TMI Associates

Japan Corporate & Finance Insights

September 2025

Topics

Trends in Shareholder Proposals in Japan

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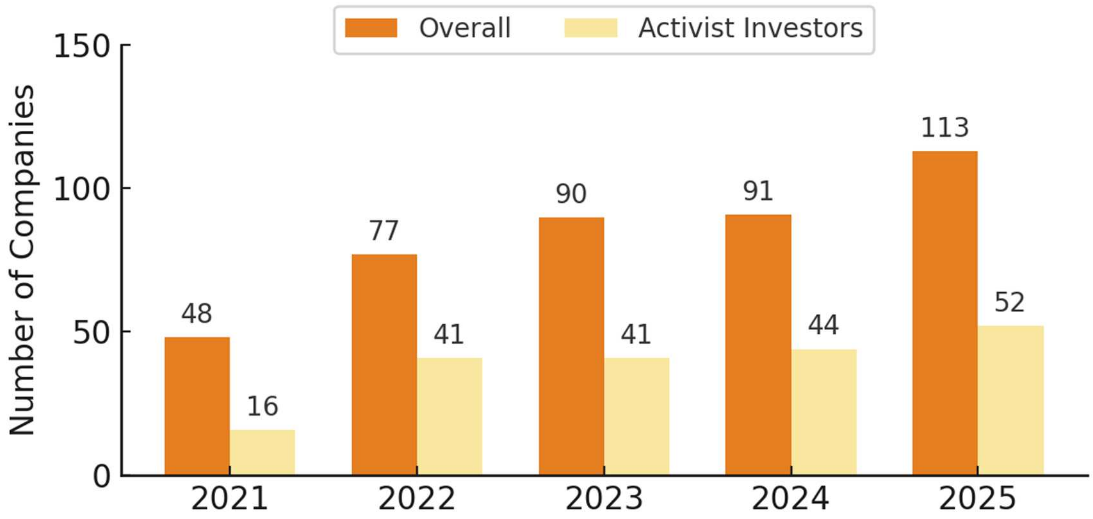
I. Increase in Shareholder Proposals

Shareholder proposals at listed companies in Japan have become increasingly active. Among listed companies that held annual general meetings of shareholders in June 2025, shareholder proposal rights were exercised at 113 companies. Of these, proposals were submitted at 52 companies by activist investors. At the annual general meetings held in June 2024, shareholder proposal rights were exercised at 91 companies. This year's figure therefore represents a significant increase from last year.

[Number of listed companies in Japan subject to shareholder proposals (FY ending March 2025)]

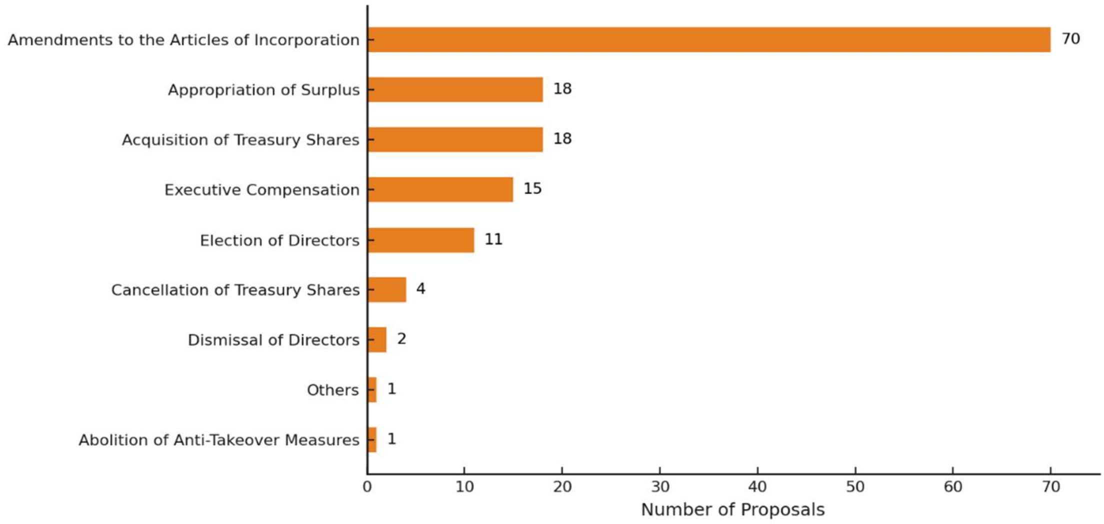


(Source: Mizuho Trust & Banking Co., Ltd.)

II. Focus on Amendments to Articles of Incorporation

With respect to shareholder proposals submitted by activists in Japan, amendments to a company's articles of incorporation remain by far the most common. At the shareholder meetings held in June 2025, out of 140 proposals submitted, 70 proposals, representing one half of the total, were proposals to amend the articles of incorporation. In Japan, even where a proposal requires directors to adopt a specific dividend policy, such as setting the dividend payout ratio at 100 percent, calls for the reduction of cross-shareholdings, or provides that a majority of the board must consist of outside directors, it is generally considered legally valid under the Companies Act if framed as an amendment to the articles of incorporation. For this reason, most shareholder proposals take this form. These are followed in such ratio by proposals concerning the appropriation of surplus, acquisition of treasury shares, executive compensation, and election of directors.

[Types of shareholder proposals submitted by activists at listed companies in Japan (FY ending March 2025)]



(Source: Mizuho Trust & Banking Co., Ltd.)

III. Rare but Notable Approvals

At the shareholder meetings held in June this year, shareholder proposals were approved at seven companies, comprising a total of 14 proposals. Approval of shareholder proposals remains extremely rare at listed companies in Japan, but this year saw exceptional developments. In certain cases, the reappointment of senior management was rejected, resulting in a change in management.

For example, at Tokyo Cosmos Electric Co., Ltd. (TSE Standard: 6772), activists and other shareholders exercised their proposal rights regarding the election of directors, nominating eight candidates in total. All five of the company's own director election proposals were rejected, while the shareholder proposals were approved, resulting in a change in management. In another case, Eiken Chemical Co., Ltd. (TSE Prime: 4549) amended the articles of incorporation stipulating that resolutions on appropriation of surplus could only be made by the board of directors - activists submitted a shareholder proposal to amend the articles to allow such resolutions to be made at the general meeting of shareholders as well. This proposal was approved.

IV. Corporate Governance Developments

Progress in corporate governance at listed companies in Japan has been driven by Japan's Corporate Governance Code introduced in 2015, and revised in 2018 and 2021. In March 2023, the Tokyo Stock Exchange further required listed companies to adopt measures aimed at management that take into account capital cost and stock price. These initiatives have encouraged greater emphasis on shareholder-oriented management. In addition, the reduction of cross-shareholdings promoted by the Japanese government and the Tokyo Stock Exchange, combined with the growing presence of institutional investors, including overseas investors, has created a shareholder base more inclined to support activist proposals.

V. Outlook: A New Stage for Shareholder Proposals

Against this backdrop, activist activity is becoming increasingly vigorous. Furthermore, reductions in the minimum trading unit have enabled greater participation by individual shareholders in submitting proposals. As a result, this year has seen a marked increase in the number of companies receiving shareholder proposals, and it is no longer unusual for such proposals to be approved or to attract substantial levels of support - indicating that shareholder proposals in Japan have entered a new stage.

This trend is expected to continue, and it will require continued careful monitoring.

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If you have any questions regarding the matters covered in this memorandum, please reach out to your usual TMI contact or the attorneys listed above.

Revisions to the Listing Rules Regarding MBOs and Subsidiary Conversions

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I. Purpose and Background of the Revision

On July 7, 2025, the Tokyo Stock Exchange (the "TSE") effected a partial revision to the Securities Listing Regulations, etc. concerning management buyouts (MBOs) and transactions that make a company a wholly owned subsidiary of its controlling shareholder (the "MBO Rules"), and the revision came into force on July 22, 2025.

The TSE had already established rules applicable when conducting MBOs and making a company a wholly owned subsidiary by a controlling shareholder. In addition, after the Ministry of Economy, Trade and Industry promulgated in 2019 the "Guidelines for Fair M&A," the establishment of a special committee as a fairness safeguard became established practice. However, investors have continued to raise issues concerning the fairness of purchase prices and procedures in MBOs, etc., and, taking such points into account, the TSE partially amended the Securities Listing Regulations with the aim of ensuring that special committees function effectively and that necessary and sufficient timely disclosure is made.

Additionally, for the purpose of actively promoting building a trusting relationship with investors, a review was conducted to require listed companies to have the IR framework listed companies should have.

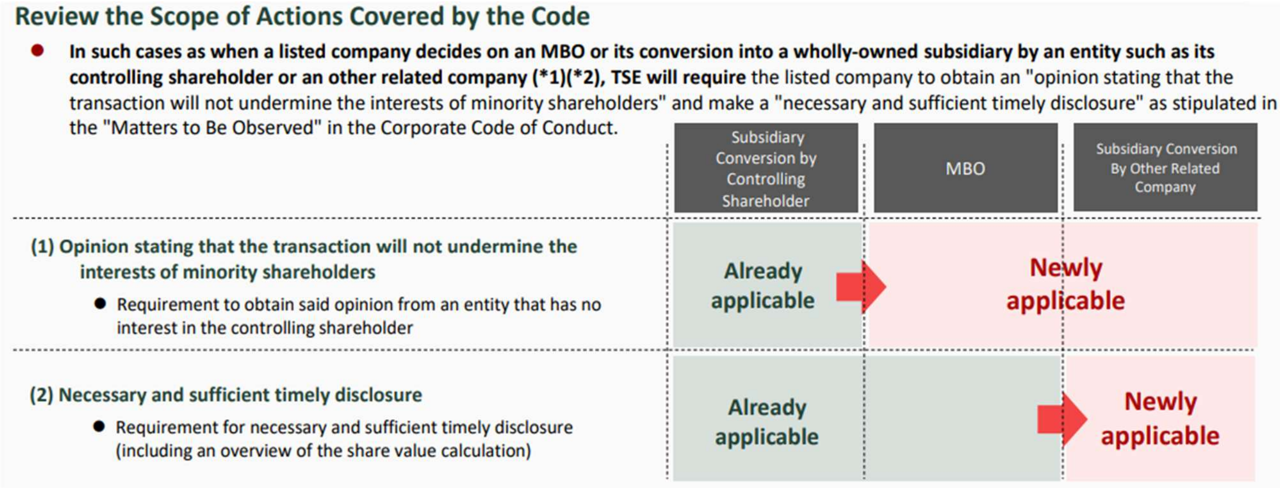
II. Details of the Revision

(1) Review of Opinions Regarding "Not Being Disadvantageous to Minority Shareholders"

A) Expansion of Covered Acts

Previously, only in cases of making a company a wholly owned subsidiary by its controlling shareholder[1] was it mandatory to obtain an opinion to the effect that the transaction is not disadvantageous to minority shareholders from a person having no conflict of interest. As a result of the revision, in MBOs and in full acquisitions by a related company other than its controlling shareholder as well, obtaining such an opinion is now mandated.

[1] Under the Securities Listing Regulations of the TSE, "controlling shareholder" means a parent company or a person who is defined by the enforcement regulations as a person who directly or indirectly owns the majority of the voting rights of a listed company.



Source: TSE, "https://www.jpx.co.jp/english/rules-participants/public-comment/detail/d1/sjcobq00000141jc-att/sjcobq00000141lr.pdf" (April 14, 2025), p.2

Even before the revision, the establishment of a special committee and the obtainment of its opinion had become settled practice in cases of MBOs and full acquisitions by a related company other than its controlling shareholder, this revision can be said to confirm pre-existing practice.

B) Source of the Opinion

Previously, it was mandatory to obtain from a "person having no conflict of interest with the controlling shareholder" an opinion to the effect that the transaction is not disadvantageous to minority shareholders. As a result of the revision, it has become mandatory to obtain from a special committee composed of independent outside directors, outside statutory auditors, and external experts an "opinion that the transaction is fair to general shareholders."

With respect to the source of the opinion, under the prior rules the opinion was required to be obtained from a "person having no conflict of interest with the controlling shareholder," and, for example, it was permissible to obtain an opinion from an individual outside director or outside statutory auditor with no conflict of interest with the controlling shareholder. Under the current revision, it is required to obtain an opinion from a special committee composed of outside directors, outside statutory auditors, and external experts that are independent of both the acquirer and the success or failure of the transaction. That said, even prior to the revision, in practice, opinions were typically obtained from a special committee.

Note that, in cases where urgency is high and swift execution is required, such as the acquisition of a company in financial distress, it is envisaged that establishing a special committee may be difficult, and in such cases the establishment of a special committee is not necessarily required.

C) Content of the Opinion

Furthermore, whereas previously it was mandatory to obtain an opinion to the effect that the transaction is "not disadvantageous to minority shareholders," under the revision it is now mandatory to obtain an "opinion that the transaction is fair to general shareholders."

As for the content of the opinion, because the prior wording "not disadvantageous to minority shareholders," caused cases in which, despite concerns about the fairness of the purchase price, the mere fact that a certain premium over the market price was attached to the price allowed the transaction to be characterized as "not disadvantageous to minority shareholders." To prevent such cases from occurring, and from the perspective of seeking an opinion based on the viewpoint of whether the transaction is such that the increment in corporate value will be fairly distributed to general shareholders, the requirement has been changed from a negative opinion that it is "not disadvantageous" to an affirmative opinion that it is "fair to general shareholders."

Given that in some cases quantifying the increment in corporate value can be difficult, the revision does not necessarily require quantitative calculation or explanation of the increment in corporate value or of the portion thereof that general shareholders should enjoy.

The following three perspectives were presented as matters to be examined in the opinion:

1) Whether the Transaction Should Be Conducted (The pros and cons of the transaction)

i.e. Whether the M&A contributes to the enhancement of the target company's corporate value.

2) Fairness of the Transaction Terms

i.e. Whether the transaction terms (the level of the acquisition consideration, the method of acquisition, the type of consideration, etc.) are fair while taking into account all of the following perspectives:

• The process of discussions and negotiations with the acquirer.

• Reasonableness of the share valuation content and that of the financial forecasts and assumptions on which such share valuation is premised.

• Reasonableness of the premium level relative to past market prices and to transactions of the same type.

• Other matters (for example, prices at which the acquirer previously acquired shares).

3) Procedural Fairness

i.e. In light of the specific circumstances of the M&A, whether sufficient fairness safeguards have been implemented so as to procedurally ensure the overall fairness of the transaction terms:

• The implementation status of the fairness safeguards exemplified in the Fair M&A Guidelines: (i) establishment of a special committee; (ii) professional advice from external experts; (iii) market check; (iv) majority-of-the-minority condition; (v) elimination of coerciveness; and (vi) information disclosure, and if some measures are not implemented, the reasons therefor and the assessment thereof from the viewpoint of ensuring fairness.

All of the above perspectives have already been examined in an opinion in prior practice, and the impact on practice is thought to be minimal.

In addition, prior to the revision, it was sufficient to include in the timely disclosure materials a summary of the special committee's opinion; however, under the current revision, the opinion letter itself must be attached to the timely disclosure materials.

(2) Review of Opinions Regarding "Not Being Disadvantageous to Minority Shareholders"

A) Expansion of Covered Acts

Previously, in MBOs and in full acquisitions by controlling shareholders, companies were required to make necessary and sufficient disclosures. As a result of the revision, in cases of full acquisitions by a related company other than its controlling shareholder, companies are now required to make necessary and sufficient disclosures.

B) Expansion of Disclosure Items Relating to Valuation

Prior to the revision, when making statements of opinion regarding MBOs, etc., the submission to the TSE of a valuation report prepared by the valuation firm had been mandated, and, as a summary of the valuation, companies were required to include: (i) the specific valuation methods, (ii) the reasons for adopting those methods, (iii) the numerical results of each valuation method, and (iv) the important assumptions for each valuation method.

However, in recent years, there has been an increase in cases where investors have raised doubts regarding the valuation of the target company's shares, therefore, the importance of clarifying through disclosure that the share valuation was conducted reasonably has increased and the assumptions that must be described have been expanded.

Specifically, disclosure of the items shown in the table below is now required (the underlined portions indicate the expanded items).

		Timely Disclosure Guidebook (enhanced parts are underlined) * When using the DCF method
Overview of share valuation calculation	Financial forecasts	Specific figures of financial forecasts (including sales, operating income, EBITDA, free cash flow)
		Sources of the financial forecasts
		Thinking behind setting of financial forecast period
		Assumptions used in financial forecasts (what assumptions are there in the business's content and its environment, etc.) – If a significant increase or decrease in profit/FCF is forecast, the reasons for this – If using financial forecasts that differ substantially from those announced before the M&A, the reasons for this
		Whether the forecasts assume that the M&A will be carried out
	Discount rate	Specific figures (range acceptable) for and type of discount rate – If there are special preconditions such as consideration of a small risk premium, the details of and basis for these
	Terminal Value	Specific figures (range acceptable) and calculation methodology for the terminal value
		Specific figures (range acceptable) of parameters used in calculation of the terminal value and thinking behind the setting of said parameters – If there are special preconditions such as adjustments to disregard one-off expenses in the final business year, the details
	Non-business assets	Treatment of individual assets (real estate such as leases, strategic shareholdings, surplus funds, etc.) in the calculation (thinking behind the categorization of business and non-business assets, etc.) (only applies if material to the calculation)
	Other	Details of other special preconditions, if any
Relationship with calculation agent		If there is a material interest relationship* with the calculation agent, the details and why the company requested the calculation from an agent with which it has a material interest relationship (E.g., a) when the agent falls under the definition of a related party, b) when the request was given to an agent recommended or introduced by the offeror, c) when the agent receives requests from both the listed company and the offeror, d) when the company was receiving financing from the agent or any of its related companies)
		Fee structure of third-party valuation advisor (whether the fee is a contingency fee paid on factors such as the completion of the M&A or a fixed fee paid regardless of the M&A's success, etc.)

Source: TSE, "https://www.jpx.co.jp/english/rules-participants/public-comment/detail/d1/sjcobq00000141jc-att/sjcobq00000141lr.pdf" (April 14, 2025), p.5

C) Treatment Where the Consideration Consists of Listed Shares

Previously, in transactions such as share exchanges where the consideration consisted of listed shares, because market prices exist for the common shares of both companies, it was required to provide enhanced disclosure only when, based on a comparison of their respective market prices, the transaction would be significantly disadvantageous to the shareholders of the listed company that is the subsidiary.

Under the revision, with respect to the disclosure of specific financial forecast figures, in cases where listed shares are used as consideration, only the financial forecasts of the target company are required to be disclosed

III. Other (Development of IR Framework)

Together with the revision of the MBO Rules, listed companies are now obligated to develop an IR framework. The amended Securities Listing Regulations take the approach that it is important to develop a framework tailored to each company's scale, shareholder composition, etc., and thus do not prescribe uniform content for IR frameworks; accordingly, they do not require, as a mere formality, the establishment of a specialized IR department or of personnel dedicated exclusively to IR nor do they make the conduct of IR activities themselves mandatory. However, since investors expect IR activities to be conducted, illustrative examples regarding the development of frameworks and the conduct of activities for that purpose have been published.

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