

23 February 2009 (No. of pages: 5)

Corporate Governance Reform (2)

—*Disclosure of Shareholder Voting*—

Disclosure of voting results under discussion

Japanese report: 18 Feb 09

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Summary

- Japan's Ministry of Economy, Trade and Industry (METI), Financial Services Agency (FSA), and the Tokyo Stock Exchange (TSE) have set up investigative committees to examine corporate governance of listed companies.
- Shareholder voting has been confidential thus far, but some institutional investors are calling for disclosure.
- This report outlines voting disclosure practices and related discussions in investigative committees.

Disclosure of Voting in Shareholder Meetings

In shareholder meetings, shareholders vote on directors, distribution of dividends, occasionally on restructuring, and other proposals. In Japan, management usually submits the proposals—shareholders rarely do. While management proposals are generally passed, shareholder submissions tend to be rejected.

Details of voting in shareholder meetings concealed

On the day of a shareholder meeting, a vote is taken on a given proposal once it is confirmed whether there is opposition following a Q&A session. The results are usually reported only as being approved by “an overwhelming majority,” without specific voting figures. Attending shareholders seldom question such announcements, but do they have access to the results if they want them? The answer is yes—though hardly any shareholders actually take the trouble to seek them out.

Growing Interest in Voting Results

More than a few institutional investors, on the natural assumption that companies record the voting results, believe they should publish them. Currently, however, shareholders are simply informed that a proposal has been approved. Shareholder dissatisfaction with this status quo has sparked interest in disclosure of the results.

Growing number of institutional investors casting “nay” votes

Since the 2000s, institutional investors have increasingly been casting “against” votes in shareholder meetings. They examine the proposals in advance and make decisions based on pre-set guidelines. Circumstances change, but they seem to be rejecting about 30% of all proposals. Even if all proposals at a meeting are passed, some institutional investors seem interested in knowing the vote spread on measures they had opposed. Moreover, given that companies have adopted majority voting systems, some institutional investors are going as far as to demand exact results.

Not All Individual Votes Necessarily Confirmed

Examples of voting disclosure

Almost no companies reveal the voting results of shareholder meeting proposals—Sony and Shiseido are rare exceptions. Sony releases the results of absentee votes (cast by one day before shareholder meeting) on the day of a shareholder meeting and publishes the final voting results on its website¹. Shiseido discloses final voting results, including votes cast at the meeting².

Companies not disclosing results are on solid legal ground—the law only requires up or down disclosure on the passage of any given proposal. Indeed, not all votes even need to be counted if companies only have to confirm that a proposal has achieved the necessary number of votes for passage.

Why voting results do not have to be finalized

No law regulates shareholder voting. Even legal precedent shows that, unless otherwise provided for by articles of incorporation, companies can utilize any voting method as long as they can confirm a proposal received a sufficient number of approval votes³. Effectively, companies only have to establish that they have (1) secured a quorum of shareholders exercising voting rights (including postal and online votes received by one day before shareholder meeting) and (2) enough “yea” votes. For example, given a company where voting shares total 100, a voting quorum is 50, and a two-thirds majority is required for a special proposal, passage would basically require two-thirds of the 50. However, if at any point 67 “yea” votes are secured, the quorum is of course automatically fulfilled and, moreover, there is no need to count any remaining votes.

Consequently, companies merely announce that an overwhelming majority has passed a resolution—they do not provide a detailed breakdown of voting results.

Cases Requiring Vote Confirmation

Shareholders normally consent to simply being told that a proposal was approved. To some shareholders, however, vote counts (proportions) are very important.

When vote counts matter

Japan’s corporate law stipulates that when a shareholder proposal is rejected with less than a tenth of votes in favor, the same agenda cannot be proposed for the next three years (Corporate Law Article 305-4). Therefore, shareholders who intend to resubmit their proposals are interested in how many supporting votes they won. Meanwhile, the companies need only know that a proposal was rejected by an overwhelming majority, without necessarily confirming the number of “nay” votes. And although opposing votes do need to be counted in order to block repeated proposals in the subsequent years, companies are not required to disclose exact numbers to the proponents.

Handling Shareholder Meeting Vote Results

Managers of shareholder rosters have a firm grasp of online and postal voting results cast by the day before shareholder meetings. In most cases, the company can confirm at this point whether a proposal was approved. Meanwhile, it is difficult to immediately count the votes cast at shareholder meetings. However, with decisions effectively made through pre-shareholder meeting votes, there is no legal requirement on the companies’ part to finalize the results of votes held on the day of the meetings.

¹ <http://www.sony.net/SonyInfo/IR/stock/qfhh7c00000gmopd-att/votee.pdf>

² http://www.shiseido.co.jp/e/ir/shareholder/e0806shm/img/shm_0009.pdf

³ Japanese Supreme Court decision, 25 Jul 1967.

As we have seen, finalizing and disclosing voting results is not necessarily an obligation, but it is a matter of course that companies do count all votes, and of course nothing prevents them from making voluntary disclosures.

Then, what should shareholders do when companies do not disclose the results? While companies are free to respond to such requests, they are under no obligation to do so.

Claiming right to access votes

In such cases, shareholders have the right to visit the company and count the votes themselves. Corporate law allows shareholders access to all votes for three months after a shareholder meeting (Corporate Law Article 311-3, 4, Article 312-4, 5). This would involve counting thousands of sheets manually.

While this requires a lot of effort, in rare cases shareholders have exercised this right and counted the votes themselves.

Committee Discussions

The TSE’s Informal Committee and the Financial Services Agency’s Study Group on the Internationalization of Japanese Financial and Capital Markets have discussed the topic regarding disclosures of voting results, as shown in Chart 1.

Issues Under Investigation by Three Committees	
FSA Study Group on the Internationalization of Japanese and Financial and Capital Markets	TSE Informal Committee
Issue 3 Some listed companies suggest making disclosure of exact voting figures for each proposal a requirement under stock exchange rules, in addition to whether a proposal was accepted/rejected.	(7 Nov, 21 Nov Meeting Minutes) More companies might disclose results of absentee voting if required by TSE’s Corporate Code of Conduct. Shareholders have right to request companies to disclose absentee voting results, and can count them themselves. However, it may be TSE’s role to encourage voluntary disclosure to enable easier access for investors. In most cases, shareholders do not need to know the votes cast in shareholders’ meetings and only need to have access to absentee voting results. It is probably not practical for companies to count votes cast in shareholders’ meetings.

Source: Committee disclosures, minutes; compiled by DIR.

As far as the minutes go, the TSE committee intends to urge companies to disclose voting results, based on the current law. However, it may be impractical for companies to finalize the results accurately, as this involves counting votes by those who attended the shareholder meetings. On the other hand, counting only the absentee votes may not hold any significance.

May need to give reasons for not disclosing results

Indeed, some institutional investors want the voting results to be disclosed. With companies normally having at least the absentee voting results in hand, institutional investors may well ask why they are not disclosing them. Voting results are fully disclosed in the UK⁴ and the US⁵. The Japanese practice may seem opaque to foreign investors who are used to such Western procedures.

Many of the issues regarding corporate governance are not urgent. However, as all companies hold annual shareholder meetings, this issue should hold significance for the companies. We will keep monitoring the debate.

⁴ Example of UK disclosure: <http://www.btplc.com/Sharesandperformance/Shareholders/AGMs/AGM2008/Presentations/Proxyvotes2008.pdf>
⁵ Example of US disclosure: http://www.ge.com/pdf/investors/ge_voting_results.pdf