

Judge Won't Settle CA Poison Pill Dispute

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A Delaware judge on Thursday refused to settle a dispute between a Harvard law professor and software company CA Inc., which has refused to include a shareholder rights proposal in proxy materials for its upcoming annual meeting.

Harvard corporate governance expert Lucian Bebchuk wants to amend CA's bylaws to require a unanimous vote by the board of directors to adopt or extend a "poison pill" antitakeover plan, and to set a one-year expiration date for any such plan. Any attempt to repeal or amend the bylaw also would require a unanimous board vote.

Under a typical poison pill plan, if an investor acquires a certain percentage of a company's stock, other shareholders have the right to buy additional shares at reduced prices, making it more difficult for the large investor to gain a controlling interest. Bebchuk, who owns 140 shares of CA, believes that allowing boards to adopt poison pills without shareholder ratification can deny shareholders the opportunity to decide whether to accept a premium acquisition offer for their stock.

CA contends that Bebchuk's proposal violates Delaware law by improperly attempting to restrict the authority of the board of directors through amending the bylaws rather than the certificate of incorporation. The proposal thus can be excluded from proxy materials under Securities and Exchange Commission rules, the company believes.

In a 16-page ruling, vice chancellor Stephen Lamb said that while the legal issue of a stockholder bylaw that limits the power of a corporate board is "fraught with tension," it would be premature for him to rule because the proposed bylaw has not been voted on.

"The key event necessary to vest jurisdiction in this court is the adoption of the proposed bylaw," Lamb wrote, noting that such an event may never occur.

While appearing to reject CA's argument that the proposed bylaw is facially illegal, Lamb noted that Bebchuk can seek an administrative remedy from the SEC and has recourse to the federal courts as well.

Michael Barry, an attorney representing Bebchuk, disagreed that the case is not ripe for resolution, but said Lamb's ruling will make it more difficult for a company to claim an SEC proxy exclusion based on its interpretation of unsettled state law.

Telephone messages left for CA officials were not immediately returned Thursday.

Shares of the company fell 2 cents to \$21.05 in afternoon trading Friday on the New York Stock Exchange.

