

# Japan's 2020 Proxy Season Results Announced

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While balance sheet proposals saw a slight downturn, COVID-19 and FEFTA appear not to have dampened shareholders' desire to effect change via AGM proposals.

## GENERAL TRENDS

In another record-breaking year, 55 Japanese public companies faced shareholder proposals in the June 2020 AGM season.<sup>1</sup> The number of public companies facing shareholder proposals has gone up consistently in recent years, with 42 companies in 2018 and 54 companies in 2019. According to a survey by IR Japan reported by the *Nikkei*, 23 public companies received proposals from activist investors this year, an increase from 16 companies last year.<sup>2</sup> According to our internal survey of the 22 companies that received activist proposals in the June 2020 AGM season, 30 proposals received more than 20 percent of the votes, of which 14 proposals received more than 30 percent. Compared to the figures from the 2019 proxy season (17 and ten proposals),<sup>3</sup> there appears to be modest growth in the willingness of shareholders to support activists.<sup>4</sup>

<sup>1</sup> *More than 30 percent of votes for shareholder proposals at nine companies including JR Kyushu, governance criticized* (株主提案へ賛成3割超 JR九州など9社で、統治に批判), *Nikkei* (July 10, 2020, 11:00 AM), <https://www.nikkei.com/article/DGXMZO61291010Y0A700C2DTA000/> (only available in Japanese).

<sup>2</sup> *Accelerating reform in corporate management: shareholder meetings during COVID-19* (今こそ VS それどころでは企業経営の改善先送り: コロナ下の株主総会 (2)), *Nikkei* (June 30, 2020, 2:00 AM), <https://r.nikkei.com/article/DGXMZO60929010Z20C20A6EA1000?s=5> (only available in Japanese).

<sup>3</sup> *Japan's 2019 Proxy Season Results Announced (Shareholder Activism Update)*, WHITE & CASE (September 12, 2019), <https://www.whitecase.com/publications/alert/japans-2019-proxy-season-results-announced-shareholder-activism-update>.

<sup>4</sup> We note that it is difficult to discern from public sources what amount of support came from institutional holders (Japanese or foreign) due to the opacity of voting results and because the figures can be skewed by a large percentage of support from the proposing shareholder. For example, AlphaLeo held approximately 7,601,000 shares (equal to 29.15 percent of issued shares) of Inui Global Logistics Co., Ltd., based on its last large shareholder report amendment filed prior to the record date, which would account for approximately 94 percent of the votes cast in favor of its proposed directors. Thus, while AlphaLeo's proposals attracted a respectable percentage of the votes at the meeting, a relatively small percentage of such votes would appear to come from third-party investors. This is in contrast to the more traditional activists on our list, who hold a much smaller stake and thus must persuade third-party institutional investors to support their proposals in order to muster significant support. However, similar comments could be made about a few proposals each year; e.g., proposals to JP Holdings supported by Mother Care Japan (although submitted by Page One Co., Ltd.) in 2018 received 63.56 percent, 59.61 percent, 44.07 percent, 43.90 percent, 43.92 percent, and 73.38 percent of votes in favor; see JP Holdings, *Extraordinary Report* (臨時報告書) (July 2, 2018), <https://www.jp-holdings.co.jp/wordpress/wp-content/uploads/2018/07/20180702-2.pdf> (only available in Japanese). A significant 27.4 percent of the float was held by Mother Care Japan per its large shareholding report filed prior to the record date; see Mother Care Japan, *Large Shareholding Report* (大量保有報告書) (Jan. 19, 2018), <http://cdn.ullet.com/edinet/pdf/S100C5EY.pdf> (only available in Japanese). And perhaps most importantly, as highlighted in our alert last year, allegiant shareholders, including, but not limited to, those counted as "cross-shareholding" among Japanese public companies, are another opaque factor in the data thought to inhibit support for shareholder proposals by reliably voting for management and against activists—according to surveys of corporate

The June 2020 AGM season is the first to be affected by the amended Foreign Exchange and Foreign Trade Act (“FEFTA”), which came into force on June 7.<sup>5</sup> Under the new amendment, aimed at inward direct investment, foreign investors must give notice and receive clearance before they can vote for certain proposals at the shareholder meetings of companies in designated business sectors.<sup>6</sup> In particular, clearance must be obtained before a foreign investor can vote for a proposal to elect itself or a “closely-related person,” regardless of whether the director was proposed by the management.<sup>7</sup> The amendment has been criticized as being designed to shut activists out of Japanese companies.<sup>8</sup> Thus far, we observe little effect of the new amendment on the AGM season this year, which is consistent with our expectations, given the most active funds in Japan tend not to nominate their own staff to boards in any case, and the government had indicated that its reviews would be based on narrow national security grounds as in the past. As in the past, foreign funds that made shareholder proposals in June generally appear to have nominated outside directors who fell outside the definition of “closely-related persons.” Activist shareholders who are able to qualify as non-foreign shareholders need not be concerned with the regulation.<sup>9</sup> However, it is premature to conclude the new FEFTA amendment is ineffectual in inhibiting shareholder activism in Japan, as there simply have not been enough filings and results to assess whether Japan’s government is abiding by its public promises to limit enforcement to national security grounds and provide a smooth and efficient process for shareholders.

Some pundits have argued that the impact of COVID-19 cannot be ignored in the June 2020 AGM season. Calls to increase dividends or implement buybacks have “rather toned down this year as a result of the pandemic,” one commentator reported to the *Nikkei*.<sup>10</sup> A *Reuters* piece suggested that the content of proposals has changed, although the number of companies receiving proposals is comparable to last year. According to research by Mitsubishi UFJ Trust Bank, quoted in the article, nine companies received shareholder proposals for a dividend, and only three of these were from activists. According to the piece, this represents a 50 percent decline compared with the six companies receiving such proposals from activists out of 17 such companies in the June 2019 AGM season.<sup>11</sup> White & Case’s internal survey indicates a more

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management themselves. See, e.g., *Shareholder Meeting Whitepaper 2018* (株主総会白書2018年版), SHOUJI HOUMU (Dec. 5, 2018). The Corporate Governance Code (as revised in June 2018) requires that management disclose the purposes of maintaining strategic shareholdings, and based on the annual reports filed with respect to the 2019 fiscal year, disclosure has increased and some shareholdings have been unwound, but a substantial amount still remain. See *COVID-19 and shareholder meetings (3) cross-shareholdings; market upheaval, increasing critical scrutiny* (コロナと総会 (3) 持ち合い株 市場動乱、批判の目厳しく), NIKKEI (June 12, 2020, 8:30 PM), <https://www.nikkei.com/article/DGXMZO60298600S0A610C2DTA000> (only available in Japanese). Such stable shareholders can be relied upon to support management in any circumstance and their precise percentage cannot be discerned based on public data alone.

- 5 Ministry of Finance, *Rules and Regulations of the Foreign Exchange and Foreign Trade Act* (Apr. 24, 2020), [https://www.mof.go.jp/english/international\\_policy/fdi/kanrenshiryoku01\\_20200424.pdf](https://www.mof.go.jp/english/international_policy/fdi/kanrenshiryoku01_20200424.pdf).
- 6 Gaikokukawase oyobi gaikokuboeki ho [Foreign Exchange and Foreign Trade Act], Law No.228 of 1949, art. 26, para. 2, item 5; Tainai chokusetsu toshito ni kansuru seirei [Cabinet Order on Inward Direct Investment], Cabinet Order No. 261 of 1980, art.2, para.11.
- 7 Tainai chokusetsu toshito ni kansuru meirei [Order on Inward Direct Investment], Ordinance of the Prime Minister’s Office, Ministry of Finance, Ministry of Education, Science and Culture, Ministry of Health and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of International Trade and Industry, Ministry of Transport, Ministry of Posts and Telecommunications, Ministry of Labour and Ministry of Construction No. 1 of 1980, art.2, paras. 1-2.
- 8 Ministry of Finance, *Frequently Asked Questions on the Amendment Bill of the Foreign Exchange and Foreign Trade Act* (Oct. 31, 2019), [https://www.mof.go.jp/english/international\\_policy/fdi/faq\\_191031.pdf](https://www.mof.go.jp/english/international_policy/fdi/faq_191031.pdf).
- 9 This is thought to be the case with Strategic Capital. In the case of Strategic Capital’s proposal to elect its co-founder Mr. Maruki to Keihanshin Building’s board however, it is unclear whether that mattered given Keihanshin is listed as not operating in any of the FEFTA-‘designated business sectors’ in the Ministry of Finance’s published list. See Strategic Capital, *Increase Keihanshin’s shareholder value* (June 17, 2020), <https://realize-value-keihanshin.com/>. See Ministry of Finance, “List of classifications of listed companies regarding the prior-notification requirements on inward direct investment under the Foreign Exchange and Foreign Trade Act” updated (「本邦上場会社の外為法における対内直接投資等事前届出該当性リスト」を更新しました) (July 10, 2020), [https://www.mof.go.jp/international\\_policy/gaitame\\_kawase/press\\_release/20200710.html](https://www.mof.go.jp/international_policy/gaitame_kawase/press_release/20200710.html) (only available in Japanese).
- 10 *COVID-19 and shareholder meetings (1) 22 activist shareholder proposals* (コロナと総会 (1) 物言う株主提案、最多22社), NIKKEI (June 10, 2020, 8:14 PM), <https://r.nikkei.com/article/DGXMZO60193860Q0A610C2DTA000>.
- 11 *Activist proposals shift during COVID-19 from dividends to governance* (新型コロナでアクティビスト提案に変化、株主還元からガバナンス重視へ), REUTERS (June 19, 2020, 04:49 PM), <https://jp.reuters.com/article/japan-stock-economy-idJPKBN23Q13N> (only available in Japanese).

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modest impact based on a broader definition of balance sheet-focused proposals: Seventy percent of companies targeted by activists this year received proposals calling for stock buybacks, increased dividends, or decreased cross-shareholdings.<sup>12</sup> This is not materially different from the 75 percent of companies targeted by activists last year who received such proposals.<sup>13</sup> Taken together, one might speculate that Japan's balance sheet-rich companies continue to attract activist attention during COVID-19, yet activists may have refocused the specifics of their proposals toward topics that appeared more tasteful than going directly to a dividend, as Japanese companies continue to boost their cash reserves during the pandemic.

Whether or not one accepts that balance sheet-focused proposals have lessened, the sheer quantity of proposals has risen overall, and among the 2020 proposals were a certain level of personnel-related corporate governance changes. Strategic Capital, one of the most active funds this season, made four shareholder proposals to Keihanshin Building, including the appointment of an outside director. Noting that four out of the five incumbent full-time directors are former employees of SMBC, Strategic Capital made the accusation that the directors “virtually make the Company their own.”<sup>14</sup> The Japan-based fund also made proposals to Toray to evaluate whether to keep its subsidiary listed and disclose the results of that evaluation publicly, via an amendment to its articles of incorporation.<sup>15</sup> While cross-shareholdings had been on the decrease following the implementation of Japan's Stewardship Code and Corporate Governance Code, COVID-19's negative impact on stock prices also increased the losses on cross-shareholdings, reported the *Nikkei*.<sup>16</sup> It is unclear whether this is related, but Strategic Capital made shareholder proposals to sell strategic shareholdings to six companies out of the seven it targeted.<sup>17</sup> In addition, AlphaLeo's proposals to Inui Global Logistics<sup>18</sup> and Japan Act's proposals to Sun A. Kaken reveal a continued focus on strategic shareholdings by activists. One could say that awareness of uniquely Japanese cross-shareholdings as problematic has become more striking.

A Japanese public company received a climate-related shareholder proposal this year, as investors increasingly seek to hold Japanese companies accountable to ESG standards. In March, Japan's Government Pension Investment Fund (“GPIF”) joined other pension managers to pen a letter announcing “companies that seek to maximize corporate revenue without considering their impacts on other stakeholders...put their long-term growth at risk and are not attractive investment targets for us.”<sup>19</sup> Unlike financial regulators in other countries, the government has not yet imposed ESG reporting requirements on Japanese public companies, although METI endorsed the TCFD guidelines in 2018.<sup>20</sup> But businesses are taking the initiative to respond to the growing ESG concerns. In June, 19 companies, including the three megabanks and the Big Four accountancies, established an “ESG Disclosure Study Group” to develop ESG indicators that “reflect the characteristics indigenous to Japan.”<sup>21</sup>

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<sup>12</sup> White & Case internal research based on publicly available information regarding the shareholder proposal voting results for the June 2020 AGM season.

<sup>13</sup> This suggests a modest decrease from last year. White & Case internal research based on publicly available information regarding the shareholder proposal voting results for the June 2019 AGM season.

<sup>14</sup> Keihanshin Building, *Notice of the 97th Annual General Meeting of Shareholders* (May 27, 2020), <https://www.keihanshin.co.jp/english/ir/stockinfo/gm/>.

<sup>15</sup> Toray, *Notice of the 139th Annual General Meeting of Shareholders* (第139回定時株主総会招集ご通知) (June 8, 2020) [https://www.toray.co.jp/ir/pdf/sto/sto\\_046.pdf](https://www.toray.co.jp/ir/pdf/sto/sto_046.pdf) (available only in Japanese).

<sup>16</sup> *COVID-19 and shareholder meetings (3) cross-shareholdings; market upheaval, increasing critical scrutiny*, *supra* note 4.

<sup>17</sup> Strategic Capital, *Proposals*, <https://stracap.jp/proposal> (last visited July 17, 2020).

<sup>18</sup> Alphaleo Holdings, *Alphaleo Holdings has submitted the shareholder proposals on 4 agenda, including sale of “cross-holding” shares and change in way of resolution of capital increase via third-party allotment, to Inui Global Logistic* (Apr. 16, 2020), <https://www.alphaleo-hd.jp/top-alphaleo-hd-gk-english/submitted-the-shareholder-proposals-on-4-agenda/>.

<sup>19</sup> Government Pension Investment Fund, *Our Partnership for Sustainable Capital Markets* (Mar. 2020), [https://www.gpif.go.jp/en/investment/Our\\_Partnership\\_for\\_Sustainable\\_Capital\\_Markets.pdf](https://www.gpif.go.jp/en/investment/Our_Partnership_for_Sustainable_Capital_Markets.pdf).

<sup>20</sup> Ministry of Economy, Trade and Industry, *METI Formulates TCFD Guidelines and Declares its Support for TCFD* (Dec. 25, 2018) [https://www.meti.go.jp/english/press/2018/1225\\_006.html](https://www.meti.go.jp/english/press/2018/1225_006.html).

<sup>21</sup> PWC Japan Group, *Establishment of and Participation in the ESG Disclosure Study Group Comprised of 19 Companies in the Private Sector* (June 11, 2020) <https://www.pwc.com/jp/en/press-room/esg-information200611.html>.

CE Holdings Co., Ltd. (“CEHD”), the largest shareholder of Ekitan & Co., Ltd. (“Ekitan”), holding more than 30 percent of shares,<sup>22</sup> submitted shareholder proposals to (i) replace the entire board of directors with its seven nominees (three from Ekitan, two from CEHD and two outside director nominees) and (ii) nominate two auditor candidates.<sup>23</sup> Ekitan, a spun-off company from Toshiba Corporation, is listed on the start-ups section (“Mothers”) of the Tokyo Stock Exchange and mainly provides transportation and travel-related information content services in Japan.<sup>24</sup> CEHD, headquartered in Sapporo, Hokkaido, provides health care-related information services and is listed on the first section of the Tokyo Stock Exchange. CEHD reportedly invested in Ekitan for capital and business alliance purposes in 2012, when CEHD obtained approximately 25 percent of Ekitan’s shares from Polaris, which was exiting Ekitan after its IPO.<sup>25</sup> According to some news articles, the alliance relationship between the two companies has not been smooth since then.<sup>26</sup> In this year’s proposal, when explaining the reasons for its proposal to remove all current board members, CEHD specifically pointed to long-term power harassment by the company’s directors, which allegedly caused a number of employees to resign from the company and/or suffer from deteriorated mental health.<sup>27</sup> In response to the CEHD’s proposals, Ekitan argued that the CEHD’s nominees do not have qualifications and may have conflicts of interest, and that the shareholder proposals contained “misleading” content, among other things.<sup>28</sup> Ekitan also cited a report by Institutional Shareholder Services Inc. (“ISS”), a leading international proxy voting advisory firm, which supported the company’s proposals and opposed CEHD’s proposals.<sup>29</sup> While acknowledging that management issues at Ekitan drove down its stock price, ISS argued that: (i) it was unrealistic to replace the entire management team, (ii) CEHD failed to propose a reasonable and detailed business plan, and (iii) CEHD should go through a proper tender offer if it wanted control in Ekitan.<sup>30</sup> A few days prior to its annual shareholders’ meeting, Ekitan announced the withdrawal of its own nominations of board members, as it failed to collect enough support for its proposals.<sup>31</sup> At Ekitan’s annual shareholders’ meeting held on June 29, 2020, both proposals by CEHD were passed with an approval rate of more than 79 percent.

<sup>22</sup> Ekitan, *Stock summary and shareholder makeup* (株式の概要・株主構成) (as of Mar. 31, 2019), <http://ekitan.co.jp/ir/stock/index.html> (only available in Japanese).

<sup>23</sup> Ekitan, *Notice regarding shareholder proposals to Ekitan* (株式会社駅探に対する株主提案に関するお知らせ) (May 21, 2020) [https://www.ce-hd.co.jp/wp-content/uploads/2020/05/20200521\\_teian.pdf](https://www.ce-hd.co.jp/wp-content/uploads/2020/05/20200521_teian.pdf) (only available in Japanese); *Ekitan hit by calls to “remove all directors”; Large shareholder nominates itself* (「全役員クビ」突きつけられた駅探大株主が独自候補), NIKKEI (June 22, 2020), <https://www.nikkei.com/article/DGXMZO60489930Y0A610C2000000/> (only available in Japanese).

<sup>24</sup> Ekitan, *History* (沿革), <http://ekitan.co.jp/corp/history.html> (last visited July 17, 2020) (only available in Japanese).

<sup>25</sup> CE Holdings, *Notice regarding the acquisition of Ekitan shares and borrowing from financial institutions* (株式会社駅探の株式取得及び資本・業務提携の締結並びに金融機関からの借入の実施に関するお知らせ) (May 14, 2012), [https://www.ce-hd.co.jp/wp-content/uploads/2019/03/20120514\\_ekitan.pdf](https://www.ce-hd.co.jp/wp-content/uploads/2019/03/20120514_ekitan.pdf) (only available in Japanese); Polaris, *Detailed Description of Portfolio Companies of Fund I*, [https://www.polaris-cg.com/us\\_fund\\_one/ekitan](https://www.polaris-cg.com/us_fund_one/ekitan) (last visited July 17, 2020).

<sup>26</sup> *Ekitan hit by calls to “remove all directors”; Large shareholder nominates itself*, *supra* note 24.

<sup>27</sup> CE Holdings, *Supplementary explanations regarding shareholder proposals against Ekitan and opinions of the board* (株式会社駅探に対する株主提案に関する、同社取締役会の意見について(補足説明)) (June 4, 2020), <https://www.ce-hd.co.jp/ir/irnews/other/1322/> (only available in Japanese);

CE Holdings, *Reasons for the shareholder proposal* (株主(弊社)提案の理由) (June 2020), [https://www.ce-hd.co.jp/wp-content/uploads/2020/06/ekitan\\_teian2.pdf](https://www.ce-hd.co.jp/wp-content/uploads/2020/06/ekitan_teian2.pdf) (only available in Japanese).

<sup>28</sup> Ekitan, *Notice of the board of directors’ opposition to shareholder proposals at the annual shareholder meeting* (当社定時株主総会に係る株主提案に対する当社取締役会の反対意見に関するお知らせ) (June 1, 2020), <https://ssl4.eir-parts.net/doc/3646/tdnet/1842393/00.pdf> (only available in Japanese).

<sup>29</sup> Ekitan, *Regarding the ISS report supporting the company proposal and opposing the shareholder proposal* (当社第18回定時株主総会におけるISS社の推奨レポート(会社提案に賛成/株主提案に反対)について) (June 17, 2020), <https://ssl4.eir-parts.net/doc/3646/tdnet/1849898/00.pdf> (only available in Japanese).

<sup>30</sup> “Remove all directors” due to power harassment; Ekitan versus shareholders (パワハラで「全役員クビ」駅探 vs 株主の大バトル), TOYO KEIZAI (June 25, 2020) <https://toyokeizai.net/articles/-/358879?page=4> (only available in Japanese); *Ekitan hit by calls to “remove all directors”; Large shareholder nominates itself*, *supra* note 24.

<sup>31</sup> Ekitan, *Notice regarding the partial withdrawal of proposals in relation to the 18th annual general shareholder meeting* (当社第18回定時株主総会における当社上程議案の一部取下げに関するお知らせ) (June 24, 2020), <https://ssl4.eir-parts.net/doc/3646/tdnet/1852187/00.pdf> (only available in Japanese).



The management of Mizuho Financial Group proposed this year to amend the articles of incorporation to allow shareholders to vote on income allocation. The same proposal had been submitted by an individual shareholder this year, as well as previously in 2015, 2016 and 2017. The shareholder proposal received more than 40 percent of the votes in each year it was previously presented.<sup>32</sup> The board had expressed opposition to the proposal in previous years, but explained in its company proposal that “it will become increasingly important for us to engage in constructive dialogue and listen thoroughly to our shareholders’ opinions with regard to the usage of capital.”<sup>33</sup> The joint company-shareholder proposal passed with 98 percent of the votes.

Kiko Network, a local climate NGO, submitted a proposal to amend Mizuho Financial Group’s articles of incorporation to mandate the annual disclosure of a strategy to align the Group’s investments with the goals of the Paris Agreement. The climate NGO argued the proposal would “enable investors to appropriately assess and price climate-related risk” in a press release<sup>34</sup>, which cited a report identifying Japan’s megabanks as the leading global financiers of coal projects.<sup>35</sup> The board argued in its opposition to the proposal that the company’s environmental policy already stipulates the disclosure of its “goals which are based on the Paris Agreement.”<sup>36</sup> Kiko Network’s proposal, although defeated, received 34 percent of the affirmative votes. *Bloomberg* reports that among the investors who voted for the proposal were Nordea Asset Management, Storebrand ASA and Kommunal Landspensjonskasse.<sup>37</sup> Proxy advisors including Institutional Shareholder Services and Glass, Lewis & Co had expressed support for the proposal.<sup>38</sup> Climate-related proposals to amend the articles of incorporation of the major power utilities were also submitted at their respective shareholder meetings. Proposals sought to incorporate commitments to abolish the use of coal-fired power generation (Chubu, Kansai, Tokyo) or increase the share of renewables (Chugoku, Hokkaido, Kansai, Shikoku) in the articles of incorporation of their respective companies. A coalition of three city governments—Osaka, Kyoto, and Kobe—jointly authored proposals to Kansai Electric Power Company requesting transparency of business operations and disclosure of the remuneration of company directors.<sup>39</sup> Osaka city, by far the leading shareholder in Kansai Electric Power, submitted further proposals to substitute the share of nuclear power with renewables. Other ESG-driven proposals heard at the power companies included calls to abolish the use of nuclear power and to incorporate local communities in decision-making, by establishment of “safety commissions” (Hokkaido) or by referendum (Chugoku, Tohoku). METI’s 2018 Strategic Energy Plan retains coal in the energy mix through 2030 and expressly delegates the task of setting “voluntary” emissions reduction targets to the electric power sector.<sup>40</sup> At 300 voting units (often an amount of only about JPY 100 million, though highly variable by company) or one percent of the voting rights, in each case, held for six months prior to exercising the shareholder proposal right, the qualifying threshold for submitting proposals is lower in Japan than in some other jurisdictions. We are interested to see whether an ongoing and growing trend develops whereby ESG activists seek to influence the behavior of Japanese corporations by acquiring shares. The voting results of Kiko Network’s proposal suggest that environmental shareholder activism can win the support of significant institutional investors. And, as with shareholder activists, even if an environmental proposal does not pass, it appears the submission of the proposal can influence corporate behavior. While Mizuho opposed the Kiko Network proposal, it pledged ahead of the shareholder meeting to

<sup>32</sup> *Japanese boardrooms are coming to terms with activist shareholders*, MERGERMARKET (Mar. 7, 2020).

<sup>33</sup> Mizuho Financial Group, *Notice on Partial Amendment to the Articles of Incorporation and Share Consolidation* (May 15, 2020), [https://www.mizuho-fg.com/release/20200515release\\_eng.html](https://www.mizuho-fg.com/release/20200515release_eng.html).

<sup>34</sup> Kiko Network, *Kiko Network, as Mizuho Financial Group shareholder, files first ever climate resolution in Japan* (Mar. 16, 2020), [https://www.kiconet.org/eng/press-release-en/2020-03-16/mizuho\\_shareholder\\_proposal](https://www.kiconet.org/eng/press-release-en/2020-03-16/mizuho_shareholder_proposal).

<sup>35</sup> *Banks and investors against the future*, BANKTRACK (Dec. 6, 2019), [https://www.banktrack.org/article/banks\\_and\\_investors\\_against\\_the\\_future](https://www.banktrack.org/article/banks_and_investors_against_the_future).

<sup>36</sup> Mizuho Financial Group, *Proposal 5 at the 18th Ordinary General Meeting of Shareholders* (June 10, 2020), <https://www.mizuho-fg.com/investors/stock/pdf/20200610.pdf>.

<sup>37</sup> *Mizuho Investors Reject Shareholder Climate Resolution*, BLOOMBERG (June 24, 2020), <https://www.bloomberg.com/news/articles/2020-06-24/mizuho-faces-shareholder-climate-resolution-over-coal-financing>.

<sup>38</sup> *Environmental shareholder activism comes to Japan as Mizuho faces climate resolution*, REUTERS (June 22, 2020), <https://www.reuters.com/article/climate-change-mizuho-coal/environmental-shareholder-activism-comes-to-japan-as-mizuho-faces-climate-resolution-idUSL4N2DZ15P>.

<sup>39</sup> City of Kyoto, *Appeal to major shareholders to support the shareholder proposal against Kansai Electric Power* (関西電力への株主提案について大株主等への賛同のお願いを発送します) (June 11, 2020), <https://www.city.kyoto.lg.jp/kankyo/page/0000271137.html> (only available in Japanese).

<sup>40</sup> Ministry of Economy, Trade and Industry, *Cabinet Decision on the New Strategic Energy Plan* (July 3, 2020), [https://www.meti.go.jp/english/press/2018/0703\\_002.html](https://www.meti.go.jp/english/press/2018/0703_002.html).

cease all financing for coal projects by 2050,<sup>41</sup> which was followed a day later by Sumitomo Mitsui Financial Group's announcement that it would stop lending to new coal power plants from May.<sup>42</sup>

Overall, the shareholder proposals of the 2020 proxy season displayed various new trends—the voting results for activist proposals remain strong, but can be heavily skewed by a large stake owned by the proposing shareholder or, perhaps most commonly, large stakes split up among a large number of management-friendly allegiant shareholders. One metric that remains missing from public data is the frequency with which discussions with activists resulted in amicable, quiet resolutions. Given COVID-19, it may be difficult to point to buybacks and dividends for a good secondary indicator of the frequency of private settlements. However, at least based on the June 2020 AGM results, it would appear that shareholder activism remains robust in Japan notwithstanding COVID-19, capital outflows of foreign shareholders from the current market environment, and the implementation of FEFTA. Will 2021 be another banner year? We shall see.

### Shareholder Proposals Submitted by Activist Shareholders Ranked by % of Support<sup>43</sup>

No.	Target Company	Submitter	Proposal	% of Support
1	Inui Global Logistics Co., Ltd.	Alphaleo Holdings	Revision to the company's Articles of Incorporation —Capital increase via third-party allotment	40.65%
2	Inui Global Logistics Co., Ltd.	Alphaleo Holdings	Revision to the company's Articles of Incorporation—adoption of clawback clause for director compensation	38.12%
3	Kyokuto Boeki Kaisha, Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Disclosure of capital costs	37.19%
4	Inui Global Logistics Co., Ltd.	Alphaleo Holdings	Revision to the company's Articles of Incorporation—Disposal of strategic shareholdings	36.37%
5	Inui Global Logistics Co., Ltd.	Alphaleo Holdings	Removal of three auditors	36.24%, 36.24%, 36.24%
6	Mizuho Financial Group	Kiko Network	Revision to the company's Articles of Incorporation—Disclosure of management strategy to align investments with the goals of the Paris Agreement	34%
7	Fujitec	Oasis Management	Revision to the company's Articles of Incorporation—Cancel treasury shares	32.91%
8	JR Kyushu	Fir Tree	Nomination of a company director	32.60%
9	Kyokuto Boeki Kaisha, Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Sell investment shares	31.52%
10	Mizuho Financial Group	Kiko Network	Revision to the company's Articles of Incorporation—Increase the character limit for reasons given for shareholder proposals	31%
11	Hazama Ando Corporation	Oasis Management	Implement share buybacks	27.87%
12	Sekitokyu Kogyo Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Disclosure of Capital Costs	27.29%
13	Asanuma Corporation	Strategic Capital	Appropriation of surplus	26.1%
14	Sekitokyu Kogyo Co., Ltd.	Strategic Capital	Appropriation of surplus	25.23%
15	JR Kyushu	Fir Tree	Nomination of a company director	24.84%

<sup>41</sup> *Mizuho to stop lending to new coal power projects*, REUTERS (Apr. 15, 2020), <https://www.reuters.com/article/us-coal-japan-mizuho-climatechange/mizuho-says-it-will-stop-lending-to-new-coal-power-projects-idUSKCN21X0F5>.

<sup>42</sup> *Japan's SMFG to end lending for new coal-fired power plants*, REUTERS (Apr. 16, 2020), <https://www.reuters.com/article/us-coal-japan-smfg-climatechange/japans-smfg-to-end-lending-for-new-coal-fired-power-plants-idUSKCN21Y0B8>.

<sup>43</sup> Based on White & Case LLP's internal survey of Japanese shareholder proposals as of July 20, 2020.

16	Mitsubishi Logistics	Oasis Management	Revision to the company's Articles of Incorporation—Abolishing the <i>sodanyaku/komon</i> system	22.47%
17	Mitsubishi Logistics	Oasis Management	Nomination of a company director	22.12%
18	Keihanshin Building Co., Ltd.	Strategic Capital	Nomination of a company director	21.2%
19	Asanuma Corporation	Strategic Capital	Revision to the company's Articles of Incorporation—Disposal of strategic shareholdings	21.0%
20	Arisawa Mfg. Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Disclosure of Capital Costs	20.63%
21	Watanabe Sato Co., Ltd.	Horizon Growth Fund	Revision to the company's Articles of Incorporation	20.5%
22	Watanabe Sato Co., Ltd.	Horizon Growth Fund	Implement share buybacks	20.5%
23	Mitsubishi Logistics	Oasis Management	Nomination of a company director	19.82%
24	Chori Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Appropriation of surplus	15.83%
25	JR Kyushu	Fir Tree	Nomination of three company directors	15.10%
26	TV Asahi Holdings	RMB Capital	Implement share buybacks	14.98%
27	JR Kyushu	Fir Tree	Revision to the company's Articles of Incorporation—Disclosure of revenues, EBITDA, net operating income, appraised cap rates for real estate assets, and growth capex details	14.51%
28	Musashi Co., Ltd.	RMB Capital	Implement share buybacks	14.3%
29	Hazama Ando	Oasis Management	Revision to the company's Articles of Incorporation—Add provisions on health and safety management	13.62%
30	Toray Industries	Strategic Capital	Revision to the company's Articles of Incorporation—Management of subsidiaries	13.59%
31	Mitsubishi Logistics	Oasis Management	Revision to the company's Articles of Incorporation—Implement three committee corporate structure	11.90%
32	Arisawa Mfg. Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Disposal of strategic shareholdings	11.76%
33	Arisawa Mfg. Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Deletion of articles with regard to holding and operation of securities for investment purposes	11.56%
34	Sun A. Kaken Co., Ltd.	Japan Act	Revision to the company's Articles of Incorporation—Disposal of strategic shareholdings	11.00%
35	Sun A. Kaken Co., Ltd.	Japan Act	Implement share buybacks	10.71%
36	Nishikawa Rubber Co., Ltd.	RMB Capital	Implement share buybacks	10.52%
37	Kirin Holdings	Independent Franchise Partners	Revision of the amount of restricted shares as remuneration for directors	10.4%
38	Keihanshin Building Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Change in business	10.2%
39	Keihanshin Building Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Disposal of strategic shareholdings	10.2%
40	Keihanshin Building Co., Ltd.	Strategic Capital	Transfer of important assets	10.1%

41	Kirin Holdings	Independent Franchise Partners	Implement share buybacks	9.4%
42	Chori Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Election of outside directors	8.22%
43	Shinsei Bank	Dalton Investments	Nomination of a company director	7.968%
44	Chori Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Disposal of strategic shareholdings	7.62%
45	Chori Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Disclosure of Capital Costs	7.32%
46	Mizuho Financial Group	Kiko Network	<ol style="list-style-type: none"> <li>Revision to the company's Articles of Incorporation—Prohibition with respect to the abuse of a dominant bargaining position to cause unreasonable disadvantage to shareholders</li> <li>Revision to the company's Articles of Incorporation—Prohibition with respect to the abuse of a dominant bargaining position to cause an unreasonable disadvantage to clients and other stakeholders of the Mizuho group</li> <li>Revision to the company's Articles of Incorporation—Establish a point of contact for whistleblowers</li> </ol>	5%
47	Chori Co., Ltd.	Strategic Capital	Revision to the company's Articles of Incorporation—Evaluate Board effectiveness by third-party analysis	3.75%

### List of Large Shareholding Reports Submitted with Stated Purposes that include “To Make Material Proposals”<sup>44</sup>

No.	Proposal Submitter	Target Company
1	Brandes Investment Partners, L.P.	Maezawa Kyuso Industries Co., Ltd.
2	Reno	Yorozu Corporation
3	Dalton Investments	Heian Corporation
4	Taiyo Fund Management Co. LLC	Open House Co., Ltd.
5	Taiyo Fund Management Co. LLC	KH Neochem Co., Ltd.
6	Scion Asset Management, LLC	Tazmo Co., Ltd.
7	Taiyo Fund Management Co. LLC	Maxell Holdings
8	Taiyo Fund Management Co. LLC	Sosei Group Corporation
9	Strategic Capital	Arisawa Mfg. Co., Ltd.
10	Taiyo Fund Management Co. LLC	Topcon Corporation
11	United Managers Japan, Inc.	Kaname Kogyo Co., Ltd.
12	Scion Asset Management, LLC	Hanatour Japan Co., Ltd.
13	Hibiki Path Advisors Pte. Ltd.	Sanyo Shokai Ltd.
14	Symphony Financial Partners (Singapore) Pte. Ltd.	Sogo Medical Co., Ltd.

<sup>44</sup> Based on White & Case LLP’s internal survey of Japanese large shareholding reports as of July 28, 2020.



15	Alphaleo Holdings	Inui Global Logistics Co., Ltd.
16	Usonian Investments, LLC	TACHI-S Co., Ltd.
17	Usonian Investments, LLC	Chugoku Marine Paints, Ltd.
18	Oasis Management	Shimachu Co., Ltd.
19	Oak Capital	Path Corporation
20	Oasis Management	Sanken Electric Co., Ltd.
21	Taiyo Fund Management Co. LLC	YAMASHIN-FILTER CORP.
22	Oasis Management	Tokyo Dome Corporation
23	Evo Fund	SymBio Pharmaceuticals Limited
24	Evo Fund	FRUTA FRUTA, Inc.
25	DCM International VI, LTD.	freee K.K.
26	Evo Fund	Kozusushi Co., LTD.
27	Evo Fund	FUJITA CORPORATION Co., Ltd.
28	Evo Fund	Nakamura Choukou Co., Ltd.
29	Great Fortune International Development Limited	Zojirushi Corporation
30	Elliott Investment Management LP	Alps Alpine Co., Ltd.
31	Elliott Investment Management LP	UNIZO Holdings Co., Ltd.
32	Asset Value Investors Limited	Teikoku Sen-I Co., Ltd.
33	Evo Fund	MedPeer, Inc.
34	Evo Fund	Pixela Corporation
35	Evo Fund	Onkyo Corporation
36	Brandes Investment Partners, L.P.	ATSUGI Co., Ltd.
37	Unearth International Limited	NIPPON ANTENNA Co.,Ltd.
38	ValueAct Capital Master Fund, L.P.	JSR Corporation
39	A-FUND International II, LTD.	VisasQ Inc.
40	United Managers Japan, Inc.	Japan Property Management Center Co., Ltd.
41	Hibiki Path Advisors Pte. Ltd.	JAPAN PURE CHEMICAL Co., Ltd.

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