

January 28, 2002

Pills, Polls and Professors

In the almost twenty years since I introduced the Shareholder Rights Plan (“poison pill”), there has never been a time when it was not under attack. It has withstood all the attacks and has become part of the basic fabric of American corporation law. However, the anti-pill forces are still active and on February 8 and 9 many of the veterans of the Pill Wars and some of their younger colleagues will be participating in a University of Chicago School of Law symposium at which the pill and the laws governing takeovers and corporate governance will be debated.

Today there are three schools of pill traducers, each led by a prominent law school professor, and each advancing a different means and rationale for doing away with the pill. One school endorses a shareholder initiated amendment to the bylaws to require redemption of the pill and to prohibit reissuance. Another, recognizing the likelihood that the bylaw invalidating the pill will be held illegal, at least in Delaware, advances bylaw amendments that do not directly attack the pill, but have the effect of undermining a board’s ability to use it. The third would amend state corporation laws to provide that a raider could make a takeover bid and force a shareholder referendum, which if supported by a majority of the outstanding shares would override the pill and all other structural defenses to the bid.

I am participating in the Chicago debate and in that connection I prepared the attached paper in support of the pill and the ability of the board of a target to “just say no” to a hostile takeover. In a way, this paper summarizes my efforts over a twenty-year period in courts, legislatures and academic publications to counter those who would hang a permanent “For Sale” sign on all public companies. My objective has been to preserve the ability of the board of directors of a target of a hostile takeover bid to control the target’s destiny and, on a properly informed basis, to conclude that the corporation remain independent. I have never been able to understand the persistent refusal of those academics who would hang a “For Sale” sign on public corporations to recognize (i) that there are very significant costs to corporations in being managed as if they are continuously for sale, and (ii) that there is simply no evidence at all that the damage, if any, that the anti-pill academics attribute to the pill is greater than those costs.

[The attached paper](#) is still in draft form and I welcome comments.

M. Lipton

Attachment

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