Problems of Excercising of Voting Right by Trustee

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The principal subjects discussed in this report were (1) the diversification of forms of stockholding; (2) the relationship between the registered shareholder and the share-certificate in the case of deposited stocks; (3) legal restrictions on the exercise of voting rights; and (4) the exercise of the voting rights pertaining to deposited stocks.

Regarding the first subject, in the normal case, the shareholder keeps the share-certificate registered in his name, his name is entered in the shareholders' list, and he exercises the voting rights, receives the dividends and carries out the transaction in selling the shares. But if he deposits his stock at someone else, the registered ownership on the stock shifts from the shareholder to the depositary and the voting rights, too, move to the latter. There are various forms of shareholding, such as the management of stocks by an employee shareholding association and the management of stocks through a nominee, a practice prevailing in the United States.

Regardless of whether it is stock management trust or depositing of stocks which arises in the course of management of money trust or securities investment trust, stocks are eventually the trust property. What should be done with the voting rights in the management of stocks? How do the things stand now? By What procedure are the voting rights exercised in the case of deposited stocks? These are the second subject discussed in report.

Regarding the third subject——legal restrictions on the exercise of voitng rights, the depositary exercises the voting rights in such a way as instructed by the depositor in such cases as investment trust. If there is no special covenant about the way to exercise the voting rights, the depositary exercises the voting rights at his own discretion and responsibility. In the shareholders' list, the depositary's name is registered as the shareholder's name. Therefore, the voting rights should be exercised at the depositary's initiative.

In the aforementioned case of stock management through a nominee or in the case where stocks are entrusted to a third person, together with the stocks of other persons, under the central depositary system, how should the rights and interests of the real shareholder be protected? This is stirring a new debate, and was the fourth theme of the report.

In mixed safe-keeping, many persons deposits their shares at one place, but the ownerships on the deposited shares theoretically belong to the real shareholders. Under the central clearing system, the central depositary organ is the nominal owner of the shares entrusted, but if the ownerships on the deposited stocks belong to the real shareholders, the real shareholders, as a matter of principle, should exercise the voting rights. Then, a "second" shareholders' list in addition to the original shareholders' list becomes necessary. What should be done to cope with this situation? In the case of collective trust, the compilation of a list of settlors is necessary in order to protect the rights and interests of the real shareholders. But this requires legislation. The problem is how to adjust the need for a second shareholders' list with the provisions of the Commercial Code regarding the shareholders' list. If the real shareholders registered in the second shareholders' list are to be permitted to exercise their voting rights, steps should be taken to give a legal backing to the second shareholders' list under the Commercial Code.