GEORGE GEIS joined the Virginia faculty in 2008, after teaching at the University of Alabama. He immediately became one of the most admired teachers at Virginia, and he has taken a leadership role in the institution. Geis has directed the school’s highly successful Law & Business Program, a curricular effort aimed at integrating business and legal analysis in the law school classroom, and became vice dean of the Law School in 2012.

Making his mark quickly comes naturally to Geis. He is just one decade into his academic career, but he already enjoys a reputation as an innovative scholar who brings the rigor and perspective of business analysis to contract and corporate law. Much of his work uses the methods of corporate decision-makers to evaluate the legal rules that govern economic organization, production, and exchange. Geis often reveals the hidden incentives or features of business law, and proposes new ways that latent incentives can be harnessed to shape legal doctrine or further cooperative private activity.

Geis never expected to be a law professor. After completing a joint J.D.-MBA degree, he joined the management consulting firm McKinsey & Company. During his five years there, Geis worked with dozens of companies around the world on business problems related to corporate strategy, mergers and acquisitions, corporate finance, and other CEO-level concerns. Geis eventually made his way to academia,
but his time in the boardroom continues to shape and influence his approach to legal scholarship.

“The decisions of corporate executives have some striking similarities to the challenges faced by lawmakers,” Geis says. “A company, for example, does not serve everyone the same way; rather, it segments customers into related groups and treats each segment differently. Lawmakers often ask a similar question: Should everyone be treated identically, or is there room to improve a legal system by offering more customized treatment?” To answer this question in business law, Geis uses the tools of corporate decision-making—such as customer segmentation, real option analysis, computer simulation, predictive modeling, and mechanism design.

Geis’s first few articles focused on contract law default rule theory. The famous case of Hadley v. Baxendale establishes a default rule that unforeseeable consequential damages are not recoverable unless the special facts leading to these damages are disclosed at the outset of the contract. Contract theorists have questioned the merits of this default rule, and some have argued for an approach that awards full damages for breach. The critics charged that the Hadley rule made sense only for markets where many buyers placed a relatively low value on performance, while just a handful of buyers held a much higher value. With this unique market structure, the high-value buyers could reveal their circumstances, and thereby receive customized seller treatment, with lower systemic transaction costs (as compared to a full-damages rule that forced many low-value buyers to step forward to negotiate lower service levels). But Hadley’s critics argued that it should not be the default rule for all markets. While market-specific rules would be best, critics pointed out that lawmakers were in no position to make fine-grained determinations about buyer preferences in different markets.

Geis saw this problem through the eyes of a marketing executive and realized that this exact question was faced by most companies: What range of prices are my customers willing to pay? In “Empirically Assessing Hadley v. Baxendale,” 32 Fl. State U. L. Rev. 897 (2005), Geis collected a series of detailed marketing studies that measured buyers’ willing-
ness to pay for various products, used this data to estimate buyer preferences about performance, and concluded, contrary to the Hadley critics, that a Hadley default rule often made more sense than a full-damages default.

Geis continued his analysis of contract law with “An Embedded Options Theory of Indefinite Contracts,” 90 Minn. L. Rev. 1664 (2006). This article asked what courts should do with an ambiguous contract. Judges often fill gaps in agreements via the process of contract interpretation. But Geis argued that courts should be more willing instead to strike down these agreements under the indefiniteness doctrine. To support this claim, he turned to real option theory. Business executives often incorporate real options—the right, but not the obligation, to expand or abandon an initial decision once new information emerges—into their planning efforts. Geis recognized that indefinite contracts are sometimes created because an imprecise term, combined with a judicial willingness to fill gaps when faced with those terms, can create an embedded option. Such options, however, may be difficult for the contractual counterparty to price. This is problematic, not only because parties are externalizing contracting costs onto the courts, but also because it can warp the efficient trade and investment goals of contract law. Geis then modeled the effect of these distortions, and that analysis supported his argument that courts should not hesitate to invoke the indefiniteness doctrine to strike down these types of bare-bones agreements.

Geis travels frequently to India to research and lecture on business-outsourcing transactions. In connection with this work, he has written a trio of articles that examine the decision to move economic production outside of a firm via contract. This work builds on legal scholarship exploring the theory of the firm, but it takes a fresh perspective. Most scholars ask why firms conduct economic activity internally—producing a given input within the borders of a corporation rather than sourcing the product via external market exchange. Geis takes the reverse tack, asking what might cause a firm to jettison an internal production activity by outsourcing. In “Business Outsourcing and the Agency Cost
Problem,” 82 Notre Dame L. Rev. 955 (2007), Geis concluded that the conventional explanation for outsourcing—that companies were adjusting their purchasing practices to take advantage of lower production costs—was only half the story. He showed how the transaction costs of outsourcing contracts (broadly defined to include agency distortions from using outsourcing vendors) were also dropping, and that this reduction in costs should accelerate a move toward greater economic production via contract.

Along the way, Geis also analyzed the common provisions in business outsourcing contracts and showed how these terms are used to mitigate the risk that an outsourcing partner would shirk or cut corners (in his terms, the “agency costs of outsourcing”). For example, most business outsourcing transactions are structured as a complicated array of overlapping contracts. A broad framework agreement will often be supplemented with dozens of detailed work orders. At one level, these complicated arrangements are puzzling because they are costly to formulate. But Geis showed that multiple, asynchronous contracts allowed outsourcing clients to stage their commitment, freeing them to reduce the scope of a project if hints of vendor opportunism arose. Other contracting strategies, such as allocating similar work to multiple vendors, negotiating explicit control or monitoring rights, and securing for-cause exit terms, can also be understood as mechanisms for aligning performance incentives.

Geis extended this work with “The Space Between Markets and Hierarchies,” 95 Va. L. Rev. 99 (2009) and “An Empirical Examination of Business Outsourcing Transactions,” 96 Va. L. Rev. 241 (2010). He recognized that the traditional distinction between internal firm production and external market contract, sometimes known as the “make-or-buy” decision, oversimplified the way that goods and services are actually produced. In “The Space Between Markets and Hierarchies,” Geis demonstrated how middle-path organizational arrangements—such as business alliances, joint ventures, franchise agreements, and outsourcing transactions—could serve as a sensible compromise between market
exchange and firm hierarchy. This type of organizational compromise can strike a balance among the typical factors that underlie the make-or-buy decision, including production costs, transaction costs, control terms, and optimal financing arrangements.

In “An Empirical Examination of Business Outsourcing Contracts,” Geis moved from the “why” question to the “how” question. He rolled up his sleeves to conduct a micro-analytic examination of outsourcing contracts to determine how parties were actually executing these transactions. Outsourcing relationships, Geis found, were extremely diverse, and he described the many different provisions for dividing financial gains, allocating control, and parsing operational risks.

Geis has also investigated the corporate governance tension between majority and minority shareholders. Much of corporate law addresses managerial agency costs—the risk that lazy or dishonest managers will use their control of a firm’s daily operations to take advantage of shareholders. But there is another tricky governance problem in corporate law: how to allocate the balance of power between controlling shareholders, who typically retain more than 50 percent of a firm’s stock, and the remaining minority shareholders who hold much smaller stakes. Lawmakers balance on a tightrope here because assigning too much power to minority shareholders can lead to a holdout problem, while granting untrammeled discretion to a majority shareholder can promote various abuses (such as underpriced freezeout mergers) that will harm overall shareholder interests. The law attempts to address these concerns through disclosure obligations, corporate fiduciary duties, and appraisal rights, but these efforts are often dismissed as inadequate.

In “Internal Poison Pills,” 84 N.Y.U. L. Rev. 1169 (2009), Geis offered a new idea for balancing the tension between majority and minority shareholders in the freezeout merger context. Borrowing conceptually from the antitakeover device created in the 1980s to counter hostile takeovers, he showed how a privately enacted solution—the internal poison pill—might finesse the twin internal governance ten-
sions of holdout and expropriation. The internal poison pill uses embedded option theory to construct an intermediate legal entitlement (as opposed to an extreme property or liability rule) for both majority and minority shareholders. A company could adopt a pill with nuanced redemption features (typically, a poison pill can be redeemed for a nominal amount at the sole discretion of the board). For instance, a minority shareholder seeking to exercise the pill after a freezeout announcement could be required to name a buyout or redemption price for the pill. There must be a mechanism to prevent the minority shareholder from naming an outrageous surrender price. (Geis suggests a money-where-your-mouth-is feature that would grant the firm a put option to sell shares to the claimant at the stated redemption price.) With that in place, the pill would allow minority shareholders to block an abusive freezeout merger, while also chilling minority holdout claims. In this article Geis also develops a pre-commitment theory to show why a firm might be willing to adopt an internal pill, though he recognizes that lawmakers may need to press for this type of governance compromise.

Geis continued his study of the governance tensions between shareholders in “An Appraisal Puzzle,” 105 Nw. U. L. Rev. 1635 (2011). As the title suggests, this piece focuses on appraisal rights, the statutory power granted to shareholders to dissent from a merger and receive a judicially determined fair price for their shares. Appraisal rights have been derided for years. But Geis identified a modern problem with these statutes, one linked to the internal plumbing of our financial markets. In order to assert an appraisal claim, shareholders must prove that they did not vote for the merger. Under current securities settlement practices, however, shares are not specifically identified; rather, a large clearinghouse organization holds the vast number of shares in undifferentiated bulk. This means that shareholders who purchase stock in a company after the record date (the day when the right to vote on a matter is severed from ownership) cannot establish, with any degree of certainty, whether “their” shares voted against the merger—and therefore whether they are entitled to appraisal rights.
Delaware courts recently weighed in, however, and held that after-purchased shares are now often eligible for appraisal. Geis argued that, as with much of corporate law, the governance effects of this Delaware ruling are difficult to predict. Amplifying appraisal rights in this way may have the positive effect of mitigating the majority shareholder freeze-out problem with a “back-end appraisal market,” analogous to the market for corporate control. Or appraisal rights could morph into a vehicle for minority shareholder strike suits, serving as a tax on freezeout transactions and ultimately preventing sensible deals from taking place. As he often has, Geis advocates a compromise, one that would retain the ability to maintain widespread appraisal claims while simultaneously undermining financial incentives for minority shareholders to overreach.

More recently, Geis has turned his attention back to contract law and to the obscure rules that govern third-party relationships. Few scholars study the law of third-party beneficiaries, and not everyone realizes that a person who lacks contractual privity may be able to sue for nonperformance. In “Broadcast Contracting,” 106 NW. U. L. Rev. 1153 (2012), Geis shows how the rules of bilateral contract law are often turned on their head when the rights of outsiders come into play. For example, gift promises are not legally binding in bilateral agreements, but a promise to a third-party beneficiary can be vested, such that it becomes legally enforceable without consideration from the outsider. Geis also demonstrates how the law of third-party beneficiary contracting can be used to broadcast private economic commitments to many different beneficiaries or even to write “new laws” in areas as diverse as tort, employment, property, and corporate law. For example, an employer might contract to license a trademark from a counterparty in exchange for a promise that all of the employer’s workers and job applicants will receive heightened legal protection (such as anti-discrimination provisions that go further than current law) as third-party beneficiaries. This commitment has legal force because any outsider in the protected class is now empowered to sue the firm directly for breach. Drawing again on his experience in corporate strat-
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Geis shows how a party might derive incremental benefits, even beyond transaction cost savings, from an ability to commit broadly to future obligations or limits on behavior. He concludes that third-party beneficiary rights offer a “powerful, even foundational, tool that can be used to adjust legal relationships in diverse areas of activity.”

Geis remains intrigued by the possibility that the methods used by firms to take action in complex markets might also be useful for understanding and setting the very rules that govern this production activity. In his scholarship, Geis often advocates a compromise approach because he appreciates that the law must often strike a balance between two equally problematic outcomes. Though he recognizes the need to regulate, Geis also seeks incentive-molding rules that can corral parties toward optimal social ends, strictly by appealing to their self-interest. In pursuit of these goals, Geis takes up the tools of the marketer to understand markets, the tools of the strategist to explain organizational structure, and the tools of the corporate leader to reform corporate law.
In early 2002, I climbed on a plane—along with my pregnant wife and two-year old daughter—for a 30-hour flight from Los Angeles to India. Our destination was Hyderabad, in the south-central part of the country, where we would be living and working for the next two months. At the other end of the flight we got off, tired and anxious, into a very different part of the world. Cows really did cross the streets. Shabby tent cities littered abandoned lots—sometimes right in front of mansions. Motor scooters loaded with husband, wife, and kids darted between bicycles, three-wheeled taxis, pedestrians, and trucks. There were people everywhere, dressed in bright reds, greens, pinks, and oranges, and they scurried among small roadside shops and cafes that seemed to be open all the time. It was eleven-and-a-half hours later back in LA, but, if anything, all of our senses seemed sharpened.

I had accepted a teaching position at a prominent new business school, started in conjunction with several Western universities, and it was the perfect place to take the pulse of economic trends in India. Most of the students and faculty were excited about technology—software development, networking, and the telecommunications industry in particular. Y2K fears had put Indian software programmers to work, and IT budget pressures in the wake of the dot-com implosion kept them there. A handful of students were talking about outsourcing beyond call centers and software maintenance, but for the most part the focus seemed to be elsewhere—on things like finance, consumer marketing and, above all, technology.

Nearly four years later, I took the same flight (actually a shorter one this time since there was a direct route into Hyderabad) and returned for another teaching visit at the business school. It is hard to describe the economic transformation that had occurred while I was away. The people and
cows were still everywhere, but now they competed with Hondas and Hyundais more than with bicycles. Gigantic new shopping malls dominated the city center; several were multi-level stores specializing in just wedding apparel. Work crews demolished decrepit roadside shops to widen the streets, and many of the shanty-towns were replaced with sparkling new office buildings.

Most strikingly, the signs of business outsourcing were everywhere. Loud explosions interrupted the late afternoon, as Microsoft built a massive campus for thousands of workers. People argued over the effects of English accent training on Indian culture—the buzz of conversation was now peppered with a Manhattan staccato or Southern drawl from some call-center workers. I asked my class of a hundred students whether they had worked on an outsourcing transaction, and nearly seventy percent raised their hand. Everyone was looking for the next wave—was it legal services outsourcing, pharmaceutical R&D outsourcing, animation, or something else? You could almost feel the exuberance in the air. And it wasn’t just Hyderabad; even the Communist governments in West Bengal and Kerala were aggressively courting foreign investment. Business outsourcing had saturated the Indian economy.

And India is certainly not the only country—although perhaps it is the most prominent one—affected by business outsourcing. By 2008, an estimated 4.1 million jobs in the service sector will have moved from developed economies to places like China, India, Russia, Brazil, and the Philippines. According to the McKinsey Global Institute, this is just a tiny proportion of the jobs that could theoretically be outsourced—it estimates that nearly 160 million jobs in the service economy, about 11 percent of total employment, could be performed anywhere in the world. No one expects this many positions to move overseas, but analysts do project the size of the total offshoring market to grow rapidly.

Firms keep some of this relocated activity under their own control by building “captive” offshore facilities that become, in essence, foreign subsidiaries of the parent firm. But many of these projects are moving economic production
beyond a firm’s borders—as companies contract with third party vendors to do something that they have historically done themselves. In short, we are witnessing a significant realignment in the scope of the firm.

This Article addresses an obvious question: why has business outsourcing grown so far so fast? What is causing so many firms to move economic activity beyond their corporate and country borders?

The question is important for corporate law scholars because it raises foundational issues underlying the theory of the firm. Indeed, the decision to pool resources under centralized control presents the fundamental tension in corporate law literature. The issues date back at least seventy years—to the celebrated work of Ronald Coase and of Adolphe Berle and Gardiner Means. On the one hand, it’s nice to be big. Assembling property under the discretionary control of a small management team can certainly create economies of scale, save transaction costs, and lead to other benefits. But on the other hand, it is now well established that the separation of ownership and control can unleash a wide variety of bad manager behavior, such as shirking, lavish compensation, entrenchment, and excessive risk-taking—collectively referred to as agency costs.

This friction between size and sloth permeates the study of corporate law, especially in discussions of executive compensation and corporate capital structure. The extensive literature in these fields debates the magnitude of agency costs and wrestles with ideas for mitigating these problems—using things like executive stock options, management performance targets, leveraged buyouts, debt covenants, and shareholder access initiatives. But the tension has hardly been explored in business outsourcing—which is surprising because outsourcing has received such widespread public attention in recent years. This Article suggests that the business outsourcing phenomenon offers a valuable, but previously neglected, context for analyzing the fundamental tradeoffs that occur when ownership is parted from control. Essentially, it considers theories of the firm from an opposite perspective: why does activity move outside the firm, rather
than why activity is placed inside it.

So let me come back to my earlier question: why have we seen such a notable shift in the optimal balance between intra-firm activity and inter-firm contracts over the past decade? The conventional explanation for the outsourcing explosion runs something like this. Relatively high transaction costs have historically prevented firms from tapping into the global supply of labor. As these costs drop, however—through improvements in communication, digitization, standardization, and the like—it becomes economical for firms to embrace overseas production. In essence, falling interaction costs have unlocked a massive supply of labor, driving down the price of economic inputs, realigning business processes, and tempting (or forcing) managers to move production outside the firm. This explanation comports with intuition and empirical observation, and certainly there must be some truth to the story.

This Article argues, however, that there is a second important catalyst for the rise of business outsourcing—one rooted in the agency cost problem. For while business outsourcing can bring interesting opportunities, it also introduces some familiar anxieties. Just as a CEO may slack off, build a fancy office, or make risky bets with shareholder dollars, an outsourcing vendor may abuse its power to conduct the economic activity that impacts another firm. Essentially, a company outsourcing an activity faces the same dilemma where control is divorced from ownership. The outsourcing vendor controls the activity, while the outsourcing firm “owns” the result. These agency costs raise a significant impediment to business outsourcing and are a major reason why firms elect to keep economic activity within their borders.

The thesis of this Article is that business outsourcing has thrived in recent years not only because globalization has unlocked inexpensive production markets, but also because it is becoming easier for firms to monitor and prevent the agency costs of outsourcing. Over the past decade, firms have undertaken a variety of intriguing tactics for mitigating agency problems in the business outsourcing context.
Drawing upon a detailed analysis of outsourcing contracts, I will explore several strategies to minimize agency costs—including the use of staged contractual commitment, redundant agents, incentive-compatible compensation, exit rights, and other techniques. To be sure, the issues here can arise in any long-term or relational contract. But the recent explosion in business outsourcing offers a fresh perspective on the ways that private parties take strategic and contractual steps to minimize agency risks.

For example, it is certainly more expensive to manage several outsourcing vendors who perform the exact same activity. But these increased costs might reduce agency risk through benchmarking or other means—and the use of multiple vendors is becoming a popular outsourcing strategy. I argue that firms are increasingly willing to trade greater monitoring activity for reduced agency risk because it is becoming cheaper to do so. In essence, the same forces that are opening overseas markets are also making it more cost-effective to detect and prevent misbehavior by outsourcing partners. And I believe that this ability to reduce the agency costs of outsourcing is another important factor in the rapid movement of activity beyond firm borders.

INTERNAL POISON PILLS
84 N.Y.U. L. Rev. 1169 (2009)

Large corporations harbor dark corners, and these shadows shelter a daunting collection of governance concerns. There are at least three problems. First, lazy or dishonest managers might use their control of a firm’s daily operations to make poor decisions or steal that which rightfully belongs to shareholders. Second, greedy shareholders may leverage their influence over managers to siphon wealth from other investors, such as lenders or preferred shareholders. Third, a controlling majority shareholder, again working through compliant managers, may wrongfully extract value from minority owners. Corporate law tries, with varying degrees
of success, to arrest the guns of all actors in this Quentin Tarantino—style standoff.

The first two contests—between manager and shareholder, and between shareholder and lender—have already been carefully dissected in the academic literature. The agency problems are unsolved (and will likely remain impenetrable), but we now have a pretty good sense of the battlefield. It is only in this decade, however, that the third relationship—the civil war between majority and minority shareholders—has taken center stage. Several incongruous Delaware cases, the rise of private equity, and a flood of post-Sarbanes-Oxley freezeout mergers have underscored the need for lawmakers to confront the governance problems presented in this context.

The tension between majority and minority shareholders is especially interesting because lawmakers must walk a tightrope between two alternative hazards. On the one hand, granting the majority untrammeled discretion can promote abuses of power that will depress the ex ante value of a firm. Controlling shareholders enjoy many strategies for fleecing minority investors, but none are more potent than using a freezeout merger to take full ownership of the firm. It is easy to see how an overly permissive freezeout policy might lower a firm’s market value: Potential investors will fear that a controlling shareholder might price the merger at a ridiculously low level. This fear will, in turn, depress the upfront price that minority investors would be willing to pay for the stock.

On the other hand, assigning too much power to minority shareholders can lead to a holdout problem, with recalcitrant dissenters demanding private payouts before blessing a merger. Even if minority owners do not maintain an express veto over the transaction, generous remedial statutes or very strict standards of review present a risk of costly strike suits.

Not all freezeout transactions amount to legally sanctioned theft. It is important to recognize that there are legitimate reasons to conduct these deals, and excessive minority blocking power (de jure or de facto) may destroy social wel-
fare by obstructing efficient mergers. The legal challenge, of course, is how to balance the dual extremes of minority holdout and majority expropriation.

Thus far, corporate law has dealt with the majority-minority governance problem, as it appears in the merger context, through a troika of regulatory policies. First, under federal securities law, firms undergoing a freezeout merger must disclose detailed financial information to all shareholders. Second, these deals are subject to judicial review (often in Delaware) to determine whether the firm (through its managers) or the controlling shareholders (directly) have breached a fiduciary obligation to the minority owners. And third, dissenting shareholders may have the right to file an appraisal claim, which theoretically ensures—again through a judicial proceeding—that minority owners receive fair value for their shares. In a perfect world, these protections should act in concert to get the balance right.

Unfortunately, this three-part framework has not been very satisfying. Disclosure seems like a reasonable idea, but it often does not have much practical effect and is subject to loopholes. Judicial review of freezeout mergers is messy, at least in Delaware, because inconsistent standards attach to identical economic transactions. Courts will either adopt a strict “entire fairness” standard or award defendants the protection of the deferential “business judgment rule”—depending on whether the deal is structured as a statutory merger or a tender offer. And the appraisal remedy has long been criticized as a weak cure due to its stringent (and outdated) procedural requirements and its protracted use of adversarial litigation to value shares.

So if the current legal framework is not working, how should we deal with the freezeout problem? Are there other sensible ways to divide the levers of power between majority and minority shareholders to help deter abusive deals and facilitate sensible ones? And can we encourage firms to make reasonable tradeoffs themselves, using private contractual arrangements instead of costly judicial resources?

In this Article, I propose and analyze a new type of economic instrument for balancing the tension between major-
ity and minority shareholders in the freezeout context. I call it an “internal poison pill”—in obvious reference to the antitakeover device that famously sets the balance of power between target firms and third-party acquirers during an outside merger contest. An internal poison pill is similar to its cousin in that it seeks to craft economic disincentives to the trampling of the rights of impacted shareholders (minority owners in this context) as a way of restoring balance to merger deliberations. Indeed, as I will show, a traditional “external” poison pill (with only slight modifications) might be used to address this problem, although this is not the approach that I ultimately recommend.

Instead, I argue that a more flexible, though weaker, “internal” pill can offer a better compromise than the conventional medicine.

The focus of my proposed modification is on the power of redemption. The stock options in traditional pills are redeemable (for a nominal fee, perhaps a penny) at the sole discretion of the issuing firm’s board of directors. This has the obvious benefit of forcing external acquirers to negotiate with the target board, instead of sidestepping this process through a direct tender offer to current shareholders. But centralizing the power of pill redemption in this manner also has some serious drawbacks: It can, for example, shield incumbent managers and directors from the discipline of corporate control markets or stymie efficient deals. This is especially true if poison pills are combined with staggered board charter provisions to brew an even more toxic potion. The thought of mounting a multiyear proxy contest to replace a staggered board—and only then redeeming the pill—is enough to scare off all but the most determined of acquirers.

By contrast, an internal poison pill (as envisioned here) would adopt a more nuanced redemption strategy. The main trick is to use embedded options to qualify the pill’s de facto veto power. For example, as part of the strike price to exercise the pill’s discounted call option, minority shareholders could be required to write the triggering controller an embedded option setting a price under which the minority sharehold-
ers’ poison pill rights could be redeemed. Economic incentives (what I call a “catch”) should also be adopted to discourage the minority shareholders from demanding outrageous terms—such as requiring a redemption payment of $1,000,000 per share. If designed correctly, these (admittedly more complex) securities might be used to elicit and compare the subjective values that each party places on a transaction. If the freezeout is a rip-off (because the majority has set an artificially low price), then the internal pill would have bite, and the minority holders could receive additional discounted shares—or, more likely, the majority controller would not attempt the abusive freezeout in the first place. If, on the other hand, a minority shareholder is simply stonewalling a sensible deal, he will be unwilling to put his money where his mouth is (for fear of springing the catch), and the majority owner can economically redeem the pill.

More theoretically, using internal poison pills as a governance tool is a way to craft an intermediate legal entitlement that rests between the extreme options of granting dissenters veto power over the merger (a property right) or granting majority shareholders full discretion to execute the merger by paying dissenters a judicially determined fine (a liability right). This work thus shows how we might parse the legal entitlements established by Calabresi and Melamed’s famous “cathedral framework” much more finely in a corporate law context.

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