

To Our Clients:

Progenitor's Retrospective -- The Poison Pill at Five

The soon to occur fifth birthday of the poison pill prompts these personal observations:

- It is one of the all-time most successful legal-financial innovations.
- Close to 1000 companies have adopted it.
- It has proven to work exactly as it was designed to work.
- The Chicago School economists who argued that it would stop all takeovers have been proven wrong.
- It has virtually eliminated two-tier tender offers, street sweeps and other abusive takeover tactics.
- Adoption is neutral with respect to the market price of the company's stock.
- It has levelled the playing field and restored to the board of directors the ability to seek and achieve the best deal for the shareholders.
- As was so aptly noted in the Federated Department Stores case, it is a "shield" against takeover abuses and a "gavel" that can be used to get the highest price.
- Its basic legality has been sustained in court (although the flip-in provision has run into some trouble) and several states have enacted statutes that specifically authorize it.
- The law firms that argued that it was illegal have been proven wrong and all of them now routinely advise clients that it is legal.
- Although they continue, the efforts of the Council of Institutional Investors and CREF to kill it by soliciting proxies for anti-pill resolutions have failed.
- While the Delaware Chancery Court has held that it cannot be used in a "just say no" defense, the Delaware Supreme Court has not yet addressed the issue and hope remains that it will recognize that a board of directors may properly determine that a company should remain independent.

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