July 18, 1997

Poison Pills

Much has happened this year with respect to poison pills: (1) they continue to be adopted at a rate of about two a day so that there are more than 2,500 companies that have pills; (2) they continue to be renewed by companies that adopted a pill in 1987 and now find the ten-year life about to expire; (3) they continue to be the most effective way to protect against a hostile tender offer and enable a target company's board of directors to decide to remain independent or to obtain the highest value available to shareholders; (4) they continue to be attacked (about 30 each year) with the old precatory proxy resolution seeking redemption by the board and with the new mandatory bylaw amendment designed to vitiate the pill by shareholder action independent of the board (despite the Fleming case in Oklahoma, we believe that the bylaw amendment usurps the function of the board and therefore will be held invalid); (5) they continue to be the subject of efforts to strengthen their defensive attributes by the "dead hand" route (the legality of which was recently sustained under a Georgia statue giving the board "sole discretion"); and (6) they continue to be the subject of efforts to make them more acceptable to institutional investors by providing for a short life in the absence of shareholder approval or by providing for control by a committee of independent directors as in the recent Pfizer pill.

When all is said and done, the poison pill continues to be the most effective means of levelling the takeover playing field and enabling a board of directors to obtain maximum value for shareholders either by remaining independent or by maintaining the flexibility to obtain the best price for the company.

M. Lipton