

Preface

A shareholder rights plan, also known as a “poison pill” is one of the most effective tactic public companies can use to deter aggressors from corporate takeover attempts. Public companies use poison pills to thwart hostile takeovers. There are several measures that a target company can employ to make a takeover less attractive.

The most common tactical structures include:

- **Preferred Stock Plans:** this is preferred stock registered with the SEC and paid as a dividend to common shareholders. This preferred stock has an important feature: it is convertible to common stock only after the takeover is completed. This strategy both dilutes the ownership of the acquiring company (which is highly undesirable for the acquirer) as well as increases the cost of the merger.
- **Flip-Over Plans:** this allows shareholders to purchase shares of common stock in the new company at a substantial discount after the merger. While this approach is simpler to implement than a preferred stock plan, it does not prevent a company from purchasing a controlling share of the target.
- **Flip-In Plans:** this strategy provides shareholders of the target company with the right to purchase additional stock in the target company at substantial discounts. The right to purchase stock occurs before the merger is finalized, and the provision is usually triggered when the acquirer owns greater than a 20% share of the target’s stock.
- **Back-End Plans:** this approach provides shareholders of the target company with the right to cash or debt securities at a price established by the company’s Board of Directors. By doing so, the target company has essentially established an above-market selling price for the company.
- **Poison Puts:** this is a bond that allows investors to cash in the security before it matures, if the target company is engaged in a hostile takeover attempt. The poison put places pressure on the acquiring company to raise substantial sums of money to pay off the owners of the puts.

Escape Clauses

When poison pills are put into place by management, they are usually accompanied by an escape clause. The escape clause allows the issuing company to redeem the poison pill via a small payment to the shareholder.

One of the advantages of the escape clause is that it prevents dilution of ownership if the acquiring company is not viewed as hostile. For example, this can occur when the acquiring company is offering shareholders a substantial premium over the current market price of their stock.¹

The global M&A markets may finally be back on an upward trajectory as some of the economic and geopolitical uncertainties weighing on the market over the past couple of years lift. Recent dealmaking momentum at the top end of the market suggests the upswing has already begun: the volume of deals greater than \$1bn in value increased by 17% in 2024, and their average value rose. We are also seeing some mixed signals: the volume of smaller and mid-sized deals fell by a meaningful 18% in 2024, and in the year ahead, dealmakers will need to keep their eye on some wild cards. The impact of the US election is reverberating around the world, and the

¹ Poison Pill Defense, *Moneyzine*, September 20, 2023: <https://moneyzine.com/investments/poison-pill-defense/>.

new administration's policies may have significant, but at times contradictory, implications for M&A, not only in the US but also globally.²

-The Publisher's Editorial Staff.

² **2025 Global M&A Industry Trends**, PwC Global: <https://www.pwc.com/gx/en/services/deals/trends.html#:~:text=a%20consensual%20restructuring.-,The%20deals%20imperative%20grows%20stronger,exit%20mature%20portfolio%20company%20investments.>