



CII Research and Education Fund[®]
An Affiliate of the Council of Institutional Investors

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RETURN OF THE POISON PILL (2021)

By Lucy Nussbaum

This edition of “The Return of the Poison Pill” updates a report by Ken Bertsch and Lucy Nussbaum that was published in May 2020. Ken Bertsch was then the executive director and Lucy Nussbaum is senior research analyst at the Council of Institutional Investors.

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Background on Poison Pills

Shareholder rights plans (also known as poison pills) saw a resurgence in early 2020 as public company boards began to worry about vulnerability to activist funds and potential opportunistic acquirers due to depressed share values. The sharp pandemic-caused drop in market prices in February and March of 2020 led to this sense of vulnerability (aggravated in key sectors by other factors, notably the collapse of oil prices amidst a price-war involving Russia and Saudi Arabia).

Shareholder rights plans are potent takeover defenses, and many shareholders object to them as disempowering shareholders and with the potential to entrench poor management. Few companies have had active rights plans in recent years because of shareholder hostility to them. However, this absence means less than it appears, because rights plans can be on the shelf and adopted quickly if a threat arises (although with the potential of greater judicial scrutiny, based on facts and circumstances, than with a standing rights plan).¹

The term “poison pill” can be used generically to refer to a number of methods to deter a bidder from seeking control of a company. The term may be one of the better metaphors in the metaphor-rich world of M&A and proxy fights; a poison pill deters an aggressor by threatening mortal damage from the attempt to ingest the target.

Most often in North America, “poison pill” also refers specifically to a shareholder rights plan of the type pioneered in 1982 by Martin Lipton and his law firm, Wachtell, Lipton, Rosen & Katz. **These poison pills would dilute the acquisitive shareholders if they are triggered, unless they are redeemed or revoked by the company’s board of directors.** Commonly, a pill is triggered by acquisition of a certain percentage of shares of the company – typically 15% or 20% in the early days of poison pills, sometimes 10% or even 5% in more recent years. The rights plan gives other shareholders the right to buy shares at a discount once an acquirer triggers the pill.

Typically **in the past, U.S. poison pills were adopted for 10-year terms.** In recent years, however, it has been more common to see pills adopted for a year or even

¹ For a law firm memo recommending pills be “on the shelf and ready to go,” see David A. Katz and Sabastian V. Niles, “Rights Plans (‘Poison Pills’) in the Covid-19 Environment – ‘On the Shelf and Ready to Go,’” Wachtell, Lipton, Rosen & Katz, April 1, 2020, at <https://www.wlrk.com/webdocs/wlrknew/WLRKMemos/WLRK/WLRK.26887.20.pdf>

less. **The shorter terms in most recent poison pills have made pills more palatable to some shareholders, as have certain other provisions found in some pills.** The most important of these are **shareholder approval requirements** (although these provide for approval after a period of pill effectiveness, generally at the next annual meeting), and **“qualifying offer” provisions** that permit takeover bids that meet certain requirements to bypass the rights plan.

The Council of Institutional Investors (CII) was formed in 1985 in part because several large public pension funds were concerned that long-term investors were being disadvantaged in fighting between opportunistic short-term investors—including so-called “greenmailers” that would threaten hostile fights in order to be paid off to go away—and boards and management that entrenched themselves through poison pills, newly staggered board elections and super-voting rights that stock exchanges had begun to permit. Despite hostility to poison pills, **the sole element of the CII Corporate Governance Policies commenting on poison pills simply asks that a pill require approval from “a majority vote of outstanding shares.”** While it clearly would be preferable from a shareholder rights standpoint for approval to be required before a poison pill takes effect, the practice is for the board to implement a pill, with early revocation if shareholders do not approve it at the next shareholder meeting.

Poison pills found generally favorable legal reception in the United States, including in Delaware.² **In Canada, where the legal environment was less receptive, poison pills can be found but they almost always have provisions that mitigate shareholder concern.**³ Almost all Canadian pills included reasonable “permitted bid” provisions even before this essentially was required by securities regulators. Like the U.S. “qualifying offer” language, such a provision allows a bid conforming to certain requirements to proceed without triggering the pill. To some extent, permitted bid provisions were codified in takeover bid rules that took effect in 2016. Canadian law (and similar rules in the U.K. and some other markets) seek a balance between bidders and targets, protecting investor choice but seeking to provide a target “time to find an alternative to the hostile bid facilitating an opportunity for investors to choose between alternatives.”⁴

² The key Delaware case is *Moran v. Household Int’l.*, 500 A.2d 1346 – Del. Supreme Court (1985).

³ In what is perhaps a less-than-apt metaphor, Canadian-style pills with permitted bid or qualifying offer provisions sometimes are called “chewable” poison pills.

⁴ John Emanolidis, Andrew Gray and Sophia Tolias, *Hostile Bids in Canada: State-of-Play of Deal Tactics* (Tory’s LLP, April 19, 2018), at <https://www.torys.com/insights/publications/2018/04/hostile-bids-in-canada-state-of-play-of-deal-tactics>.

The evolution of poison pills in the United States can be seen as a degree of convergence with the historically more shareholder-oriented Canadian practices.

Aside from general concern about potential for poison pills to disempower shareholders and entrench management, very large asset managers can find themselves with the potential to unintentionally trigger a poison pill, particularly with the evolution toward lower percentage ownership triggers. In these situations, very large investors – even those driven by indexing and other quantitative strategies with no intention to challenge incumbent management – needs to undertake compliance measures to flag where their beneficial ownership may exceed triggers (particularly a concern at a 5% or 10% trigger). To mitigate this issue, some companies adopt a **“passive investor” exception**, with higher thresholds or a complete exemption for passive investors, sometimes defined as those who are 13G filers.⁵

While some provisions – including qualifying offer, shareholder approval and passive investor exception provisions – have reduced common shareholder concerns, other innovations over the years have made certain pills even more objectionable from a shareholder rights standpoint. Perhaps most notably, in the 1990s, a significant number of companies adopted shareholder rights plans that could not be redeemed during their term except by a majority of “continuing directors,” generally defined as individuals serving on a board at the time the pill was adopted and their designated successors. This was dubbed the **“dead-hand” poison pill**, as it would persist for up to 10 years without recourse should shareholders replace the board. This was a show-stopper for proxy fights since it would paralyze a new board. The dead-hand pill receded, however, after Delaware courts ruled they are coercive and therefore invalid.⁶ Still, dead-hand pills are permitted in some other states, and some diluted forms of dead-hand provisions persist, notably at some Maryland-incorporated entities, mainly REITS.

⁵ Holders of 5% or more of a listed company’s stock generally are required by the SEC to file Schedule 13D reports. However, the shorter Schedule 13G can be filed if the filer meets certain requirements, including that the stock was acquired without intent of influencing control over the issuer.

⁶ In July 1998, the Delaware Chancery Court ruled that the dead-hand provision with unlimited duration at Toll Brothers was invalid. See *Carmody v. Toll Brothers, Inc.*, 723 A. 2d 1180 – Del. Court of Chancery (1998). In December 1998, the Delaware Supreme Court upheld that view and extended it, ruling that a limited-duration (180 day) dead-hand provision at Quickturn Design Systems was invalid. See *Quickturn Design Systems, Inc., v. Shapiro*, 721 A. 2d 1281 – Del. Supreme Court (1998).

Additionally, some poison pills have “acting in concert” or wolfpack provisions that aim to prevent shareholders from cooperating by counting the combined holdings of any shareholders who are deemed to be “acting in concert” toward the specified threshold, even if they do not have an explicit agreement.⁷ This type of provision has been challenged in court in shareholder lawsuits against multiple companies that adopted poison pills in 2020.

Most notably, in February 2021, a Delaware judge struck down a poison pill adopted at Williams Co. in March 2020 saying that the pill, which had a 5% trigger threshold and an acting in concert provision, was a disproportionate response to the threat of a takeover.⁸ Two other lawsuits were filed at Tribune Publishing Company and AAR Corp regarding their newly adopted poison pills, which both had triggers at 10% ownership thresholds and had acting in concert clauses.⁹ On October 5, AAR amended the poison pill to accelerate the expiration date to immediately terminate the pill. In February, Tribune settled with its shareholders, agreeing to raise the threshold to 15% and loosen the acting in concert provision.

While many investors dislike poison pills generally, **limited duration pills can win more support or at least tolerance**. Also, shareholder rights plans can win support in particular from some value investors whose analysis leads them to value company shares significantly in excess of current market values. Such investors may worry that an opportunistic bid may be supported by other investors with less faith in a company and its current management and strategy.

Some investors generally hostile to poison pills accept them when they are **designed to protect net operating loss (NOL) carryforwards**, which can be

⁷ Charlotte Newell, Beth Berg, Kai Liekefett and Derek Zaba, Back to the Future: New Lines Drawn for Poison Pills, (Sidley Austin, March 25, 2021), <https://ma-litigation.sidley.com/2021/03/back-to-the-future-new-lines-drawn-for-poison-pills/>.

⁸ See Memorandum Opinion, Vice Chancellor Kathaleen McCormick, The Williams Companies Stockholder Litigation, Del. Court of Chancery (2021) available at <https://courts.delaware.gov/Opinions/Download.aspx?id=317240> i.e. (“the Plan increases the range of Williams’ nuclear missile range by a considerable distance beyond the ordinary poison pill” at 78 and concluded that the company “failed to show that this extreme, unprecedented collection of features bears a reasonable relationship to their stated corporate objective” and “they have failed to show that this extreme, unprecedented collection of features bears a reasonable relationship to their stated corporate objective.” at 89).

⁹ Mike Leonard, Tribune Co., AAR Sued Over Poison Pill ‘Wolfpack’ Provisions (Bloomberg Law, August 31, 2020), <https://news.bloomberglaw.com/esg/tribune-co-aar-sued-over-poison-pills-wolfpack-provisions?context=article-related>.

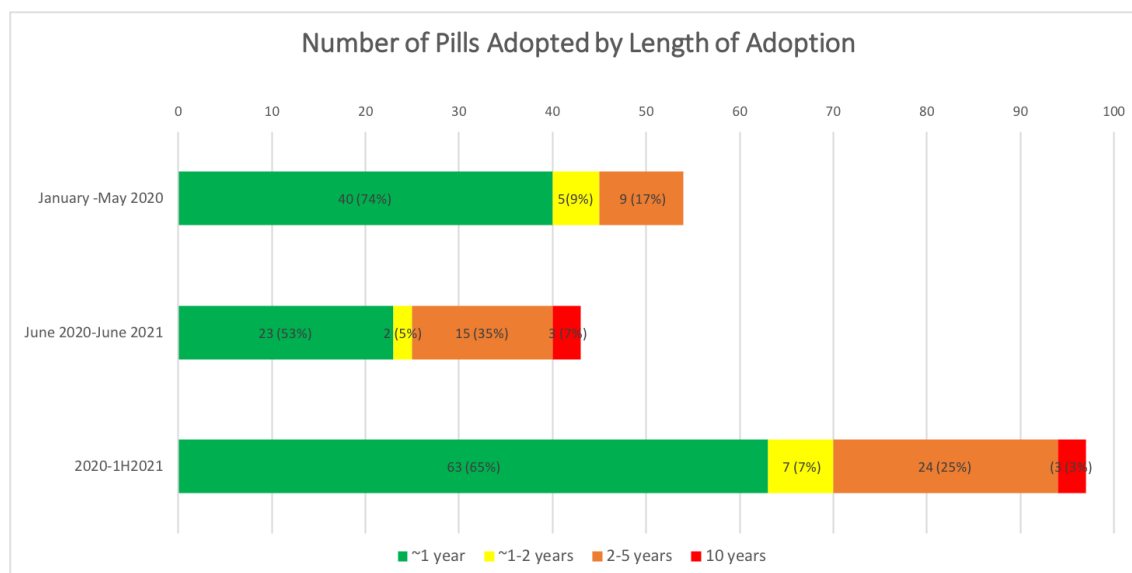
threatened by relatively small shifts in control under U.S. tax law.¹⁰ Most (but not all) shareholder rights plans with thresholds just under 5% are intended to protect NOL assets.

Shareholder rights plans are complicated, lengthy legal documents, and other details can be highly important, but those discussed above appear to be the most salient.

2020-1H 2021 Pill Adoptions

Through monitoring SEC filings, the **CII Research and Education Fund (CII-REF)** tracked adoptions of shareholder rights plans from January 2020 through the first half of 2021 at U.S. companies. The updated list of pills adopted is available [here](#).

From Jan. 1, 2020 through June 30, 2021, **CII-REF tracked 97 pill adoptions**, listed in the Appendix. All but four were adopted after March 10, 2021 amidst the U.S. Covid-19 crisis. In the original publication, CII-REF tracked 46 pills from Jan. 1, 2020 through May 6, 2020. Originally, only two of the companies extended existing poison pills, but later in the pandemic many of the pills adopted were extensions, totaling 14 out of the 97 pills.

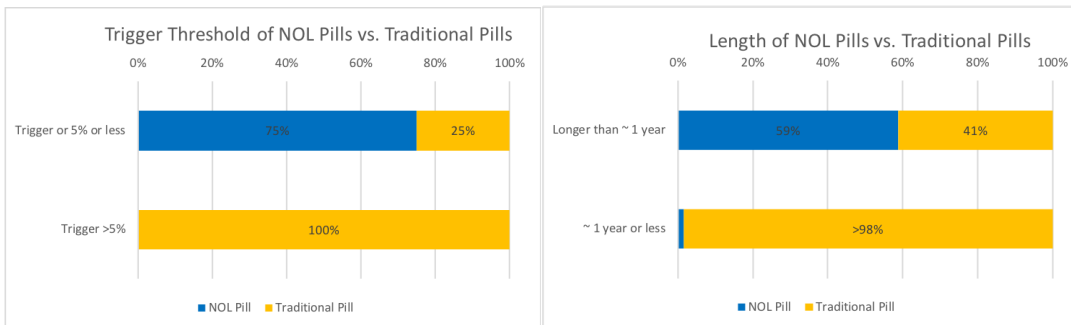


¹⁰ William L. McRae, Jason R. Factor, James E. Langston & Corey M. Goodman “Is Now A Good Time to Adopt an NOL Rights Plan?” (Cleary Gottlieb M&A and Corporate Governance Watch, April 17, 2020) <https://www.clearymawatch.com/2020/04/is-now-a-good-time-to-adopt-an-nol-rights-plan/>.

While the pace of pill adoptions slowed after April 2020, the significant number of additional adoptions may seem surprising, given that the overall market fall reversed rather rapidly. However, while some companies have prospered since Covid arrived, and others quickly recovered, some companies have continued to be under stress.

Of pills adopted in January to May 2020, **37 of 46 (80%) expired in one year or less**. Of all pills adopted between January 2020 and June 2021, **63 of the 97 (65%) set expiration dates of about one year or less**. This dip may reflect the fact that a number of companies later extended pills that were originally adopted during the pandemic, as well as the fact that later in the pandemic companies extended existing pills that were adopted for reasons unrelated to pandemic issues. Because the companies likely had different motivations for adopting the pills, their pills may have different attributes. **Nevertheless, the shorter duration of these pills relative to old-style pills that typically expired after 10 years may significantly reduce investor concern.**

Considering the entire 18-month period ending June 30, 2021, seven pills were set to expire after more than one but less than two years. In total, about 40 percent of the pills that last more than one year (14 of the 34) will be or have been put up for a shareholder vote. There are, however, three pills that were adopted in late 2020 – at Safe Bulkers, L.S. Starrett Company and Hollysys Automation Technologies – that will not expire for 10 years and will not be put up for a shareholder vote. Motivation for the adoption of these 10-year pills may have little or nothing to do with Covid concerns.

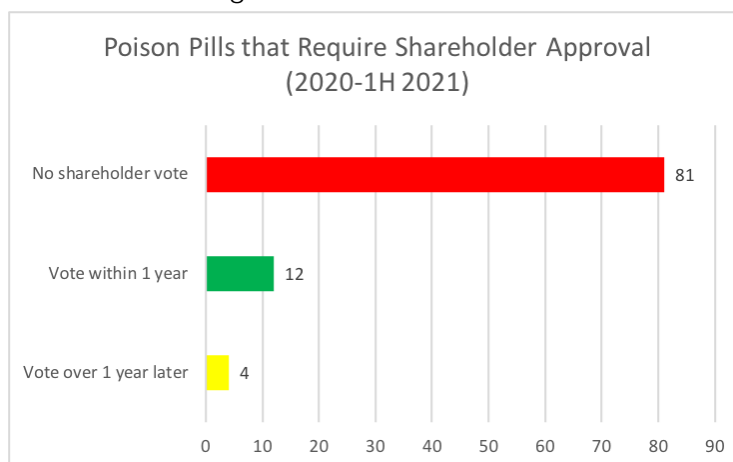


More concerning from a shareholder rights perspective may be that trigger thresholds in a significant number of 2020 and 1H 2021 poison pills have been set at low levels. Twenty-eight pills would be triggered at ownership of 5% of shares or slightly less. Twenty-one of these are designed to protect net operating losses (NOL pills), of which investors seem to tolerate as valuable in protecting tax

losses. These NOL pills also tend to last longer than one year. However, seven company boards adopted thresholds of 5% or less without it being clear to us that they are designed for NOL protection. Moreover, **four of those pills – at Global Net Lease, American Finance Trust, New York City REIT and Whitestone REIT – include dead-hand provisions** (albeit of limited duration, each for 180 days).

Thirty-nine companies have adopted pills with 10% thresholds, which, while not so extreme as 5%, at one time was unusual. One pill has a 12% threshold, another 18 pills have 15% thresholds, nine have 20% thresholds and two have higher thresholds.

Seventeen pills adopted in 2020-1H 2021 have acting in concert provisions, although there were more pills that were amended to eliminate these provisions after the provision was challenged in court.



Another concern from a shareholder rights perspective is that **just twelve of the newly adopted pills have provisions that put them to shareholder votes within one year**. Four others set the vote for the 2021 annual meeting or the 2022 annual meeting despite it being over one year away. That arguably is not significantly different than the bulk of the new pills that simply expire within one year.

Twelve pills adopted in 2020-2021 have qualifying offer provisions. How meaningful those provisions are depends on details, and CII-REF has not reviewed them in detail.

Conclusion

While the adoption of poison pills in response to Covid-19 slowed after the initial period of market panic, the sudden return of the takeover defense provided a roadmap for future periods of uncertainty or instability where companies may choose to adopt poison pills to try to protect themselves from periods of systemic short-term stress. In these scenarios, companies may want to consider adopting pills that have provisions that are considered generally more shareholder-friendly and avoid pills that may meet challenges from shareholders or in the courts. Additionally, shareholders voting on these pills and developing proxy voting policies related to poison pills may want to consider the effect of particular provisions that may mitigate or elevate concerns.

Appendix

Poison Pills Adopted January 1, 2020- June 30, 2021

Company	Adopted	State of Inc.	Trigger	Passive Investor Exception?	Expiration	SH Vote?	Qualifying Offer?	Dead Hand?	Acting in Concert?
AAR	3/27/2020	DE	10%	Yes - up to 20%	2/28/21	No	No	No	Yes
Adma Biologics	12/16/20	DE	10%	No	12/15/21	No	No	No	No
Advaxis Inc.	9/29/20	DE	10%	No	9/28/21	No	No	No	No
AirNet Technology Inc.	8/13/20	Cayman Islands	15%	No	8/13/21	No	No	No	No
Akers Biosciences	9/9/20	NJ	10%	No	9/8/21	No	No	No	No
American Finance Trust	4/13/2020	MD	4.9%	Yes - passive investor exempt	4/12/24	No	No	Yes	Yes
Aptevo Therapeutics	11/9/20	DE	10%	No	11/8/21	No	No	No	No
Ashford, Inc.	3/13/2020	TX	10%	No	2/13/21	No	No	No	Yes
Avis Budget Group	1/27/20	DE	20%	No	1/26/21	No	Yes	No	No
Barnes & Noble Education	3/25/20	DE	10%	No	12/31/20	No	No	No	No
BBX Capital Corporation	6/17/20	FL	5%	No	6/17/22	No	No	No	Yes
Biosig Technologies, Inc.	7/14/20	DE	12%	No	7/13/21	No	No	No	No
Biospecifics Technologies Corp.*	4/10/20	DE	20%	No	4/9/23	No	Yes	No	No
Bonanza Creek Energy Inc.	11/9/20	DE	4.95% (NOL)	No	11/9/23	No	No	No	No
Centrus Energy Corp.*	6/16/21	DE	4.99% (NOL)	No	6/30/23	No	No	No	No
CenturyLink, Inc.*	11/20/20	LA	4.9% (NOL)	No	12/1/23	Yes, at 2021 AGM	No	No	No
Chesapeake Energy Corp	4/23/20	OK	4.9% (NOL)	No	4/22/23	Yes, at 2021 AGM	No	No	No
Chico's FAS	4/2/20	FL	10%	Yes - up to 20%	4/1/21	No	No	No	No
Clear Channel Outdoor Holdings, Inc.	5/19/20	DE	10%	Yes- up to 20%	4/15/22	No	No	No	No
CNO Financial Group, Inc.*	11/12/20	DE	4.99% (NOL)	No	11/13/23	Yes, at 2021 AGM	No	No	No
Cohen & Co., Inc.	3/10/20	MD	4.95% (NOL)	No	12/31/23	No	No	No	No
Commercial Vehicle Group, Inc.	6/25/20	DE	10%	Yes- up to 15%	4/15/21	No	No	No	No
CommVault	4/3/20	DE	10%	Yes - up to 20%	4/1/21	No	No	No	No

Company	Adopted	State of Inc.	Trigger	Passive Investor Exception?	Expiration	SH Vote?	Qualifying Offer?	Dead Hand?	Acting in Concert?
Core Molding Technologies, Inc.	4/21/20	DE	15%	No	3/30/21	No	No	No	Yes
CoreLogic, Inc.	7/6/20	DE	10%	Yes- up to 20%	7/6/21	No	No	No	No
Cracker Barrel Old Country Store	4/9/21	TN	20%	No	4/9/24	No	Yes	No	No
Cubic Corporation	9/20/20	DE	15%	Yes- up to 20%	9/19/21	No	Yes	No	No
Cumulus Media Inc.	5/21/20	DE	10%	Yes- up to 20%	4/30/21	No	No	No	No
Dave & Buster's Entertainment	3/18/20	DE	15%	Yes - up to 20%	3/17/21	No	No	No	No
Dawson Geophysical Company	4/8/21	TX	10%	Yes- up to 20%	4/7/22	No	No	No	No
Delek U.S. Holdings	3/20/20	DE	15%	No	3/19/21	No	Yes	No	No
Evoform Biosciences	3/24/20	DE	32%	No	3/24/21	No	No	No	No
Express Inc.	4/20/20	DE	10%	Yes- up to 20%	4/19/21	No	No	No	No
Extreme Networks, Inc.*	5/17/21	DE	4.95% (NOL)	No	5/17/24	Yes, at 2022 AGM	No	No	No
Fluor	3/24/20	DE	10%	No	3/24/21	No	No	No	No
Foot Locker	12/7/20	NY	20%	No	12/7/21	No	No	No	No
Forum Energy Technologies	4/29/20	DE	10%	Yes- up to 20%	4/28/21	No	No	No	No
FTS International, Inc.	11/19/20	DE	20%	No	11/18/21	No	Yes	No	No
Gannett	4/6/20	DE	4.99% (NOL)	No	4/5/23	No	No	No	No
Global Eagle Entertainment	3/19/20	DE	20%	No	12/31/20	No	No	No	No
Global Net Lease Inc.	4/9/20	MD	4.9%	No	4/8/24	No	No	Yes	Yes
Gogo Inc.	9/23/20	DE	4.9% (NOL)	No	9/23/23	Yes, at 2021 AGM	No	No	No
Groupon	4/10/20	DE	10%	Yes- up to 20%	3/10/21	No	No	No	No
Heat Biologics Inc.*	3/8/21	DE	20%	No	3/11/22	No	No	No	Yes
Hexcel	4/6/20	DE	15%	No	4/6/21	No	No	No	No
Hilton Grand Vacations, Inc.	4/16/20	DE	10%	Yes- up to 20%	4/15/21	Yes	Yes	No	No
Hollysys Automation Technologies Ltd.*	9/24/20	British Virgin Islands	15%	No	9/27/30	No	No	No	No
Hovnanian Enterprises, Inc.*	1/18/21	DE	4.9% (NOL)	No	8/14/24	No	No	No	No
HP Inc.	2/20/20	DE	20%	No	2/20/21	No	No	No	No
iHeartMedia Inc.	5/6/20	DE	10%	Yes- up to 20%	5/5/21	No	No	No	No

Company	Adopted	State of Inc.	Trigger	Passive Investor Exception?	Expiration	SH Vote?	Qualifying Offer?	Dead Hand?	Acting in Concert?
INmune Bio, Inc.	12/30/20	NV	20%	No	12/30/21	No	No	No	No
Insperty Inc.	5/21/20	DE	10%	Yes- up to 20%	5/20/21	No	No	No	No
KB Home*	4/8/21	DE	4.9% (NOL)	No	4/30/24	Yes	No	No	No
L.S. Starrett Company*	10/30/20	MA	15%	No	10/30/30	No	No	No	Yes
Loral Space & Communications	11/23/20	DE	15%	No	11/22/21	No	No	No	No
LSB Industries Inc.	7/6/20	DE	4.9% (NOL)	No	7/6/23	Yes, at 2021 AGM	No	No	No
Manning & Napier Inc.	4/14/20	DE	15%	No	4/14/23	Yes	No	No	Yes
Moneygram International Inc.	7/28/20	DE	4.95% (NOL)	No	6/3/21	No	No	No	No
Nabors Industries Ltd.	5/5/20	Bermuda	4.9%	No	4/30/21	No	No	No	No
Neuronetics, Inc.	4/8/20	DE	10%	Yes- up to 15%	4/8/21	No	No	No	No
New York City Reit, Inc.	5/18/20	MD	4.9%	Yes- passive investor exempt	8/16/21	No	No	Yes	Yes
Newpark Resources Inc.	5/27/20	DE	10%	Yes- up to 20%	5/1/21	No	No	No	No
News Corporation*	6/18/21	DE	15%	No	6/18/22	No	No	No	No
NN Inc.	4/15/20	DE	15%	No	3/31/21	No	No	No	No
Nuverra Environmental Solutions Inc.	12/21/20	DE	45%	No	12/21/21	No	Yes	No	No
Occidental Petroleum	3/12/20	DE	15%	Yes - up to 20%	3/11/21	Yes	No	No	No
Office Depot Inc.	5/5/20	DE	10%	Yes- up to 20%	5/4/21	No	No	No	No
On Semiconductor Corporation	6/8/20	DE	15%	No	6/7/21	No	Yes	No	No
Patterson-UTI Energy, Inc.	4/22/20	DE	10%	Yes- up to 12%	4/21/21	No	No	No	Yes
Perma-Fix Environmental Services*	3/20/20	DE	15%	No	5/2/21	No	Yes	No	Yes
ProPetro Holding Corp.	4/14/20	DE	10%	No	3/31/21	No	Yes	No	Yes
RCM Technologies Inc.	5/22/20	NV	10%	No	5/22/21	No	No	No	No
Rubicon Technology Inc.*	12/18/20	DE	4.9% (NOL)	No	12/18/23	No	No	No	No
Safe Bulkers Inc.	8/5/20	Marshall Islands	10%	No	8/5/30	No	No	No	No

Company	Adopted	State of Inc.	Trigger	Passive Investor Exception?	Expiration	SH Vote?	Qualifying Offer?	Dead Hand?	Acting in Concert?
Sinovac Biotech, Inc.*	2/21/21	Antigua and Barbuda	15%	No	2/22/22	No	No	No	No
Six Flags Entertainment	3/31/20	DE	10%	Yes - up to 20%	3/30/21	No	No	No	No
Spirit Aerosystems Holdings	4/22/20	DE	10%	Yes- up to 20%	4/22/21	No	No	No	No
Spirit Airlines	3/29/20	DE	10%	Yes- passive investor exempt	3/29/21	No	No	No	No
Star Equity Holdings	6/2/21	DE	4.99% (NOL)	No	6/2/24	No	No	No	No
Steel Connect, Inc.*	1/8/21	DE	4.99% (NOL)	No	1/8/24	Yes, at 2021 AGM	No	No	No
Stratus Properties Inc.	9/22/20	DE	9.8%	No	9/22/23	Yes, at 2021 AGM	No	No	No
Synalloy	3/31/20	DE	15%	No	3/31/21	No	Yes	No	No
Tailored Brands	3/30/20	TX	10%	No	3/29/21	No	No	No	No
Tempur Sealy International	3/27/20	KY	10%	Yes - up to 20%	3/26/21	No	No	No	No
Tenneco Inc.	4/15/20	DE	4.9% (NOL)	No	10/2/21	Yes, at 2021 AGM	No	No	No
The Chef's Warehouse	3/22/20	DE	10%	Yes - up to 20%	3/21/21	No	No	No	Yes
Tribune Publishing Company	7/28/20	DE	10%	Yes- passive investor exempt	7/27/21	No	No	No	Yes
Universal Stainless & Alloy Products, Inc.	8/24/20	DE	4.95% (NOL)	No	8/24/23	No	No	No	No
Viad	3/30/20	DE	10%	Yes - up to 20%	2/28/21	No	No	No	No
Vidler Water Resources (formerly Pico Holdings, Inc.)	7/24/20	DE	4.99% (NOL)	No	7/24/23	Yes, at 2021 AGM	No	No	No
Warrior Met Coal	2/14/20	DE	4.99% (NOL)	No	2/14/23	Yes	No	No	No
Wesco International Inc.	7/17/20	DE	10%	Yes- up to 15%	7/16/21	No	No	No	No
Westwood Holdings Group, Inc.	5/2/21	DE	10%	Yes- up to 20%	5/1/22	No	No	No	No
Whitestone REIT	5/14/20	MD	5%	Yes- up to 20%	5/13/22	No	No	Yes	No
Whiting Petroleum	3/26/20	DE	4.99% (NOL)	No	3/26/23	Yes, at 2021 AGM	No	No	No

Company	Adopted	State of Inc.	Trigger	Passive Investor Exception?	Expiration	SH Vote?	Qualifying Offer?	Dead Hand?	Acting in Concert?
Williams Companies	3/19/20	DE	5%	Yes- passive investor exempt	3/20/21	No	No	No	Yes
Woodward	4/6/20	DE	15%	No	4/5/21	No	No	No	Yes

Red shading indicates provisions of high concern from a shareholder rights perspective.

Yellow shading indicates provisions that may be at least moderately concerning from a shareholder rights perspective.

Green shading indicates provisions that may ameliorate concerns from a shareholder rights perspective.

* Indicates that the pill extends an existing pill.