

**The Use of Stock Options as Defensive Measures :
The Impact of the 2001 Amendments to the Corporate Law
on Corporate Control in Japan**

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I. INTRODUCTION

As a part of the overall revision of the corporate law of Japan that has been undertaken since the beginning of this century,¹ the issuance of stock options by a stock corporation was made possible by amendments to the Commercial Code in 2001.² Though at first considered to be mere deregulation, stock options have attracted the attention of many practicing lawyers as possible defensive measures against hostile takeovers.

Inspired by these practical concerns, some Japanese commentators have started to explore the issues regarding “poison pills,” largely relying on the experience of the United States in the 1980s. However, Japanese corporate law differs from American (or Delaware) law both in the rules of the issuance of stock options and in the background regulation. This article examines how these differences affect the discussions over “poison pills” in Japan. Having briefly reviewed the background of the amendments in 2001 (II), the issues left undecided are discussed (III), followed by the implications on the arguments over corporate governance (IV).

1 In the wake of a series of amendments to the corporate law concerning structural changes (mergers (1997 amendments), share exchanges (1999), and divisions of corporations (2000)), the corporate law of Japan, Book II of the Commercial Code and some relevant statutes, has been undergoing an overall review. As a result of this, four bills passed the Diet in 2001 and 2002. For an overview of them, see H. ODA, Corporate Law Reform in Japan 2001/2002 – Deregulation of Company Law? –, in: ZJapanR 14 (2002) 5. Besides a bill to further deregulate the repurchase of standing stocks that passed the Diet in 2003 and amendments to modernize the settlement system of stocks expected to be enacted later the same year, another project of fundamentally reviewing the corporate law is being undertaken toward enactment in 2005.

2 *Shôho*, Law No. 48/1899, as amended by Law No. 44/202; hereinafter ComC.