

# The Development of “Institutional Investors” and Activist Funds in Japan

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- I. The Pre-1990s Landscape
  1. Absence of True Institutional Investors
  2. Regulatory Reforms: Laying the Groundwork
- II. The Emergence of Activists
  1. Early Outsiders: Raiders and “Shite-Suji”
  2. Changing of the Guard: New Shareholders, New Norms
  3. The First Wave of Shareholder Activism: Murakami and Momentum
- III. Corporate Governance Reform and the Second Wave
  1. Corporate Governance Reform as a Growth Strategy
  2. Skepticism Toward Institutional Investors
  3. Second Wave of Activism
- IV. The Third Wave and Beyond
  1. Evaluating Current Activism
  2. Future Prospects of the Activism in Japan

In recent years, the Japanese stock market has experienced a notable surge in activist campaigns, where activist hedge funds acquire stakes in companies to push for changes they believe will enhance shareholder value. To be sure, the rise of shareholder activism is not unique to Japan but is a global phenomenon. However, the most recent surge in activist activity is largely concentrated in the Asia-Pacific region, particularly in Japan.<sup>1</sup> Today, Japan is considered the second-largest market for shareholder activism, trailing only the United States.<sup>2</sup> This “activist boom” is, however, a relatively recent development. Historically, activist interventions were rare in Japan, and even mainstream institutional investors were reluctant to exercise their voting rights against the incumbent management of investee companies. This article explores the evolution of shareholder activism in Japan, beginning with the landscape before the 1990s.

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\* The links given were last checked on 7 July 2025.

1 V. PAU, *Activist Investor Campaigns Hit Record High, Driven by Japan*, The Japan Times, 2 July 2024.

2 N. HANSEN/J. USAMI, *Land of the Rising Dissension: Japanese Shareholder Activism in Focus*, White & Case M&A Explorer 2025.

## I. THE PRE-1990S LANDSCAPE

### 1. *Absence of True Institutional Investors*

While institutional shareholders—entities other than natural persons—have long existed in Japan, they did not function in the way that “institutional investors” are understood today: as professional asset managers or asset owners entrusted with maximizing financial returns for clients or beneficiaries. This modern conception began to emerge in Japan only in the 1990s.

In the 1960s, the Japanese government started to liberalize capital movement regulations. In 1964 Japan joined the Organization for Economic Cooperation and Development (OECD), committed to undertaking capital liberalization. Meanwhile, Japanese listed companies began establishing cross-shareholding arrangements with one another, as well as with commercial banks and life insurance companies. These arrangements served as a defense mechanism against possible hostile foreign takeovers. Accordingly, the cross-held shares were not intended for profit-driven investment, but rather to create a stable shareholder base that would support company management regardless of performance.

From the perspective of the shareholders involved—particularly banks and insurers—this system had its advantages. For banks, cross-shareholding often secured the role of “main bank,” a lucrative position at that time due to companies’ constant need for external financing. Life insurers, meanwhile, gained marketing access to employees of the issuer companies of cross-held shares. They could comfortably achieve profitability thanks to tightly regulated assumed interest rates and high long-term yields, even without chasing stock market returns; thus they did not have to make serious investment decisions when they formed cross-shareholding arrangements.

Mutual funds played a much more limited role in pre-1990s Japan than in the U.S. Though Japanese investment trusts (akin to American mutual funds) were introduced in 1951, they were heavily controlled by securities brokers. At that time, securities brokers were trying to secure a better position in the individual savings market dominated by commercial banks. To compete with bank deposits, they were pushed to offer “unit-type” investment trusts, which typically had an effective two-year term.<sup>3</sup> As a result, it was infeasible for investment trust to employ long-term investment strategies that included an active commitment to investee companies’ management.

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3 A typical “unit type” investment trust had a four- or five-year term with a two-year “closing period”. When the closing period had expired, the securities broker who sold the product had a strong incentive to persuade the customer to sell off the product and purchase another newly launched “unit type” investment trust in order to earn additional sales commission.

Public and private pension funds—major institutional investors in other markets—also had limited roles. Public pension reserves were primarily funneled into the Fiscal Investment and Loan Programme (FILP), and only a small portion was managed independently. Private pension funds, meanwhile, operated under strict regulations. Only trust banks and life insurers could manage them, and the 5/3/3/2 rule severely restricted equity exposure, mandating that more than 50% of assets be allocated to public bonds and no more than 30% to equities.

## 2. *Regulatory Reforms: Laying the Groundwork*

This began to change in the late 1980s. The 1986 Investment Advisors Act introduced the concept of discretionary investment management business, allowing authorized investment advisors to manage assets on behalf of institutional clients, including pension funds. Although the primary objective of the Act was to regulate businesses providing investment advice, particularly to individual investors, in light of incidents such as the large-scale fraud case known as the “Toshi Journal Incident”, the new Act contributed to a transformation of institutional investment in Japan.

Initially, only a small portion of public pension funds—mostly bond portfolios—was entrusted to authorized investment advisors. This changed with the 2001 abolition of the FILP loan system. The newly formed Government Pension Investment Fund (GPIF) began allocating substantial funds to authorized investment advisors. Many investment trust companies affiliated with securities brokers entered this new business.

In parallel, the 1990 amendment to the Employees’ Pension Insurance Act enabled authorized investment advisors to manage private pension assets. Though initially limited to “new money” deriving from new contributions and a third of total assets, these restrictions were lifted entirely with the 1999 repeal of the 5/3/3/2 rule, opening the door for competition and more active management.

## II. THE EMERGENCE OF ACTIVISTS

### 1. *Early Outsiders: Raiders and “Shite-Suji”*

Even before the 1990s, Japan’s market had its share of aggressive investors, such as corporate raiders and “shite-suji”—speculative individuals seeking to accumulate large stakes in mainly small-cap companies. However, these actors did not qualify as institutional investors, as they were not managing assets on behalf of others with the aim of securing long-term financial returns.

Corporate raiders and “shite-suji” investors often expressed themselves vocally at Annual General Meetings (AGMs). Their behavior was often dis-

ruptive during AGMs, but it was focused on short-term gains rather than constructive engagement with management. Similarly, “sokaiya” gangsters, who posed as corporate governance advocates, used AGMs to extort companies by threatening to expose scandals—often receiving hush money in return. These payments persisted until they were effectively prohibited by an amendment of the Corporation Act in 1997.<sup>4</sup>

The first bona fide foreign activist shareholder in Japanese stock market appeared in 1989: T. Boone Pickens, who acquired a significant stake in Koito Manufacturing, a Toyota Group firm.<sup>5</sup> Pickens pushed for board representation, but his approach—colored by his reputation as an American corporate raider—triggered a defensive backlash from Japanese corporate circles. This initial experience with an activist left many Japanese corporate executives with the impression that activist shareholders were akin to corporate raiders or even “sokaiya”. Pickens’ entry only reinforced the belief that any shareholder opposition to company management was inherently hostile or illegitimate.

## 2. *Changing of the Guard: New Shareholders, New Norms*

The Japanese stock price bubble reached its peak in December 1989, when the Nikkei 225 index closed at 38,915.87 yen. Its collapse and financial crisis in 1990s led to the gradual unwinding of cross-shareholdings. Institutional players—banks, insurers, and conglomerates—offloaded shares throughout the 1990s, and foreign institutional investors stepped in to fill the gap.

These new shareholders brought a different attitude towards corporate managers to the Japanese market. In the U.S., the Department of Labor’s 1988 “Avon Letter” clarified that ERISA fiduciaries had a duty to exercise proxy voting power responsibly.<sup>6</sup> The era of the “Wall Street Rule”, where institutional investors would simply sell their shareholdings if they disagreed with company management, was already over outside Japan. By the 1990s, foreign institutional investors no longer passively rubber-stamped management proposals; they assessed them critically and sometimes voted “no.”

This trend finally reached Japan. Increasingly, Japanese listed companies faced “no” votes on their proposals not only from “sokaiya” and corporate raiders but also from serious professional institutional investors. The per-

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4 As part of this amendment, the penalty for making such payments was increased from imprisonment of up to six months to imprisonment of up to three years, and the action of demanding such payments was newly prohibited.

5 J. BUCHANAN/D. H. CHAI/S. DEAKIN, *Hedge Fund Activism in Japan: The Limits of Shareholder Primacy* (2012) 128–130.

6 Letter to Helmuth FANDL, Chairman of the Retirement Board, Avon Products, Inc. 1988 WL 897696 (23 February 1988).

centage of foreign investors voting against company proposals rose steadily each year, reaching 29.7% of the listed companies holding AGMs or 585 companies during the period from July 2001 to June 2002.<sup>7</sup>

Following the model shown by their foreign peers, domestic institutions also began to adopt more proactive governance stances, taking their voting rights as shareholders more earnestly. In April 2002, the Japan Investment Advisors Association, a self-regulatory organization for authorized investment advisors, published a report emphasizing that proxy voting was a fiduciary duty.<sup>8</sup> It recommended that member firms utilize proxy voting to enhance shareholder value of the investee companies. This was followed by the 2003 publication of proxy voting principles and guidelines by the Pension Fund Association,<sup>9</sup> which was one of Japan's largest pension fund. These principles included provisions linking the re-election of directors to company performance. For instance, the principle stated that if a company had reported losses with no dividend payouts for each of the past three years, or if it had accumulated after-tax losses over the past five years, the PFA would either vote against the proposal or abstain.<sup>10</sup>

### 3. *The First Wave of Shareholder Activism: Murakami and Momentum*

Against this backdrop, the first true wave of activism began in 2000, when the so-called Murakami Fund launched a hostile takeover bid for Shoei Co., a former textile firm turned real estate investor. Founded by a former MITI (now METI) official, Yoshiaki Murakami, the Murakami Fund was the first to adopt activist tactics, including public confrontation, as part of its strategy to engage with management in the Japanese market.<sup>11</sup>

At the time of the Murakami Fund's bid, the market capitalization of Shoei was approximately 5 billion yen, despite holding large amounts of listed stocks and rental properties valued significantly higher than its market capitalization. Presumably, the objective of the takeover bid by the

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7 M. IWATANI, The Exercise of Voting Rights in Japanese Companies by Foreign Shareholders, *Capital Research Journal* 6-2 (2003) 34-44.

8 The Japan Investment Advisors Association [日本投資顧問業協会], 投資一任会社の議決権等株主権の行使について [On the Exercise of Shareholder's Rights Including Proxy Voting by Discretionary Investment Management Business Providers] (2002).

9 The PFA manages the assets of employee pension fund schemes that have been wound up as well as assets that will be needed to pay benefits to short-term members who have left an individual fund as a result of early retirement or job-change.

10 M. HASHIMOTO, The Pension Fund Association's Recently Released Proxy Voting Principles, *Capital Research Journal* 6-2 (2003) 26-33.

11 BUCHANAN/CHAI/DEAKIN, *supra* note 5, 154.

Murakami Fund was to pressure Shoei's management to establish an effective plan for utilizing its idle assets.

Though the bid failed—being opposed by major shareholders such as Canon and Fuji Bank—the fund profited from the post-announcement share price rise. Between 2000 and the founder's 2006 arrest for alleged insider trading,<sup>12</sup> the Murakami Fund undertook over 40 interventions in listed companies, namely acquiring more than 5% of the outstanding shares in all listed companies.<sup>13</sup>

The Murakami Fund had demonstrated that a public and even confrontational style of shareholder activism could yield significant financial returns in Japan.<sup>14</sup> Other activist funds from abroad followed, including Steel Partners, TCI, Dalton, Silchester, and Perry. This first wave ended in 2007 when the Supreme Court upheld Bull-Dog Sauce's defensive measures against Steel Partners.<sup>15</sup> Regulatory pushback followed in 2008, with the Ministry of Finance and METI blocking TCI's bid to increase its stake in J-Power beyond 10% on national security grounds. The 2008 global financial crisis then drove many activists from the market, at least temporarily.

### III. CORPORATE GOVERNANCE REFORM AND THE SECOND WAVE

#### 1. *Corporate Governance Reform as a Growth Strategy*

The first wave of shareholder activism, marked by the confrontational approaches adopted by activist funds, raised the profile of several such funds and had a significant psychological impact on Japanese corporate society. However, it did not necessarily result in increased corporate value or higher stock prices of Japanese listed companies.<sup>16</sup> Furthermore, it failed to transform the corporate practices of Japanese "community firms," which are not primarily managed for the benefit of shareholders.<sup>17</sup>

That said, the first wave laid the groundwork for relevant institutional changes. Media attention and public debate surrounding annual general meetings (AGMs), shareholder voting, and corporate accountability intensified.

12 S. OSAKI, *The Murakami Fund Incident and the Regulation of Collective Investment Schemes*, *ZJapanR / J.Japan.L.* 25 (2008) 89–103.

13 BUCHANAN/CHAI/DEAKIN, *supra* note 5, 158.

14 BUCHANAN/CHAI/DEAKIN, *supra* note 5, 165.

15 S. OSAKI, *The Bull-Dog Sauce Takeover Defense*, *Nomura Capital Market Review* 10-3 (2007) 2–20.

16 M. BECHT/J. FRANKS/J. GRANT/H. F. WAGNER, *Returns to Hedge Fund Activism: An International Study*, *The Review of Financial Studies* 30 (2017) 2933–2971; BUCHANAN/CHAI/DEAKIN, *supra* note 5, 210–211.

17 BUCHANAN/CHAI/DEAKIN, *supra* note 5, 295–296.

In response, the Tokyo Stock Exchange (TSE) and the government introduced a series of reforms. In 2009, the TSE began urging companies to disclose AGM voting results. Although this was not a formal obligation under TSE rules at the time, the requirement became mandatory in 2010 through amendments to the Cabinet Office Ordinance on the Disclosure of Corporate Affairs.

Following the Liberal Democratic Party’s return to power in 2012 under Prime Minister Shinzo Abe, a new economic policy known as “Abenomics” was launched. Built around three key strategies—referred to as the “Three Arrows”—Abenomics aimed to revitalize the Japanese economy after the “Lost Decades” resulting from the collapse of “bubble” economy. The Three Arrows comprised: (1) bold monetary policy, including aggressive quantitative easing; (2) flexible fiscal policy with significant public spending; and (3) a growth strategy. Corporate governance reform emerged as a central element of the Abenomics growth strategy.

Among other objectives, the reform sought to boost corporate productivity by aligning governance practices with global standards. Two key frameworks—often described as the “two wheels of a car”—were introduced: the Stewardship Code, adopted by the Financial Services Agency (FSA) in 2014, and the Corporate Governance Code, adopted by the TSE in 2015 under the auspices of the FSA.

The Stewardship Code was addressed to institutional investors, such as investment advisors, life insurance companies, and pension funds. It urged these investors to fulfill their stewardship responsibilities—namely, to engage actively with investee companies in order to enhance shareholder value. The Corporate Governance Code, by contrast, was directed at listed companies, encouraging them to improve governance practices by enhancing board independence and transparency. It also called for increased shareholder engagement.

Notably, both codes are considered forms of “soft law,” meaning they lack legally binding force. They are neither statutes enacted by the National Diet nor government orders or Cabinet Office ordinances grounded in specific legal provisions. The Stewardship Code, in particular, serves as a voluntary standard for institutional investors who choose to adhere to its principles. The FSA publishes an annual list of entities that have signed up for the Code, although there is no formal obligation to do so under any relevant legislation. The Corporate Governance Code, while also non-binding in the legal sense, possesses greater authoritative weight: the TSE requires listed companies to disclose how they comply with the Code’s principles, although this disclosure requirement is not codified in law.

Furthermore, both codes operate under a “comply or explain” principle, which affords companies and institutional investors the flexibility to devi-

ate from the standards provided they offer credible justifications. While non-binding, these codes have nonetheless reshaped expectations and norms surrounding corporate governance in Japan.

## 2. *Skepticism Toward Institutional Investors*

The Stewardship Code—one of the “two wheels of a car”—was modeled on the UK Stewardship Code introduced in 2010. While the current UK and Japanese Stewardship Codes differ in many respects, particularly following the major revision of the UK Code in 2020, the Japanese Code adopted in 2014 closely resembled the UK version at that time even without any detailed analysis.<sup>18</sup> In fact, several principles of the Japanese Code were almost direct translations of their UK counterparts. For example, the official translations of Principles 1 and 2 in the Japanese Code were virtually identical to those in the UK Code, aside from a few wording differences.

Nevertheless, there were several notable distinctions between the two Stewardship Codes. Most significantly, the primary objectives of the Codes differed markedly. The UK Stewardship Code aimed to curb excessive risk-taking and short-termism among listed companies—which were arguably factors in the global financial crisis that began in 2008—by encouraging institutional investors to act more responsibly in the public interest. In contrast, the Japanese Code sought to promote shareholders’ interests by encouraging domestic institutional investors to become more active and exert pressure on entrenched management.<sup>19</sup>

Another noteworthy difference was Principle 7 of the Japanese Code, which states: “To contribute positively to the sustainable growth of investee companies, institutional investors should have in-depth knowledge of the investee companies and their business environment, as well as the skills and resources needed to appropriately engage with the companies and make proper judgments in fulfilling their stewardship activities.” No similar principle or guidance exists in the UK Code.

The inclusion of Principle 7 was proposed and supported by several experts involved in the drafting process, particularly those representing listed companies. For instance, during a meeting of the expert panel for drafting the Japanese Stewardship Code, Junichi Kawada, then Managing Director of JX Holdings Co., voiced skepticism about the competence of some institutional investors. He noted that certain investors requesting engagement

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18 S. OSAKI, *The New Stewardship Code in Japan. Comparison with UK Code and its Implementation*, in: H. ODA (ed.), *Comparative Corporate Governance, The Case of Japan*, ZJapanR/J.Japan.L. Special Issue 12 (2018) 101.

19 G. GOTO, *The Logic and Limits of Stewardship Code: The Case of Japan*, *Berkeley Business Law Journal* 15 (2019) 365, 396.

with companies lacked even a basic understanding of the businesses of the issuer of the stock they were investing in.<sup>20</sup>

When corporate executives expressed concerns and skepticism about institutional investors, it was most likely driven by negative perceptions of short-termism observed in some foreign institutional investors. Japanese companies have been frequently criticized by foreign institutional investors for their overly long-term-oriented management style, which tends to disregard the current level of ROE and other indicators of profitability. From the viewpoint of Japanese corporate executives, those foreign investors who do not understand a long-term-oriented management style are falling into the pitfalls of short-termism. Although the aforementioned Principle 7 was not directly related to activist funds, it could potentially be used as an excuse to avoid engagement with activists who place greater emphasis on short-term performance.

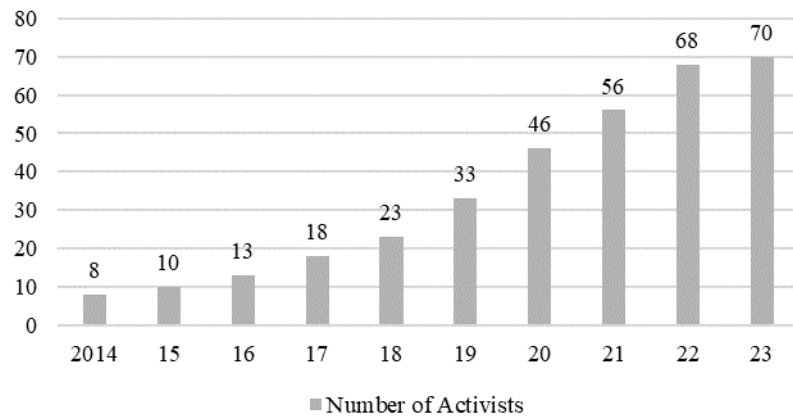
### 3. *Second Wave of Activism*

Encouraged by the essentially government sponsored Stewardship Code, activist funds returned to the Japanese market. The second wave of shareholder activism had arrived, and since 2014 the number of activists engaged in the Japanese market has grown each year (Figure 1).

Foreign activist funds already active in the first wave, such as Dalton and Silchester, returned to the stage, along with new players such as Oasis Management from Hong Kong and ValueAct Capital from the US. The best known domestic activist fund, the Murakami Fund, was dissolved in 2006 after the arrest of Yoshiaki Murakami on allegations of insider trading. However, new funds such as Effissimo Capital Management, Reno, C&I Holdings, and Strategic Capital—led by Murakami himself, a family member, or a former colleague—entered the market in the second wave. Funds established abroad by Japanese activists, such as 3D Investment Partners and Hibiki Path Advisors also began actively engaging with Japanese listed companies.

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20 The Minutes of the 18 September 2013 Meeting of the Panel of Experts on the Stewardship Code, Japanese Version [日本版スチュワードシップ・コードに関する有識者検討会], available in Japanese at <https://www.fsa.go.jp/singi/stewardship/gijiroku/20130918.html>.



*Number of Activists Active in Japanese Market (as of end of the CY)*

*Source: Daiwa Institute of Research, based on the material prepared by IR Japan Holdings Ltd.*

Unlike the first wave—when mainstream domestic institutional investors were generally reluctant to support activist proposals and claims—hedge fund activists in the second wave were more frequently able to rely on their votes. This shift can be attributed to two main factors.

First, as mainstream investors expanded their passive Japanese equity portfolios tracking the TOPIX index, they became increasingly reliant on proxy advisory firms such as Institutional Shareholder Services (ISS) and Glass, Lewis & Co. As strong advocates of “Western”-style, shareholder-oriented corporate governance, these proxy advisors were more inclined to support activists in opposition to incumbent management.

A prominent example of this trend was ISS’s recommendation in August 2015 to support a shareholder proposal submitted by activist funds that sought to appoint the well-known activist Yoshiaki MURAKAMI as a board director of Kuroda Electric. In this instance, had ISS mechanically applied its Proxy Voting Guidelines, it would have recommended voting against MURAKAMI, who failed to meet ISS’s independence criteria and who had a prior conviction for illegal insider trading.<sup>21</sup> Although the proposal was ultimately rejected, it nevertheless received approximately 40% of the vote. The activist fund that had supported the proposal continued to hold shares in Kuroda Electric and, in June 2017, successfully secured a board seat for its nominee—this time not MURAKAMI—with the support of ISS.

<sup>21</sup> S. OSAKI, Time to Look at Regulating Proxy Advisory Firms, Nomura Research Institute Lakyara 224 (2015) 2.

Second, following the 2017 revision of the Stewardship Code—which mandated the detailed disclosure of voting outcomes—domestic institutional investors began to exercise their voting rights more mechanically, in accordance with their publicly disclosed proxy voting guidelines. In particular, when they had capital ties or well-known close business relationships with investee companies, they increasingly sought to demonstrate to the public that they were not taking an excessively conciliatory stance toward management.

Even the most conservative domestic institutional investor—Nippon Life, the largest life insurer in Japan—began disclosing its proxy voting results, albeit not immediately after the 2017 revision, but in 2019.

From a stewardship responsibility perspective, domestic institutional investors are no longer dismissing activist claims outright simply because they oppose management. Activist arguments are expected to receive more support than in the past from conservative institutional investors who still maintain a close relationship with established listed companies.

#### IV. THE THIRD WAVE AND BEYOND

##### 1. *Evaluating Current Activism*

As mentioned in the introduction to this paper, Japan is currently considered the second-largest market for shareholder activism. The present vigorous expansion of activism represents a continuation of the second wave, yet it should more appropriately be characterized as a third wave. This classification is warranted by a major new surge in activity triggered by the Tokyo Stock Exchange’s (TSE) March 2023 request that companies listed on the Prime and Standard Markets take measures aimed at “achieving management that is conscious of cost of capital and stock price.”<sup>22</sup>

This request reflected the TSE’s concern that many listed companies had stock prices falling below their “liquidation value,” resulting in a price-to-book ratio (PBR) below 1.0. Notably, encouraging companies with low PBRs to make more effective use of their assets to boost stock prices has long been a central strategy of activist investors. In this respect, the perspectives of activists and the TSE were aligned. Indeed, the prominent activist firm Dalton Investments noted in its newsletter: “We recognize and applaud the TSE as Japan’s most powerful activist, serving as the primary catalyst for reform.”<sup>23</sup>

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22 TSE, Action to Implement the Management that is Conscious of the Cost of Capital and Stock Price (2024).

23 S. HAYASHI and M. NISHIDA, Tokyo Stock Exchange (TSE) Reform Continues, posted on Dalton Insights, <https://www.daltoninvestments.com/tokyo-stock-exchange-tse-reforms-continue/> (2024).

An empirical study focusing on the second wave of activism, which occurred between 2014 and 2019, found that the stock prices of targeted firms responded positively to activist interventions.<sup>24</sup> The study also revealed that, unlike in the first wave, activist funds in this period did not necessarily concentrate on low-margin or undervalued companies.

It appears that activist funds have broadened their range of targets. Activists are now engaging not only with small- and mid-cap companies with underperforming stock prices but also with a wide array of large-cap listed firms. In terms of strategy, activist investors are evolving. They likely recognize that merely adopting a confrontational stance toward management or exploiting legal loopholes will not garner widespread support. Instead, they appear to be shifting toward approaches that seek to apply pressure through engagement with institutional investors and the broader public. Accordingly, some funds are moving beyond simplistic demands for balance sheet restructuring and are instead offering highly tailored proposals grounded in detailed financial, operational, and environmental analysis.

From another perspective, activist shareholders may be seen as offering the services of unpaid management consultants or talent scouts for listed firms. Rather than reflexively rejecting activist engagement or responding with hostility, companies would benefit from seeking common ground through constructive dialogue. In today's environment, what is required is the strategic acumen to leverage the rise of activism to enhance long-term corporate value.

That said, many corporate executives continue to associate activists with investors who aggressively push for measures such as share buybacks, large dividend increases, or the sale of real estate and securities holdings, often with a view to short-term stock price gains. Concerns also persist regarding hostile takeovers and “wolf pack” tactics, where multiple activist funds coordinate informally behind the scenes.

Such skepticism is not entirely unfounded. There are documented cases where activists quickly divest their holdings even after their proposals are adopted, exemplifying short-termist behavior. A notable example is the intervention in Didoh Limited Group by Strategic Capital (SC), an activist fund led by Tsuyoshi MARUKI, co-founder of the Murakami Fund.

SC submitted a shareholder proposal to nominate directors at Didoh's AGM in June 2024. The proposal was partially approved, and three SC-supported candidates were appointed to the board. In July 2024, Didoh announced a significant dividend increase—from 5 yen to 100 yen per share—for three consecutive years starting in 2025.

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24 H. MIYACHI/F. TAKEDA, *Hedge Fund Activism in Japan under the Stewardship and Corporate Governance Code*, *International Advances in Economic Research* 27 (2021) 119, 129.

The day after this announcement, SC sold all of its shares in Didoh. Four days later, one of the newly appointed directors backed by SC resigned, citing “personal circumstances.”

## 2. *Future Prospects of the Activism in Japan*

In 2024, amendments to the Financial Instruments and Exchange Act introduced significant changes to the regulatory framework governing takeover bids (TOBs) and large shareholding disclosures. Notably, the revised provisions expanded the mandatory TOB requirements so as to include transactions executed through exchange markets and lowered the threshold from one-third to 30%. These modifications are expected to impose greater constraints on activist investors seeking to discreetly accumulate shares of target companies within the market. However, the reforms are unlikely to deter activist funds from engaging with Japanese publicly traded companies. In addition, discussions are ongoing regarding a potential amendment to the Corporation Act aimed at enhancing transparency in the disclosure of beneficial ownership in listed companies. Nevertheless, it is similarly anticipated that this prospective legislative change will not serve as a deterrent to activist investor interventions.

On the other hand, ongoing regulatory changes in the US market might deter activist funds to some extent.

In February 2025, the US Securities and Exchange Commission (SEC) published two significant documents that may negatively impact the aggressive engagement strategies pursued by certain institutional investors, including activist funds. The Staff Guidance on Regulation 13 D-G Beneficial Ownership Reporting, released on 11 February, redefines the circumstances under which investors engaging with companies on executive compensation, corporate governance, or social and environmental policies may no longer be allowed to report beneficial ownership using the Schedule 13G “short-form” and may instead be required to report via the Schedule 13D “long-form”.<sup>25</sup>

The following day, the SEC staff issued Staff Legal Bulletin (SLB) 14M, which addresses several aspects of Rule 14a-8 and the SEC’s no-action letter process. Most notably, SLB 14M rescinds SLB 14L in its entirety, reinstates guidance that SLB 14 L had previously rescinded, and provides clarifying views on the scope and application of the “economic relevance” exclusion provided by Rule 14a-8(i)(5) as well as the “ordinary business” exclusion under Rule 14a-8(i)(7).<sup>26</sup> In sum, the new guidance broadens the

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25 “SEC Staff Adopts Significant New Guidance Affecting Shareholder Proposals and Engagement”, Cooley alert, 14 February 2025.

26 Cooley alert, *supra* note 25.

circumstances in which a company may exclude a shareholder proposal from proxy materials prepared by management.

Although both documents are highly technical in nature, they could significantly impact activist engagement strategies and increase the costs associated with activist involvement. Moreover, additional regulatory changes imposing further burdens on activists may follow.

While it is still too early to make a definitive assessment, there is a possibility that Japan could emerge as the largest market for activist activities, surpassing the US, should the SEC indeed take a more restrictive stance toward activist investors under a second-term Trump administration.

#### SUMMARY

*In recent decades, Japan has undergone a dramatic transformation in shareholder activism, evolving from a market dominated by passive cross-shareholding structures to one of the most active arenas globally. Before the 1990s, institutional investors such as banks, insurers, and pension funds prioritized stability over profit, often supporting management regardless of performance. Regulatory reforms in the late 1980s and 1990s—such as the Investment Advisors Act and the repeal of restrictive pension rules—opened the door for professional asset managers and more active investment strategies.*

*The first wave of activism emerged in the early 2000s, led by Yoshiaki Murakami's fund, which pioneered confrontational tactics. Foreign hedge funds soon followed, but regulatory pushback and the 2008 financial crisis curtailed their influence. A second wave began in the mid-2010s, fueled by corporate governance reforms under "Abenomics." The introduction of the Stewardship Code (2014) and the Corporate Governance Code (2015) encouraged institutional investors to engage more actively with companies, while proxy advisors like ISS and Glass Lewis bolstered activist campaigns. Domestic institutions, once reluctant, increasingly exercised voting rights in line with fiduciary duties.*

*Today, Japan is considered the second-largest market for activism, trailing only the U.S., and a third wave is presently underway, catalyzed by the Tokyo Stock Exchange's 2023 call for companies to improve capital efficiency and stock valuations. Activists now target both small- and large-cap firms, often presenting detailed financial and operational proposals rather than relying solely on confrontation. While skepticism persists—particularly regarding short-termist behavior—the broader trend suggests activism is reshaping corporate governance norms. With evolving regulations in Japan and potential restrictions in the U.S., Japan may soon become the world's leading market for shareholder activism.*