

Japan's 2019 Proxy Season Results Announced (Shareholder Activism Update)

Another record breaking year for shareholder proposals, including significant support for activists' and other dissident proposals

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The number of shareholder proposals made by activist shareholders, votes against management proposals and the number of public companies facing shareholder proposals all continue to break previous records in Japan.

Recent trends in shareholder proposals in Japan

A record breaking 54¹ Japanese public companies faced shareholder proposals in the June 2019 annual meeting proxy season. The number of public companies facing shareholder proposals in Japan has increased in each of the past three years, with 40 companies in June 2017, 42 companies in June 2018, and now, 54 companies in June 2019.^{2,3} At least 12 companies faced shareholder proposals made by institutional investors in the June 2019 shareholder meeting season, breaking the previous record of 10 proposals in the 2018 proxy season.⁴ The number of such proposals that the requisite majority or supermajority of shareholders have approved has been relatively small, with only RISE in 2016, Kuroda Electric in 2017, two companies in 2018 (JP-Holdings, Inc. and 21LADY),⁵ and no proposals from shareholder activists being approved in 2019.⁶ However, we note that more than 20% of the votes present in person or by proxy supported 17 individual proposals submitted by institutional investors, and more than 30% of the votes supported 10 such individual shareholder proposals, in our internal survey of the general meeting reports of 12 companies facing proposals from institutional investors. Voting patterns are reported to indicate increased support for shareholder proposals, particularly for proposals to strengthen corporate governance and

¹ <https://www.nikkei.com/article/DGXMZO45814540X00C19A6EA1000/>

According to the print version of *Shouji Homu* (July 2019 and June 2018), there were 44 companies subject to shareholder proposal rights exercise in the June 2019 annual shareholder meetings out of 1896 companies surveyed, an increase of more than 25% from the 35 such companies in June 2018 out of 1899 companies surveyed.

² White & Case July 18, 2018 Client Alert, "Japan's 2018 Proxy Seasons Results Announced (Shareholder Activism Update (2))," available online at <https://www.whitecase.com/publications/alert/japans-2018-proxy-season-results-announced-shareholder-activism-update-2>.

³ Survey results from Mitsubishi UFJ Trust and Banking Corporation, quoted in a Jun 26, 2019 Reuters news article available online at <https://www.reuters.com/article/us-japan-shareholder-activism/for-japan-inc-discretion-is-the-better-part-of-activist-valor-idUSKCN1TP2ZB> (last visited September 9, 2019).

⁴ *Supra* notes 1 and 2.

⁵ *Supra* note 2.

⁶ Based on White & Case LLP's internal survey of Japanese shareholder proposals as of July 5, 2019

shareholder return.⁷ Declining levels of reliable support for management (discussed below) may be contributing to the increasing frequency with which issuers are thought to be settling proposals before they become public, offering issuers the opportunity to avoid a public fight and give up less than they might have to were a shareholder proposal to be made and receive significant support. If this view is accurate, the record breaking number of public activist proposals may mask the true level of activist engagement in Japan this year. The record number of poison pills being shelved,⁸ amount of stock buybacks being announced⁹ and other indicia of shareholder pressure may be viewed as supporting evidence for this possibility.

Record buybacks announced; management proposals see more significant opposition than ever before; shareholder proposals highlighted publicly for the significant percentage of support received from shareholders, including by a growing number of local institutional investors.

According to IN Research reported by the Wall Street Journal, in 2018 Japanese companies announced share repurchases worth \$55.6 billion, which broke the previous record of 2016 by 4%.^{10,11} 2019 has started at a pace suggesting it may break the record once again, with only the first half of the year seeing stock buybacks announced totaling \$53.5 billion,¹² more than double the level in the first half of 2018. Another focus of reporting was the level of support for such proposals (whether or not advanced by an activist shareholder) and the record level of opposition to management proposals. According to IR Japan's statistics quoted in the Nikkei Asian Review, a record 14.8% of reporting issuers with the typical June annual meeting dates saw more than 20% of votes against at least one management proposal.¹³ This represents, per the article, a 2.6% increase over the same figure in 2018. Sun Corp. and Dai Nippon Printing were specifically highlighted for a greater than 40% and 36% opposition to four out of their five senior management directors or chairman and representative directors, respectively.

LIXIL's June 24, 2019 annual meeting saw significant votes from shareholders in favor of eight directors proposed by former chief executive Mr. Kinya Seto which included bringing Mr. Seto back after he was ousted from his position in the previous year.¹⁴ Mr. Seto acquired the majority support he needed to join the board with a 53.7% vote in favor of his appointment. A number of investors such as UK based Marathon Asset Management expressed dissatisfaction with his resignation (in substance, he is understood to have been ousted) in 2018 and were involved with a campaign to bring him back.¹⁵ Based on LIXIL's March 31, 2019 annual report, foreign legal entities are thought to own about 35% of LIXIL's shares, while 30% are reported to be owned by domestic institutional investors. While the breakdown between foreign and domestic support is unclear, based on the votes in favor of his reappointment, the narrative appearing in the Japanese press is that Mr. Seto's backers included significant support from Japanese shareholders as well as foreign shareholders to vote in his favor this proxy season at the general meeting of shareholders on June 24. A Nikkei article singled out Nippon Life Insurance as a surprise dissident vote in favor of Mr. Seto's backers' proposals in addition to management's.¹⁶ On the other hand, two of the eight nominees for the board of directors submitted by the company were rejected for failing to receive the requisite support, which, given the majority of shares are held by Japanese investors, suggests that a significant percentage of Japanese

⁷ **Supra** note 1.

⁸ <https://www.nikkei.com/article/DGKKZO45095250R20C19A5DTA000/>

⁹ <https://www.wsj.com/articles/once-a-miser-japan-inc-is-opening-its-wallet-to-buy-back-shares-11562752804>

¹⁰ **Id.**

¹¹ <https://www.nikkei.com/article/DGXMZO46993840V00C19A7EA5000/>

¹² **Supra** note 9.

¹³ <https://asia.nikkei.com/Business/Business-trends/Once-mum-Japan-shareholders-crank-up-pressure-on-management>

¹⁴ <https://asia.nikkei.com/Business/Companies/Shareholders-prevail-in-Lixil-showdown-restoring-ousted-CEO>

¹⁵ **Id.**

¹⁶ <https://www.nikkei.com/article/DGXMZO46798820R00C19A7EA1000/>

Please note that a number of other shareholder proposals were also highlighted in the cited articles and otherwise for significant shareholder support, including by activist shareholders in situations in which we were involved or otherwise involving firm clients. We have in such instances omitted summaries of significant voting results due to these sensitivities, and our exclusion of a matter from this alert should not be read to indicate anything about our views on the significance or results of such matter.

investors likely voted against at least some management directors. Similarly, Kansai Electric Power Co., Inc. faced a total of 21 proposals by shareholder groups at its annual shareholders meeting, one of which received 43% support, a proposal to disclose each individual director's compensation.¹⁷

The growing influence of activists in Japan

Activist shareholders continue to enjoy increased influence in Japan through what is reported to be a growing willingness of Japanese and other institutional investors to support their shareholder proposals. In addition to the unknowable number of private settlements that may have arisen from this changed landscape, a number of activist shareholders have influenced the managerial decisions of Japanese companies where such decisions were made by companies prior to the shareholder meetings following public disclosure of activist pressure and letters. Strategic Capital, Inc., one of the most prolific activist funds in Japan, had submitted a shareholder proposal for this year's annual shareholder's meeting requesting that Asanuma disclose its cost of capital. However, Asanuma chose to release this information prior to the general meeting of shareholders, without waiting for a vote on the proposal.¹⁸

Japan's Stewardship Code calls on institutional shareholders to publicly disclose their proxy votes on an individual investment basis. Shareholders who have adopted the Stewardship Code are expected to provide an explanation as to why they oppose shareholder proposals. Activists' proposals are thought to be generally designed to align with public perceptions of how to strengthen corporate governance, and it has become correspondingly more difficult for such a shareholder to cast a vote against many activists' proposals without conducting some level of analysis first. As of June 2019, 251¹⁹ institutional investors have conveyed an intent to adopt the Stewardship Code to the Japanese Financial Services Agency, an increase of 30 investors since February 2018.²⁰

Nikko Asset Management has reported that the amount of cash distributions to shareholders in Japan has nearly doubled over the past five years to exceed 15 trillion yen.²¹ Further, some observers have pointed out that cross-shareholdings are on the decline, boosted by the demand for individual disclosure of strategic shareholdings since the adoption of Japan's stewardship code and corporate governance code. The percentage of cross-shareholdings has fallen to 10.1% as of the 2018 fiscal year end, from the level of 34.1% in the 1990 fiscal year in Japan's bubble era. As a result, some say that the reduction in cross-shareholdings is entering its 'final phase.'²² On the other hand, in reality 60.3% of listed companies still report that they have stable shareholders accounting for 40% to 60% of their shareholder base, measured as the percentage of total voting rights among all shareholders that are held by those shareholders who are expected to vote in favor of management proposals.²³ It remains normal practice at annual shareholder meetings in Japan for stable shareholders such as cross-shareholders to give a blank proxy to the issuer in favor of management representatives, and it has been exceptionally rare for shareholder proposals to be approved or for an issuer's proposals to be rejected. However, as set out above, there are now some examples like LIXIL where proposals from institutional shareholders are approved as a result of a proxy fight, and in a growing number of cases in annual meeting season, institutional shareholders in Japan are viewing management with more rigor and skepticism. Going forward, we will need to pay attention to whether we are headed toward a reduction of the stable shareholder percentage held by strategic shareholders, a reduction of "cross-shareholdings" in the true sense of the term. One might describe this as a litmus test for whether in fact the discipline of the capital markets will be permitted to work in Japan, and the environment will change such that investors can more easily influence Japanese companies regarding issues like the return of capital and corporate governance.

¹⁷ <https://www.nikkei.com/article/DGXMZO46657800X20C19A6DTA000/>.

¹⁸ **Supra** note 1.

¹⁹ <https://www.fsa.go.jp/en/refer/councils/stewardship/20160315.html>

²⁰ <https://www.fsa.go.jp/en/news/2018.html>

²¹ <https://insights.nikkoam.com/articles/2019/03/new-wave-of-shareholder-activism-in-japan>

²² Article published in the morning edition of the *Nikkei Shimbun*, available online at <https://www.nikkei.com/paper/article/?b=20190905&ng=DGKKZO49410140U9A900C1MM8000> (Japanese) and <https://asia.nikkei.com/Business/Business-trends/Corporate-Japan-sheds-more-cross-shareholdings> (English), citing the Nomura Institute of Capital Markets Research.

²³ Shareholder Meeting Whitepaper 2018 (*Shouji Houmu* published December 5, 2018), pages 85-86.

Also, our firm found that 52 Large Shareholding Reports²⁴, the Japanese analog of a 13D filing in the US, were filed in the fiscal year ended on March 31, 2019, with the stated purpose of shareholding using phrases such as ‘to make material proposals’, which phrase may indicate a potential activist intent. The number of Large Shareholding Reports filed has also seen a steady increase, with 49 Large Shareholder Reports being filed with similar stated purposes in the financial year ended March 31 2018, and 47 Large Shareholding Reports in the year before.

Based on this year’s annual meeting results, expectations remain high that Japan will continue to see an increase in influence by activist shareholders, but only a few so far have been able to secure significant levels of support at meetings or public settlements with significant results. We are interested to see how those companies who were surprised by a strong showing in opposition to management at their annual meeting will respond in the coming weeks and months, as well as whether the trend for US-style settlements and private resolutions continues to grow in the years to come.

Shareholder Proposals Submitted by Activist Shareholders Ranked by % of Support²⁵

No.	Target Company	Submitter	Proposal	% of Support
1	JR Kyushu	Fir Tree Capital Management	Election of One Director to the Board	41.69
2	JR Kyushu	Fir Tree Capital Management	Election of One Director to the Board	40.09
3	JR Kyushu	Fir Tree Capital Management	Revision to the Company's Articles of Incorporation - Changing to a Company with a Three Committees Structure	34.36
4	JR Kyushu	Fir Tree Capital Management	Implementing Share Buybacks	34.10
5	Seikitokyu Kogyo Co., Ltd	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Disclose capital costs	33.15
6	Faith, Inc.	RMB Japan Opportunity Fund LB	Nomination of a company director	33.07
7	Kyokuto Boeki Kaisha, Ltd.	Strategic Capital and others	Appropriation of surplus	33.06
8	Kyokuto Boeki Kaisha, Ltd.	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Disclosure of Capital Costs	32.98
9	Kyokuto Boeki Kaisha, Ltd.	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Change to the dissolution of holding shares	32.94

²⁴ **Supra** note 6.

²⁵ **Supra** note 6.

10	Hazama Ando Corporation	Oasis Investment II Master Fund Ltd	Revision to the Company's Articles of Incorporation	30.14
11	Asanuma Corporation	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Dissolution of cross shareholdings	28.3
12	Asanuma Corporation	Strategic Capital and others	Appropriation of surplus	28.3
13	Faith, Inc.	RMB Japan Opportunity Fund LB	Increasing share dividends	27.55
14	Seikitokyu Kogyo Co., Ltd.	Strategic Capital and others	Appropriation of surplus	25.98
15	JR Kyushu	Fir Tree Capital Management	Election of One Director to the Board	24.77
16	Watanabe Sato Co., Ltd.	Horizon Capital Management	Implementing Share Buybacks	20.6
17	JR Kyushu	Fir Tree Capital Management	Revising Compensation Amounts for Directors and Implementing Restricted Stock Compensation	20.55
18	Watanabe Sato Co., Ltd.	Horizon Capital Management	Revision to the Company's Articles of Incorporation – Disposal of Important Assets	19.3
19	Shinsei Bank	Dalton Kizuna	Nomination of a Company Director	16.64
20	Seikitokyu Kogyo Co., Ltd	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Establishing an independent investigation committee	15.65
21	Yokohama Maruuo Co., Ltd.	M&S LLC	Appropriation of Surplus	13.10
22	Yokohama Maruuo Co., Ltd.	M&S LLC	Revision to the Company's Articles of Incorporation – Change to the dissolution of holding shares	12.87
23	Musashi	RMB Capital	Revision to the Company's Articles of Incorporation	10.4
24	Musashi	RMB Capital	Appropriation of surplus	9.4
25	Sun A. Kaken Co., Ltd.	Japan Act	Appropriation of Surplus	3.21

26	JR Kyushu	Fir Tree Capital Management	Election of Three Directors to the Board	Not measured due to proposal interdependencies
27	JR Kyushu	Fir Tree Capital Management	Revision of Compensation Amounts for Outside Directors	Not measured due to proposal interdependencies
28	Musashi	RMB Capital	Retirement of treasury shares	Not measured due to proposal interdependencies
29	Watanabe Sato Co., Ltd.	Horizon Capital Management	Disposal of non-performing assets	Not measured due to proposal interdependencies
30	Asanuma Corporation	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Disclose capital costs	NA
31	Tosho Printing Co., Ltd.	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Disclosure of capital costs	NA
32	Tosho Printing Co., Ltd.	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Increase in independent outside directors on the board	NA
33	Tosho Printing Co., Ltd.	Strategic Capital and others	Appropriation of surplus	NA
34	Tosho Printing Co., Ltd.	Strategic Capital and others	Revision to the Company's Articles of Incorporation – Dissolution of Cross Shareholdings	NA

List of Large Shareholding Reports Submitted with Stated Purposes that include “To Make Material Proposals”²⁶

No.	Proposal Submitter	Target Company
1	United Managers Japan, Inc.	Amuse, Inc.
2	Godo Steel Ltd.	Asahi Industries Co., Ltd.
3	United Managers Japan, Inc.	Hokuestsu Industries Co., Ltd.
4	United Managers Japan, Inc.	Teikoku Electric Mfg. Co., Ltd.
5	NTT Data	Netyear Group Corporation
6	King Street Capital Management L.P.	Toshiba Corporation

²⁶ **Supra** note 6.

7	Hennape Six SAS	Clarion Co., Ltd.
8	Red Planet Hotels Ltd.	Red Planet Japan
9	Alferio Holdings	Inui Global Logistics Co., Ltd.
10	Reno Corporation	Kosaido
11	Johnson & Johnson	Dr.Ci:Labo Co., Ltd.
12	Dentsu Corporation	Carta Holdings Corporation
13	Nitto Kyogo Corporation	Kitagawa Industries Co., Ltd.
14	Electric Power Development Company	Eneres Co., Ltd.
15	Fir Tree Value Master Fund L.P.	JR Kyushu
16	Dentsu Corporation	Septeni Holdings
17	Nationwide Office Support Corporation	Toshiba Machine Co., Ltd.
18	Dalton Investment LLC	Taisei Oncho Co., Ltd.
19	Hibiki Path Advisers Corporation	IG Port
20	Hibiki Path Advisers Corporation	Astmax
21	Dalton Investment LLC	Taisei Oncho Co., Ltd.
22	Aspirant Group SPC 5	FMC Co., Ltd.
23	Usonian Investments LLC	Maxwell Holdings. Ltd.
24	Dalton Investment LLC	Iwaki Corporation
25	Taiyo Fund Management LLC	Funai Consulting, Inc.
26	XTech HP Corporation	Excite Japan Co., Ltd.
27	Minami Aoyama Real Estate Co., Ltd.	Maxwell Holdings Ltd.
28	S-Grant Co., Ltd.	Shinko Shoji Co., Ltd.
29	Taiyo Fund Management LLC	Anicom Holdings Inc.
30	Mitsui & Co.	Sogo Medical Holdings Co., Ltd.
31	Dalton Investment LLC	Trancom Co., Ltd.
32	FC Holdings LLC	Fujitsu Component Ltd.
33	Mitsubishi Estate Co., Ltd.	Urban Life Corporation
34	Reno Corporation	Inno Tech Corporation
35	Elliott International LP	Alps Electric Co., Ltd.
36	Aktio Holdings Corporation	Sanshin Corporation

37	Fuh Hwa Japan Corporation	FHT Holdings
38	Elliott International LP	Alpine Electronics, Inc.
39	Nationwide Office Support Corporation	Central Glass Co., Ltd.
40	United Managers Japan Inc.	Techno Medica Corporation
41	M&S LLC	Nippon Antenna Co., Ltd.
42	Belluna Co., Ltd.	Sagami Co., Ltd.
43	Deutsche Bank London	Digital Hearts Holdings Co., Ltd.
44	Taiyo Fund Management LLC	Sosei Group Corporation
45	ValueAct Capital Master Fund, L.P	Olympus Corporation
46	Dalton Investment LLC	Stella Chemifa Corporation
47	Dalton Investment LLC	OPT Holding Corporation
48	M&S LLC	Yokohama Maruuo Co., Ltd.
49	Taiyo Fund Management LLC	ULVAC, Inc.
50	Reno Corporation	ShinMaywa Industries Ltd.
51	Sumitomo Mitsui Banking Corporation	Kansai Mirai Financial Group
52	Resona Holdings, Inc.	Kansai Mirai Financial Group

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