Date:
2008-06-24

Summary:

First reported in TheDeal.com, this article caught NIRI's eyes. While the trend (ex Japan) has been toward eliminating poison pills, Micrel Corp. and Louisiana-Pacific Corp. amended theirs for better protection against investors, such as hedge funds, who may try to launch a sneak attack.

The Children's Investment Fund, or TCI, did just that in connection with CSX Corp. SEC rules require shareholders disclose voting stakes of 5% or more. TCI avoided this by accumulating total return swaps and shifting the votes in the shares to the TRS counterparties.

The key issue is the precise nature of the stake held. Most pills define ownership in a manner that resembles SEC Rule 13d. By broadening the "beneficial ownership" definition to include "cash-settled equity derivatives," firms are able to eliminate this loophole.

The article points to considerable backlash against poison pills, especially rights plans, which are not popular with institutional investors. Yet, George Bason, head of M&A at Davis Polk & Wardwell LLP in New York, asserts that "If you do have a pill in place, then there's no reason why you wouldn't consider including this type of provision."

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Original Title:
For Derivatives, Take a Pill