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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
BOSTON REGIONAL OFFICE

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June 23, 1989

The Honorable Lois Pines
Massachusetts State Senate
State House
Boston, Massachusetts

Dear Senator Pines:

The staff of the Federal Trade Commission is pleased to respond to your letter of invitation of June 15, 1989, to comment on House Bill 5768, "An Act Relative to Corporate Takeovers and Competitiveness of the Massachusetts Economy." 1/ If enacted, the bill, among other things, would amend the Massachusetts General Laws to regulate certain "business combinations" involving Massachusetts corporations and would authorize the use of "poison pills."

We believe that enactment of these provision would be likely to deter takeovers that may increase economic welfare. If the legislature nevertheless decides to enact the "business combination" restrictions contained in Section 1, we suggest that it consider making those provisions applicable solely to corporations that affirmatively elect to be covered by them through amendments to their articles of organization. An affirmative "opting in" provision would enable the shareholders of each corporation to determine whether restraints on the transfer of corporate control are in the interests of the corporation. In addition, to prevent the use of "poison pills" by managers to protect their own interests at the expense of shareholders, we suggest a requirement that such devices be approved by a vote of the majority of the outstanding shares.

A. Interest and Experience of the Staff of the Federal Trade Commission

The Federal Trade Commission ("FTC") is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45. Pursuant to this mandate, the staff of the FTC seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. Our efforts have included providing comments to federal, state, and

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1/ These comments are the views of the staffs of the Boston Regional Office and of the Bureau of Competition of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner.

local legislatures and administrative agencies on matters that raise issues of competition or consumer protection policy.

The staff of the FTC has substantial experience in the area of mergers and acquisitions. The Commission enforces Section 7 of the Clayton Act, 15 U.S.C. § 18, which prohibits acquisitions of corporate assets or securities that may substantially lessen competition or tend to create a monopoly. Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, the Commission reviews proposed acquisitions of corporate assets or securities, including tender offers, to determine whether they violate the antitrust laws.

The staff of the FTC has addressed issues related to the market for corporate control through scholarly studies and comments to state governments. The Bureau of Economics of the FTC has published a study on the effects of takeover legislation enacted by New York in 1985. 2/ Last year the staff of the Boston Regional Office and the Bureau of Competition of the FTC provided the Commission to Review the Massachusetts Anti-Takeover Laws with comments on the Massachusetts statutes that currently regulate corporate takeovers. 3/ In the past three years, the staff of the FTC has provided comments on the corporate control legislation of several states. 4/

B. Effect of Takeovers on Economic Welfare

The corporate takeover is a mechanism for transferring control of corporate assets. The transfer of corporate control can serve a number of economic functions, such as facilitating the redeployment of corporate assets to more efficient uses and improving corporate management. Although not every takeover ultimately produces such benefits, we believe that takeovers in the aggregate are likely to enhance economic efficiency.

Some studies suggest that management-opposed corporate acquisitions are most commonly carried out when outside bidders

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2/ L. Schumann, State Regulation of Takeovers and Shareholder Wealth: The Effects of New York's 1985 Takeover Statutes (Federal Trade Commission, Bureau of Economics, 1987).

3/ Letter to Hon. Joseph D. Alviani, Exec. Office of Economic Affairs of Massachusetts, September 2, 1988.

4/ E.g., Letter to Hon. Steven D. Wolens, Texas House of Representatives, May 10, 1989; Letter to Hon. Barbara Flynn Currie, Illinois House of Representatives, May 3, 1989; Letter to Hon. Steven H. Amick, Delaware House of Representatives, January 15, 1988.

have an opportunity to improve the performance and thereby increase the value of target corporations. 5/ Such bidders pay substantial premiums over the pre-offer market price of the shares of target corporations because they believe that the corporations will be worth more under their control. 6/

There are a number of sources for the potential gain in an acquired firm's performance. In some cases, bidders are able to improve the management of the target firm. In other cases, bidders may be able to combine firms with complementary strengths, integrating production or distribution channels, eliminating duplicative functions, or facilitating mutually beneficial technology transfers. Takeovers may also permit firms to shift corporate assets to more efficient uses by selling or changing the use of underperforming facilities.

The transfer of corporate control in such circumstances is likely to benefit shareholders, employees, and the economy as a whole, as well as the successful bidder. Shareholders benefit in two ways. First, because bidders for corporate control offer substantial premiums over the pre-offer market price of corporate shares, target company shareholders enjoy rapid appreciation of the value of their shares. Second, the threat of takeovers may motivate incumbent corporate managers to improve corporate performance. Employees benefit from enhanced corporate efficiency and the accompanying gains in corporate competitiveness. 7/ The economy can benefit both from the transfer of corporate control to more efficient management and from the incentives that takeovers create for improved managerial performance.

Numerous scholarly studies have concluded that takeovers, on average, lead to an increase in the stock market's valuation of both the acquired and the acquiring firms. According to a recent study, share prices of acquired firms increase by an

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5/ See Bradley, Desai & Kim, The Rationale Behind Interfirm Tender Offers: Information or Synergy, 11 J. Fin. Econ. 183 (1983); Gilson, A Structural Approach to Corporations: The Case Against Defensive Tactics in Tender Offers, 33 Stan. L. Rev. 819 (1981); Easterbrook & Fischel, The Proper Role of a Target's Management in Responding to a Tender Offer, 94 Harv. L. Rev. 1161 (1981).

6/ There is evidence that share prices of most target companies significantly underperform the market in the pre-offer period. See Gilson, supra note 5, at 852-53, and sources cited therein.

7/ Profitable firms provide the best opportunities for wage growth, new employment, and the fulfillment of pension and other contractual obligations to workers.

average of 53.4 percent. 8/ Similarly, share prices of some acquiring firms have increased, albeit by smaller amounts. Various studies of share prices of acquiring firms have reported increases that ranged from 2 to approximately 7 percent in the past, 9/ although other studies have found no gains for acquirers in this decade. 10/ Even if the acquiring company's shares experience no gains, these studies suggest that the market values the combination of the acquirer and the target company more highly than the individual firms absent a takeover. 11/

These studies measure the stock market performance of the companies involved during short periods of time surrounding takeover bids. They may be viewed as offering the stock market's valuation of the long-term effects of takeovers based on the information available at the time the takeover is announced. These valuations may change over time as more information is

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8/ Office of the Chief Economist, Securities and Exchange Commission, The Economics of Any-or-All, Partial, and Two-Tier Tender Offers, Table 4A (1985).

9/ Those findings are summarized in Jensen & Ruback, The Market for Corporate Control: The Scientific Evidence, 11 J. Fin. Econ. 5, 11 (Table 3), 16-22 (1983). See also Jarrell & Bradley, The Economic Effects of Federal and State Regulations of Cash Tender Offers, 23 J. Law Econ. 371, 393-95 (1980); Council of Economic Advisers, Economic Report of the President 197 (1985).

10/ See Jarrell, Brickley & Netter, The Market for Corporate Control: The Empirical Evidence Since 1980, 2 J. Econ. Persp. 49 (1988). A recent study of acquiring firms in 78 management resisted takeovers between 1976 and 1981 concluded that those firms lost 42 percent of the value of their stock prices over the three years following their acquisitions. Magenheim & Mueller, Are Acquiring-Firm Shareholders Better Off After An Acquisition?, in Knights, Raiders, and Targets 171 (J. Coffee, L. Lowenstein & S. Rose-Ackerman ed. 1988). That study has been criticized for using methodology that significantly overstates the losses of the acquiring firms' value. See Bradley & Jarrell, Comment, id. at 254. Bradley and Jarrell, using the data from the Magenheim-Mueller study and a different methodology, concluded that the acquiring firms' three year losses were actually statistically insignificant. Moreover, they note that even when "acquiring firms suffer capital losses, the gains to targets outweigh these losses, and the net effect is a significant increase in the value of the combined assets." Id. at 256.

11/ Similarly, share prices of both bidding and target firms usually decline after unsuccessful takeover bids to below the pre-offer level. Bradley, Desai & Kim, supra note 5, at 189-204; Jensen & Ruback, supra note 9, at 8.

gained. Thus, these studies serve only as indirect estimates of long-term performance. Economic scholars largely agree, however, that the increases in company valuations reported by these studies represent efficiency gains. See note 11, infra. Of course, sharp fluctuations in market values, such as those experienced in the October 1987 stock market, may require a cautious approach to long-term conclusions.

A substantial body of economic and legal literature supports the view that these increases in the stock market valuation of firms following a takeover represent efficiency gains, and the creation of new wealth, attributable solely to the takeover. 12/ Participants in the stock market are not likely to bid up the price of equity securities involved in takeovers unless prior takeovers, on average, produced such gains. Other studies quarrel with these conclusions, but many of these studies contain methodological errors. 13/ Some scholars have also questioned the overall effects of mergers and unsolicited takeovers on eco-

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12/ See, e.g., Economic Report of the President, supra note 9, at 187-216; Jensen & Ruback, supra note 9; Jarrell, Brickley & Netter, supra note 10; Bradley, Desai & Kim, supra note 5; Gilson, supra note 5; Easterbrook & Fischel, supra note 5; Easterbrook & Jarrell, Do Targets Benefit from Defeating Tender Offers, 59 N.Y.U.L. Rev. 277 (1984); Pound, Lehn & Jarrell, Are Takeovers Hostile to Economic Performance?, Regulation, Sept.-Oct. 1986, 25.

13/ For example, Weidenbaum & Vogt, Takeovers and Stockholders: Winners and Losers, 19 Cal. Mgmt. Rev. 157 (1987), incorrectly relied on evidence concerning negotiated mergers to conclude that management-opposed takeovers reduce efficiency. When the evidence of management-opposed takeovers reviewed by the authors is examined separately, it supports the conclusion that takeovers enhance efficiency. Similarly, Lipton, Takeover Bids in the Target's Boardroom, 35 Bus. Law. 101 (1979), offered evidence purporting to show that stockholders benefited from management resistance that resulted in the defeat of takeover bids. Lipton's evidence showed that the share prices of some firms that had defeated takeover bids increased above the tender offer price a number of years later. His study did not compare these share price movements to the overall market's movement during the same period. More systematic studies, which examine abnormal returns on shares of takeover targets compared to overall market trends, show that stockholders incur significant losses from the defeat of takeover bids. See generally Easterbrook & Jarrell, supra note 12, at 282-84.

nomic efficiency. 14/ Another major scholarly study that relied on accounting data took issue with the conclusions of the stock market studies and concluded that takeovers neither improved nor degraded the performance of the target firms. 15/

Accordingly, no scholarly consensus on the economic effects of takeovers supports changes in the law to make management-opposed takeovers more costly and difficult. On the contrary, we believe that the preponderance of scholarly opinion on the subject supports the conclusion that management-opposed takeovers produce economic benefits, and that new restrictions on takeovers are likely to undermine economic efficiency.

C. Asserted Disadvantages of Takeover Activity

Purported disadvantages of takeover activity are often asserted to justify restraining corporate acquisitions. Although we know of no empirical research to substantiate these disadvantages, they are often cited by incumbent managers and other takeover critics in testimony before Congressional committees and in articles in the general press. In the absence of persuasive substantiating evidence, these claims do not support the enactment of curbs on takeover activity.

Some takeover critics claim, for example, that acquirers often take over well-managed corporations, oust good management,

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14/ See Ravenscraft & Scherer, The Long-Run Performance of Mergers and Takeovers, in Public Policy Toward Corporate Takeovers 34 (M. Weidenbaum & K. Chilton ed. 1988); Herman & Lowenstein, The Efficiency Effects of Hostile Takeovers, in Knights, Raiders, and Targets, supra note 10, at 211.

15/ D. Ravenscraft & F. Scherer, Mergers, Sell-Offs, and Economic Efficiency 101-03 (1987). The authors used accounting data to measure economic rates of return. This methodology is controversial because profits revealed by such data are subject to wide variations resulting from the use of divergent accounting conventions by different firms. See generally Benston, The Validity of Profits-Structure Studies with Particular Reference to the FTC's Line of Business Data, 75 Am. Econ. Rev. 37 (1985); Fisher & McGowan, On the Misuse of Accounting Rates of Return to Infer Monopoly Profits, 73 Am. Econ. Rev. 82 (1983). In addition, because of constraints on the availability of data, the study focuses largely on conglomerate mergers, and not management-opposed takeovers. See Ravenscraft & Scherer, supra, at 22. As the authors observe, however, the incidence of horizontal merger activity has increased markedly in this decade, and "[t]he shift toward large horizontal mergers is more difficult to evaluate solely on the basis of our research." Id. at 219.

and reduce corporate efficiency by installing less capable management teams. This may happen in some cases. Corporate acquirers, like all other businesspersons, may make mistakes. This possibility, however, does not justify controls on takeover activity any more than the possibility of poor investments in plant or equipment justifies government controls on investment decisions made by corporate managers. In a market economy, investment decisions generally are best left to investors, who stand to profit from correct decisions and lose from poor ones. The critical fact is that takeover activity, in the aggregate, has not been demonstrated to have adverse effects and in fact appears to benefit society. Because the evidence suggests that the benefits of takeovers outweigh their costs, restricting takeovers in the hope of preventing unwise investments is likely to harm societal welfare.

It also has been argued that management-opposed takeovers result disproportionately in facility closings and lay-offs, which impose great social costs on individuals and communities in which plants are located. But factual support for the position that takeovers lead to plant closings and lay-offs that would not have occurred otherwise is, at best, scanty. 16/ Indeed, it is difficult to assess whether or not closings or lay-offs that occur after takeovers would have been carried out by the target's management in any event to keep the firm competitive. Moreover, most economic changes that increase efficiency -- and thereby increase aggregate societal wealth -- create dislocations that reduce the welfare of some individuals. 17/ Virtually every

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16/ *See* Jensen, *Takeovers: Folklore and Science*, Harv. Bus. Rev. Nov.-Dec. 1984, at 114 ; *cf*. American Enterprise Institute, *Proposals Affecting Corporate Takeovers* 31 (1985) (citing finding that "very few jobs were affected" by 6,000 corporate acquisitions in 1970s). The AFL-CIO estimates that a total of 80,000 jobs of members of its affiliated unions have been lost as a "result of corporate restructuring" in recent years. *Hostile Takeovers*, Hearings Before the Senate Committee on Banking, Housing, and Urban Affairs, 100th Cong., 1st Sess. 262 (1987) (statement of Thomas R. Donahue). Even assuming that this estimate, for which the time frame is unspecified but presumably spans a number of years, is correct, it is difficult to assess how many of those jobs would have been abolished in any event to improve the competitiveness of the affected companies. To put the figure in perspective, a total of 5.1 million workers lost their jobs because of plant closings or efficiency measures in the years 1979-1983. Bureau of Labor Statistics, *Monthly Labor Review* (June 1985).

17/ It would seem preferable for government to respond to these inevitable economic dislocations by initiating effective remedial

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major technological advance renders an earlier technology obsolete and thus may disadvantage firms and individuals dependent on the earlier technologies.

Finally, it is argued that takeovers force corporate managers to focus on short-term profits and forego long-term investments. The evidence shows, however, that foregoing long-term investment makes companies more, not less, vulnerable to takeovers. Takeover targets tend to have below-average research and development budgets, showing a lesser commitment to long-term investments than the average firm. 18/

D. Empirical Evidence on Effects of Anti-Takeover Legislation

Three recent empirical studies concerning the effects of anti-takeover legislation have concluded that anti-takeover laws harm shareholders and undermine economic efficiency. A 1987 empirical study by the Commission's Bureau of Economics of a New York statute 19/ similar to Section 1 of H.B. 5768 analyzed the extent of the economic harm caused by restrictions on "business combinations." 20/ The study found that the announcement by New York's governor of the proposed legislation that ultimately became the New York law resulted in a statistically significant decline in the average value of shares of New York corporations. The decline was equal to approximately one percent of the value

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17/(...continued)
measures to assist displaced individuals rather than severely restricting economic activity that benefits society. Such measures may include, for example, programs to retrain workers displaced from declining industries.

18/ This proposition is supported by a recent empirical study of the investment patterns of takeover targets. The study, which examined all 217 takeover targets that were acquired between 1980 and 1984, found that takeover targets had below average ratios of (i) research and development expenditures to total expenditures and (ii) capital investment to earnings. Office of the Chief Economist, Securities and Exchange Commission, Institutional Ownership, Tender Offers, and Long-Term Investment 8-10 (1985).

19/ N. Y. Bus. Corp. Law § 912.

20/ Schumann, *supra* note 2. "Business combination" statutes restrict the ability of acquiring firms to merge or engage in other specified business activity with unsolicited takeover targets for a specified period of time following the acquisition of target company shares.

of the shares, or $1.2 billion. 21/ As the study noted in conclusion:

> [D]espite the political rhetoric advocating the regulation of takeovers on behalf of shareholders, the evidence . . . indicates that this very strong statute does not protect shareholders; rather, the law protects managers at the expense of shareholders. . . . [In addition, the statute] may promote the inefficient management of society's assets by lessening the ability of capital markets to efficiently reallocate assets. Consequently, the real cost of the goods and services produced by the firms affected by [the statute] may increase, injuring consumers as well as shareholders. 22/

Another study, conducted by the Office of the Chief Economist of the Securities and Exchange Commission, also concludes that anti-takeover legislation is harmful to the interests of shareholders. The study examined the effects of a recent Ohio law that, among other things, authorized corporate directors to consider the interests of persons other than the shareholders in assessing takeover bids. 23/ The SEC study found that enactment of the Ohio law caused an immediate two percent decline in the equity value of corporations insulated from takeovers. Finally, a 1987 study on the effects of Indiana's anti-takeover statute, which contains a "business combination" provision similar to that in the proposed legislation, found that the enactment of Indiana's law caused a 4.2 to 6.1 percent decline in the value of shares of Indiana corporations. 24/

21/ Id. at 41, 46-47. Continuing research by the same author suggests that the decline in the value of New York corporations caused by the enactment of the legislation may have been significantly greater than reported in this study. Measured over the entire 205-day course of the legislative process, the decline was 9.7 percent, net of market. L. Schumann, State Regulation of Takeovers and Shareholder Wealth: The Case of New York's 1985 Takeover Statutes 19 Rand J. of Economics 557 (1988).

22/ Schumann, supra note 2, at 47.

23/ Office of the Chief Economist, Securities and Exchange Commission, Shareholder Wealth Effects of Ohio Legislation Affecting Takeovers (1987). The Ohio law is codified in Ohio Rev. Code Ann. § 1701.01 et seq. (Page 1986 Supp.).

24/ Sidak & Woodward, Corporate Takeovers, The Commerce Clause, and the Efficient Anonymity of Shareholders (mimeo March 1987). The 4.2 percent decline represents a portfolio in which equal (continued...)

E. Effect of "Business Combination" Restrictions

If enacted, Section 1 of H.B. 5768 would govern "business combinations" between "interested stockholders" and takeover target firms. The bill defines "interested stockholders" as owners of five percent or more of the voting shares in corporations. The proposed legislation would prohibit such stockholders from merging with or conducting other specified business activities with target corporations for three years after becoming interested stockholders, unless one of three conditions is met. First, the business combination may be carried out if the target corporation's board of directors approved the business combination or the purchase of shares before the acquirer became an interested stockholder. Second, the business combination may be carried out if the interested stockholder became owner of at least 90 percent of those shares not owned at the time the transaction commenced by certain employee stock plans or directors who are also officers. Third, the business combination may be carried out if is approved by the board of directors and authorized at an annual or special meeting by a vote of two thirds of the outstanding voting shares not owned by the interested stockholder.

The proposed legislation is likely to deter takeovers whose profitability depends on the ability of the acquirer to merge with the target corporation. The successful bidder for corporate control commonly seeks to consolidate the target into its operations by means of a merger. 25/ A three-year merger prohibition will likely require many acquirers to maintain inefficient forms of business organization and thus would undercut their ability to improve the efficiency of target corporations. This, in turn, may deter some takeover bids that would benefit the economy.

The bill would also prohibit the sale or other disposition of substantial target company assets to or with an affiliated shareholder for three years after the shareholder becomes an affiliated shareholder. This prohibition would increase the cost of financing, and in many cases may deter, takeovers designed to redeploy assets to more efficient uses.

The proposed legislation would restrict the freedom of shareholders to control and dispose of their property. When

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24/(...continued)
weight is given to all Indiana firms. The 6.1 decline represents a value-weighted portfolio.

25/ See R. Gilson, The Law and Finance of Corporate Acquisitions 854 (1986).

shareholders determine, for whatever reason, to transfer control of a corporation, the state should not frustrate their will and require them to retain managers they wish to displace.

F. <u>Consideration of an "Opting-In" Mechanism</u>

If the legislature decides to enact the "business combination" restrictions in some form despite the concerns discussed above, we suggest that the relevant provisions be modified to make them inapplicable to corporations whose shareholders do not affirmatively elect to be covered by them through amendments to their articles of organization. In its present form, the proposed legislation, if enacted, would apply to all corporations that do not "opt out" by an amendment to their articles of organization or bylaws. To the extent that the "business combination" provisions of H.B. 5768 are motivated by a concern for shareholders, their purpose would be better served by a requirement that shareholders approve a decision to opt into that aspect of the legislation. We recommend that a corporation's decision to opt into the statutory scheme be made solely through a shareholder vote amending the articles of organization. 26/

If the legislature decides to retain the proposed opting-out mechanism, we recommend that shareholder determinations to opt out be given immediate effect. The bill now provides that amendments to a corporation's articles of organization or bylaws that expressly state that the corporation will not be governed by the statutory provisions restricting "business combinations" would not become effective for twelve months. This is a serious restraint on the freedom of shareholders to control the corporations they own. The inclusion of an opting-out provision in the bill embodies an implicit recognition that the "business combination" provisions of the proposed legislation may be harmful to the interests of shareholders. An opting-out provision that contemplates a substantial delay in effectuating shareholders' desires, however, does little to ameliorate that harm.

26/ Corporate bylaws generally may be amended without the approval of the shareholders. *See* M.G.L. c. 156B § 17. Consequently, we believe that the legislation should require decisions to opt in to be made in the form of amendments to the articles of organization.

G. Effect of "Poison Pill" Restrictions

Section 12 of H.B. 5768 would amend Chapter 156B of the Massachusetts General Laws to grant corporations explicit authority to issue rights or options that cannot be transferred to or exercised, received, or held by persons owning or offering to acquire a certain number or percentage of outstanding shares. These rights or options are often called a "poison pill."

The term "poison pill" refers to a family of shareholder rights plans that, when triggered by a tender offer or the accumulation of a specified percentage of shares by an acquirer, provide other shareholders with rights to purchase additional shares or to sell shares to the target at very attractive prices. These rights, when triggered, may significantly reduce the value of the target to a hostile bidder and may substantially lower the value of the target's shares that a hostile bidder has already acquired. According to a 1986 study by the SEC's Office of the Chief Economist, "poison pills" are very effective deterrents against hostile takeovers due to two important features: 1) when they can be cheaply and quickly redeemed by target management, they force potential acquirers to negotiate directly with the target's board if they wish to have the pill removed; and 2) if not redeemed, they make hostile acquisitions exorbitantly expensive. 27/

The 1986 SEC study examined the effects of "poison pills" on the wealth of target shareholders. The study reports on the effects of 245 "poison pills" announced between 1983 and July 4, 1986, and focuses on the effects of pills that appeared in 37 firms subject to takeover speculation. The authors find that "poison pills" are associated with gains to target shareholders following an auction for the firm. In such cases the target shareholders gained 14 percent on average. However, in other cases the pills led to the defeat of the takeover and the target shareholders' stock fell 17 percent in value over the next 6 months. On net, the authors find that "poison pill" announcements are generally associated with a loss of shareholder value of .66 percent.

"Poison pills" may result from market failure with respect to corporate governance that enables managers to thwart takeovers and protect their own interests at the expense of shareholders. Nevertheless, shareholders of some firms may have legitimate objections to hostile takeovers and desire long-term contracts with incumbent managers. Shareholders may also desire "poison

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27/ Office of the Chief Economist, Securities and Exchange Commission, The Effects of Poison Pills on the Wealth of Target Shareholders, October 1986.

pills" in order to provide managers greater leverage in negotiations with potential bidders.

To correct any market failure that enables managers to use "poison pills" to protect their own interests at the expense of shareholders, legislation that allows for the adoption of "poison pills" should stipulate that such shareholder rights plans can be adopted only upon approval of a majority of outstanding shareholders. By requiring shareholder approval, legislation permitting the adoption of "poison pills" would prevent the abuse of "poison pills" by management, while allowing for their use when shareholders believe them to be in the shareholders' best interest.

Conclusion

On the whole, we believe that takeover activity may enhance economic efficiency and thus benefits consumers, workers, and shareholders. We believe that Sections 1 and 12 of H.B. 5768 are likely to impede many of the potential beneficial consequences of takeovers without offering countervailing benefits. The legislature therefore may wish to consider whether these provisions of the legislation unduly interfere with the market for corporate control to the detriment of the economy and consumer welfare generally.

Sincerely,

Phoebe D. Morse

Phoebe D. Morse
Regional Director