

Delaware Judge: Fight On CA Poison Pill Proxy Not Ripe

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A Delaware judge Thursday refused to say whether CA Inc. (CA) can legally reject a proposed proxy item that would allow shareholders to vote on whether they want to limit "poison pill" antitakeover measures.

Vice Chancellor Stephen Lamb said the battle between CA and Harvard Law professor and shareholder rights activist Lucian Bebchuk is not ripe for decision yet.

Bebchuk wants CA to poll shareholders by way of proxy on a proposal to limit the terms of poison pills to one year.

The company refused to include Bebchuk's proposal in its proxy materials, saying it would violate Delaware corporate law.

Where the ruling leaves CA, which is planning to mail proxies July 17 in advance of a later annual meeting, is not clear.

"I'd like to know myself," Bebchuk attorney Michael Barry said.

According to the lawyer, Lamb's ruling acknowledges that there is no clear action in Delaware law yet about the question of whether shareholders can rein in the power of boards of directors to set the terms of poison pill measures, which are designed to make hostile takeovers exorbitantly expensive.

As long as there is no answer from the Delaware courts on the legality of the measure, Barry said, the Securities and Exchange Commission's Division of Corporation Finance will not be able to issue so-called "no-action" letters.

Corporations that plan to embark on actions where they risk running afoul of securities laws often ask the SEC in advance for a determination on whether what they are doing will pass muster.

CA sought a "no-action" letter from the SEC division to back its decision to keep Bebchuk's proposal off the list of measures being put before shareholders for a vote.

Barry said the SEC will not be able to issue a "no-action" letter in CA's case, due to Lamb's decision.

"Now that we have the Chancery Court in Delaware acknowledging that this is not a settled matter, companies will not be able to get the Division of Corporation Finance to issue no action letters on these proposals," Barry said.

The SEC has refused to issue a no-action letter, so far, and Lamb, the judge, suggested Bebchuk might want to take his fight to securities regulators or to federal court, if CA refuses to put the measure on the proxy.

Lamb did not shut off the possibility that Bebchuk could come back to court in Delaware, either, depending on where the dispute heads next.

But as far as Delaware is concerned, Lamb said, the courts are reluctant to walk into disputes until the facts have developed sufficiently to support a reasoned decision.

At this point, it is not inevitable that the proposed limits on poison pills would be voted in, even if it was put on the ballot, Lamb said.

If CA agrees to put Bebchuk's poison pill limit proposal to its shareholders for a vote and they vote 'no,' the battle could be over, at least as far as the software maker is concerned.

And if shareholders vote "yes" on the proposal, CA could still force a court test later of its legality, the Delaware judge noted.

Barry said that the legality of the Bebchuk proposal will be tested in court at some point and that he was "disappointed" Lamb did not feel the matter was ripe for decision.

-By Peg Brickley, Dow Jones Newswires; 302-656-8830

(Kaja Whitehouse contributed to this article.)

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