

# Does Shareholder Activism Change the Complementarity between Poison Pill and Directors' Duty?

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The Poison Pill: Still Relevant After All These Years

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Session 2: “Code of Conduct, Norms, Duties, Etc. of Directors of a Target, Listed Company in a Competitive Situation of Tender Offers”

Comments on Masakazu Iwakura’s Presentation

# Turnaround of the Father of Japanese Poison Pills?

- Masakazu Iwakura: Japanese *Lipton*—the Father of Poison Pill in Japan

The first Poison Pill in Japan (Bull-Dog SauceCo. Ltd. 2007): Supreme Court affirmed.

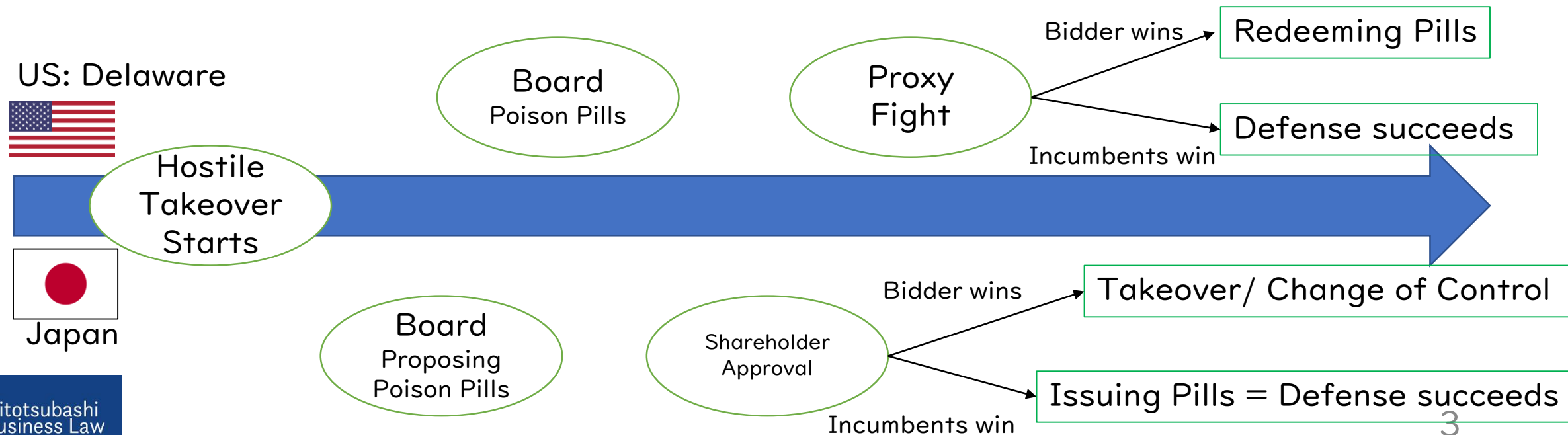
His interests shifted from Poison Pill itself to Directors' Duty

Three Traditional Frameworks justifying less interest of Pills

1. Functional Convergence of Poison Pill b/w US and Japan
2. Too Expensive → Alternative Tools for Corporate Governance
3. Tender Offer Regulation vs Poison Pill

# Traditional Framework I: Functional Convergence of Poison Pills

US (Delaware)		Japan
Board (Independent Directors)	Power	Shareholder Approval
Negotiating Tool Response to Coerciveness	Purpose	Response to Coerciveness



# Traditional Framework 2: Alternative Tools for Governance

- Market of Corporate Control:  
Disciplinary Effect on Managers, BUT too Expensive



- Alternative Tools for Corporate Governance
  - Stock Options; Incentive Compensation
  - Independent Directors

US: 80s Hostile Takeover → 90s Alternatives (Holmstrom & Kaplan 2001)

Japan: Monitoring Board in 2010s.

# Traditional Framework 3: Tender Offer Regulation vs Poison Pills

- Tender Offer Regulation vs Poison Pill
  - Same Purpose
    - Coerciveness; Negotiating Tool=Restraining from Inefficient Change of Control
  - Different Target?
    - Hostile Takeover—Friendly Takeover
- Tender Offer Regulation >> Poison Pill ?
- Tender Offer Regulation = Poison Pill + **Directors Duty**
  - Revlon Duty
  - Duty to Transfer “Fair Value” to Shareholders (Rex Holdings)

# Does Shareholder Activism change Three Frameworks?

## 1. The Trigger of Poison Pill

Anti-activist Pills—Anti Takeover Pills

Target: Parallel-conduct (wolfpack)

## 2. Cost of Market of Corporate Control

- Institutional Shareholders' Ownership Increased



- Cost of Market of Corporate Control was lowered.
- The Role of (Institutional) Shareholders was enlarged.

Stewardship; Board 3.0

# 3. TOB Regulation vs Poison Pills

- Tender Offer Regulation = Poison Pills + Directors' Duty

	Hostile	Friendly
Takeover Activities	Anti-activist Pills w/o Directors' Duty	Poison Pills + Directors' Duty
Stewardship Activities Parallel-conducts		?

How to fill this blank?  
How to extend Directors' Duty?