

Recent Developments in Activist Investing in Japan

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[Activist investor Oasis Management receives 90% approval for its proposals from minority shareholders at Tokyo Stock Exchange \(ticker: 9449\) listed GMO Internet](#)

Global activist investor trends in recent years

Activist investors have in recent years begun to experience limitations on their ability to continue their rapid pace of growth and fundraising solely in the US market due to a combination of factors including the market environment. Further, the improved level of dialogue between US-listed companies and their shareholders, resulting from the relatively well-established understanding of the importance of investor engagement by US listed companies, together with increased monitoring from institutional investors, has made the US market environment more challenging for activist investors.

On the other hand, outside of the US, activist investors are rapidly increasing their investment activities, including in Japan. Through these activities outside the US, activists are working to maintain their growth rate in the global market as a whole. In Japan, shareholder proposals by activist investors have become more frequent, such as Strategic Capital's demands for increased dividends from Tocho Printing Co., Ltd., but most of these proposals have been rejected due to the lack of support from a majority of shareholders.

Oasis' efforts to get votes from minority shareholders of GMO Internet

In January 2018, Oasis made six shareholder proposals to GMO Internet, as follows: 1. Eliminate GMO Internet's shareholder rights plan ('poison pill'); 2. Restrict implementation of shareholder rights plans by GMO Internet; 3. Require that the chair of GMO Internet's board of directors and its representative director (CEO) positions be held by different people; 4. Revise the design of compensation for members of GMO Internet's board of directors; 5. Change GMO Internet's corporate form to a company with a nominations committee; and 6. Adopt a system of cumulative voting for board members, enabling minority shareholders to obtain board representation. Oasis indicated that one reason for GMO Internet's prolonged period of underperformance in stock price was the lack of effective restraints on the CEO and Chair of GMO Internet's board of directors, Mr. Kumagai, also GMO Internet's largest shareholder with approximately 41% of GMO Internet's shares, as well as its founder. In response, GMO Internet's management indicated their intent to completely oppose all of Oasis' shareholder proposals.

Oasis reached out to all shareholders to support Oasis' shareholder proposals. Oasis had been a shareholder with more than 5% of GMO Internet's stock from beforehand; however, by March 9, 2018 Oasis held 7.22% due to continued purchases beginning in the second half of January 2018.

At this shareholders' meeting, Oasis' proposals received approximately 45% of the total votes from attending shareholders, even though Mr. Kumagai opposed the proposals with his approximately 41% holdings in GMO Internet stock. This means that Oasis received support from approximately 90% of the minority shareholders of GMO Internet in attendance.

Activist shareholder response going forward in Japan

In recent years, many activist shareholders had made demands for improvements in governance at Japanese companies, such as to replace management, appoint directors nominated by the activist, and so on. Until now, we had not seen instances in Japan where activist shareholders' demands were so widely accepted by ordinary shareholders. However, the results of these proposals by Oasis at GMO Internet's shareholders' meeting indicate receipt of support from the vast majority of ordinary shareholders. This is noteworthy as a case where an activist's demands were widely accepted by ordinary shareholders.

The adoption of the Stewardship Code in February 2014* and its amendment in May 2017, and of the Corporate Governance Code in June 2015,** indicate that management must respond seriously to demands from activist shareholders, such as improved return on equity and governance reforms for that purpose. The votes cast by ordinary shareholders at GMO Internet's shareholders' meeting can be described as an iconic case where the level of dialogue and engagement demanded by shareholders in Japan and the level of acceptance of activist shareholders in Japan have entered a new era.

This change in public perception and the fact that Japan's stock market is becoming relatively more attractive to activist investors suggests a significant possibility that other activist investors will also become more active in Japan. Going forward, market observers may look for developments in engagement efforts by companies listed in Japan and activist investor moves in the market to see whether Japan's listed companies will come to face constant pressure from shareholders like US listed companies, and whether real engagement between listed companies and their investors will become the norm in Japan.

*: The Stewardship Code sets out principles for institutional investors to appropriately perform their responsibilities as fiduciaries by encouraging sustainable growth and increased enterprise value through 'purposeful dialogue' between investors and listed companies (engagement) as 'responsible institutional investors.'

** : The Corporate Governance Code sets out principles for listed companies to follow to achieve effective corporate governance.

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