Vanguard Investment Stewardship Insights

An independent investigation and director accountability votes at Toshiba

July 2021

Vanguard publishes Investment Stewardship Insights to promote good governance practices and to provide investors and public companies with our perspectives on important governance topics and issues that come up for shareholder votes.

Company: Toshiba Corp. (Toshiba)

Meeting date: June 25, 2021

Proposals: Item 1.1 through 1.13—Election of directors

How the funds voted

At the annual meeting for Toshiba, a Japanese technology and electronics manufacturing company, the Vanguard funds did not support the reelection of its board chair and one member of the Audit Committee. An independent report revealed material gaps in oversight related to the company's 2020 annual meeting. At a special meeting earlier this year, the Vanguard funds had supported the ballot item that called for the formation of the independent committee that generated the report.

Vanguard's principles and policies

Boards are responsible for overseeing a company's long-term strategy and material risks. Vanguard's Investment Stewardship team regularly assesses boards' understanding of company strategy and boards' role in overseeing the identification, mitigation, and disclosure of material risks.

We place high expectations on boards because of the integral role they play. Shareholders elect directors to represent their interests and to promote and protect shareholder value. Directors bring a wealth of experience to the boardroom, and they can provide valuable counsel to company leaders who are executing on strategy. Boards must continuously evaluate themselves and evolve to align with the long-term needs of their business. Boards should also embrace—and their companies should have in place—governance structures that give voice to shareholders.

We express our support for boards—or our lack of it—by participating in the election of directors at our portfolio companies.

Analysis and voting rationale

In March, two of Toshiba's largest shareholders requested a special meeting. At that meeting, a ballot item requested that Toshiba create an independent committee to investigate allegations that the company's 2020 annual meeting was not conducted in a fair and impartial manner. After engaging with Toshiba to understand the allegations, the Vanguard funds supported the call for an independent investigation, and the resulting report was published in June. Although the investigation did not find wrongdoing by board members, the report did identify serious concerns about corporate culture, the company's efforts to limit shareholder rights, and the accuracy of the 2020 annual meeting voting count.[1]

We have engaged with members of Toshiba's board over many years. Multiple recent discussions focused on the allegations regarding the 2020 annual meeting, with an emphasis on the board's role in the oversight of these matters. We attended an investor conference where the chairman apologized for poor governance and added that two Audit Committee members would be removed. We also conducted a thorough review of the independent committee's report.

In these situations, we expect boards to be candid about any lapses in governance and to communicate how they plan to improve on their practices and policies. We were particularly troubled by the company's inability to provide information on how its own audit of the annual meeting allegations was conducted earlier this year and its refusal to publish a statement from its law firm that would have dispelled the allegations.

1 Source: *Investigation Report,* June 10, 2021.

Based on the board's response, the seriousness of the governance lapses outlined in the report, and our own analysis and research, we concluded that accountability for the oversight failures was appropriate. The Vanguard funds did not support the reelection of Toshiba's chairman and one member of the Audit Committee. The chairman and the Audit Committee member received 43.74% and 25.32% of votes in support, respectively.

In future engagements, we will expect the board to be more forthcoming about how it plans to move on from this chapter in the company's history and how it will be more responsive to shareholder feedback.

What we expect from companies on this matter

Vanguard expects boards to acknowledge shortcomings and take appropriate actions to hold directors and executives accountable for material failures. We also encourage boards to be receptive to feedback from shareholders and community stakeholders. As circumstances warrant, boards should consider a wide range of available disciplinary options, including pay reductions and, if appropriate, loss of employment.

When confronted with a crisis resulting from governance and risk oversight failures, companies and their boards should implement changes and improvements in their policies, processes, and practices to remediate adverse impacts and prevent recurrences.

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