration to minority shareholder interests.[15]

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[13] In relation to this point, there is opinion that cases of multi-layered structures, where a listed subsidiary has a listed subsidiary, also require attention to whether there are conflicts of interest in transactions among group companies.

[14] There is also opinion that it is important to enhance information disclosure by listed companies on transactions that listed companies with Controlling Shareholders or Quasi-Controlling Shareholders may differently perceive from investors in terms of significance, including loans and deposits through the cash management system of the Controlling Shareholder's corporate group.

[15] There are limits to how far TSE can require listed companies with Controlling Shareholders or Quasi-Controlling Shareholders to disclose information on such shareholder's approaches and policies. There is

(2) Procedures

With respect to "opinion on not undermining the interests of minority shareholders" in a tender offer by a Controlling Shareholder aimed at taking a listed subsidiary private, it is increasingly important that a special committee composed of independent directors expresses its opinion from the perspective of protecting minority shareholder interests after the Ministry of Economy, Trade and Industry issued "Fair M&A Guidelines: Enhancing Corporate Value and Securing Shareholders' Interests" (June 28, 2019). In light of the circumstances, there is opinion that a listed company cannot be considered to have obtained an opinion that actively expresses that "the interests of minority shareholders will not be undermined" even if the company obtains a report from a special committee endorsing a tender offer by a Controlling Shareholder but not recommending shareholders to tender their shares. There is also opinion that in connection with "opinion on not undermining the interests of minority shareholders," which is required by the listing system as part of the framework for minority shareholder protection, the special committee could withhold its opinion if it does not recommend shareholders to tender their shares.[16]

On the other hand, there is opinion that requiring excessive procedures in such situations may make it difficult for a Controlling Shareholder to implement a tender offer, and accordingly, may lead to minority shareholders being denied the opportunity to receive a premium, which is an undesirable outcome for minority shareholders.[17] There is also opinion that requiring excessive procedures may work against the dissolution of parent-subsidiary listings that have no economic rationale.

Therefore, the Study Group will continue to discuss the framework for minority shareholder protection in situations where a Controlling Shareholder conducts a tender offer aimed at taking a listed subsidiary private, including the essence of "opinion on not undermining the interests of minority shareholders," taking into account the role expected of special committees.[18]

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opinion that, taking into account the impact of said approaches and policies on minority shareholders and investors, it is important to require Controlling Shareholders or Quasi-Controlling Shareholders (including unlisted companies) to disclose information on their approaches and policies.

[16] However, there is opinion that the fact that the report from the special committee that it does not recommend tendering shares, in a sense, indicates that it is functioning.

[17] There is opinion that market checks cannot be expected to function effectively in this situation since the Controlling Shareholder is unlikely to accept a third-party tender offer.

[18] In this regard, there is opinion that when a Controlling Shareholder conducts a tender offer aimed at taking its listed subsidiary private, from the perspective of minority shareholder protection, a plausible measure could be to require a majority-of-minority, where the condition for the consummation of such tender offer is that a majority of minority shareholders tenders their shares. On the other hand, there is opinion that requiring a majority-of-minority may impede Controlling Shareholders from conducting tender offers for listed subsidiaries, which would end up working against the interests of minority shareholders.

(3) Corporate Governance

There is opinion that the approaches toward minority shareholder protection from the perspective of corporate governance may include (i) obligating listed companies with Controlling Shareholders or Quasi-Controlling Shareholders to appoint a specific number or ratio of independent directors,[19] (ii) enabling independent director appointments only upon obtaining approval by a majority of minority shareholders, (iii) introducing a mechanism to obtain approval by a majority of minority shareholders (majority-of-minority)[20] for significant corporate events, and (iv) requiring listed companies to respect the decisions of their nomination committees, which consist of independent directors. Furthermore, there is opinion that it is essential to impose a fiduciary duty to other shareholders on Controlling Shareholders and to construct a framework within which minority shareholders can practically address their losses as a fundamental measure for minority shareholder protection in listed companies with Controlling Shareholders.[21]

On the other hand, there is opinion that it would be excessive to obligate all listed companies to appoint a specific number or ratio of independent directors, even if for the purpose of protecting minority shareholders in listed companies with Controlling Shareholders. There is also opinion that because the basic structure of the stock company is based on control backed by the share of voting rights, it would be excessive to always require approval by a majority of minority shareholders for independent director appointments, even in the ordinary course of business. Furthermore, there is opinion that the use of a nomination committee is a matter that needs careful consideration.[22]

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[19] There is opinion that independent directors of listed companies with Controlling Shareholders should be independent not only from the company management but also from the Controlling Shareholders (including companies within the group where the Controlling Shareholder is a core company).

[20] Majority-of-minority includes (i) regulations that a company can appoint an independent director or conduct a specified transaction with its Controlling Shareholder only if a majority of minority shareholders approve, and (ii) regulations regarding information disclosure such as disclosure on the percentage of minority shareholders who approve or disapprove of the appointment of the independent director. There is opinion that although the latter (i.e., (ii)) can already be implemented under the current listing system, it should be noted that companies do not necessarily have an accurate count of the number of voting rights exercised on-site at general shareholders meetings in the current practice.

[21] The Corporate Law Subcommittee of the Legislative Council of the Ministry of Justice discussed the establishment of provisions in the Companies Act to explicitly address the liability of a parent company, etc. However, the committee expressed concern that reasonable transactions between parent companies and subsidiaries may be impeded due to, among others, the difficulty in quantifying the benefits that a company enjoys from its parent company, and thus did not reach a consensus (minutes of the 23rd meeting of the Corporate Law Subcommittee of the Legislative Council (July 18, 2012), p. 14-15 (only available in Japanese)).

[22] A nominating committee is theoretically designed to mitigate conflicts of interest between company management and its shareholders in the form of diversified ownership, and it is not appropriate to limit the right of a controlling shareholder to appoint directors through exercising voting rights. In line with this understanding, for example, the New York Stock Exchange obligates a general listed company to have a nominating committee consisting only of independent directors but exempts a controlled company

Therefore, based on this opinion, the Study Group will continue to discuss independent director appointments and other aspects of corporate governance.

(4) Scope of Application

In practice, a shareholder can exert control backed by the share of voting rights at general meetings of shareholders even if it does not hold a majority of the voting rights.[23] Moreover, in some cases, a shareholder can exercise substantial influence over a listed company based on contracts or agreements, other than voting rights. Therefore, the risk that the interests of minority shareholders in listed companies may be undermined by structural conflicts of interest is the same regardless of whether they are companies with Quasi-Controlling Shareholders or those with Controlling Shareholders.

Therefore, it is appropriate to consider extending the scope of the listing system for minority shareholder protection to listed companies with Quasi-Controlling Shareholders to an appropriate extent, and it is advisable for TSE to further review (i) the specific scope of "Quasi-Controlling Shareholder"[24] [25] and (ii) the framework of the listing system for minority

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with a controlling shareholder from the obligation (NYSE Listed Company Manual 303A. 00). NASDAQ also obligates companies to make decisions on director appointments with the backing of a nominating committee consisting only of independent directors or a majority of independent directors at the board of directors but exempts a controlled company with a controlling shareholder from the obligation (NASDAQ Listing Rule 5615(c)(2)). However, there is opinion that the system in the US is adopted on the premise of the case law that has established the controlling shareholder's fiduciary duty, while in Japan, directors, who are appointed by a majority vote, are required to consider not the interest of a specific group of shareholders but the general interests of shareholders. In addition, there is also opinion that it is important to ensure that the system of checks and balances facilitates directors' behavior toward considering the general interests of shareholders.

[23] According to page 10 of "2019 National Kabukon Association Survey Report" released by the National Kabukon Association, 26.1% of listed companies saw a voting rights exercise ratio of between 70% and 80% calculated based on the number of voting rights, while 47.9% of listed companies saw a voting rights exercise ratio of between 80% and 90%.

[24] In this regard, there is opinion that (i) a shareholder who holds 20% of voting rights may still be able to control the company substantially, (ii) a shareholder who holds one-third or more of the voting rights may fall under a "Quasi-Controlling Shareholder" in consistency with the tender offer rules, and (iii) a shareholder who holds 40% of voting rights may have control based on voting rights in light of the ratio of voting rights exercised at general meetings of shareholders. In addition, there is opinion that since whether a shareholder may exert control based on its voting rights at general meetings of shareholders without holding a majority of voting rights depends on the company's shareholder composition, a plausible measure may be to require companies to disclose the shareholder who holds the largest number of voting rights and also explain whether or not the shareholder is a "Quasi-Controlling Shareholder."

[25] On the other hand, there is opinion that, depending on the definition of "Quasi-Controlling Shareholder" and the details of the expanded scope of the regulations, there is concern that the resultant costs incurred by listed companies may become an undue burden. Furthermore, there is opinion that the issues reviewed in this interim report should be re-examined as to whether they should uniformly apply also to individual shareholders, who do not engage in business, and unlisted companies, which do not have disclosure obligations under the listing system.

shareholder protection that should apply to listed companies with Quasi-Controlling Shareholders.

4. The Way Forward

In order to foster trust in the fairness of Japan's capital market and create the environment where investors can participate with confidence, TSE is expected to examine specific measures for improvements of the listing system based on the issues and reviews in this interim report, and to improve the listing system and operations in stages, starting with measures considered feasible among those for enhancing information disclosure mentioned in 3. (1) above and extending the listing system for minority shareholder protection to listed companies with Quasi-Controlling Shareholders mentioned in 3. (4) above.[26]

The Study Group will continue to review issues surrounding listed companies with Controlling Shareholders or Quasi-Controlling Shareholders that it has been unable to discuss sufficiently, such as the framework for minority shareholder protection in a situation where a Controlling Shareholder conducts a tender offer aimed at taking a listed subsidiary private mentioned in 3. (2) above, and governance issues mentioned in 3. (3) above.

[26] In proceeding to improve specific rules and operations, it is advisable to consider whether there are matters that should be addressed from the perspective of minority shareholder protection other than matters highlighted by the cases described in this interim report.

(Appendix) Listing System related to Minority Shareholder Protection

April 2007	■ Published "Comprehensive Improvement Program for Listing System 2007" * TSE clearly stated that "including in the Code of Corporate Conduct relevant measures to prevent minority shareholders from incurring damage arising from conflicts of interest in transactions involving the management" would be an item to be implemented after consideration of practical approaches.
June 2007	■ Clarified "TSE stance on the listing of companies which have parent companies" (only available in Japanese) * In a related announcement, TSE clarified its view that a subsidiary listing is not necessarily a desirable capital policy.
July 2008	■ Under the "Comprehensive Improvement Program for Listing System 2007," TSE enhanced disclosure regarding parent companies, etc. and transactions involving company management or Controlling Shareholders in companies with parent companies. * TSE revised and expanded the scope for timely disclosure from disclosure on "parent companies, etc.," where companies with parent companies, etc. were subject to timely disclosure, to disclosure on "Controlling Shareholders," where individuals who are Controlling Shareholders are also subject to timely disclosure in addition to "parent companies, etc." * TSE required listed companies to disclose guidelines on how they protect minority shareholders when executing transactions with Controlling Shareholders in their Corporate Governance Reports. * TSE required listed companies to disclose the status of compliance with the measures described in the guidelines provided in their Corporate Governance Reports when they conduct disclosure on matters relating to "transactions with a Controlling Shareholder,

	etc." within three months after the end of a business year. * TSE required listed companies to disclose that transactions with their Controlling Shareholders are consistent with the guidelines provided in their Corporate Governance Reports when they conduct timely disclosure on such transactions.
June 2010	■ Under the "Listing System Improvement Action Plan 2009" (published in September 2009), TSE established new rules in the Code of Corporate Conduct to obligate listed companies to "obtain an opinion that the interests of minority shareholders will not be undermined" regarding a material transaction, etc. with Controlling Shareholders. * From the perspective of preventing Controlling Shareholders from abusing its position and achieving appropriate minority shareholder protection, TSE made it an obligation for listed companies, if their decision-making organs decide to execute any material transaction, etc. with their Controlling Shareholders, to obtain an opinion that the decision would not undermine the interests of minority shareholders from an entity that has no vested interest in the Controlling Shareholders and to perform necessary and sufficient timely disclosure of the opinion.
February 2020	■ Under "Development of Listing Rules for Improving Governance of Listed Subsidiaries and other Rule Changes" (published in November 2019), TSE improved the listing system and revised the preparation guidelines for Corporate Governance Reports (only available in Japanese) and "Practical Considerations When Appointing Independent Director/Auditor" (only available in Japanese). * From the perspective of improving the governance of listed subsidiaries, TSE added the following items to the independence criteria for independent directors/auditors: (a) a person who was, within 10 years prior to appointment, (i) a person engaged in the business

	execution or a non-executive director of the listed company’s parent company, (ii) an auditor of the listed company’s parent company (limited to the case where an outside auditor is designated as an independent director/auditor), and (iii) a person engaged in the business execution of a fellow subsidiary, and (b) a close relative of any person listed in (a) (excluding insignificant persons). * TSE requested listed subsidiaries with parent companies to disclose in their Corporate Governance Reports the parent company's approaches to and policies on management of the corporate group and, if any, the details of related agreements.

(Reference 1) Member List of Study Group to Review Minority Shareholder Protection and Other Framework of Quasi-Controlled Listed Companies

(in alphabetical order of surname)

[Members]
Shozo Furumoto, Director, Member of the Board, NIPPON STEEL CORPORATION
Yoshimitsu Goto, Board Director, Senior Vice President, CFO, CISO & CSusO, SoftBank Group Corp.
Kazuhito Ikeo, Professor, The Rissho University Faculty of Economics
Hideki Kanda, Professor, Gakushuin University Law School
Hiroyuki Kansaku, Professor, The University of Tokyo Graduate Schools for Law and Politics
Takahito Kato, Professor, The University of Tokyo Graduate Schools for Law and Politics
Katsuya Kikuchi, ESG Specialist, Tokio Marine Asset Management Co., Ltd.
Etsuro Kuronuma, Professor, Waseda University, Waseda Law School
Yuri Okina, Chairperson of the Institute, The Japan Research Institute, Limited
Hiroki Sanpei, Head of Engagement, Fidelity International
Kazuhiro Takei, Lawyer, Nishimura & Asahi
Noriyuki Yanagawa, Professor, The University of Tokyo Graduate School of Economics

[Observers]
Financial Services Agency; Ministry of Economy, Trade and Industry; and Ministry of Justice

(Reference 2) Progress of Deliberations

First Meeting (January 7, 2020)

Identification of issues surrounding listed companies with Quasi-Controlling Shareholders (1)

Presentation by the Ministry of Economy, Trade and Industry

Second Meeting (January 27, 2020)

Identification of issues surrounding listed companies with Quasi-Controlling Shareholders (2)

Presentation by investors

Third Meeting (July 1, 2020)

Identification of issues surrounding listed companies with Quasi-Controlling Shareholders (3)

Presentation by listed companies

Fourth Meeting (August 25, 2020)

Compilation of the interim report