the trends to broadly recognize the controlling shareholder in the case of "closely held corporation".

III Analysis

There is a subtle difference between Delaware and the other state cases. However, in Delaware and the other state cases, the court precedents have never pointed out the reason of the standard defining the scope of controlling shareholder. Therefore, this report is tried to analyze the defining problem in the perspective of the aspects of voting right.

Historically speaking, American corporation law has been founded on the fundamental value, the unlimited exercise of voting right and the rule of voting majority, because the corporate share is the private property of shareholders. Given the fundamental values, the fiduciary duty theory of the controlling shareholder has been formed on the basis of two different approaches. First approach is to restrict the unlimited exercise of voting right. This approach is that the fiduciary relation between controlling shareholder and others is formed in the voting majority because shareholders can not exercise the voting right without restriction. Second approach is to carry through the principle of the unlimited exercise of voting right. This approach is that the decision-making of a certain shareholder corresponds with the decision-making of the corporation in itself or its directors, because the principle of the unlimited exercise of voting right is carried through.

The difference of two approaches is thought to come from the way that second approach considered the property right of voting to be more relatively significant than the first approach. Delaware case is the position closer to second approach, in contrast, the cases except Delaware is to first approach.

IV Summary and Conclusion

Given the existing Japanese corporation law structure, it is necessary to emphasize the property right of voting to be relatively significant. Therefore, if the same fiduciary duty as American law should be introduced in Japanese corporation law, the standard of defining a controlling shareholder should be based on the standard adopted in Delaware cases. However, if so, the concept of "controlling shareholder" in Japanese corporation law may be more restrictive than the concept of "parent corporation". Accordingly, it is necessary to make further consideration whether this result is reasonable as the law-making.

The Expansion of the Concept of Securities and Its Limits

Masahiko TAKAHASHI

In Japan, the scope of securities which were the basic concept of the Securities and Exchange Law was fixed for many years after World War II. Although the scope of securities was gradually expanded with limited enumeration as a result of trends in securitization and the financial system reform in the first half of the 1990's, the wider concept of securities including a comprehensive definition rule
has not been fully realized.

Although the Financial Instruments and Exchange Law was reformed based upon the Securities and Exchange Law, reforms on a broader scale, such as adopting financial instruments or investment products, for example, were not pursued. But the conventional concept of securities was maintained and its scope was expanded further with the adoption of a comprehensive provision regarding units of collective investment schemes.

The concept of securities in the Financial Instruments and Exchange Law is usually understood to have investment characteristics as a fundamental criterion. But it is difficult trying to determine the investment potential underlying the concept of securities based upon the criterion of investment characteristics, if both the legal form and economic substance of individual financial instruments are taken into account. From a legal viewpoint, the Financial Instruments and Exchange Law’s definition of securities lacks balance and is not sufficiently clear.

Firstly, various loans by financial institutions, for example, syndicated loans and ABL (asset-backed loans) are not included in the definition rule of securities of the Financial Instruments and Exchange Law, though they have for their economic substance some investment characteristics.

Secondly, beneficiary’s rights in the Trust Law are fully included in the definition rule of securities, but some of them lack virtually any substantial investment characteristics.

At present, it is very difficult to maintain the traditional concept of securities which has been supported by the criterion of investment characteristics whilst the border between investment products and other financial instruments becomes increasingly ambiguous. Sooner or later, we will have to adopt a new and broader concept that transcends the current concept of securities by reforming the Financial Instruments and Exchange Law.