

Bebchuk's Crimson Tirade

Institutional Investor

Stephen Taub

June 15, 2006

For two decades, Harvard Law professor Lucian Bebchuk has been an outspoken voice for shareholder rights, railing in books and interviews against the excesses of entrenched corporate executives and directors. Now he's no longer just a commentator -- he's a combatant.

Over the past few months, Bebchuk, 50, has purchased small stakes in several big companies and sponsored shareholder resolutions calling for governance changes. So far three of the companies he has targeted have amended their bylaws to avoid votes on his proposals: American International Group agreed to reimburse shareholders for expenses associated with successful proxy proposals; Time Warner mandated that director candidates receiving more "withhold" than "for" votes offer to resign; and Bristol-Myers Squibb limited its use of poison-pill takeover defenses.

Bebchuk, who heads Harvard Law School's corporate governance program, also lodged resolutions calling for Chevron to reimburse successful proxy campaigners and mandating that General Dynamics not renominate directors who fail to earn a majority of votes in the preceding election. Opposed by management, these proposals each received about one third of the votes cast at the companies' annual meetings.

The professor-cum-activist's most significant battle, however, is ongoing. In March, Bebchuk filed a resolution for the 2006 proxy statement of CA, the Islandia, New York, software company formerly known as Computer Associates. The proposal would amend CA's bylaws to require that it periodically review the appropriateness of any poison-pill defense that has not been approved by shareholders, and would mandate a supermajority vote of directors to extend the life of any existing pill. CA contends that the proposal violates corporate law in Delaware, where CA and most other big U.S. companies are incorporated. Last month, Bebchuk filed a lawsuit in Delaware's Chancery Court asking it to declare his proposal legal.

Bebchuk says the case could resolve a long-running debate over the validity of proposed bylaw amendments. But the Israeli native stresses that he's not about to trade academia for activism.

"My recent stockholder proposals are an outgrowth of my academic work," he explains. "My primary focus will remain writing, research and teaching."