

THE BANKING AND SECURITIES SCANDALS AND FUNDAMENTAL THEORIES OF COMMERCIAL JURISPRUDENCE†

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Abstract: The recent Japanese banking and securities scandals are among the most serious events that the Japanese business community has ever experienced. This article, written by Professor Seiji Tanaka, and translated by Yutaka Nakamura, analyzes these events applying positive laws from Professor Tanaka's standpoint, emphasizing the social responsibilities that corporations should have in Japanese society. The article relies on the basic purposes and provisions of the Japanese Commercial and Civil Codes and establishes organic principles of social responsibility for Japanese corporations to follow. Finally, the article emphasizes that a high standard of conduct, based on these principles of social responsibility, is necessary for Japanese corporations to maintain the trust of the international community.

1. INTRODUCTION

The recent banking and securities scandals [of 1991] are serious events in the Japanese business community. Scholars in the field have reason to study the legal ramifications of the scandals because of their relation to commercial jurisprudence. However, commercial law scholars have not dealt sufficiently with the matter. My position on fundamental commercial jurisprudence has been to emphasize the social role of corporations. In February 1991, I published a book titled, *Emphasizing Corporate Social Responsibility in Commercial Jurisprudence*. Using the ideas from my book as a basis, this article examines the recent banking and securities scandals, summarizes my conclusions, and considers their possible usefulness in society.

† Translated from Seiji Tanaka, *Kinyū shōken fushōji to shōjihōgaku no kiso riron*, 1265 *Shōji hōmu* 2 (1991).

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2. THE RELATION OF THE BANKING AND SECURITIES SCANDALS TO COMMERCIAL JURISPRUDENCE

"Banking scandals" here refers to the huge loans made by persons connected with the Sumitomo Bank through non-bank financial institutions¹ in speculative land purchases. This situation resulted in skyrocketing land prices that left the average citizen at a disadvantage in the real estate market. Persons connected with the Fuji Bank, the Tokai Bank, and the Kyowa Saitama Bank² loaned huge amounts of money from non-bank financial institutions as security consisting of forged saving certificates and pledge agreements. "Securities scandals" refers to compensation paid by the Nomura Securities Company and other major securities companies to customers who lost money on stock transactions. The brokerage houses had guaranteed their customers a certain percentage yield and promised to compensate for any shortfall at the time of purchase of the stocks, or compensate actual losses or shortfalls after the transactions. Other illegal acts, such as manipulating stock market prices or dealing with underground organizations, are not included in the scope of "securities scandals" for the purposes of this article because space is limited and they have already occurred [and been discussed] several times in the past.

The scandals are such a significant issue that the entire business community is now trying to agree on prevention programs. The Diet views the scandals as a serious issue and has created a special committee to address the issues. The bill to amend the Securities and Exchange Act was proposed and discussed in the Diet resulting in the Act Amending the Securities and Exchange Act [of 1948] finally being enacted.

On the other hand, commercial law scholars apparently still have not sufficiently addressed the same issue. Traditionally, commercial jurisprudence has limited its scope to private law, such as civil or commercial law. The focus of commercial jurisprudence has been limited to the detailed analysis and clarification of the legal structure of a specific legal system through

¹ [Translator's Note] In Japan, banking business is regulated by the Banking Law (Ginkō Hō). The English translation of the Banking Law used here is taken from Eibun Hōrei Sha Law Bulletin Series Japan, Vol. VI BA 2. "Bank" is defined as an institution engaged in the banking business which is "[r]eceiving of deposits or installment savings *together with* lending of funds or discounting bills or notes." Banking Law article 2(2)(i) (emphasis added). "Non-bank" financial institutions generally refers to the institutions which lend funds but do not receive deposits (e.g., leasing companies), thus falling outside the regulation of the Banking Law.

² [Translator's Note] Kyowa Saitama Bank has formally changed its name to "The Asahi Bank, Limited."

extensive use of every provision in the Civil Code and the Commercial Code. For instance, one of the areas of greatest interest among commercial law scholars is the effect of transactions between a corporation and its directors under article 265 of the Commercial Code. The scandal controversies, meanwhile, are considered illegal corporate activities better resolved under tort or criminal law and thus fall outside the area of commercial jurisprudence.

However, in my view, these problems are of prime importance to commercial jurisprudence since they relate to the extent to which corporations can perform social roles. I have advocated for years that commercial jurisprudence should emphasize society's needs. In the introduction to my book published in October 1990, I expressed my regret of an incident in which employees of Daiwa Securities Company, one of the four biggest securities companies in Japan, compensated customers for losses from declining stock prices. At the same time, employees of the Sumitomo Bank loaned inordinate sums of money through non-bank financial institutions for speculative land purchases which were fueling skyrocketing land prices.

3. COMMERCIAL JURISPRUDENCE AND THE EMPHASIS ON SOCIAL RESPONSIBILITIES OF CORPORATIONS

Legal history, general legal philosophy, and commercial law philosophy all implicitly recognize an important facet of commercial jurisprudence today: emphasis on the corporate social role in the enactment and interpretation of law.³ Japan legislated corporation law, approved the corporation system, and affirmed its development with the intent of providing for corporate public service, corporate social roles, and the production of goods and services useful to society. Therefore, in consideration of that legislative intent, the [future] legislative policy regarding the interpretation of corporation law should be constructed so as to sufficiently allow corporations to perform their social role. It is from this standpoint that I would like to analyze the scandals.

³ Seiji Tanaka, *Kigyō no shakaiteki yakuwari jūshi no shōji hōgaku* (Emphasizing Corporate Social Responsibility in Commercial Jurisprudence) 5.

4. THE REASON FOR APPLYING THE ABOVE THEORY TO THE SCANDALS

The purpose of commercial law is to promote the social role of corporations while restricting their socially detrimental activities. Commercial jurisprudence should likewise have the same emphasis.

The first reason for that can be found in the achievements made in the [area of the] social sciences concerned with legal studies. The most convincing argument comes from Professor Kenichi Tominaga of the University of Tokyo. His opinion is developed from a theory by Talcot Parsons, an influential American sociologist of the 1950s. Professor Tominaga's study is based on "structural-functional analysis," which places society and community in a superior position to corporate systems in a hierarchic structure. Therefore, society and community should impose sanctions on certain corporate activities according to a determined moral standard that dictates corporate social responsibility.

Moreover, corporate activities have a "public" side in addition to a "private" side. Even privately held corporations should shoulder the responsibilities of the "public" side, as a substructure within the overall matrix of societal structures. Therefore, [for example] Professor Tominaga goes on to say that problems such as the prevention and elimination of the pollution emitted by corporations must be discussed in the context of the public side of corporations. Corporate social responsibilities dictate sanctions be imposed on activities related to the public side.⁴

In addition to theories of social science, the other basis is in the area of business administration and economics. There had been heated debate in these fields over corporations and social responsibility. However, as previously mentioned, a majority of scholars in both the United States and Japan now support the imposition of social responsibility upon corporations.⁵ These scholars emphasize that the corporation itself constitutes a part of a greater social system; that is, employees, customers and suppliers are organic elements of the corporate structure and have [the right to make] reasonable demands on the corporation, like shareholders. Management must, in turn, accommodate the interests of these groups and it must satisfy their demands. Private corporations, therefore, must hold society's trust and recognize that

⁴ Kenichi Tominaga, ed, *Keiei to shakai* (Management and Society), 15 Gendai keieigaku zenshū 15, 41; and Kenichi Tominaga, *Kigyō no shakaitei sekininron ni tsuite* (On the Theory of Social Responsibility of Corporations), 4-2 Tsūsan janaru 24 (Mar 1971).

⁵ See Tanaka at 121 (cited in note 3).

public interest is a priority.⁶ The most influential advocate of this theory is Professor Keith Davis of Arizona State University, who says that corporations have social power, and "[s]ocial responsibility goes with social power."⁷

The second reason [for promoting corporate social responsibility in commercial jurisprudence] is based upon the legislative reasons for, or goals of, corporation law itself. It is appropriate in this connection to quote the words of Professor Dodd at Harvard University in a famous thesis: "business is permitted and encouraged by the law primarily because it is of service to the community rather than as a source of profit to its owners."⁸ In other words, the law approves and encourages the corporate system since it anticipates that corporations will perform a social role. Thus, the social responsibilities of corporations can be discerned in the legislative intent of [U.S.] corporation law itself. This concept of legislative intent has influenced public opinion toward affirming the imposition of social responsibilities upon corporations.

However, the [Japanese] Commercial Code provides that a corporation is a juristic person for profit,⁹ and thus is legally authorized to pursue profit. The issue, therefore, is whether this provision is consistent with the legislative intent behind corporation law. At this point, it can be argued that the legislative intent underlying [Japanese] corporation law is that corporations be useful to society and simultaneously engage in profit-making activity as a means for achieving this aim. In actual cases, corporation law may act to restrict the corporation's commercial functions. Thus, the legislative intent behind corporation law can be construed as affirming the social responsibility of corporations.

The third reason [for commercial jurisprudence's support of the corporate social role] is founded upon interpretations based on provisions of positive law. First, the Japanese Constitution provides that "[p]roperty rights shall be defined by law, in conformity with the public welfare" ([Japanese Constitution] article 29 (2)),¹⁰ and article 1(1) of the Civil Code provides a

⁶ Katsuhiko Sakurai, *Gendai Kigyō no shakaiteki sekinin* (Social Responsibilities of Present Corporations) 99 (1976).

⁷ Keith Davis and Blomstorm, *Business, Society, and Environment: Social Power and Social Response* 93 (2d ed 1971).

⁸ Dodd, *For Whom are Corporate Managers Trustees*, 45 Harv L Rev 1149 (1932).

⁹ Commercial Code article 52(1).

¹⁰ [Translator's Note] The Japanese Constitution article 29(2), as translated in Eibun Hōrei Sha Law Bulletin Series Japan, Vol. I AA 7.

blanket clause, "[a]ll private rights shall conform to the public welfare."¹¹ These provisions are intended to qualify the absoluteness of private rights, in particular, ownership rights. "The public welfare" means the progress and the development of the life of the whole social community. "All private rights shall conform to the public welfare" means that the content and execution of private rights should be in accordance with the public welfare. Moreover, the effective of private rights may be denied to the extent that they conflict with social welfare.¹²

In Japan, however, ideas about modern individualism did not completely prevail in some property relationships. It was feared that private rights would be sacrificed by an automatic application of "public welfare" to such property relationships. Therefore, it is recognized that article 1(1) of the Civil Code must be construed in accordance with the concept of respect for individual freedom stipulated in article 1-2 of the Civil Code.¹³ It is also recognized that individual freedom is not absolutely unrestricted, in light of the relationship between private rights and public welfare. Since individual freedom is minimally restricted, consistency mandates public welfare-based restrictions be considerably passive.¹⁴ Indeed, as to the scandals, sanctions can be imposed on corporate activities only if they are in direct violation of laws. Nevertheless, even where scandals do not explicitly violate existing laws, there remains the possibility of [the activity being] contrary to public welfare.

In the banking scandals, for instance, speculative purchases of land made by banks not intending to use [the land], but solely to increase profits (especially those made through their subsidiary non-bank financial institutions) caused land prices to skyrocket, adversely affecting the average citizen. In the securities scandals, the securities companies' huge expenditures to compensate customers for stock transaction losses and to meet certain standard yields was not directly illegal under the pre-amendment Securities and Exchange Act, but [the compensation] violated the [principle of] autonomy of the stock transaction and thus unjustly disadvantaged other customers. The result is an artificial distortion of natural market prices. In

¹¹ [Translator's Note] Civil Code article 1(1), as translated in Eibun Hōrei Sha Law Bulletin Series Japan, Vol. II, FA 1.

¹² Sakae Wagatsuma, *Shintei minpō sōsoku* (The New Edition of the Civil Code General Provisions) 34.

¹³ *Id* at 34. [Translator's Note] Civil Code article 1-2, as translated in Eibun Hōrei Sha Law Bulletin Series Japan, Vol. II, FA 1: "[t]his code shall be construed from the standpoint of the dignity of individuals and the essential equity of the sexes."

¹⁴ Minoru Tanaka, *Tsūshaku minpō (I)* (Commentary on the Civil Code) 64.

such cases, corporations and their executives may be liable to the shareholders or the customers who failed to receive compensation for their losses.¹⁵

Besides the above public welfare principle, the Civil Code provides that "[t]he exercise of rights and performance of duties shall be done in good faith and in accordance with the principles of trust,"¹⁶ and, "[n]o abuse of rights is permissible." [Civil Code] § 1(2) and (3).¹⁷ In general, these provisions can be applied to commercial law as blanket clauses. For example, Commercial Code article 254-3 provides, "[t]he directors are obligated to observe the provisions of the laws and ordinances and of the articles of incorporation and resolutions of general meetings."¹⁸ Commercial Code article 266(1)(v) provides for a director's liability to a corporation "in the event of any act in contravention of any law, ordinance or the articles of incorporation." Finally, the concepts of the above blanket clauses are reflected in Commercial Code article 266-3(1), which provides for director liability to a third party "[i]n case directors . . . in executing their office."¹⁹ Since the above blanket clauses appear to include, to some extent, the directors' duty to make efforts to ensure that the corporation fulfills its social role, Japanese law provides for a degree of social responsibility in the interpretations of Commercial Code articles 254-3, 266(1)(v) and 266-3(1).

One may criticize the fact that the social responsibility of a director or a corporation is so limited that it is difficult to derive a positive responsibility from such blanket clauses. However, this is due to the vague wording of blanket clauses; even scholars are divided in their interpretations of the blanket clauses. While the degree of social responsibility expected of a director or a corporation would be lower under a narrow interpretation, expectations would rise significantly if the broader interpretation ever became influential under pressure of public opinion.

In short, corporations may not engage in unrestricted business for

¹⁵ See the discussion in section 6.

¹⁶ [Translator's Note] Civil Code article 1(2), as translated in Eibun Hōrei Sha Law Bulletin Series Japan, Vol. II, AF 1.

¹⁷ [Translator's Note] Civil Code article 1(3), as translated in Eibun Hōrei Sha Law Bulletin Series Japan, Vol. II, FA 1.

¹⁸ [Translator's Note] Commercial Code article 254-(3), as translated in 2 Japan Bus L J A-21 (Oct 1981): "The directors are obligated to observe the provisions of laws and ordinances and of the articles of incorporation and resolutions of general meetings and to execute their offices faithfully in the interest of the corporation."

¹⁹ [Translator's Note] Commercial Code article 266-3(1): (Liability to Third Persons) If any directors act with wrongful intent or committed gross negligence in executing their offices, such directors shall be jointly and severally liable for payment of damages to third persons as well.

profit's sake. Profit motives should be limited by social constraints. For example, corporations should have refrained from holding back their commodities during the oil crises. Today, corporations not engaged in real estate must refrain from acquiring land since a sudden rise of land prices resulting from speculative profits would significantly harm society. I believe that the general public approves, with little objection, of a corporate responsibility of self-restraint.

5. APPLICATION OF THE ABOVE THEORY TO THE SCANDALS

It is indeed desirable to preempt such scandals by preparing the best possible provisions and legislation. Except for a few problems, the Securities and Exchange Act was amended to correct flaws in its provisions concerning securities scandals. I am of the opinion, however, that it is more important to confirm the existence of corporate social responsibility as the basis of such provisions. The application of my fundamental theory of commercial law to the scandals would yield the following results.

First, if corporations or directors of corporations restricted commercial activities based on social requirements without unreservedly pursuing profit, such conduct would be justified and not give rise to the directors' liability to another to a corporation or a shareholder.²⁰ For example, in a purchase of real property, if a corporation acquired the land for the purpose of selling it at a high price rather than for usage or consumption, it would be construed as breach of its social duties because of the resulting adverse rise in land price and the harm to the general public. On the other hand, if the corporation were to refrain from purchasing the land, resulting in lost opportunity for profits, it may injure the corporation. Under my theory, however, in no case are the corporation's executives liable to the corporation or shareholders under such circumstances, because their conduct was reasonable. Moreover, before the amendment of the Securities and Exchange Act, in no instance were the directors of a securities company liable if the company lost a major client and therefore lost significant future benefit as a result of refusing to compensate the customer's loss, when the refusal was made in order to maintain fairness among customers and so as not to distort the operation of the stock market. This was the case even though the compensation of some customers for losses would have been preferable to the company from the point of view of maintaining customers and increasing future securities transactions.

²⁰ Commercial Code arts 266 and 254-3.

When a corporation's employee is ordered to perform a duty that is explicitly against the social role of the corporation, he or she should be entitled to refuse to comply with the order and not to perform the duty. Indeed, when the employee is ordered to perform an illegal act, he can refuse to do it; however, even if its illegality is not obvious, the employee nevertheless should be entitled to refrain from performing the duties which are counter to the social role of the corporation.

Second, the application of my theory to the securities scandals yields the further consequence that a securities company's compensation of customers for losses on stock purchases may trigger the directors' liability despite the company's need to maintain customers and increase future profit. Such activity violates the fiduciary duty under Commercial Code article 254-3, and thus the director is liable for a violation of Commercial Code article 266-1(v). This illustration actually happened in a shareholder's derivative suit against the Nomura Securities Company, discussed in the next section.

Third, comprehensive provisions in individual legislation cannot solve all the problems that may arise from scandals. In some cases, it is even doubtful that such provisions may be applicable. Under my theory, in a case where individual legislation does not explicitly prohibit certain conduct, the law nevertheless should not be construed as non-intervening. Rather, there should be a limitation on such conduct, derived from the social role of corporations. In the criminal penalty provisions, there is little opportunity for broad interpretation because of the "principle of legality."²¹ In other areas of law, however, my fundamental commercial law theory would allow for a broader interpretation of law, and legal interpretation by analogy.

Fourth, securities companies' compensation against customer losses may be construed as an unfair business practice under the Anti-Monopoly Act. Some of the compensation methods would be deemed "discriminatory pricing" (if goods are provided or accepted at an unfair price (General Designations²² item No. 3); "unjust low price sales";²³ "unjust high price

²¹ [Translator's Note] *Zaikei hōtei shugi (nulla perna nullam crimen sine lege)* or, "there can be no punishment without an explicit provision of law governing the crime."

²² [Translator's Note] *Fukōsei na torihiki hōhō*, Fair Trade Commission Notification No. 15 of 1982. Article 19 of the Anti-Monopoly Act states, "[n]o entrepreneur shall engage in an unfair business practice." Under article 2(9) and 72, the Fair Trade Commission shall designate the general categories of unfair business practices applied to all fields of trade by means of notification [*kokuji*]. The categories of unfair business practices thus designated by this notification are referred to in practice as "General Designations."

²³ *Id* at item No 6.

purchasing";²⁴ "Undue Customer Inducement by Unfair Benefits"²⁵), and, consequently, in contravention of the Anti-Monopoly Act as unfair business practices. The activities would be subject to a cease and desist order.²⁶ An entrepreneur who engages in an unfair business practice is liable for compensatory damages to victims and may not be discharged from the liability notwithstanding non-intention or negligence if a decision of the Fair Trade Commission becomes final and binding.²⁷ Moreover, if the damage caused by an unfair business practice satisfies the elements of articles 709 or 715 of the Civil Code, the entrepreneur may be held liable for compensatory damages under the above provisions. Where the unfair business practice is implemented by a juristic act, the juristic act may be voidable only when that unfair business practice is a [material] factor or a condition to the juristic act, or when the fact of the unfair practice is disclosed to the other party.²⁸ In fact, fifty-one attorneys in the "National Security Research Group" claimed that a securities company's compensation of customers against losses would violate the Anti-Monopoly Act. The group then petitioned the Fair Trade Commission to take action, such as a cease and desist order.²⁹ Future developments should be monitored.

6. AN OPINION ON THE DERIVATIVE SUIT SEEKING DIRECTORS' LIABILITY FOR COMPENSATION OF CUSTOMER LOSSES

On September 9, 1991, a shareholder of the Nomura Securities Company who owns 1,000 shares brought a derivative suit in the Tokyo District Court against ten directors, including the ex-CEO of Nomura, for their liability in compensating Tokyo Broadcasting System (TBS) in the amount of 362 million yen for losses incurred in stock transactions.

According to the complaint, the plaintiff asserted that the defendants were in violation of the representative directors' fiduciary duty, on the grounds that they compensated the customers for their losses despite a circular promulgated in December of 1989 prohibiting such compensatory acts, and that they were aware of article 50(1)(iii)³⁰ of the Securities and

²⁴ *Id* at item No 7.

²⁵ *Id* at item No 9.

²⁶ Anti-Monopoly Act, article 20.

²⁷ Anti-Monopoly Act, article 26.

²⁸ Tanaka and Kubo, *Shinban keizaihō gaisetsu san zenteiban* (The New Edition of the Outline to Economic Law, the Third Complete Revised Edition) 333.

²⁹ Yomiuri Shinbun (Yomiuri Daily News) (morning edition Oct 5, 1991).

³⁰ [Translator's Note] The Pre-amended Securities and Exchange Act article 50(1): A securities

Exchange Act. The plaintiff further asserted that Nomura's representative directors violated a fiduciary duty, requiring them to deal in the warrant bonds at a fair price, when they unfairly transacted in warrant bonds in order to compensate the customers for their losses. The plaintiff brought the derivative suit under article 267(1)³¹ of the Commercial Code because the representative directors' violation of fiduciary duty is included in Commercial Code article 266(1)(v), making the defendants liable for 362 million yen in compensation for damages, the amount of the compensation for losses derived from the bond transactions.³²

Does this allegation have reasonable legal ground? This suit is based on Commercial Code article 266(1)(v), which requires that (1) a director be in violation of law or the articles of incorporation, and (2) the corporation suffered damages thereby. The securities company's inducement by promising compensation of a customer for all or a part of the customer's losses at the time of the stock transaction was prohibited by article 50(1)(iii) of the former Securities and Exchange Act. Therefore, if the directors violated this provision, it is obvious that such conduct falls within the scope of Commercial Code article 266(1)(v). However, since the compensation for the loss after the stock transaction does not fall within the former Securities and Exchange Act article 50(3), it could be maintained that the compensation is not illegal under the former Securities and Exchange Act (provided that it is under the old Securities and Exchange Act). Even after the December 1989 Circular was promulgated, a violation of the circular itself was not illegal, since it is nothing more than an administrative guideline.

Therefore, will such a questionable action constitute a violation of Commercial Code article 266(1)(v) and, as a result, incur director liability? If mere violation of the Circular did not fall within Commercial Code article 266(1)(v), the compensation for customer losses would be strictly distinguished as to when—before or after—the stock transaction was made. The latter case could not constitute a violation of Commercial Code article 266(1)(v). This could be a conclusion according to former prevailing theory.

However, such conduct should incur director liability. In applying my

company, director, or an employee thereof shall not perform the following activities: . . . (iii) with respect to sales or other transactions relating to stocks, or transactions relating to stock option: solicitation of customers by promising to bear all or a portion of losses incurred by customers on the said sales or transactions.

³¹ [Translator's Note] Commercial Code article 267(1), as translated in 2 Japan Bus L J A-25 (Oct 1981): "A shareholder owning a share or shares for not less than six successive months may demand in writing that the corporation lodge an action for pursuing the liability of directors."

³² 1261 Shōji hōmu 38.

theory, when a securities company compensates customers against losses derived from stock purchases, such commercial conduct should be treated as illegal conduct despite the company's obvious need to maintain customers and secure future profit. The profit caused [for the compensated customers] by such conduct should not be taken into account when mitigating damages.³³ The directors would be in violation of their fiduciary duty under Commercial Code article 254-3, and thus liable for compensatory damages in violation of Commercial Code article 266(1)(v). In my opinion, it is not necessary to distinguish between when the compensation against customer losses occurred—even under the pre-amendment Securities and Exchange Act.

One may question whether the profit mitigates or eliminates the damages where compensation against customer losses contributes to maintaining or increasing the number of customers and profits the corporation. As discussed above, the maintenance or increase of customers should not be taken into account in the mitigation of the damages because the act is derived from illegal conduct contrary to the social role of corporations. While there are no direct provisions that refer to this point, by analogy, the provision that prohibits a setoff when a credit to be setoff is derived from tortious activity (Civil Code article 509)³⁴ supports this conclusion.

7. CONCLUSION

The recent banking and securities scandals are a serious matter in the Japanese business world. However, the commercial law world has not sufficiently dealt with this matter. The social role of corporations should be considered important in today's commercial jurisprudence. This problem has been discussed above. In conclusion, whether or not there are specific provisions for the corporation's actions, activities that run counter to the social role of corporations must be strictly controlled. This position led me to the above conclusions, including my opinion regarding the derivative suit. One may object to my position on the ground that it is so strict that corporate executives would suffer much inconvenience in their management, adversely affecting Japanese corporate competitiveness internationally. However, strict interpretation is necessary in order to maintain trust in Japanese corporations and prevent distortions in the price-forming function of the market.

³³ Hatoyama, *Zōtei kaihan Nihon saikenhō (Sōron)* (The Supplemental Amended Edition of the General Provisions of the Japanese Law of Obligations) 105. Wagatsuma, *Saiken shōron (Minpō Kōgi IV)* (General Provisions of the Law of Obligations (Civil Code Lecture IV)) 109.

³⁴ See Wagatsuma at 241 (cited in note 37).

Moreover, strict requirements are indispensable to Japanese corporations' future international development. Japanese corporations must comply with such strict requirements in order to modernize, be understood internationally, and obtain the trust of their overseas working partners.

Finally, I would like to emphasize again that corporate activities should be permitted only to the extent that they do not run contrary to the social role of corporations, regardless of whether there are specific provisions governing corporate activities; the corporate activities contrary to [social welfare] must be strictly controlled.

