

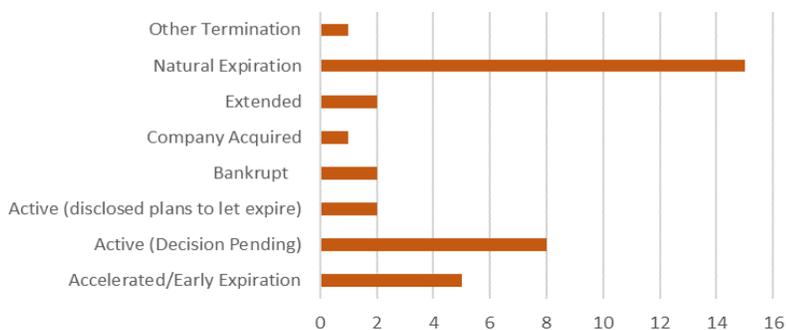
## Covid-19 Rights Plans (“Poison Pills”) Revisited

April 2021

One year removed from the Covid-19 related stock market crash and the resulting increase in the number of companies turning to poison pills, we revisit the status of these companies and plans.

The substantial declines in stock prices from mid-February through March 2020 including the more than 30% decline in the S&P 500 in the first three weeks of the March alone, left many companies feeling vulnerable to opportunist acquirers and activist investors and many responded by adopting short-term poison pills. Twenty-two U.S. companies adopted poison pills in March which represented a multi-year high. That total was surpassed in April when an additional 24 companies adopted poison pills. Prior to 2020, our previous most active month for poison pill adoptions had been January 2018 with seven adoptions. Most of the adoptions in March and April were traditional plans (i.e., not net operating loss carryforwards protection plans "NOL plans") and almost all were adopted with limited durations. Thirty-three out of the 36 traditional poison pills adopted in March and April had a term of one year or less (the remaining three had three-year terms). As stock prices rebounded, the rate of poison pill adoptions declined and have returned to comparable levels from recent years.

March/April 2020 Traditional Poison Pill Adoptions - Renewal Decision



The latest sign that companies are returning to the pre-Covid playbook of not maintaining poison pills in favor of keeping one "on the shelf" until a specific threat or need emerges is how companies are responding to these expiring plans. All 17 of the traditional poison pills adopted in March 2020 had a term of one year or less. None of these poison pills were renewed. Eleven of the companies let the poison pill expire naturally under the original terms (including Fluor Corporation which had an initial nine-month term that was extended for three months before expiring) and three companies accelerated the expiration to an even earlier date. Two of the poison pills were terminated as part of the company's bankruptcy plan and the remaining plan adopted by The Williams Companies, Inc. was permanently enjoined by a Delaware court. As of April 2, 2021, four of the poison pills adopted in April 2020 have expired naturally, two expired via an accelerated expiration, and two poison pills have already been extended for additional three-year periods. While most of the companies used a carefully crafted message in adopting the poison pill there appears to be little need to publicize the expiration. Only one company (Dave & Buster's Entertainment, Inc.) that let its poison pill expire naturally issued a press release announcing the expiration.

That the surviving companies are not extending these poison pills is unsurprising. First, stock prices have largely recovered. Many of the companies that adopted poison pills in March and April of 2020 specifically cited equity market volatility and the share price declines caused by the Covid-19 pandemic when adopting the plans. The stock price of 11 of the 14 companies that adopted a traditional poison pill in March that let it expire rose when comparing the price at the time of the adoption versus the price on the expiration date and in most cases quite substantially. On average, the stock prices of these companies rose 191% during the time the poison pill was in effect. Additionally, any leeway companies may have received from shareholders and proxy advisory firms may no longer apply. Both Institutional Shareholder Services ("ISS") and Glass Lewis & Co. provided guidance in spring 2020 that the impacts of the Covid-19 pandemic on companies and stock prices was a valid justification for adopting limited duration poison pills. With equity markets hitting new highs, citing the pandemic's effect on stock prices will be difficult to use as a valid rationale for adopting a poison pill. Directors at companies adopting long-term poison pills without shareholder approval or year or less plans without adequate justification will once again be subject to potential negative vote recommendations on their re-elections.

### March 2020 Traditional Poison Pill Adoptions

Company	Adoption Date	Expiration Date	Original Term (in years)	Trigger (AP %)	Stockholder Approval	Stock Price % Change from Adoption to Expiration	Poison Pill Status
AAR Corp.	3/27/2020	10/5/2020	0.9	10	Not Sought	8%	Accelerated Expiration
Ashford Inc.	3/13/2020	2/13/2021	0.9	10	Not Sought	-22%	Natural Expiration
Barnes & Noble Education, Inc.	3/25/2020	12/31/2020	0.8	10	Not Sought	204%	Natural Expiration
Chefs' Warehouse, Inc. (The)	3/22/2020	3/21/2021	1	10	Not Sought	444%	Natural Expiration
Dave & Buster's Entertainment, Inc.	3/18/2020	3/17/2021	1	15	Not Sought	856%	Natural Expiration
Delek US Holdings, Inc.	3/20/2020	3/19/2021	1	15	Not Sought	95%	Natural Expiration
Evoform Biosciences, Inc.	3/24/2020	3/24/2021	1	32	Not Sought	-47%	Natural Expiration
Fluor Corporation	3/24/2020	3/24/2021	0.8	10	Not Sought	217%	Natural Expiration
Global Eagle Entertainment Inc.	3/19/2020	12/31/2020	0.8	20	Not Sought	N/A	Bankrupt
Occidental Petroleum Corporation	3/12/2020	3/11/2021	1	15	Approved	161%	Natural Expiration
Six Flags Entertainment Corporation	3/31/2020	3/30/2021	1	10	Not Sought	277%	Natural Expiration
Spirit Airlines, Inc.	3/29/2020	3/29/2021	1	10	Not Sought	147%	Natural Expiration
Synalloy Corporation	3/31/2020	6/28/2020	1	15	Not Sought	-8%	Accelerated Expiration
Tailored Brands, Inc.	3/30/2020	3/29/2021	1	10	Not Sought	N/A	Bankrupt
Tempur Sealy International, Inc.	3/27/2020	3/26/2021	1	10	Not Sought	216%	Early Expiration
Viad Corp	3/29/2020	2/28/2021	0.9	10	Not Sought	125%	Natural Expiration
Williams Companies, Inc. (The)	3/19/2020	3/20/2021	1	5	Not Sought	N/A	Other Termination



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