

# Penney's Fights Back Adopts Poison Pill To Thwart Ackman

By Evan Clark  
TAKE THAT.

J.C. Penney Co. Inc. chairman and chief executive officer Myron E. "Mike" Ullman 3rd and the rest of its board sent a missile back to activist investor William Ackman on Monday by adopting a shareholder rights plan, or poison pill, that would make it prohibitively expensive for anyone to take over the retailer without the consent of the board.

So far, Ackman, ceo of Pershing Square Capital Management, hasn't expressed an interest in acquiring the whole company. But the investor has taken a 16.5 percent stake in the Plano, Tex.-based Penney's and said he wants to meet with management about operations and strategy. He's working with Vornado Realty Trust, which owns another 9.9 percent of the retailer.

If Ackman ups his stake or if anyone else hits the 10 percent mark, the rest of the shareholders would get the opportunity to buy a portion of a preferred share of the company for \$130. The effect would be to lessen the stake of the would-be acquirer, who can't participate in the plan, and to jack up the overall price tag by astronomical proportions.

The company's shares fell 57 cents, or 1.7 percent, to close at \$33.30 in New York Stock Exchange trading Monday.

"It effectively dilutes the acquirer out of the picture," Douglas Hand, attorney at Hand Baldachin & Amburgey, who has worked on both sides of hostile takeovers but is not involved in the Penney's battle, said of the poison pill. "The acquirer really must deal with the board. They're doing what they can to have the conversation occur with the board and to be in control of that process."

With a poison pill in place, Ackman can no longer simply offer to buy shares from other stockholders and gain control at the firm. He would have to come up with an offer that was sweet enough to get the board to remove the poison pill.

"What management appears to be doing is taking a very defensive, crouched position," said Craig Johnson, consultant and president of Customer Growth Partners. "I would love to see J.C. Penney put as much energy into reviving its core business. Companies that put in poison pills most typically have done so to protect entrenched management."

Johnson said the company has been on the wane and trying



Myron E. "Mike" Ullman 3rd

to stem the market share losses with new deals and collaborations, such as MNG by Mango shop-in-shops and a new Liz Claiborne exclusive.

Ackman is seen as a savvy player who is not afraid to take his case directly to shareholders or to try to oust boards. He made repeated and public appeals for change at Target Corp. and spent \$10 million in an unsuccessful attempt to place five directors

on the retailer's board last year.

Penney's is more vulnerable than Target was since its 12 directors serve one-year terms ending at the annual meeting next spring. And as part of a bloc controlling more than 26 percent of the company, Ackman is in a stronger position, making him a potentially more potent force when it comes to shaking up the board.

The investor has been generally quiet on his plans for Penney's, though he appears to think the retailer could do more to cut expenses. Ackman could not be reached for comment Monday and Penney's declined to elaborate on any interactions with the investor.

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— Douglas Hand, Hand Baldachin & Amburgey