Shareholder Meetings and Corporate Governance: With a Focus on Electronic Provision of Reference Materials for Shareholder Meetings*

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Abstract

This article proposes some possible improvements to the system relating to the electronic provision to shareholders of reference materials for shareholder meetings, as part of a legal system reform that would promote dialogue between corporations and investors (shareholders). Such electronic provision will result in economic benefits in terms of paper resources and corporate cost reduction. It could also enhance the quality of shareholder decision-making and promote dialogue between corporations and shareholders through the fulfillment and acceleration of information sharing prior to shareholder meetings. Under the current Companies Act, companies can electronically dispatch notices calling shareholder meetings and electronically provide all shareholder meeting reference materials once the individual consent of the shareholder has been received. However, this system has been poorly implemented. The limits of such systems that require individual consent have been pointed out. This paper examines the U.S. legal system, under which companies are able to provide reference materials for shareholder meetings electronically by posting such materials on their websites and sending shareholders written notices providing the minimum legally required information, such as dates, times, locations for shareholder meetings, and methods for accessing relevant websites. This article considers the possibility of Japan adopting a similar system and the challenges that must be overcome to that end.

Keywords: Corporate governance, electronization of shareholder meetings, electronic shareholder materials, legal system reform, promotion of dialogue between companies and investors

I. Introduction: Identification of Problems

In recent years, attention has been paid to corporate governance as a means of enhancing corporate profitability and growth potential.¹ As a part of this, the importance of creating

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¹ Whether or not superior corporate governance can provide the improvement of corporate performance or corporate value has been a subject of study for a long time. Due to the problem of endogeneity, the relationship between the two is not clearly demonstrated (for example, see information on the independence of the board of directors: Bhagat and Black 2002). Nevertheless, there has been empirical research suggesting that certain corporate governance systems and customs have positive or negative relationships with corporate value (Gompers et al. 2003; Bebchuk et al. 2009).

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corporate value through dialogue between corporations and investors has been emphasized. In September 2014, to arrange institutional environments for the aforementioned promotion of dialogue, the “Research Association for Dialogue between Corporations and Investors for Sustainable Growth” was established at the Ministry of Economy, Trade, and Industry. The “Sectional Committee for Review of Ways of Holding Shareholder Meetings” and the “Sectional Committee for Review of Corporate Disclosure” were founded under the aforementioned Association.

Generally, it is necessary for individual corporations and investors to endeavor to hold high-quality discussions in order to maintain and improve corporate value through such dialogue. The establishment of legal or other types of systems alone will not guarantee that such corporate/investor dialogues occur. However, discussions on system maintenance and improvement are not necessarily useless. In particular, if there are any unnecessary hindrances to the dialogue between corporations and investors in current systems, it will be useful to eliminate such hindrances with institutional reforms.

On the basis of the aforementioned perspective, the Sectional Committee for Review of Ways of Holding Shareholder Meetings is responsible for reviewing the possibilities for improvement in prescribed systems relating to shareholder meetings. In this sectional committee, schedules for the holding of shareholder meetings and record dates regarding these are the subjects of discussion. I have undertaken comprehensive reviews around this topic to some extent (Tanaka 2007, 2015). Therefore, in this paper, I attempt to review the issues that are expected to be implemented initially by the aforementioned Sectional Committee. Specifically, I examine potential institutional revisions for the electronic provision of data associated with shareholder meetings.

Under the current Companies Act (CA), in principle, listed companies in Japan must submit to shareholders notices and various reference materials for shareholder meetings (reference documents for the meetings, financial statements, business reports, etc.) in writing. The dispatching of notices and the provision of the aforementioned reference materials for the shareholder meetings electronically will be permitted only if the consent of individual shareholders has been obtained. In this regard, institutional revision is possible in accordance with the U.S. legal system as described below. Companies could provide reference materials for shareholder meetings based on the following methods; companies could post data on their websites, transmit to shareholders the written notices providing the minimum information, including methods for accessing the websites, and have shareholders access

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2 According to the Japan Revitalization Strategy adopted by the government in 2014, it is important to “enhance corporate governance” in order to improve productivity and profitability (“earning power”) of corporations (Prime Minister of Japan and His Cabinet 2014, p.5). As one of the specific measures for the purpose, “[p]romoting dialogue between companies and investors for sustainable corporate value creation” is mentioned (p.38).
3 Ministry of Economy, Trade, and Industry (2014). I attend discussions as a member of the Sectional Committee for Review of Ways of Holding Shareholder Meetings. The views stated in this paper are my own personal opinions, and do not reflect the opinions of the Sectional Committee.
4 For example, see Iida (2014) for a review of potential improvements examining the possibility that a large shareholding reporting system (in particular, in relation to joint holding requirements) would become a hindrance to dialogue between investors and corporations.
and download the data via such websites. Written data would be supplied only to shareholders who request it.

The main goals of the institutional revision, stated above, are to save paper resources through a paperless delivery method and reduce costs for corporations. However, such goals also have relevance from the perspective of corporate governance, regarding what can be called the “promotion of dialogue between corporations and investors.” If shareholder reference materials can be provided electronically in principle, costs, as well as the time necessary for printing or mailing, can be avoided. Therefore, prior to meetings, it would be possible to provide greater amounts of information to shareholders in comparison with what is currently provided via the traditional printed method. In this way, it may be possible to improve the quality of decisions being made by shareholders in the exercising of voting rights, as well as to further promote dialogue by exchanging more opinions between corporations and investors regarding agendas and other material, prior to the meetings. Based on the aforementioned viewpoint, systems and practices under the advanced U.S. laws are explored in this article as well as the potential institutional revisions for electronic provision of reference materials for shareholder meetings.5

The rest of this article goes as follows. In section II, the current systems and practices for the provision of reference materials for shareholder meetings in Japan are reviewed, and problems relating thereto are clarified. In section III, the U.S. systems are analyzed together with the problems occurring based on such systems. In section IV, the potential for institutional revision in Japan is reviewed. Section V concludes the analysis. This article focuses on the possibility of institutional improvement for promotion of dialogue between corporations and investors in listed companies. Based on this prospect, analysis is conducted on listed companies alone (i.e., stock companies whose shares are listed on financial exchanges).

II. Current Legal Systems and Problems

II-1. Legal System Relating to Provision of Reference Materials for Shareholder Meetings

Prior to review, as background knowledge, the reference materials that should be provided for shareholder meetings by listed companies are briefly explained.6 Under Japanese law, there are cases in which directors convolve shareholder meetings (CA 298), and also cases in

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5 In regards to electronization of shareholder meetings, in addition to the electronic provision of reference materials for shareholder meetings reviewed in this paper, (i) electronization for exercising of shareholder voting rights (electronic voting) and (ii) the omission of physical shareholder meetings altogether by having shareholders vote exclusively in writing or electronically are worth considering. In regard to measure (i), institutional steps have already been taken in a manner such that conveners allow shareholders to perform electronic voting at the convocation of shareholder meetings (Companies Act 298 (1) (iv)). This method has been widespread in practice, with a central focus on the exercising of voting rights by institutional investors (electronic voting platform for institutional investors: Tanaka, 2007, pp.427–428). Measure (ii) has been permitted in some states in the U.S., including Delaware. However, whether or not such a measure would be adopted in Japan is a matter intended for future analysis.

6 Under Japanese law, there are cases in which directors convolve shareholder meetings (CA 298), and also cases in
which shareholders with a certain number of voting rights convoke shareholder meetings (CA 297). In this article, explanations are made about cases in which directors convoke shareholder meetings (in particular, annual shareholder meetings).

II-1-1. Dispatch of Notices

or the convocation of shareholder meetings, it is necessary to dispatch notices to shareholders. In public companies (all listed companies are public companies under the CA), the notices must be dispatched in writing two weeks prior to the shareholder meeting (CA 299 (1) and (2)). The notices must include statutory matters, such as dates, times, locations, and purpose (agendas), regarding the shareholder meeting (CA 299(4) and 298(1)).

II-1-2. Provision of Reference Materials for Shareholder Meetings

(1) Reference Documents for Shareholder Meetings and Voting Forms

Listed companies are required to allow shareholders who do not attend shareholder meetings to exercise their voting rights in writing subject to the rules and regulations under the CA or FIEA. Upon notification, companies that allow voting in writing must issue reference documents (sanko shorui) for the shareholder meetings and voting forms (giketsuken koshi shomen) to shareholders (CA 301 (1)). Reference documents for the meetings must include certain information regulated under the Ordinances of the Ministry of Justice as information to be used as reference for the exercise of voting rights based on the nature of the

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6 Japanese laws, regulations, etc., are indicated using the following abbreviations hereafter: Companies Act [kaisha ho](CA); Order for Enforcement of the Companies Act [kaisha ho seko rei] (Order for ECA); Ordinance for Enforcement of the Companies Act [kaisha ho seko kisoku] (OCA); Ordinance for Companies’ Accounting [kaisha keisan kisoku] (OCA); Financial Instruments and Exchange Act [kinyu shohin torihiki ho] (FIEA); Order for Enforcement of the Financial Instruments and Exchange Act [kinyu shohin torihiki ho seko rei] (OEFIEA); Cabinet Office Ordinance for Solicitation of Proxies of Voting of Listed Shares [jojo kabushiki no giketsuken no dai ni koshi no kanyu ni ni kansuru naikakuhu rei] (Proxies Ordinance); and, Tokyo Stock Exchange’s Securities Listing Regulations (TSE Listing Reg.). For example, Article 298(1)(i) of Companies Act will be cited as “CA 298(1)(i).”

7 Under the CA, the term “public company” refers to any company that does not restrict the transfer of some or all of its shares by its articles of incorporation (CA 2 (v)). At present, the financial instruments exchange in Japan prohibits the restriction of the transfer of listed shares (TSE Listing Reg. 601 ((1) (xiv))). Therefore, all listed companies can be said to be public companies under the CA.

8 The CA requires companies with 1,000 shareholders or more with voting rights to have such shareholders vote in writing (CA 298 (1) (iv) and (2). In addition, subject to stock exchanges’ regulations, even listed companies with less than 1,000 shareholders are required to have their shareholders vote in writing (TSE Listing Reg. 435). However, special cases exist when directors of companies have solicited all shareholders regarding the exercise of voting rights by proxy, subject to regulations in accordance with FIEA (FIEA 194, OEFIEA 36-2 through 36-6, Proxies Ordinance). The aforementioned cases differ based on the following points. When voting in writing under the regulation of the CA, shareholders exercise their voting rights themselves. On the other hand, shareholders who have responded by proxy exercise their voting rights using a third party as a proxy through power of attorney (in cases when company directors perform proxy solicitation, the company employees will normally serve as the proxies). However, under the proxy rules of the FIEA, the provision of information to shareholders via reference documents is required in the same manner as in the case of voting in writing. Furthermore, proxy cards issued to shareholders must have a space for the shareholder to indicate approval or disapproval of all agenda items (Proxies Ordinance 43). As a result, the case of proxy voting is hardly different from a case of voting in writing. In practice, voting in writing, instead of voting by proxy, is used in most listed companies. Thus, in this article, “voting in writing” includes cases in which proxy solicitation applies to shareholders in accordance with the proxy rules relating to FIEA.
agenda items to be addressed (OECA 65 and 73 through 94). Moreover, voting forms must include space for approval or disapproval (OECA 66 (1)(i)).

(2) Provision of Annual Reports under the CA (Financial Statements, Business Reports, etc.)

In addition to the data explained in (1) above, for annual shareholder meetings,\(^9\) upon notification, financial statements and business reports, audit reports, and accounting audit reports therefor, and consolidated financial statements (collectively referred to as “CA Annual Reports” hereafter)\(^10\) must be submitted to shareholders (CA 437, OECA 133, OCA133, CA 444 (6), and OCA 134).

(3) A General Principle on Written Provision of Reference Materials

As notices to call shareholder meetings must be dispatched in writing (see II-1-1), reference documents for shareholder meetings, voting forms, and CA Annual Reports (hereafter in Part II collectively referred to as “Reference Materials”) are also required to be submitted to shareholders in writing, in principle (reference documents for shareholder meetings and voting forms: CA 301 (1); CA Annual Reports: CA 437, OECA 133 (2) (i) [business reports and related audit reports], OCA 133 (2) (i) [financial statements as well as related audit reports and accounting audit reports], CA 444 (6), and OCA134 (1) (i) [consolidated financial statements]).

However, under current laws, in certain cases, some or all of the data outlined above are provided to shareholders via an electromagnetic method (electronic provision). In the following section, the system relating thereto is explained.

II-2. Legal System Relating to Electronic Provision of Reference Materials for Shareholder Meetings

II-2-1. Overview

Under current laws, there are two methods for the electronic provision of shareholder meetings Reference Materials: (i) electronically dispatching notices for the meetings and electronic provision of all Reference Materials for the meetings after obtaining the individual consent of the shareholder; and, (ii) providing only certain matters from among shareholder meeting Reference Materials electronically (known as “web disclosure”), subject to the articles of incorporation. These methods have been newly permitted, due to an amendment to the Commercial Code (2001) in the case of method (i), and subject to the CA, established in 2005, in the case of method (ii). Such methods are hereafter explained in order.

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\(^9\) Annual shareholder meetings are shareholder meetings that companies must convolve within a certain period following the conclusion of the business year (CA 296). The main purposes of annual shareholder meetings are approval and reporting of financial statements and business results. Other matters, such as appointment of officers and surplus dividends, can be also resolved (Egashira 2014 p. 321).

\(^10\) Audit reports and accounting audit reports for consolidated financial statements are not required to be submitted to shareholders. They will be provided only if companies decide to submit them to shareholders (OCA 134 (2)).
II-2-2. Electronic Dispatch of Notices and Electronic Provision of Reference Materials for Shareholder Meetings Based on the Individual Consent of Shareholders

(1) Electronic Dispatch of Notices

When directors have obtained the individual consent of shareholders, such directors will be able to dispatch notices via an electromagnetic method (electronic dispatch of notices; CA 299 (3)). There are two electromagnetic methods: (i) dispatch of information to be provided to shareholders via email (and attached files); and (ii) posting corresponding information on a website and having shareholders access and download the information after notifying shareholders of the website’s URL (CA 2 (xxxiv) and OECA 222 (1) (i)(a)&(b).\(^{11}\) Both methods must allow shareholders to download the provided information and print/save the documents containing the information (OECA 222 (2)).

The consent of shareholders for the electronic dispatch of notices is not required for every shareholder meeting. It is understood that unless shareholders withdraw their consent for electronic dispatch, such consent will be deemed to remain in effect (Egashira 2014, p. 323 note 4).

(2) Electronic Provision of Reference Materials for Shareholder Meetings

For shareholders who have already consented to electronic dispatch of notices, directors are also able to electromagnetically provide the matters to be specified in the reference documents for shareholder meetings and voting forms by an electromagnetic method (CA 301 (2)); provided, however, that in the case when shareholders have requested written issuance thereof, written documents are also issued (CA 301 (2)).

For annual shareholder meetings, the CA Annual Reports must also be provided electronically to shareholders to whom the notices will be electronically dispatched (CA 437 and 444 (6), OECA 133 (2) (ii), and OCA 133 (2) (ii) and 134 (1) (ii).

II-2-3. Electronic Provision Subject to Provisions of Articles of Incorporation (Web Disclosure)

Web disclosure allows companies to electronically provide shareholders with only certain specified information in the Reference Materials for shareholder meetings, posting such information on Internet websites and having shareholders access and download the information subject to the provisions of the articles of incorporation,\(^{12}\) without obtaining the individual consent of each shareholder.

Web disclosure of the following information is permitted under current laws.

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\(^{11}\) Another method (which is not used much in practice) for recording relevant information using media such as CD-ROMs, etc., and issuing such media to shareholders, is also permitted (OECA 222 (1) (ii)).

\(^{12}\) Articles of incorporation are created by incorporators upon the incorporation of stock companies (CA 26(1)). After the establishment of the companies, articles of incorporation can be changed through special resolutions of shareholder meetings (CA 466 and 309 (2) (xi)).
(i) Certain matters to be specified in reference documents for the shareholder meetings (OECA 94 (1)). Basically, although companies are not able to disclose information on agendas themselves via the website (OECA 94 (1)(i)), web disclosure for all reference information relating to the agendas is permitted. However, this is not applicable to matters regarding which auditors or company audit committee members have raised objections concerning web disclosure (OECA 94 (1)(iv)).

(ii) Certain matters to be specified in business reports (OECA133 (3)).

(iii) Matters to be specified in notes to specific items in financial statements (OCA133 (4)): Web disclosure is not allowed for financial statements other than for notes to specific items (balance sheets, profit and loss statements, and statements of changes in net assets), or audit reports or accounting audit reports thereof.

(iv) Matters to be specified in consolidated financial statements as well as related audit reports and accounting audit reports (OCA134 (4)).

After the dispatch of the notices by the company, web disclosure can occur through “measures that allow shareholders to receive the provision of information via an electromagnetic method” continuously for three months after the day of the shareholder meeting (OECA 94 (1) and 133 (3), OCA 133 (4) and 134 (4)). That is, web disclosure can occur by posting relevant information on websites and having shareholders access and download it. In such cases, companies must notify shareholders of the websites’ URLs (OECA94 (2) and 133 (4), and OCA 133 (5) and 134 (5)).

Shareholders are not entitled to request information in writing on matters that have already been legally disclosed via a website. That is, for the matters that the company is permitted to provide to shareholders via a website under current laws, web disclosure can be considered to be a complete substitution for written provision.13

II-3.  Current Situation and Problems Concerning Electronic Provision

As described above, systems for the electronic provision of Reference Materials for shareholder meetings have been established to some extent under the current laws. However, problems with the implementation of such systems have been pointed out.

II-3-1.  Electronic Dispatch of Notices: Poor Use

In particular, methods for electronic dispatch of notices and the electronic provision of all Reference Materials for shareholder meetings based on individual shareholder consent (II-2-2) have rarely been used in practice. According to the survey by Japan Institute of

13 Separate from web disclosure explained above, under current law, in cases when Reference Materials for shareholder meetings are modified during the time from the dispatch of notices to the day preceding the shareholder meeting date, a company can include methods for familiarizing shareholders with the modified information in the notices (OECA 65 (3) and 133 (6), and OCA 133 (7) and 134 (7)). In practice, in many cases, modified information is posted on websites; a method called “web modification.”
Business Law (JIBL) targeting listed companies, excluding emerging markets, that held annual shareholder meetings during the period from July 2012 through June 2013, only 40 (2.2%) of the 1,792 respondent companies had adopted electronic dispatch of notices. Of those respondent companies, 1,719 (95.9%) responded that they had no plan for the adoption of electronic dispatch in the future (JIBL 2013 p.137, chart 151). Since electronic dispatching requires the individual consent of shareholders, even in cases when companies have adopted the system, few shareholders have given their consent. As a result, it has not been possible yet to realize a significant benefit from the implementation of the paperless process or from mailing cost reductions. Instead, it has had the opposite effect—of increasing of costs—due to the expenditure of extra time and effort. It has been pointed out that the aforementioned matter is the reason why the system has not been widely adopted (JIBL 2013 p.138).

In particular, at present, due to the rules of financial exchanges, listed companies are required to post the notices and Reference Materials for shareholder meetings on the websites of such exchanges.¹⁴ Even if shareholders have not consented to the electronic dispatch of notices, it is still possible for them to electronically access relevant data. Once shareholders consent to electronic dispatch, they will no longer be able to obtain the Reference Materials for the meetings or the notices in writing that they would have obtained as a matter of course without consent prior. Thereby, it can be said that there is little incentive for shareholders to consent to electronic dispatching.

II-3-2. Web Disclosure: Restrictive Use

Since enforcement of the CA, the number of companies that have implemented web disclosure (II-2-3) has gradually increased. According to the survey by JIBL in 2013, the total percentage of the respondent companies that had implemented web disclosure previously was 20.6% and those that had implemented it for the first time at the shareholder meeting this year was 9.5%, that is, a total exceeding 30% (JIBL, 2013, p.59, chart 46).

However, web disclosure is available for information on only certain matters among the Reference Materials (see (i) through (iv) of II-2-3). In regard to other matters, companies must create documents as they did previously, and they must issue these documents to shareholders. Furthermore, not all information for which web disclosure is permitted under current laws and regulations is practically made available on the website, even by companies that have implemented web disclosure. Most of these companies have disclosed only notes to specific items in financial statements and notes to consolidated financial statements.¹⁵ Use of web disclosure for other matters, such as reference documents for share-

¹⁴ See the Listed Company Information Services of the Tokyo Stock Exchange ((http://www.tse.or.jp/listing/compsearch/index.html).

¹⁵ Among the companies that implemented web disclosure, the percentage that have implemented web disclosure regarding notes to specific items in financial statements and notes to consolidated financial statements amount to 95.4% and 93.9%, respectively. On the other hand, about 10% of these companies have implemented web disclosure regarding matters stated in reference documents for shareholder meetings or business reports (BILJ 2013 p.60, chart 47).
holder meetings and business reports, has decreased (JIBL 2013 p.137). The volume of notes to specific items and notes to consolidated financial statements is so large that there could be a profound cost reduction effect from the web disclosure thereof, compared with other data (JIBL 2013, p.59). However, in addition, under current laws, shareholders are not entitled to request that information be provided in writing on matters that have already been disclosed via the web (see II-2-3). Shareholders who are not able to access the Internet will not be able to receive information about these corresponding matters. Thus, it is possible to assume that companies are very careful in utilizing web disclosure of reference documents for shareholder meetings and business reports in which many shareholders are interested. If this is the case, this indicates a possible limit to the current web disclosure system (JIBL, 2013, p.137).

II-3-3. Challenges toward Diffusion of Electronic Provision

As described above, use of the system for electronic dispatch of the notices is rare. Additionally, electronization is available only for limited information associated with shareholder meetings in the case of web disclosure. Thus, it can be said that the benefits from electronic provision have not necessarily been realized yet to a sufficient extent. In light of the aforementioned situation, it would be desirable to revise current legal systems in order to allow companies to electronically provide data associated with shareholder meetings in principle, and to provide written documents only to shareholders who particularly desire them in this way. That kind of legislative solution has already been suggested (JIBL 2013, p.138).

In fact, as noted above, a system whereby “electronic provision is applicable in principle, and documents are provided to only shareholders who have requested them” has been already implemented with a legal reform in 2007 in the U.S. Therefore, an investigation of the legal system and practices in the U.S. may be extremely useful in thinking about the future of electronization in Japan. In the following section, the system in the U.S. is reviewed.


III-1. Outline of the U.S. Laws Relating to Information Provision for Shareholder Meetings

III-1-1. Systems under U.S. Law

Before examining the U.S. legal systems relating to the electronic provision of Reference Materials for shareholder meetings (in Part III, “Reference Materials” refer to a proxy statement, a form of proxy and an annual report that a U.S. listed company is required to provide to shareholders under the Federal proxy rules described below), an outline of the U.S. legal systems relating to information provision to shareholders for shareholder meet-
ings is presented. In the same manner as for the cases in Japan, the focus is exclusively on the laws and regulations that impact listed companies.

Basically, listed companies in the U.S. observe the company laws of the states where they are incorporated. Moreover, such companies are subject to federal securities acts (the Securities Act of 1933 and the Securities Exchange Act of 1934; the latter is hereafter referred to as the “Securities Exchange Act”). However, in terms of problems regarding information provision to shareholders for shareholder meetings, regulations in accordance with state laws do not exist or, even where such state laws exist, the effects thereof are very moderate. In many cases, only federal laws are effective. Therefore, in this paper, the analysis exclusively targets federal securities regulations.

III-1-2. Provision of Proxy Statements and Regulation of Forms of Proxy

In the U.S., no legally mandated system exists for having shareholders who do not attend the shareholder meeting in person exercise their voting rights themselves. In line with conventional practices, companies (via their officers or employees) solicit shareholders for proxy voting. Subject to the Securities Exchange Act Article 14A, it is necessary to perform the aforementioned solicitation in accordance with the proxy rules (Rules and Regulations under the Securities Exchange Act [hereafter referred to as “Rule”] 14a-1) regulated by the Securities Exchange Commission (SEC). In particular, a proxy statement (which corresponds to reference documents in Japan), including reference information for the exercising of voting rights, must be supplied (Rule 14a-3(a)). Moreover, there are regulations for a form of proxy used for granting the authority of representation to shareholders (Rule 14a-4). In particular, it must be possible for shareholders to indicate approval or disapproval of each agenda item (Rule 14a-4(b)(1)).

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18 Subject to the Securities Exchange Act Article 12, in order for securities to be the targets of transactions on national securities exchanges, registration is required with the Securities Exchange Commission (SEC). Registered companies are required to perform continuous disclosure subject to the Securities Exchange Act, Article 13 (submission of 10-K annual reports, which correspond to securities reports in Japan). In addition, such companies are subject to various regulations, such as the Securities Exchange Act, including proxy rules. Other types of companies as well as listed companies are subject to the Securities Exchange Act. However, in order to simplify the content, this paper targets listed companies only. See Kubora (2012) pp.772–781 for targets regulated by the Securities Exchange Act.

19 In particular, the law of Delaware as a governing law for incorporation, which applies to a majority of listed companies in the U.S. (Bebchuk and Cohen (2003), p.391), does not require companies to provide annual reports to shareholders. Even in the states that require companies to provide annual reports to shareholders (which typically use the Model Business Corporation Act [MBCA] as a model; this amounts to about one-half of the U.S. states), no detailed regulations exist regarding relevant forms for the provision of annual reports in many cases. According to the MBCA, when companies have created financial reports in accordance with generally accepted accounting principles (GAAP), financial reports in accordance with such GAAP must be provided to shareholders (Model Business Corporation Act §16.20(a)). When companies only have financial reports that are not in accordance with GAAP, it is acceptable to provide such reports. See Eisenberg and Cox (2011), p.363 for the aforementioned information.

III-1-3. Provision of Annual Reports

In addition to the proxy statement explained in the previous section, in the case when solicitation of proxies for voting occurs for annual shareholder meetings (shareholder meetings at which directors are appointed under the law), it is also a requisite that annual reports be supplied to shareholders (Rule 14a-3(b)). The forms of these annual reports provided to shareholders upon the solicitation of voting proxies are regulated under Rule 14a-3(b). These annual reports do not have to be the same as the annual reports that listed companies are required to supply under the Securities Exchange Act, Article 13 and Rule 13a-1 (hereafter “annual reports on Form 10-K”)\(^\text{21}\). However, the annual reports required under Rule 14a-3(b) must include the core information from annual reports on Form 10-K (Eisenberg and Cox (2011), p. 370). Moreover, in case shareholders, who have received solicitation of proxies for voting, request an annual report on Form 10-K, the report must be supplied (Rule 14-3(b)(10)). Upon solicitation of proxies for voting, some listed companies provide shareholders an annual report on Form 10-K in lieu of, or in addition to, annual reports required under Rule 14a-1(b).\(^\text{22}\) In cases when companies have provided shareholders with an annual report on Form 10-K and have submitted the same to the SEC, the companies will not be required to issue the form repeatedly at the request of shareholders (Rule 14a-3(b)(10)).

In the next section, the system by which U.S. listed companies electronically provide Reference Materials for meetings (proxy statements, annual reports, and forms of proxies) is examined.

III-2. Legal System in the U.S. Relating to Electronic Provision of Reference Materials for Shareholder Meetings

III-2-1. Electronic Dispatch of the Notices and Electronic Provision of Reference Materials for Shareholder Meetings Based on the Individual Consent of Shareholders

In the U.S., subject to the SEC interpretation bulletin of 1995, providing that the individual consent of shareholders has been obtained, electronic dispatch of the notices and Reference Materials for shareholder meetings will be permitted (SEC, 1995).

\(^{21}\) Form 10-K corresponds to securities reports in Japan, and under federal rules and regulations in accordance with the Securities Exchange Act, it regulates the relevant forms.

\(^{22}\) See the explanations about annual reports of the SEC (http://www.sec.gov/answers/annrep.htm). Form 10-K includes information on all matters to be stated in annual reports to be supplied to shareholders upon proxy solicitation under Rule 14a-3(b). Thus, it is understood that annual reports are deemed to have been provided in accordance with proxy rules if Form10-K is provided.
III-2-2. Provision of Reference Materials for Shareholder Meetings on Websites

(1) Outline
In addition to the electronic provision based on the individual consent of shareholders explained above, in 2007, the SEC amended proxy rules. Listed companies are now required to disclose Reference Materials for shareholder meetings on websites. A method for providing shareholders with Reference Materials for these meetings not based on individual shareholder consent has been permitted under the condition that companies provide shareholders with notification (in the form of documents) that includes a minimum amount of information, such as how to access corresponding websites as well as dates, locations, agendas, etc. for these meetings (Rule 14a-16). The aforementioned method is known as the “Notice only” option or the “Notice and Access” option. In this paper, it is called the “notice plus access method.” Upon request, shareholders will be able to receive written or electronic copies of Reference Materials for shareholder meetings.

Alternatively, listed companies are permitted to provide shareholders with written Reference Materials for meetings (known as the “Full set delivery” option; hereafter the “full set delivery method”). Listed companies do not have to adopt either of the above methods for all shareholders alike. Instead, listed companies may provide some shareholders with relevant information via the notice plus access method and provide other shareholders with such information via the full set delivery method (SEC 2007, p.8).

The aforementioned methods are explained in order. Cases in which listed companies (via their officers or employees) solicit proxies for voting at annual shareholder meetings will be explained. However, rules explained in this section are also applicable (with a few modification) to solicitation of voting proxies by parties other than the companies (Rule 14a-16(l)). For example, shareholders who have made shareholder proposals can also perform proxy solicitation from other shareholders via the notice plus access method (Saccone 2010, p.3).

(2) Notice Plus Access Method
A: Information Disclosure on Website and Notification to Shareholders (Notice of Internet Availability of Proxy Materials)
In cases when listed companies adopt the notice plus access method, such companies must provide shareholders with proxy statements and annual reports (for annual shareholder meetings) by notifying shareholders of the availability of the proxy materials on the Internet (Notice of Internet Availability of Proxy Materials; hereinafter “Availability Notice”) 40 calendar days prior to the day of the meeting (Rule 14a-16(a)). Listed companies must post

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23 This notification itself must be performed in writing, in principle. In order to electronize the dispatch of the notices and provision of all data for shareholder meetings, in accordance with the SEC interpretation notice of 1995, the individual consent of each shareholder is necessary.

24 In order to respond to problems occurring following the establishment of this rule (decline in voting rates; see details in III-3-2), the SEC amended the rule in 2010. In this section, explanations are provided based on the amendment to the rule in 2010. See SEC (2007) for the details of the amendment in 2007; see SEC (2010) for details of the amendment in 2010.
the aforementioned information on their websites and allow the public to access it without charge no later than the day of dispatching the Availability Notice (Rule 14a-16(b)(1)). Moreover, listed companies must allow shareholders to grant the authority of representation for exercising voting rights (Rule 14a-16(b)(4)).

In regard to a method for shareholders to grant the authority of representation of voting rights, no adoption of any particular method is required. Thus, listed companies will be able to choose any method, electronic voting (shareholders grant the authority of representation via an electromagnetic method), voting by phone (telephone numbers are posted on websites and shareholders grant the authority of representation by phone), or voting in writing (proxy forms are posted on websites and shareholders can insert relevant information in such printout forms and return by mail). However, via any form, companies must not enable shareholders to grant the authority of representation without accessing data on relevant websites (Rule 14a-16(d)(10)). For example, the inclusion of telephone numbers for voting by phone in the Availability Notice instead of on websites is prohibited (SEC 2007, p.12). Additionally, attachment of a written form of proxy (i.e., a proxy card) in the Availability Notice is also not permitted (Rule 14a-16(f)(1)); however, as described below, it is possible to transmit a proxy card after 10 days or longer have elapsed following provision of the Availability Notice.

Reference Materials for the meetings on websites must be posted in a format suitable for reading online and printing on paper (Rule 14a-16(c)).

B: Information Stated in the Availability Notice

The following matters must be included in the Availability Notice (Rule 14a-16(d)).

(i) The title (included in bold letters: “Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date]”) (Rule 14a-16(d)(1)).

(ii) An indication that a relevant notice presents nothing but the outline of the Reference Materials posted on the websites and such materials should be read prior to the exercising of voting rights (Rule 14a-16(d)(2)).

(iii) The website’s URL (Rule 14a-16(d)(3)).

(iv) Methods for requesting written copies or electronic copies of Reference Materials, such requests to be handled without charge, deadline of such requests, and, an indication that such Reference Materials for the meeting cannot be obtained without request (Rule 14a-16(d)(4))

(v) Date, time and location of the meeting (Rule 14a-16(d)(5)).

(vi) The solicitor’s recommendations regarding each of the agenda; [...] But no supporting statements can be included (Rule 14a-16(d)(6)).

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26 In cases when investors (beneficial owners) hold shares via financial intermediaries (record holders) in their names, listed companies must provide those record holders with all the information listed in Rule 14a-16 (d) in sufficient time for those record holders to prepare, print and send the Availability Notice to those beneficial owners at least 40 calendar days before the meeting date (Rule 14a-16(a)(2), SEC 2007, pp.23–24).
(vii) List of Reference Materials for shareholder meetings posted on the website (Rule 14a-16(d)(7)).
(viii) A toll-free telephone number, email address, and a website for requests by shareholders of copies of Reference Materials for the meeting (Rule 14a-16(d)(8)).
(ix) ID numbers necessary for shareholders to access proxy forms (Rule 14a-16(d)(9)).
(x) Instructions for the methods for accessing shareholder proxy forms; provided, however, that shareholders will not be allowed to execute proxies without accessing proxy statements or annual reports (Rule 14a-16(d)(10)).
(xi) Information on how to obtain directions to be able to attend the meeting and vote in person (Rule 14a-16(d)(11)).

In order not to misguide shareholders, the attachment to the Availability Notice of any data other than that permitted under laws and regulations will be prohibited (Rule 14a-16(f)).

C: Provision of Written or Electronic Copies of Reference Materials for Shareholder Meetings at the Request of Shareholders

Shareholders are able to request that companies issue written copies of proxy statements, annual reports, and forms of proxy, without charge. Companies must send the aforementioned written copies within three business days after receiving the request (Rule 14a-16(j)(1)). Shareholders are also able to request that companies provide electronic copies of the aforementioned data via email without charge. In such cases, companies must also transmit such electronic copies via email within three business days after receiving the request (Rule 14a-16(j)(2)).

Shareholders are also able to request that companies continue to provide Reference Materials for meetings in writing or via email for future solicitations. In such cases, companies must continue the aforementioned provision until the shareholder withdraws the request (Rule 14a-16(j)(4)).

D: Transmission of Forms of Proxy

Attachment of a form of proxy (in the case of printed documents, a proxy card) in the Availability Notice is prohibited so that shareholders will not grant the authority of representation of voting rights before accessing the Reference Materials on the website (Rule 14a-16(f)(1)). However, after at least 10 calendar days have passed since the date the listed

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26 Matters in (i) through (iv) mentioned above, prior to amendment to the rule in 2010, were strictly stylized (even the wording) under the rule. See Rule 14a-16(d)(1) prior to amendment in 2010. However, the aforementioned stylized wording was far from easily understood, which resulted in a decline in the voting rate. Considering this regrettable situation, the rule was amended in 2010. The present Rule 14a-16(d) regulates only the content of information to be provided to shareholders, and wording (expression) is delegated to the discretion of each company, except for the title of the Availability Notice provided in Rule 14a-16(d)(1) (SEC, 2010, pp.6–7).

27 Examples of data permitted to be attached under laws and regulations include return postcards requesting copies of reference materials for shareholder meetings (Rule 14a-16(f)(2)(i)) and an explanation of the reasons for the company to use the notice plus access method and the process of accessing reference materials and voting under the method (Rule 14a-16(f)(2)(iv)).
company first sent the Availability Notice, the company may send to shareholders forms of proxy accompanied by copies of the Availability Notices (Rule 14a-16(h)(1)). Additionally, if the forms of proxy are accompanied or preceded by copies of the proxy statement and annual report, they may be sent to shareholders even prior to the 10 days following the Availability Notice (Rule 14a-16(h)(2)). The purpose of those exceptions is to assist the company’s efforts to solicit proxies if its initial efforts have not produced an adequate response (SEC 2007, p.13).

(3) Full Set Delivery Method

In cases when listed companies adopt the full set delivery method, all Reference Materials for shareholder meetings, that is, a proxy statement, an annual report (in case of an annual shareholder meeting), and a form of proxy, will be directly provided to shareholders (Rule 14a-16(n)(1)). The aforementioned materials must be transmitted in writing, in principle. However, if the individual consent of shareholders is obtained, electronic transmission (by email) is permitted according to the SEC interpretation bulletin of 1995 explained in III-2-1 (Saccone 2010, p.2).

Even if a listed company has adopted the full set delivery method, the company still must post a proxy statement and an annual report on its website according to Rule 14a-16(a), and send the Availability Notice to shareholders according to Rule 14a-16(b) in order to enable the shareholders to access the online information. The company does not have to send the Availability Notice, however, if the information to be provided in it is incorporated in the proxy statement and the form of proxy provided directly to the shareholders (Rule 14a-16(n)(2)(ii)).

In the case when the full set delivery method is used, the regulation to the effect that notification must be given to shareholders at least 40 calendar days prior to the day of the shareholder meeting (Rule 14a-16(a)(1)) is not applicable (Rule 14a-16(n)(3)(i)). This is because in the notice plus access method, a period is necessary during which shareholders can request written or electronic copies of the Reference Materials. On the other hand, in the full set delivery method, Reference Materials for the meetings will be directly provided to shareholders from the beginning. Thus, the aforementioned period will not be necessary (SEC 2007, p.21).28


III-3-1. Electronization Diffusion

In this section, the electronic provision practices in the U.S., under the laws explained in

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28 In relation to the full set delivery method, shareholders will receive all Reference Materials for shareholder meetings together with the notices. Thus, the regulation relating to the notice plus access method (Rule 14a-16(j)) to the effect that, at the request of shareholders for provision of written or electronic copies of Reference Materials for shareholder meetings, companies respond to such requests is not applicable (Rule 14a-16(n)(3)(ii)).
the previous sections, and problems occurring therefrom are explained.

In the U.S., even prior to the institutional revision in 2007, practices had already been advanced for the electronic dispatch of notices and electronic provision of all shareholder meeting Reference Materials based on individual shareholder consent in accordance with the SEC interpretation bulletin in 1995. In particular, in almost all cases with institutional investors, the provision of Reference Materials for shareholder meetings takes place electronically via electronic platforms (Broadridge and PwC, 2014, p.10).29

Additionally, following the institutional revision in 2007, the number of companies that also electronically provide retail shareholders (mainly, individual shareholders) with Reference Materials for shareholder meetings by using the notice plus access method has increased. According to the survey by Broadridge Financial Institution (hereinafter “Broadridge”),30 653 companies (9% of all the companies that used Broadridge’s services) used the notice plus access method in 2008. In 2013, the figure increased to 1,904 companies (31%) (Broadridge, 2013, p.5).31 The percentage of companies adopting the notice plus access method tends to be higher among companies with a large number of employees. The adoption percentage for companies with 300,000 shareholders (positions) or more exceeds 80% (Broadridge, 2013, p.5).

In 2014, during the season of shareholder meetings (January 1 through June 30 of the same year), among retail shareholders, (i) the percentage of shareholders that obtained all notices and Reference Materials for meetings in writing (via the full set delivery method) amounted to 40% (a 4% decline compared with the previous year), (ii) the percentage of shareholders electronically receiving all notices and Reference Materials for shareholder meetings (based on individual consent) amounted to 32% (a 2% increase from the previous year), and (iii) the percentage of shareholders receiving the Availability Notice (via the notice plus access method) amounted to 28% (a 2% increase over the previous year) (Broadridge and PwC 2014, p.10).

The aforementioned expansion of the electronic provision of Reference Materials for shareholder meetings results in considerable cost reduction. In 2013, it was estimated that the cost saving effect of this was equal to $297 million (after deduction of commissions) for the companies in total using the notice plus access method (Broadridge 2013, p.5).

29 In the U.S., the system in which institutional investors receive electronic provision of Reference Materials for shareholders’ meetings via electronic platform (for institutional investors in Japan) provided by Automatic Data Processing, Inc. (ADP) and exercise their voting rights electronically has been widespread (Tanka (2007), p.433 note 49). As of 2014, 98% of shares held by institutional investors are electronically exercised (Broadridge and PwC 2014, p.10).

30 In the U.S., retail shareholders (mainly meaning individual shareholders) usually hold their shares via financial intermediaries, such as brokers, under their names. Broadridge is the largest company that provides services for the processing of the exercising of voting rights by such shareholders. According to the website of Broadridge, 90% or more of the listed companies in the U.S., receive the services it provides. (http://www.broadridge.com/company-information/about/overview)

31 As described above, listed companies are permitted to use both the notice plus access method and the full set delivery method depending upon their shareholders. Therefore, some of the companies that have adopted the notice plus access method use this method only for some shareholders and use the full set delivery method for others (SEC, 2010, p.5 n.10).
III-3-2. Problems for Electronic Provision—Decline in Voting Rates

Despite the benefit stated above, in the course of the progress in the electronic provisioning of shareholder meeting information, problems have also been pointed out. The voting rates of shareholders (the rate of collection of proxies) have declined remarkably via the notice plus access method (Saccone, 2010, p.4).

According to the survey, approximately one year after the enforcement of the amendment to Rule 14a-16 in 2007, looking at the standards of positions (the percentage of shareholders who returned proxies out of all retail shareholders), the voting rates of retail shareholders at 467 companies that newly adopted the notice plus access method declined 70% or more (from 21.2% prior to adoption to 5.7% after adoption). Looking at the standards of shares (the percentage of the shares of shareholders who returned proxies out of all shares owned by retail shareholders), a decline of nearly 50% or more occurred (from 31.3% to 16.4%). Many shareholders do not spend any time or effort accessing websites intentionally to review Reference Materials for shareholder meetings or to grant the authority of representation of voting rights.

To handle such declines in the voting rates, an amendment to Rule 14a-16 was made in 2010 (SEC, 2010). In particular, under the rules prior to the amendment, the wording for the Availability Notice was strictly stylized. However, such strict stylization was changed and companies were allowed to craft more easily comprehensible statements. Companies are now permitted to add reasons why they adopted the notice plus access method, as well as to include data explaining the method for accessing data for shareholder meetings and the granting of the authority of representation based on the method in the Availability Notice.

However, it seems the tendency for the decline in the voting rate by shareholders who are the targets of the notice plus access method has not changed following the amendment in 2010. Table1 shows the aggregation of the voting rates by shareholders in the fiscal year ending June 30, 2013, according to Broadridge. The aggregation was conducted as follows. First, listed companies are categorized into (a) those that have adopted the notice plus access method and (b) those that have not adopted the method. Then shareholders of the companies in each category are (sub)categorized based on the method via which they receive notifications and Reference Materials for shareholder meetings. Remember that companies having adopted the notice plus access method may still use the full set delivery method for some shareholders (see III-2-2(1)), and that shareholders who receive the Availability Notices via the notice plus access method may request the companies to issue written Reference Materials (see III-2-2(2)(C)). Thus, the subcategory “Full set delivery” (i.e., shareholders who receive notifications and Reference Materials via the full set delivery method) appears in category (a) as well as in category (b). Also remember that, according to the SEC interpretation bulletin of 1995, companies may transmit shareholders notifications and Reference Materi-

33 See above-mentioned note 18.
34 See above-mentioned note 19.
als for shareholder meetings electronically based on the individual consent of each shareholder, regardless of whether or not those companies have adopt the notice plus access method (see III-2-1). Thus, the subcategory “Electronic delivery” (i.e., shareholders who receive electronic notifications and Reference Materials) appears both in category (a) and category (b). For each category and subcategory, the voting rates of shareholders, based on the positions and the number of shares, are calculated. For one example, among the shareholders in the companies having adopted the notice plus access method, the voting rate was 12.20% based on positions and 27.28% based on the number of shares. For another example, among the shareholders who received notifications and Reference Materials via the full set delivery method from the companies having not adopted the notice plus access method, the voting rate was 18.10% based on positions and 37.02% based on the number of shares.

In regard to shareholders who received the Availability Notices through the companies having adopted the notice plus access method, the voting rate based on the positions amounted to 4.9%, which was remarkably low. This number is vastly different compared with the voting rate of 18.10% (based on positions) among the shareholders who received the notifications and Reference Materials for shareholder meetings via the full set delivery method through the companies that did not adopt the notice plus access method. Additionally, the voting rate as a whole among the companies using the notice plus access method (based on both positions and the number of shares) was lower than at companies not using

Table 1
Voting rates categorized by whether or not the company has adopted the notice plus access method and by the method with which shareholders receive notifications and Reference Materials for shareholder meetings (fiscal year ending June 30, 2013)

<table>
<thead>
<tr>
<th>Category and Delivery Method</th>
<th>Position Rate</th>
<th>Number of Shares Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Companies that have adopted the notice plus access method</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All</td>
<td>12.2%</td>
<td>27.28%</td>
</tr>
<tr>
<td>Full set delivery</td>
<td>50.7%</td>
<td>45.21%</td>
</tr>
<tr>
<td>Electronic delivery</td>
<td>9.4%</td>
<td>18.06%</td>
</tr>
<tr>
<td>Notice plus access</td>
<td>4.9%</td>
<td>21.36%</td>
</tr>
<tr>
<td>(b) Companies that have not adopted the notice plus access method</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All</td>
<td>15.0%</td>
<td>33.2%</td>
</tr>
<tr>
<td>Full set delivery</td>
<td>18.10%</td>
<td>37.02%</td>
</tr>
<tr>
<td>Electronic delivery</td>
<td>10.4%</td>
<td>26.0%</td>
</tr>
</tbody>
</table>

(Note) This figure is based on Bainbridge (2013), pp.7–8.
As described above, in the U.S., it can be observed that the benefit of cost reduction via the electronic provision of Reference Materials has been achieved in exchange for a decline in the voting rate among retail shareholders.

IV. Review Concerning Institutional Revisions

In light of the analysis of the legal system and practices in the U.S. in the previous section, potential institutional reform in Japan for the electronic provision of Reference Materials for shareholder meetings are reviewed in this section.

IV-1. Possibility for Adoption of the Notice Plus Access Method

As explained in section II, under the current Japanese legal systems, the dispatch of notices and provision of Reference Materials for shareholder meetings are principally performed in writing. At the same time, if the individual consent of a shareholder has been obtained, all Reference Materials for the meetings can be provided electronically. This is the same as the legal system in the U.S. before the amendment to proxy rules in 2007 following the SEC interpretation bulletin in 1995. It seems that the legal system requiring individual consent described above reflects the situation at the time of revision in 2001, when the Internet was not necessarily ubiquitous in Japan.

However, the Internet diffusion rate in Japan has been steadily increasing since 2001. According to the survey by the Ministry of Internal Affairs and Communications, the Internet population diffusion rate has increased from 64.3% in 2003 up to 82.8% in 2013. Looking at the diffusion rate in 2013 among people in their 60s, who appear to conduct more stock investments than other generations, the diffusion rate was 76.6% for people 60 to 64 years of age and 68.9% for people 65 to 69 years of age.35

In light of the aforementioned diffusion rate, the adoption of a U.S.-like method of electronic provision should be considered. That is, Reference Materials for shareholder meetings would be uploaded on websites and the written notices including minimum matters, such as the method for accessing the websites as well as the date, time and place of the meetings, will be dispatched to each shareholder.36 Reference Materials for shareholder meetings will be provided electronically. Shareholders who cannot use the Internet may request that com-

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35 Ministry of Internal Affairs and Communications (2014) (Chart 5-3-1-2).
36 Even if the notice plus access method is adopted, the notices should be required in writing unless individual consent of shareholders is obtained. However, content of the notices would be allowed to include minimum statements, such as dates, times, and agendas for shareholder meetings (and in the case that the attachment of a voting form is permitted, agenda statements will be necessary) in addition to the method for accessing the websites containing the reference materials for shareholder meetings.
panies issue written Reference Materials for meetings without charge and a certain period for request and issuance will be provided as stated below. In this system, no shareholders would be at any particular disadvantage.

**IV-2. Matters to be Reviewed upon System Adoption**

**IV-2-1. Treatment of Decline in Voting Rates: Advisability Regarding Attachment of Voting Forms in the Notices**

In the U.S., the voting rate among shareholders who receive Availability Notices via the notice plus access method has become remarkably low (see III-3-2). It is necessary to review whether the same problem will occur in Japan. However, the problem in the U.S. seems to have arisen largely from the following system aspect; that is, that the attachment of a form of proxy (corresponding to a voting form in Japan) to the Availability Notice is prohibited (Rule 14a-16(f)(1); see III-2-2(2)D). In order for shareholders to grant the authority of representation for exercising voting rights, they must access websites. Of course, the purpose of the aforementioned regulation is to prevent shareholders from casting their votes without accessing websites and obtaining sufficient information. However, it cannot be denied that the voting motivation of shareholders will be lost. Therefore, in the U.S., forms of proxy accompanied by copies of the Availability Notice may be transmitted to shareholders after 10 days following the (original) Availability Notice (Rule 14a-16(h)(1)). If this is the case, shareholders will be able to cast their votes without accessing Reference Materials after all. This does not seem to be consistent with the purpose of the regulation. At the same time, in order to transmit forms of proxy accompanied by copies of the Availability Notice, companies must bear additional costs besides the cost of sending the (original) Availability Notice, reducing the benefits of electronic provision.

If the notice plus access method adopted in the U.S. is applied in Japan, whether or not the attachment of voting forms in the Availability Notices will be permitted will become a point of issue. In this regard, it should be pointed out that even under the current legal system in which Reference Materials for shareholder meetings are to be provided in writing, there is no way to prevent shareholders from returning voting forms without reading the Reference Materials at all. In light of this point, even based on the notice plus access method, the necessity for preventing shareholders from exercising voting rights without accessing Reference Materials appears dubious. If so, it would be acceptable to permit voting forms to be attached in the notices. In this way, it would be sufficient for companies to send shareholders a single return postcard (i.e. an Availability Notice to which a voting form is attached), which would result in substantial cost reduction.

**IV-2-2. Preservation of Convocation Period**

In cases when companies adopt the notice plus access method, it is necessary to preserve
a period during which shareholders, who cannot access websites, are able to receive Reference Materials in writing. If the Availability Notice is given two weeks prior to the day of the shareholder meeting as a lower limit under the current laws (CA 299(1)), such a period cannot be sufficient for shareholders to request issuance of documents after understanding the Availability Notice and receive the relevant documents. In this regard, setting aside the question of whether or not a regulation to the effect of at least 40 days prior to the day of the shareholder meeting will be put in place like the U.S. law, it seems to be necessary to have at least a convocation period of approximately two weeks under the current laws plus 10 days.

The reason why the current schedule for holding annual shareholder meetings in Japan is remarkably tight is a custom unique to Japan (details therefore are discussed in a separate paper, Tanaka 2007). That is, the closing date (the end date of a business year, which is March 31 for many listed companies) is a record date for the voting right for an annual shareholder meeting and the right to receive dividends resolved by such a shareholder meeting. Under the CA, the effect of a record date cannot last three months or longer (CA 124(2)). Thus, an annual shareholder meeting must be held by the end of June. In terms of the time needed to create and audit Reference Materials for meetings, the holding of an annual shareholder meeting tends to be concentrated at the end of June. Moreover, the convocation period is remarkably short, around the two weeks of the statutory lower limit to about three weeks. Therefore, shareholders cannot take sufficient time for close examination of agendas. The custom of the closing date being the record date does not seem rational. Rather, a large gap occurs for shareholders between the time of the record date and the time of the close date. This may impact the decision-making in shareholder meetings. It is desirable to change the practices and customs so that a record date for an annual shareholder meeting will be moved to the end of May and an annual shareholder meeting will be held in the middle of July through the end of July. In this way, it will be possible to have at least one month or more of a convocation period for the shareholder meeting.

IV-2-3. Permission for Partial Adoption of the Notice Plus Access Method

In the U.S., use of both of the notice plus access method and the full set delivery method are permitted (III-2-2(1)). In the same manner, in the case that the notice plus access method is permitted in Japan, use of the previous method (written provision of notices and Reference Materials for shareholder meetings as well as electronic dispatch of the notices and Reference Materials once individual shareholder consent is obtained) should also be permitted. In particular, the notice plus access method will be a new experience for Japanese companies. Based on such a method, in order to identify the possible extent of the voting rates and the extent of shareholder written requests for the provision of Reference Materials, use of the aforementioned system should be allowed experimentally for some shareholders.
V. Conclusion

As part of the institutional revision of shareholder meetings for the promotion of dialogue between corporations and investors, this paper has reviewed a legal system revision that allows Reference Materials for shareholder meetings to be provided to shareholders electronically. I hope that this paper creates momentum for discussion toward legislation concerning this issue.

References


Ministry of Internal Affairs and Communications (2014), 2014 WHITE PAPER Information Communications in Japan [Heisei 26 nen ban joho tsushin hakusho]


