

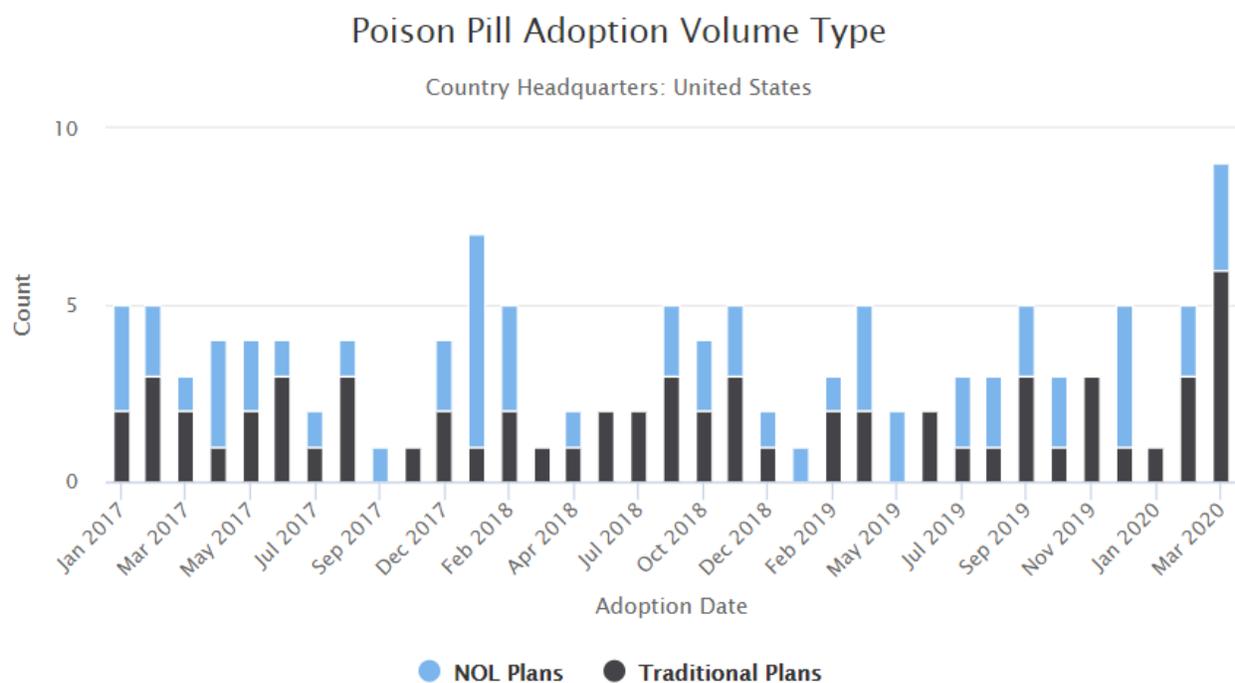
## Corporate America’s Medicine Against Coronavirus

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Faced with myriad problems caused by the coronavirus pandemic, including significantly depressed stock prices and the ensuing threat of shareholder activism and hostile takeovers, corporate America is turning to an old standby - poison pills.

Over the last four decades, poison pills, technically called shareholder rights plans, have steadily fallen out of favor. The use of poison pills became popular after a Delaware court upheld their legality in the *Moran v. Household International* decision in 1985 and by the end of the decade, a majority of the S&P 500 had a rights plan in place. The use of poison pills continued to grow in the 1990s and by 2001 over 2,200 U.S. companies had one in place. As of today, there are a mere 228 companies with an active poison pill. The only time this steady downward trend temporarily reversed itself was immediately following the financial crisis when many companies with decreasing valuations felt vulnerable to opportunistic hostile acquirers and activist investors. Once the financial crisis was over and market conditions improved, however, the downward trend of companies moving away from maintaining poison pills continued. In recent years when companies have adopted poison pills they've typically been short term plans in response to a specific threat or for a specific purpose like to protect net operating loss carryforwards and other tax attributes ("NOL plans").

Today, as the coronavirus pandemic continues, we are seeing an increase in poison pill adoptions. Since the beginning of March, 9 U.S. companies have already adopted new poison pills and 4 companies have extended their poison pills. These 9 new poison pill adoptions are the most we have recorded in any month since we began tracking this activity on January 1, 2017 and we are only two-thirds of the way through the month. Please see the chart below:



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These 9 new adoptions include companies of varying size, including two large cap companies that are in the S&P 500. All 9 companies have adopted limited duration poison pills which exempt them for ISS's requirement for shareholder approval and three of them are NOL pills and are not a traditional anti-takeover poison pill. The remaining 6 most recent poison pill adoptions, however, are all traditional anti-takeover poison pills. Four of these 9 new poison pill adoptions have occurred in the last 3 days.

Company Name	Primary Ticker	Poison Pill Active	Poison Pill Adoption Date	Poison Pill NOL	Market Cap at Pill Adoption (\$m)	Index
Aviat Networks, Inc.	AVNW	Yes	03/03/2020	<a href="#">Yes</a>	67.3	
Drive Shack Inc.	DS	Yes	03/05/2020	<a href="#">Yes</a>	173.7	Russell 2000
Cohen & Company Inc.	COHN	Yes	03/10/2020	<a href="#">Yes</a>	5.4	
Occidental Petroleum Corporation	OXY	Yes	03/12/2020	No	10,644.20	Russell 1000 S&P 500
Ashford Inc.	AINC	Yes	03/13/2020	No	23	
Dave & Buster's Entertainment, Inc.	PLAY	Yes	03/18/2020	No	148.9	Russell 2000 S&P 600
Global Eagle Entertainment Inc.	ENT	Yes	03/19/2020	No	13.9	
Williams Companies, Inc. (The)	WMB	Yes	03/20/2020	No	13,119.10	Russell 1000 S&P 500
Delek US Holdings, Inc.	DK	Yes	03/20/2020	No	846.5	Russell 2000

< Click this [LINK](#) to update list of recent poison pill adoptions >

Interestingly, only two of the companies have referenced the coronavirus specifically when announcing the adoption of their poison pill. The Williams Companies, Inc. stated "that in light of the coronavirus and recent market events, the closing price of Williams common stock is, as of yesterday, 50% below the price just one month ago". Delek US Holdings, Inc. stated that their "current share price does not reflect the company's intrinsic long-term value due to the extreme dislocation caused by the COVID-19 crisis and low commodity prices, we have no choice but to take action to prevent a creeping change of control without a premium and on terms that would not deliver sufficient value for all shareholders".

There is no question that legal and financial advisers are currently recommending that their clients adopt poison pills as a strong structural defense given existing market conditions. Going forward, we expect to continue to see companies adopt both traditional anti-takeover poison pills while stock prices are declining and eventually NOL pills given that many companies are likely to have net operating losses to protect in the future.