

## Exercise of Voting Rights: Activist Investors and Takeover Defence Measures from an Asset Manager's Perspective

*By Iriya Takayama and Shinji Ayuha*

### Introduction

With the Nikkei 225 index surpassing the 40,000 yen level at one point in 2024, many readers of this article may have sensed a shift in the perception of the Japanese stock market. One factor driving this recent stock market rally is the improvement in the corporate governance of Japanese companies. A significant contributor to this improvement is the evolving relationship between companies, asset management firms and activists in the context of exercising voting rights. In this article, we will discuss recent developments surrounding this dynamic.

### The Rise of The Activist

The atmosphere at shareholder meetings in Japan has become significantly more tense compared to the late 2000s and early 2010s. There has been a noticeable increase in governance-related issues being raised, particularly over the past few years, such as corporate scandals and environmental topics. There is an emerging trend of shareholders applying pressure on companies, often in a highly publicised manner involving the media.

### Typical Cases from an Asset Manager's Perspective

Activist investors hold shares of their target companies and seek dialogue with their management teams to ultimately aim for an increase of corporate value. A key target for activists is companies which have lower share prices and do not utilise their assets effectively. For activists, such companies are seen as having a potential for share price improvement through engagement with company management after acquiring a certain amount of their shares. Therefore, activists proactively engage with the management of these companies to urge for their proposals to be accepted. However, if these dialogues falter and the activists increase their shareholding to strengthen their influence, the target company can counter the activists' claims by using anti-takeover measures when it deems the situation is no longer desirable.

In recent years in Japan, it has become mainstream to implement anti-takeover measures against activists only after a takeover proposal is presented. The measures need to be approved at a shareholder meeting, and the support of asset management firms like ours is crucial for their approval; therefore, market participants have a high level of interest in the decision-making process at shareholder meetings.

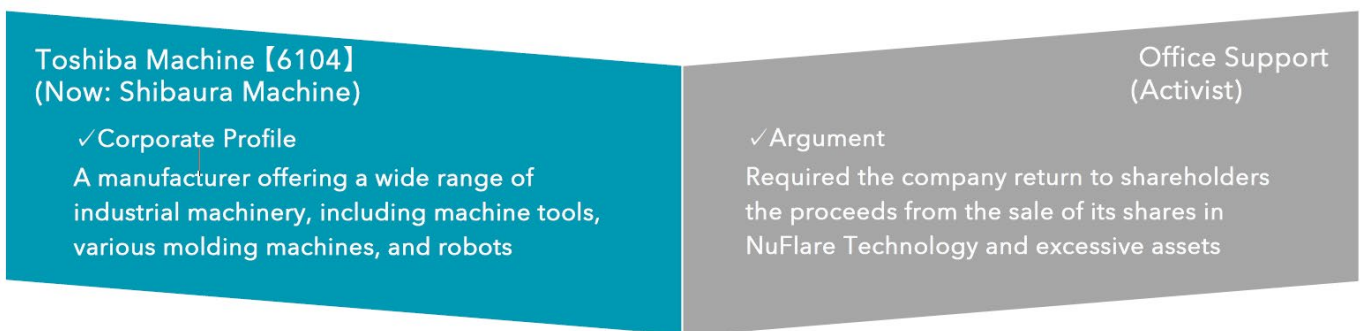
We strongly believe that anti-takeover measures should not aim to protect the self-interests of the target company's board but should contribute to enhancing long-term shareholder value of the company. In principle, we generally oppose anti-takeover measures. However, in the case of anti-takeover measures being proposed in an emergency situation, we make our judgement effectively based on shareholder value reflecting future prospects together while exercising our voting rights [1]. Here, we will introduce two cases where we had to

make a judgment relating to anti-takeover measures.

### Case 1: Toshiba Machine

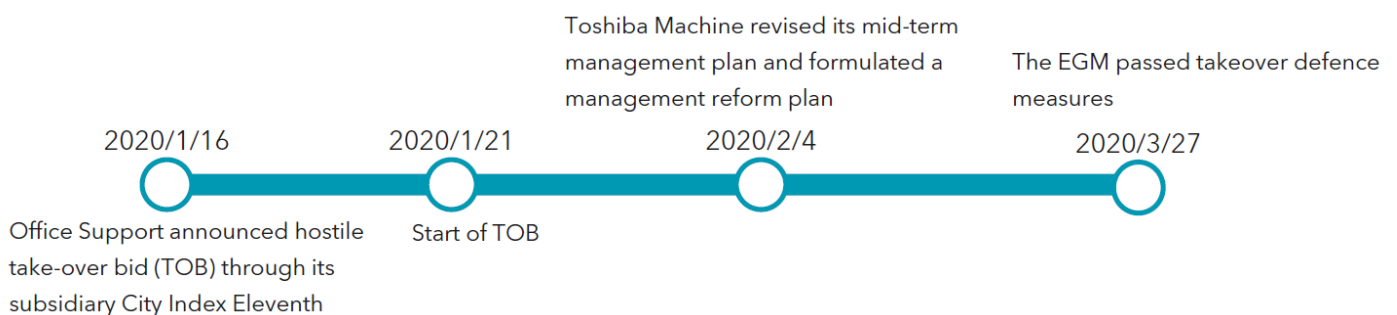
Toshiba Machine (now Shibaura Machine) held an extraordinary general meeting (EGM) to vote on anti-takeover measures to counter a hostile takeover bid, which was an acquisition proposal without the company's consent by an activist investor named Office Support (March 2020 EGM)

#### Company and Activist Investor



Source: Prepared by SuMi TRUST AM based on publicly available information on Toshiba Machine (now Shibaura Machine)

Background to the EGM: Office Support launched a takeover bid (TOB) without Toshiba Machine's consent. In turn, Toshiba Machine introduced anti-takeover measures.



Source: Prepared by SuMi TRUST AM based on publicly available information on Toshiba Machine (now Shibaura Machine)

Basis for our voting decision: As this case was categorised as anti-takeover measure and an emergency situation, we exercised our vote based on which option would contribute to improving corporate value if it were implemented: the company's management reform plan (formulated by its management prior to the EGM) or the activist's claims.

### Our Decision

- We scrutinised and evaluated the points below from the prospect of increasing corporate value:
  - ✓ The company's efforts to increase corporate value through reorganisation and investment in growth as indicated in the management reform plan were appropriate and reasonable.
  - ✓ We found the activist investor's post-acquisition management plan to be inadequate.
  - ✓ We were concerned that an excessive shareholder pay out would result in insufficient funds for investment in the company's future growth.
- Conclusion: We decided that it was appropriate to vote in favour of the company's anti-takeover measures.

## Case 2: Cosmo Energy Holdings

Cosmo Energy Holdings asked its shareholders at its annual general meeting (AGM) whether to activate anti-takeover measures in preparation for a TOB by an investment company named City Index Eleventh (AGM of June 2023)

### Company and Activist Investor

#### Cosmo Energy Holdings [5021]

##### ✓ Corporate Profile

Holding company of Cosmo Energy, which operates a broad petroleum related business, including from supply chain construction to sales

#### City Index Eleventh (Activist)

##### ✓ Argument

1. Reorganisation of oil refineries
2. Value actualisation by spin-out of wind power subsidiary
3. Review of shareholder returns, including gains from the spin-out mentioned in No. 2

Source: Prepared by SuMi TRUST AM based on publicly available information on Cosmo Energy Holdings and City Index Eleventh

Background to the AGM: With City Index Eleventh holding more than 20% of the company's shares, Cosmo Energy Holdings voted to activate anti-takeover measures in preparation for further purchases by the investor.



Source: Prepared by SuMi TRUST AM based on publicly available information on Cosmo Energy Holdings

Basis for our voting decision: We made the decision to exercise our vote based on our ongoing dialogue with the company as the event was categorised as an emergency situation involving anti-takeover measures. In particular, our dialogue about the company's business transformation toward a decarbonised society gave a solid foundation for our decision-making process because it demonstrated the connection between its wind power generation subsidiary and the company's future corporate value.

#### Our Decision

- We made our decision based on a series of dialogues with the company:
  - ✓ We continuously had discussions with Cosmo Energy's President and outside directors on governance and decarbonisation.
  - ✓ We confirmed that its wind power business would be a key factor as a cash generator for the company in a decarbonised society in the future.
  - ✓ We recognised that the company should keep the wind power generation subsidiary within its group rather than sell it for a shareholder pay out.
- Conclusion: We decided to vote in favour of the anti-takeover measures.

#### Looking Ahead

Here we have presented two examples of our decision-making process relating to anti-takeover measures. In both cases, we took an individual approach to make our final decision based on close examination of the facts and a series of dialogues with the investee companies and their newly presented strategies with consideration for what is required to enhance their corporate value.

As investor activism becomes more prevalent in Japan, not only investee companies but also asset management firms are under pressure to deal with increasingly complex issues requiring thoughtful consideration. We have put in place an effective system to respond promptly and adequately, including acquiring a variety of knowledge and information through our global offices, domestic and international initiatives, and other stakeholders. We will continue to work to increase the corporate value of our investee companies as well as the value of the assets entrusted to us by our clients.

[1] Our policy on the exercise of voting rights: [Proxy Voting | SuMi Trust Asset Management \(sumitrust-am.com\)](https://www.sumitrust-am.com)



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Before joining SuMi TRUST AM in March 2023, Shinji supported climate-related disclosures by government bodies and financial institutions at the Mitsubishi Research Institute. He is currently a researcher in the field of sustainable finance at the University of Tokyo Graduate School of Frontier Science (GSFS), where he lectures on sustainable finance and disclosure. Shinji previously worked at the World Bank as a Financial Sector Specialist for the climate-related risk assessment framework. He also has experience in the credit analysis of emerging markets in Africa, the Middle East, South America and Asia at the Japan Bank for International Cooperation.

Shinji received a Ph.D. in international studies from the University of Tokyo, Department of International Studies. He holds an MBA from Sloan School of Management of the Massachusetts Institute of Technology.