

After Binding Pill Proposal Receives Strong Support, Disney Adopts Bylaw Changes

Last month, **Walt Disney** adopted a bylaw amendment placing restrictions on the renewal of the company's poison pill. At Disney's March 8 annual meeting a proposal submitted by Lucian Bebchuk asking the company to amend its bylaws to place similar restrictions on its pill received support from 58.3 percent of the votes cast.

Under the new bylaw amendment, all poison pills adopted after the amendment was added to the bylaws will expire in one year unless a majority of the board, including a majority of the independent members, extend the pill until the next annual meeting or unless its extension is approved by shareowners.

Bebchuk's proposal placed the following restrictions on any poison pills:

- The adoption or extension of a pill must be approved by at least 75 percent of directors if shareholders do not ratify the pill;
- Any pill adopted or extended by the board will expire if shareholders do not ratify such action within one year; and
- This bylaw amendment may be repealed or amended only by unanimous board support.

Bebchuk says Disney's adoption of such an amendment is

significant because corporate attorneys have consistently insisted that binding poison pill shareowner proposals are not valid under Delaware law.

In 2006, **CA** (formerly Computer Associates) tried to exclude from its proxy statement a similar binding poison pill proposal submitted by Bebchuk. If passed, the proposal would have amended CA's bylaws to require that approval of or extension of a poison pill was contingent upon an affirmative vote of two-thirds of the board. The bylaw change also would have specified that any pill adopted or amended by the board would expire after three years. (See 2006 Alerts #19 and #21.)

Bebchuk filed suit in Delaware Chancery Court on May 11, 2006, challenging CA's assertion in its no-action request to the SEC that Bebchuk's binding poison pill proposal is illegal under Delaware law. He sought a declaratory judgment affirming that his proposal was valid under Delaware law and an order compelling CA to withdraw its no-action request. The court issued a decision that forced the company to put the proposal on the ballot, but did not include a final determination as to whether such binding proposals are valid under Delaware law. The proposals received the support of 48.5 percent of the votes cast at the company's Sept. 16, 2006, annual meeting, reports Institutional Shareholder Services' Governance Research Service.

Community Health Services, Laborers' Funds Spar Over Pending Merger with Triad Hospitals

The Laborer's International Union of North America (LIUNA) and the Indiana State District Council of Laborers and Hod Carriers Pension Fund appear to have reached an impasse with **Community Health Services** (CHS).

Upon hearing about a proposed acquisition by CHS of **Triad Hospitals**, the Indiana fund sent a letter April 18 to CHS President and Chair Wayne T. Smith. The letter expressed concern that the company was paying too much for Triad, that the merger created a capital structure for CHS that was so leveraged that it could limit future investments and that the transaction reversed CHS's successful strategic orientation toward rural hospital markets. These concerns were especially troubling given the fact that the company did not provide shareowners with an opportunity to vote on the merger, said the correspondence. The Indiana fund also asked for documents that would shed more light on the terms of the merger and the approval process. The letter informed Smith that labor representatives would attend the company's May 22 annual meeting to voice their concerns

and pose questions to the board about the merger.

Rachel Seifert, senior vice president, secretary and general counsel of CHS responded to the letter by explaining that it was "inappropriate" to submit the merger to a shareowner vote. "The matter was duly approved after deliberation by our board of directors and a binding contract has been entered into," she explained. "Interjecting an additional condition to the consummation of the transaction would result in a breach of the merger agreement and expose Community Health Systems to substantial damages. I further note that stockholder approval for this transaction is not required by applicable state and federal statute or the rules of the New York Stock Exchange." She also said that documents requested by the fund were not yet publicly available to all CHS shareowners, so she could not provide them to the fund until they were made publicly available.

The company's annual meeting was conducted by Smith

