



## DOW JONES CORPORATE FILINGS ALERT

### **More small firms adopting poison pills, experts say**

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WASHINGTON-The number of companies adopting or extending their "poison pills," or takeover defenses, increased this year from last year, even as a rising number of Standard & Poor's 500 companies are getting rid of theirs.

Ninety-three companies have either adopted or extended poison pills so far this year, compared with 92 in all of 2004, according to John Laide, research manager at Sharkrepellent.net, which tracks corporate takeover defenses.

"This is the first year-over-year increase since 2000 to 2001," Laide said.

Thirty-six companies cancelled their poison pills this year, compared to 45 last year. An unknown number let their poison pills lapse.

Corporate governance observers say that most of the companies adopting or extending poison pills are small- or midcap companies.

Laide said the average market capitalization of companies that adopted the pills in 2005 is about \$500 million (euro428 million), compared with average market cap of \$8.7 billion (euro7.4 billion) of the companies that shed their pills.

For instance, Laide said, several companies in the S&P 500 index - which tracks widely held large companies - have removed their pills, leading the index to reach a majority pill-free mark this year.

Poison pills, or shareholder-rights plans, are designed to prevent hostile takeovers. Under a typical poison pill, if an investor acquires a certain percentage of a company's stock, other shareholders can start buying additional shares at reduced prices, diluting the acquirer's investment.

Experts say smaller companies tend to deploy takeover defenses such as poison pills because these firms, unlike the bigger companies, aren't closely scrutinized by investor groups.

Shareholder activists view poison pills as a tool for management entrenchment and a device that erodes shareholder value, since it discourages takeover offers. In the past few years, several companies have terminated the pills under shareholder pressure.

Companies that have reported the adoption or renewal of their shareholder-rights plans this year include the franchiser of Hardee's and Carl's Jr. restaurants, CKE Restaurants Inc., fitness centers operator Bally Total Fitness Holding Corp., medical imaging products maker Digirad Corp. and biopharmaceutical company Genta Inc.

In an SEC filing Tuesday, Digirad said the rights plan is meant to protect it from acquisition proposals that aren't approved by its board. A Digirad representative said a company official wasn't immediately available for comment.

"The company's board of directors believes that the rights represent a sound and reasonable means of addressing the complex issues of corporate policy created by the current takeover environment," Digirad said in the filing.

Genta spokeswoman Tara Spiess said the company doesn't plan to hold a shareholder vote on its pill.

"The reason for doing it is to protect the shareholders in the long run, in the event of a potential takeover or a buyout," Spiess said.

Laide said that only a handful of companies disclosing adoption or extension of the pills in 2005 have said they will seek stockholder votes. These include Bally, CKE Restaurants, energy technology firm Capstone Turbine Corp. and network security provider WatchGuard Technology Inc.

Bally this year adopted a replacement pill that is set to expire in October 2015. However, the pill will expire July 15, 2006, if it isn't approved by shareholders by that date.

Supporters of poison pills argue that boards are better positioned than shareholders to use their experience and skills in deciding when to accept or reject takeover bids.

"For smaller companies, shareholder-rights plans seem to make a lot of sense," said Paul Lapidés, director of the Corporate Governance Center at Kennesaw State University near Atlanta.

Lapidés says poison pills protect early-stage companies that otherwise would be an easy target for investors who are looking to make a quick profit.

"In a larger company, it is much harder to do that - just because of the volume of shares out there and the dollar value of those shares," Lapidés said.

"Shareholder rights plans are almost never executed ... they are used to gain some negotiation strength," said Lapidés.