

Court to say whether CA holders vote on 'poison pill'

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- A Delaware judge is expected to decide in the next month whether shareholders can vote to limit the corporate antitakeover defenses known as "poison pills."

The ruling will come in a case involving CA Inc. (CA), which on July 14 is scheduled to mail the proxies listing matters up for shareholder vote at its 2006 annual meeting.

Vice Chancellor Stephen Lamb said Friday he would rule before then on whether CA must include a proposal from Harvard Law School Professor Lucian Bebchuk that involves poison pills, a hot-button issue for corporate-governance experts.

Poison pills are measures designed to make hostile corporate takeovers prohibitively expensive. They force would-be acquirers to negotiate with the target company's board, instead of wooing shareholders.

As such, poison pills are frequent targets of attack by shareholders, who say they protect bad corporate managers and scare off good potential acquirers.

CA's case is before Delaware's Court of Chancery, which has ruled many times on poison-pill questions in the context of heated takeover battles.

The question of whether shareholders can enact a by-law that says how long a poison pill should last, however, is a new one for the court, which sets legal standards for thousands of corporations.

The lawsuit is a test case for corporate governance activist Bebchuk, who wants CA to consult its shareholders on whether to limit poison pills to one-year terms.

At arguments Friday, Lamb questioned a lawyer for the company on why it is legal for a corporate board to set a one-year term on a poison pill, but illegal for shareholders to do the same thing.

CA lawyer Robert J. Guiffra Jr. said the decisions on poison pills belong to the board of directors, not to shareholders.

Bebchuk's lawyer, however, said shareholders have the right to be heard when corporations are deciding how high to build the barricades against an actual or threatened hostile takeover.

"The underlying issue is whether shareholders must maintain a hands-off approach to all things management-related," Bebchuk attorney Michael J. Barry said.

CA lawyer Giuffra said Bebchuk is trying to "hamstring the board" in violation of Delaware law. Under guise of shareholder rights, Giuffra said, the corporate activist is trying to wipe out poison-pill provisions.

Bebchuk has persuaded companies including Bristol-Myers Squibb Co. (BMY) to poll shareholders on various proposals he said will improve corporate governance.

The poison-pill question is one that failed to win an approving vote when put to shareholders of Halliburton Co. (HAL), but the law professor says CA's shareholders must at least get the right to vote on his proposal.

The case grew out of CA's April refusal to add Bebchuk's proposal to its proxy package.

The company asked the Securities and Exchange Commission for a ruling on whether its move passed muster under federal securities laws.

The SEC deferred to the Delaware court, and it is now up to Lamb to decide whether Bebchuk's proposal to rein in CA's board authority over poison pills is legal or not.

By limiting the duration of poison pills, Bebchuk hopes to eliminate poison pills altogether, Giuffra said.

Barry said that Bebchuk's proposal for CA means only that the Islandia, N.Y., company's board will have to act annually to keep a poison pill in place.

It would not prevent CA from keeping its corporate defenses in place permanently, as long as the board votes on the question each year, Bebchuk's lawyer said.

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