

The Game of Governance: Same Playbook, Different Stage – Japan and the United States

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I. Perceived Discretion, Persistent Accountability

Recent regulatory and policy developments in Japan and the United States may, at first glance, suggest that companies have greater discretion in shaping their corporate governance practices, particularly with respect to shareholder proposals. Yet expectations from investors, regulators and other stakeholders remain grounded in accountability, transparency and long-term value creation. This paper examines the distinct nuances and contexts underlying key governance developments in Japan and the U.S. and considers how companies are expected to maintain robust governance practices that support sustainable, long-term growth.

II. Shareholder Proposals: Greater Flexibility, Not a Reduced Mandate for Accountability

The current proxy season unfolds following the **Securities and Exchange Commission (SEC)'s November 2025 changes to the shareholder proposal no-action process**, which removed the agency from actively assessing companies' no-action requests through September 2026. Companies will no longer receive the SEC's review of their grounds for excluding a shareholder proposal, at least until the completion of the current proxy season. As former SEC Commissioner Caroline Crenshaw, a Democratic appointee who has criticized the reform, characterized the change, the process risks becoming a "rubber stamp," raising concerns about the erosion of meaningful regulatory oversight. Early signals suggest that institutional investors expect companies to provide greater transparency by disclosing both omitted shareholder proposals and the rationales for their omission in proxy statements. Rather than relaxing investor expectations, this shift has heightened scrutiny of companies' discretionary decisions to exclude shareholder proposals.

Adding to this broader shift, recent remarks by SEC Chair Paul Atkins go a step further, suggesting that companies could question whether a shareholder proposal may be deemed "improper under state law" under **Rule 14a-8(i)(1)**, regardless of whether it is framed as binding or non-binding. In particular, he indicated that if a Delaware company argues that a precatory shareholder proposal it received is excludable under Rule 14a-8(i)(1) based on an opinion of counsel that the proposal is not a "proper subject" for shareholder action under Delaware law, then the SEC may respect such a position for that company. To date, however, no company has pursued such a route at the risk of litigation to challenge the prevailing view that precatory proposals are generally not excludable under Rule 14a-8(i)(1), likely reflecting concerns about potential shareholder backlash. Market participants will be closely watching whether any company moves to take action in light of Chair Atkins' statement as the proxy season progresses.

State governments are also driving regulatory changes affecting shareholder rights. A prominent example is Texas, which has been actively seeking to attract corporate incorporations through an aggressive deregulatory agenda. As part of this effort, **Senate Bill 1057** positions the state at the forefront of tightening the requirements for submitting shareholder proposals, mandating higher ownership thresholds and adding a requirement to solicit at least 67% of the shareholders entitled to vote on the proposal, compared to the SEC's Rule 14a-8.

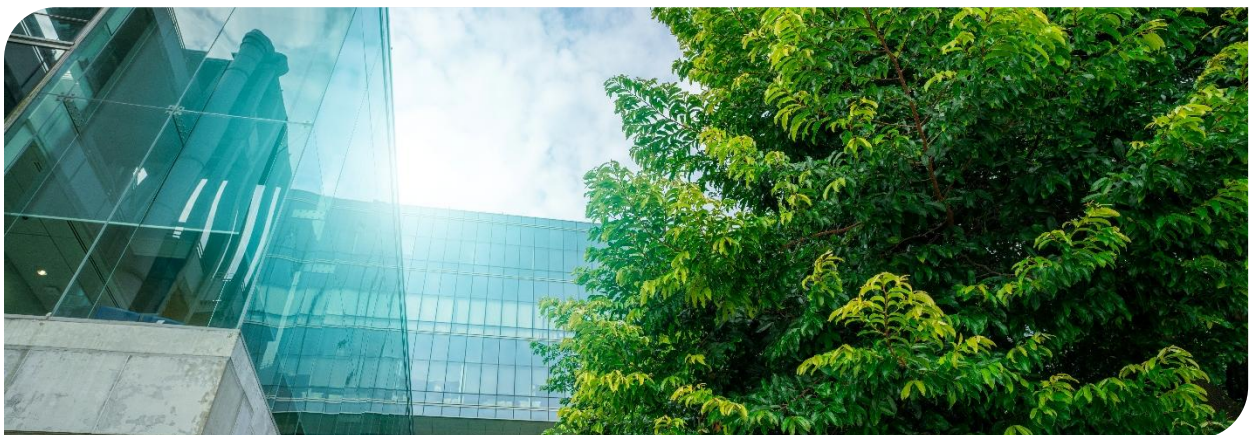
Notably, however, these requirements will apply only to companies that adopt the new provision rather than being imposed uniformly across all companies. As a result, companies that choose to opt into this regime may face heightened investor scrutiny regarding the rationale for their adoption.

A similar reconsideration of shareholder proposal rights is also underway in Japan. Within the Ministry of Justice's Legislative Council, discussions have emerged around revisiting the required number of voting rights needed to submit shareholder proposals. Under the current framework, shareholders are generally entitled to submit proposals if they hold either 1% of the voting rights or at least 300 voting rights for a minimum of six months. However, deliberations are increasingly focused on tightening the latter absolute numerical threshold.

At first glance, the direction may appear aligned with recent developments in Texas. In the Japanese context, however, the practical background differs materially. In recent years, widespread stock splits, often aimed at reducing minimum trading units, have significantly lowered the practical barriers associated with the absolute numerical voting rights threshold. As a result, concerns have grown that the existing framework has made it easier for abusive or low-quality shareholder proposals to be submitted, and the current discussions can be viewed as a corrective response to these developments.

Moreover, the scope of shareholder proposal rights in Japan differs fundamentally from that in the United States. In Japan, shareholders are permitted to propose amendments to the articles of incorporation across various topics, thereby exercising binding authority that can compel corporate action. Unlike in the United States, Japanese companies may therefore be subject to binding shareholder proposals on matters beyond director elections and the approval of certain transactions such as mergers or asset sales, exposing companies to the unnecessary risk of being compelled to address shareholder demands that may not align with the interests of majority shareholders. Nonetheless, in the 2025 AGM season, numerous governance-related shareholder proposals were put forward, particularly those seeking amendments to the articles of incorporation to enhance corporate disclosure, to modify the process for determining shareholder returns and other actions that aim to promote shareholders' interests. There is broad consensus that companies need to take shareholders' concerns seriously.

Despite these differences in nuance and context, the fundamental objective underlying ongoing regulatory developments in both Japan and the U.S. can be distilled into a single theme: improving efficiency so companies can focus on material shareholder concerns rather than diminishing or eliminating shareholders' voices altogether.



III. Proxy Advisors: Regulatory Scrutiny and the Expected Shifts in the Ecosystem

President Trump issued an Executive Order in December 2025 directing the SEC, Federal Trade Commission (FTC) and Department of Labor (DOL) to examine various aspects of proxy advisory firms' operations and to review related rules. These include proxy advisors' potential role in facilitating group formation under Section 13(d), the adequacy of conflict-of-interest disclosures and the extent to which proxy voting advice undermines the financial value of ERISA plan assets. At the state level, **Texas Senate Bill 2337**, although currently subject to a preliminary injunction, reflects similar regulatory momentum. The bill would mandate proxy advisory firms to provide specific disclosures when voting recommendations consider ESG- or DE&I-related factors. While the required actions differ, both regulatory movements demand greater transparency in how proxy advisors develop their vote recommendations and encourage institutional investors to consider company-specific context rather than defaulting to proxy advisors' vote recommendations, reinforcing a focus on financial materiality and reducing proxy advisors' influence in the market.

In Japan, there is currently no hard-law regulation governing proxy advisory firms, nor are such regulations under active discussion. However, amid ongoing discussions to revise the Stewardship Code, a form of soft law, the Financial Services Agency (FSA) has noted concerns about communication gaps between companies and proxy advisory firms. In this regard, Keidanren has emphasized in its policy and action reports that "direct dialogue should be conducted in order to fully take into account company-specific circumstances, industry characteristics and the business environment, and the substance of such dialogue should be appropriately reflected in proxy voting advice." Moreover, within the broader context of the corporate governance reforms currently underway led by the FSA and Tokyo Stock Exchange, Keidanren has warned that "mechanical evaluations based on uniform criteria, regardless of company size or stage of growth, risk rendering hollow governance reforms," and that ensuring the quality of proxy advice requires sufficient resources, including specialized personnel and robust analytical capabilities. Taken together, the call for proxy advisory firms to incorporate company-specific context into their analyses can be seen as a shared theme in both Japan and the United States.



Amid heightened scrutiny of proxy advisors in both the U.S. and Japan, J.P. Morgan recently announced plans to implement a proprietary AI-based tool for U.S. proxy voting in the upcoming proxy season, effectively ending its reliance on one of the dominant proxy advisors, Institutional Shareholder Services (ISS). Some observers view this move as a potential model for other large U.S. asset managers seeking to demonstrate greater independence from proxy advisors amid increasing regulatory and market scrutiny. At the same time, many asset managers continue to rely on the broad range of services



provided by proxy advisors beyond voting recommendations, services that may be more difficult for small- and mid-sized managers to replace. That said, early signs of emerging competitors suggest that alternatives to the services provided by the two dominant firms, ISS and Glass Lewis, may begin to take shape.

While reduced reliance on proxy advisors may initially appear favorable from a corporate perspective, it introduces a new set of challenges. In the absence of market consensus on voting outcomes, particularly as proxy advisors move away from benchmark voting recommendations, companies are increasingly left to interpret principles-based investor policies that offer limited insight into how shareholders may ultimately vote. This dynamic heightens the importance of developing effective communication channels and stronger relationships with shareholders, underscoring the growing significance of proactive shareholder engagement.

IV. Shareholder Engagement: An Essential Opportunity for Companies to Highlight Their Governance Strength and Capability

Under Principle 5 of Japan's Corporate Governance Code, listed companies are encouraged to engage in constructive dialogue with shareholders on an ongoing basis, not limited to general shareholders' meetings, to achieve sustainable growth and enhance medium- to long-term corporate value. In line with this principle, the Tokyo Stock Exchange has reaffirmed the importance of improving management quality and gaining new insights through dialogue with investors. As part of these efforts, since 2023, Prime Market-listed companies are requested to develop appropriate organizational structures to facilitate constructive dialogue with shareholders, to respond to shareholders' requests for engagement and to disclose the status and substance of such engagement activities.

Constructive dialogue with shareholders is positioned at the core of the Prime Market concept at the Tokyo Stock Exchange. Specifically, the Prime Market is defined as a market for companies that place constructive dialogue with shareholders at the center of their management practices. Prime Market-listed companies are expected to meet global standards of corporate governance, are encouraged to deepen mutual understanding with investors through engagement, to learn from such interactions and to translate them into sustained improvements in corporate value.

In the context of promoting investor engagement, the Financial Services Agency published on August 26, 2025, a consolidated set of interpretation on regulations and Q&A concerning "Act of Material Proposals" and "Joint Holders" under the Large Shareholding Reporting Rule. Previously, institutional investors were uncertain whether collaborative engagement could be treated as joint holding, triggering more burdensome large shareholding reporting requirements and deterring active engagement. By clarifying that ordinary exchanges of views and collaborative engagement do not automatically constitute joint holding, the FSA sought to create an environment in which investors can engage in constructive dialogue with confidence and support the enhancement of medium- to long-term corporate value.

Meanwhile, several factors are complicating the engagement environment in the U.S., although the value of shareholder engagement continues to be appreciated by both companies and investors. For instance, the SEC's announcement last year regarding **Schedule 13G and 13D disclosures** alarmed institutional investors, as the trigger for being considered an activist investor became inclusive of the scope of exchanges during an engagement. To avoid more complex filing obligations and the risk of being deemed activist investors, asset managers have been discouraged from clearly expressing views on company

management that could be construed as “influencing control.” As a result, during the 2025 proxy season, investor engagements were more restrained, with many limiting discussions of specific proposals or governance issues.

Nonetheless, as traditional signals of investor sentiment become less reliable amid changes to the shareholder proposal and proxy advisory landscape, direct shareholder engagement is increasingly the primary mechanism through which companies can understand investor priorities and prepare for annual meetings. In this environment, companies with proactive and disciplined engagement strategies are better positioned to navigate regulatory uncertainty and evolving stewardship practices.

V. Governance Discipline as the Constant in a Polarized World

As regulatory, investor and societal expectations continue to evolve, companies must remain nimble in adapting to change while staying anchored to their core principles. In an increasingly polarized environment, disciplined governance provides the necessary constant, enabling companies to define and execute long-term strategy, focus on what truly drives sustainable value and remain accountable to both shareholders and other stakeholders. While regulatory approaches may differ in form and process, the underlying objective is consistent: fostering more efficient capital markets that support long-term value creation for companies, investors and the broader ecosystem.





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