

Japan's 2018 Proxy Season Results Announced (Shareholder Activism Update (2))

~Record-breaking number of activist shareholder proposals, including successful proposals to replace top management

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The number of shareholder proposals made by activist shareholders and the number of public companies facing shareholder proposals in general both break previous records in Japan.

Recent trends in shareholder proposals in Japan

A record-breaking 42¹ Japanese public companies faced shareholder proposals in the June 2018 proxy season. The previous record was set in June 2017 with 40² companies, following 37³ companies in June 2016. The trend over the past few years has been one of consistent increase in the number of shareholder proposals, according to research by Mitsubishi UFJ Trust and Banking Corporation. Also, the June 2018 shareholder meeting season saw a record-breaking 10 companies face shareholder proposals made by activist shareholders, according to IR Japan, the proxy advisor with the largest market share in Japan.⁴ The number of such proposals actually approved by shareholders has been small, with only RISE in 2016,⁵ Kuroda Electric in 2017⁶ and two companies in 2018 (JP-Holdings, Inc. and 21LADY),⁷ the steady increase in approval percentages for shareholder proposals and decrease in approval percentage of management proposals has certainly been increasing the impact of shareholder proposals on management teams.

In particular, institutional investors have been trending toward support for activists' shareholder proposals. A record 45% of such proposals were supported at meetings in the first quarter of 2018, more than triple the level of support seen in the prior quarter, based on the Nikkei's survey of 12 institutional shareholders (four trust banks, one life insurance company and seven asset managers).⁸ We introduced one significant example of this trend in our April 12, 2018 client alert, Hong Kong-based investment fund Oasis Management's (**Oasis**) securing approximately 45% support, constituting approximately 90% of non-management shareholders, at the March 2018 shareholders meeting of GMO Internet.

¹ <https://www.nikkei.com/article/DGXMZ032093990S8A620C1MM8000/>

² Tatsuya Makino, "Analysis of shareholder proposal rights usage – at shareholders meetings held from July 2016 through June 2017," *Shouji Homu* No. 402 (September 2017), pp 13 & seq.

³ Tatsuya Makino, "Analysis of shareholder proposal rights usage – at shareholders meetings held from July 2015 through June 2016," *Shouji Homu* No. 390 (September 2016), pp 104 & seq.

⁴ <https://www.nikkei.com/article/DGXMZ032093990S8A620C1MM8000/>

⁵ Supra note 3.

⁶ Supra note 4.

⁷ Based on White & Case LLPs internal survey of Japanese shareholder meeting results as of July 10, 2018.

⁸ <https://www.nikkei.com/article/DGKKZO32172760U8A620C1NN1000/>

Significant shareholder proposals by activists in the 2018 proxy season, focused on June 2018 shareholder meetings (Note: Japanese companies traditionally have a March 31 fiscal year end, so most shareholder meetings are held in mid- to late June.)

In this year's proxy season, a striking number of activist proposals were made to increase dividends, eliminate shareholdings in other public companies or make changes regarding corporate governance, such as successful campaigns to oust the President and Representative Director. For example, Oasis secured nearly 30% approval for its proposal to make a 325 yen per share dividend, in contrast to the management's proposal of 15 yen, at Alpine Electronics, Inc. This is significant because Oasis is gathering support for the extraordinary shareholders meeting of Alpine to be held in December, at which Oasis needs only to secure more than 1/3 of the votes to block the merger of Alpine with its majority shareholder ALPS Electric Co., Ltd. Oasis has been opposing the merger due to its exchange ratio's being too low. In particular, Oasis calculated that a 325 yen per share dividend was helpful to partially address the failure of the valuation attributed to Alpine to account for a significant amount of balance sheet cash Alpine holds (in addition to other deficiencies and unfairness in the valuation Oasis has asserted). Alpine's management won the battle in this annual general meeting vote, but the situation looks precarious as they approach the extraordinary general meeting since Oasis obtained a significant amount of support, as well as backing from ISS.

In another game-changing outcome, two Representative Directors (similar to a CEO) were ousted:

- The President and Representative Director of 21Lady, Ms. Michiko (Fujii) Hirono, was ousted from the board despite being the founder and maintaining a 33.4% ownership stake in her company.⁹ As a result, one of 21Lady's outside directors was named the new President and Representative Director.¹⁰ The shareholder proposals for alternative non-management nominations were made by a fund managed by Siam Partners Inc. The Representative Director of 21Lady after the shareholders meeting is the managing member of that Siam Partners Inc. fund, so in this case the activist fund manager personally took over management.¹¹
- JP-Holdings, Inc. saw shareholder proposals to revise its articles of incorporation to allow removal of a director with a simple majority (instead of a 2/3 supermajority) be approved, as well as the ousting of six of its own management nominees to the board of directors including the President and Representative Director.¹² Activist investor Mirai Capital Co., Ltd. was the sponsor of the successful proposals, including the shareholder nominee directors appointed to the board, through its controlled subsidiary Mother Care Japan Co., Ltd.¹³

The growing influence of activists in Japan

As described above, activist shareholders' influence through shareholder proposals is expanding, and they are beginning to gain support from other shareholders, including institutional investors. This trend is thought to relate to the requirement that institutional shareholders publicly disclose their proxy votes on an individual investment basis under Japan's Stewardship Code revised in May 2017. Institutional shareholders who have adopted the Stewardship Code need to have a good reason to explain why they opposed a shareholder proposal, when that shareholder proposal is a reasonable one from an investor's perspective. Since many activists' proposals are financially sensible dividend increases or aligned with public perceptions of how to strengthen corporate governance, it has become more difficult for such a shareholder to cast a vote against many activists' proposals.

The Nikkei has reported that a group of 16 major domestic and foreign activist shareholders held a record amount of Japanese publicly listed stock, valued at 1.5932 trillion yen as of March 31, 2018, an increase of

⁹ Announcement of changes in directors, officers and Representative Director due to approval of shareholder proposal at ordinary shareholders meeting of 21Lady, dated June 27, 2018. As of July 14, 2018, a copy was available online at <https://www.nikkei.com/nkd/disclosure/tdnr/b37wa2/>

¹⁰ Id.

¹¹ Id.

¹² Announcement of the results of the 26th annual shareholders meeting of JP-Holdings, Inc., dated June 28, 2018. As of July 14, 2018, a copy was available online at <https://www.nikkei.com/nkd/disclosure/tdnr/b63lre/>

¹³ Announcement of response to demand to hold an extraordinary shareholders meeting as well as the board of directors' opinion on the shareholder proposals and the holding of the annual shareholders meeting of JP-Holdings, Inc., dated June 5, 2018. As of July 14, 2018, a copy was available online at <https://www.nikkei.com/nkd/disclosure/tdnr/b4py mz/>

approximately 20% from the prior year. Also, based on our firm's research, 49 Large Shareholding Reports, the Japanese analog of a 13D filing in the US, were filed in the fiscal year ended March 31, 2018 with a stated purpose that included phrases such as 'to make material proposals' and 'to give advice to management'. In the prior year, we count 47 such Large Shareholding Reports, so this represents another indicator of activist activity on the upswing in Japan. The June 2018 revision to Japan's Corporate Governance Code is also expected to further increase transparency regarding management strategy, corporate planning and 'strategic shareholdings' (such as relationship-based cross-shareholdings), which are a focus of activist concern at Japanese listed companies. With that backdrop, expectations remain high that activist shareholder proposals will continue to increase. Market observers will be watching to see whether these proposals are able to continue to get a growing level of institutional and other shareholder support, and even cases of majority shareholder approval.

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