

The Best Offense is a Good Defense - Considering a Rights Plan in Light of COVID-19

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PRACTICES Corporate, Capital Markets and Securities

Boards of directors of public companies have a lot on their minds today as they navigate the unprecedented circumstances resulting from the novel coronavirus (“COVID-19”) pandemic—from precipitous drops in revenues as businesses are shuttered, to supply chain disruption, to difficulties in making debt payments, to labor challenges, among many others. On top of this, many companies have experienced significant declines in their market value since March 2020, and certain sectors, including airline, travel, hospitality, entertainment and energy, have been especially vulnerable to the recent downturn. During this time, boards of directors should consider the risk that opportunistic activist-investors and potential bidders, including hostile bidders, may be circling the waters as they consider acquiring a company, or a significant stake therein, at current market prices that may represent a fraction of what the company’s market value was just a few months ago.

It is also worth noting that the enhanced risk of potential takeovers is not limited to the near future; the threat can linger in the wake of significant economic downturns. For example, the years following the 2008 global financial crisis witnessed significant activist activity, with 2009 representing a record year for proxy contests in the U.S. In the current economic landscape, we expect that many well-capitalized activists may seek to accumulate large positions of target company securities, relying on volatile prices and management distraction.

In light of the potentially enhanced risk of a hostile takeover or the emergence of a stockholder insurgent during these uncertain times, we are encouraging our clients to evaluate whether their existing slate of takeover defenses is sufficient. In particular, one of the key lines of defense to deter an unwanted acquisition of a large block of securities is the adoption of a stockholder rights plan, more commonly referred to as a “poison pill.” One of the primary advantages of a rights plan is that, unlike many antitakeover provisions that typically require a stockholder-approved charter amendment to implement, a board of directors may adopt a stockholder rights plan without stockholder approval.

[Read the full alert here.](#)

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