

**THE NOTION OF POISON PILLS, THE MANOEUVRE TO SHIELD A  
COMPANY FROM HOSTILE TAKEOVER ATTEMPTS**

SAGARNIL GHOSH

AMITY UNIVERSITY, KOLKATA

**Abstract**

*The term poison pills may sound somewhat like lethal and a toxic substance, which can be well derived from the scientific and biological province, but not all poison pills are used for executing something toxic. This term apart from the biological connotations can also be inferred from the world of corporate affairs which acts as a preventive shield to save a company from various dirty hostile takeover attempts. In a simplified sense, this article would like to bring out the intricacies of a hostile takeover along with illustrating the way when a hostile takeover is knocking with the concerning intent of harming the company and its management, and how the strategy of poison pills can prove itself to be a defensive technique against such takeovers. This article additionally sets up the point that, whether this procedure and the methodology of poison pills can demonstrate its effectiveness with respect to the investors and their need to buy shares to save the association from the grimy corporate takeovers.*

**Keywords:** *Poison Pills, Hostile Takeovers, defensive technique, administration*

**Introduction**

**Concept of Hostile Takeover**

The word Hostile takeover speaks for itself, means an antagonistic rather a confrontational takeover attempted with a particular motive. A Hostile takeover in mergers and acquisitions is a manner by which an organization is targeted and procured generally for a specific reason by another organization. The organization that is procured is alluded to as the targeted organization and the organization buying the targeted organization is called as the acquirer. Such a hostile takeover happens when the acquirer goes through the organization's investors or battle the

administration of the organization to get endorsement for the procurement. Such takeovers might be finished by either intermediary battle or delicate offer.

The significant attribute of such takeovers is that the administration of the targeted organization won't wish for the procuring deal to occur. On that occasion, the administration of the target organization attempts to battle against the antagonistic takeovers by utilizing methodologies that are viewed as questionable, like the freebie, the Pac-Man guard, crown-gem safeguard, and the poison pill.<sup>1</sup>

Bid for hostile takeover happens when an association attempts to oversee an organization by not taking the approval or endorsement from the administration of the targeted organization. Rather than taking endorsement from the directorate of the target organization, the acquirer will attempt to oversee the organization by giving a delicate offer, concoct an intermediary battle, or attempt to buy the essential number of portions of the target organization in the open business sectors.<sup>2</sup>

To ruin the endeavours of the acquirer, the administration of the target organization will think of safeguard systems and may utilize the responsive guard instrument to withstand the obtaining. There are a few factors that drive an unfriendly takeover of an organization. One such factor is that the acquirer organization accepts that the target organization is underestimated and would be advantageous over the long haul on the off chance that they assume control over that organization.

In some cases, such takeovers are vital moves by financial backers who are activists and are in quest for changing the administration and tasks of the organization.<sup>3</sup>

## WORDS SPEAK

<sup>1</sup> Vineeth, *Hostile Takeover*, *ClearTax.in* (May 23<sup>rd</sup>, 2021, 11:34 AM), <https://cleartax.in/g/terms/hostile-takeover#:~:text=A%20hostile%20takeover%20is%20a,is%20acquired%20by%20another%20company.&text=A%20hostile%20takeover%20happens%20when,get%20approval%20for%20the%20acquisition>.

<sup>2</sup> Vineeth, *Hostile Takeover*, *ClearTax.in* (May 23<sup>rd</sup>, 2021, 11:34 AM), <https://cleartax.in/g/terms/hostile-takeover#:~:text=A%20hostile%20takeover%20is%20a,is%20acquired%20by%20another%20company.&text=A%20hostile%20takeover%20happens%20when,get%20approval%20for%20the%20acquisition>.

<sup>3</sup> Vineeth, *Hostile Takeover*, *ClearTax.in* (May 23<sup>rd</sup>, 2021, 11:34 AM), <https://cleartax.in/g/terms/hostile-takeover#:~:text=A%20hostile%20takeover%20is%20a,is%20acquired%20by%20another%20company.&text=A%20hostile%20takeover%20happens%20when,get%20approval%20for%20the%20acquisition>.

## Understanding the practicality and impact of hostile takeovers

The targeted organization in a threatening takeover bid, regularly encounters an expansion in the cost of its shares. An antagonistic takeover is the point at which a acquirer makes a proposal to the target organization's investors, yet the governing body of the target organization doesn't endorse the takeover. Simultaneously, the acquirer typically participates in strategies to supplant the administration or directorate at the target organization.

The two organizations may have neglected to agree, or the acquiring organization chose to not go ahead with the consolidation.

Likewise, a gathering of investors may accept the administration of the organization isn't completely augmenting investor esteem. Likewise, the financial backers may present a defence for another supervisory crew. The acquirer can likewise be an organization. Public organizations can gain a target organization through the investors regardless of whether the executives don't need the takeover. The result is the utilization of threatening strategies to procure the target organization by the financial backers or getting organization. The objective of the takeover by the acquirer is to accomplish at any rate 51% possession in the target organization 's stock. The procedures utilized in an unfriendly takeover can drive extra interest for shares while making a sharp fight for control of the target organization.<sup>4</sup>

Procuring organizations would you be able to utilize a procedure called a delicate proposal to buy the portions of the target organization. A delicate offer is an offered to buy the stock portions of the target organization along with some hidden costs to the market cost of the stock. As such, a securing organization may offer \$50 per share for the target organization when its offers are exchanging at \$35 per share. Accordingly, a delicate offer can prompt a huge expansion in the stock cost for the target organization. The explanation the securing organization makes a proposal along with some built-in costs to the current stock value is to allure the current investors of the target organization to sell their offers and permit the gaining organization to possess the greater part stake. The delicate offer is normally contingent on the securing organization acquiring controlling interest in the target organization.

---

<sup>4</sup> Adam Hayes, *what happens to the target companies share in hostile takeover?* Investopedia (May 23<sup>rd</sup>, 2021, 12:26 PM) <https://www.investopedia.com/ask/answers/042215/what-happens-shares-company-has-been-object-hostile-takeover.asp#:~:text=Key%20Takeaways,incentives%20to%20approve%20the%20takeover.>

An intermediary vote is another threatening takeover system whereby the procuring organization endeavours to persuade existing investors of the target organization to remove their leader the administration and directorate. The procuring organization would then supplant the fundamental supervisory crew and board individuals with individuals who are available to the possibility of the takeover and will cast a ballot to support it. Unfriendly takeovers, regardless of whether ineffective, regularly lead the executives to make investor cordial proposition as a motivating force for investors to dismiss the takeover bid.<sup>5</sup>

These propositions incorporate extraordinary profits, profit expands, share buybacks, and side projects. These actions drive up the cost of the stock for the time being and longer-term. Profits are ordinarily cash instalments made to investors by the organization. Extraordinary profits are one-time pay-outs to investors. Profit climbs are bullish impetuses, making the stock more alluring, particularly in low-rate conditions.<sup>6</sup>

Offer buybacks make a consistent bid for the stocks and lessen the stockpile of stock. Side projects are key choices to strip non-centre specialty units to make higher valuations and give a more engaged vision and business for investors. Note that threatening takeovers are typically a submission on the target organization 's administration. Investors should gauge their confidence in administration's drawn-out vision against the capability of easy gains.<sup>7</sup>

### **Notion and Evolution of Poison Pills Strategy**

The poison pill strategy, at times otherwise is called an investor rights plan, is a type of guard against an expected antagonistic takeover. It is a procedure by which the targeted organization tries to make itself less alluring to expected acquirers.

Poison pill strategies may likewise be utilized to relax the blow of a confrontational takeover. As regularly the situation in threatening acquisitions, the procuring organization will utilize harmful

---

<sup>5</sup> Adam Hayes, *what happens to the target companies share in hostile takeover?* Investopedia (May 23<sup>rd</sup>, 2021, 12:26 PM) <https://www.investopedia.com/ask/answers/042215/what-happens-shares-company-has-been-object-hostile-takeover.asp#:~:text=Key%20Takeaways,incentives%20to%20approve%20the%20takeover.>

<sup>6</sup> Adam Hayes, *what happens to the target companies share in hostile takeover?* Investopedia (May 23<sup>rd</sup>, 2021, 12:26 PM) <https://www.investopedia.com/ask/answers/042215/what-happens-shares-company-has-been-object-hostile-takeover.asp#:~:text=Key%20Takeaways,incentives%20to%20approve%20the%20takeover.>

<sup>7</sup> Adam Hayes, *what happens to the target companies share in hostile takeover?* Investopedia (May 23<sup>rd</sup>, 2021, 12:26 PM) <https://www.investopedia.com/ask/answers/042215/what-happens-shares-company-has-been-object-hostile-takeover.asp#:~:text=Key%20Takeaways,incentives%20to%20approve%20the%20takeover.>

takeover strategies, or utilize its predominant situation to put the target organization in a terrible position. In the realm of corporate affairs, the "poison pill" term started in the United States. Poison pill strategies were intended to deter a possible acquirer from seeking after a takeover. The strategy was first utilized by the firm Wachtel, Lipton, Rosen, and Kantz. Martin Lipton developed the strategy as a protection during a takeover fight during the 1980s. Martin Lipton instructed the board regarding heads of targeting company to flood the market with new portions of the organization's stock, along these lines weakening the value, making the securing significantly more costly to seek after (since Pickens would need to buy a lot more offers to acquire a co).<sup>8</sup>

Around then, this strategy was viewed as dubious and potentially a break of fiduciary obligation. The Poison pill methodology, be that as it may, was pronounced legitimate in 1985 by the Delaware Supreme Court.<sup>9</sup>

### Defensive Mechanisms

#### FLIP IN POISON PILL

A flip-in poison pill technique includes permitting the investors, apart from the acquirer, to buy additional shares at a certain rebate. Despite the fact that buying extra offers furnishes investors with momentary benefits, the practise weakens the worth of the set number of offers previously bought by the obtaining organization. This pertinent option to buy is generally given to the shareholders of the procuring company before the takeover is concluded and is frequently set off when the procuring company sets up a specific parameter of portions of the targeted organization.<sup>10</sup>

Here's a model for a certain explanation. Suppose a flip-in poison pill plan is set off when the acquirer buys 30% of the target organization 's offers. When set off, each investor—barring the acquirer—is qualified for purchase new offers at a limited rate. The more prominent the quantity

<sup>8</sup> *Poison Pill; A Defensive strategy to dissuade any hostile takeovers, corporate finance institute ( May 23<sup>rd</sup> , 2021, 14:08 PM )* <https://corporatefinanceinstitute.com/resources/knowledge/deals/poison-pill-shareholder-rights-plan/>.

<sup>9</sup> *Poison Pill; A Defensive strategy to dissuade any hostile takeovers, corporate finance institute ( May 23<sup>rd</sup> , 2021, 14:08 PM )* <https://corporatefinanceinstitute.com/resources/knowledge/deals/poison-pill-shareholder-rights-plan/>

<sup>10</sup> *Adam Hayes, what happens to the target companies share in hostile takeover? Investopedia (May 23<sup>rd</sup> , 2021, 20:23 PM)* <https://www.investopedia.com/ask/answers/042215/what-happens-shares-company-has-been-object-hostile-takeover.asp#:~:text=Key%20Takeaways,incentives%20to%20approve%20the%20takeover.>

of investors who purchase extra offers, the more weakened the gaining organization's premium becomes. This makes the expense of the bid a lot higher.

As new offers clear a path to the market, the worth of offers held by the acquirer decreases, consequently making the takeover endeavour more costly and more troublesome. In the event that a bidder knows that such an arrangement could be actuated, they might be slanted not to seek after a takeover. Such arrangements of a flip-in are frequently openly accessible in an organization's ordinances, or sanction, and demonstrate their expected use as a takeover guard.<sup>11</sup>

## FLIP OVER POISON PILL

A flip-over poison pill system permits investors of the targeted organization to buy the portions of the procuring organization at a profoundly limited cost if the unfriendly takeover endeavour is effective. For instance, an investor from the targeted organisation may acquire the option to purchase the load of its acquirer at a two-for-one rate, along these lines weakening the value in the gaining organization. The acquirer may try not to proceed with such acquisitions on the off chance that it sees a weakening of significant worth post-securing.<sup>12</sup>

## POISON DEBT

The targeted organization issues obligation protections on certain specified terms and conditions to debilitate a threatening takeover bid. Models incorporate agreements that seriously confine the organization's capacity to sell resources, an expansion in the financing costs, a speed increase of the development date, a transformation of obligation to value at ideal rates, and rights to purchase notes at a generous premium to the common market cost at the hour of the takeover bid.<sup>13</sup>

WORDS SPEAK

<sup>11</sup> Adam Hayes, *what happens to the target companies share in hostile takeover?* Investopedia (May 23<sup>rd</sup>, 2021, 20:23 PM) <https://www.investopedia.com/ask/answers/042215/what-happens-shares-company-has-been-object-hostile-takeover.asp#:~:text=Key%20Takeaways,incentives%20to%20approve%20the%20takeover.>

<sup>12</sup> Adam Hayes, *what happens to the target companies share in hostile takeover?* Investopedia (May 23<sup>rd</sup>, 2021, 20:23 PM) <https://www.investopedia.com/ask/answers/042215/what-happens-shares-company-has-been-object-hostile-takeover.asp#:~:text=Key%20Takeaways,incentives%20to%20approve%20the%20takeover.>

<sup>13</sup> Ramesh C Garg, *Poison Pills Strategies, Reference for business* (May 23<sup>rd</sup> 2021, 20:23 PM) <https://www.referenceforbusiness.com/management/Or-Pr/Poison-Pill-Strategies.html>.



## "PUT RIGHTS" PLAN.

Under this point, the target organization issues rights to its investors as a profit. At the point when an acquirer buys a predefined rate proprietorship in the target organization, the objective investors, barring the acquirer, are qualified for sell their normal stock back to the organization for a predetermined amount of money, obligation protections, favoured stock, or some blend thereof.<sup>14</sup>

## VOTING POISON PILL PLAN.

This poison pill procedure is intended to weaken the controlling force of the acquirer. Under this arrangement, the target organization gives a profit of protections, presenting exceptional democratic advantages to its investors. For instance, the target organization may give shares that don't have unique democratic advantages at the start. At the point when an expected unfriendly bid happens, the investors, other than the getting party, get super democratic advantages. On the other hand, the target organization 's investors may get protections with casting a ballot rights that increment in esteem over period.<sup>15</sup>

## Conclusion

Poison Pills can prove to be exceptionally successful in deterring a takeover yet are regularly not the primary line of defence. The general thought, be that as it may, is to prevent any external takeover endeavour by either making the organization less attractive or by putting current investors at a higher mark of force.<sup>16</sup> Both of these objectives can be cultivated by offering less expensive offers to existing investors, in this manner weakening the potential value an acquirer gets, and furthermore giving greater value to existing investors. This is on the grounds that the procedure isn't totally ensured to work, as a toxin pill won't really forestall the securing of the enterprise if the acquirer is determined. Besides, this strategy may debilitate the organization whenever utilized erroneously.

---

<sup>14</sup> Ramesh C Garg, *Poison Pills Strategies, Reference for business* (May 23<sup>rd</sup> 2021, 20:23 PM) <https://www.referenceforbusiness.com/management/Or-Pr/Poison-Pill-Strategies.html>.

<sup>15</sup> Ramesh C Garg, *Poison Pills Strategies, Reference for business* (May 23<sup>rd</sup> 2021, 20:23 PM) <https://www.referenceforbusiness.com/management/Or-Pr/Poison-Pill-Strategies.html>.

<sup>16</sup> *Poison Pill; A Defensive strategy to dissuade any hostile takeovers, corporate finance institute* ( May 23<sup>rd</sup> , 2021, 14:08 PM ) <https://corporatefinanceinstitute.com/resources/knowledge/deals/poison-pill-shareholder-rights-plan/>