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Memo to Shareholders: Shut Up

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TO all those public company shareholders who are trying to make directors more accountable to owners and more watchful over executives: Cheer up. Your efforts seem to be gaining genuine traction.

How do we know? Martin Lipton told us so.

Mr. Lipton, of course, is the nation's pre-eminent takeover lawyer and founding partner of Wachtell, Lipton, Rosen & Katz. He invented the poison pill in the 1980s, a device that entrenched me-first managers threatened by takeover artists. More recently, Mr. Lipton has become the apologist for embattled chief executives who don't like shareholders sounding off on excessive pay and cozy boards.

Last week, he sounded a grave warning at the 25th annual Institute on Federal Securities in Miami. "Today shareholder activism is ripping through the boardrooms of public corporations and threatening the future of American business," he said in a keynote speech to the legal and corporate crowd that had assembled. Directors are under siege, he averred, thanks to shareholder activists who are "destroying the role, focus and collegiality of the board of directors."

Finally, Mr. Lipton thundered: "We cannot afford continuing attacks on the board of directors. It is time to recognize the threat to our economy and reverse the trend."

As part of his speech, Mr. Lipton also asked such fundamental questions as whether qualified people would agree to serve as directors in the current environment and whether directors would become so risk-averse that their companies would suffer.

Those are both worthwhile topics for a reasoned, probing discussion. But the sheer desperation in Mr. Lipton's speech, called "Shareholder Activism and the Eclipse of the Public Corporation," subverted the more intellectually challenging elements of his argument, leaving what remained something of a rant. As such, it may have been the best proof yet that shareholders' rightful demands to make directors more accountable are getting results.

Mr. Lipton did not return a phone call seeking comment.

Mr. Lipton is a sophisticated, savvy lawyer. But his thesis — that owners are bent on wrecking the companies they have bought and upon which they hope to build a prosperous retirement — doesn't make much sense. He seems to see shareholders as infants who should stay in their cribs and leave big corporate decisions to wise men on the board, in the corner suite and, of course, in law offices.

"It's almost like listening to a small boy who has lost his favorite toy — in this case the poison pill that is held in disrepute," said Herbert A. Denton, president of Providence Capital in New York. As an adviser to minority shareholders, Mr. Denton has faced the likes of Conrad M. Black, the disgraced former chief executive of Hollinger and Richard Scrushy, former chief executive at HealthSouth.

"I've sat on nine different boards," Mr. Denton added. "Sometimes it's collegial and sometimes hard questions need to be asked, but nobody's been hit by a plate yet."

If Mr. Lipton had focused his diatribe on marginal activists with kooky agendas or hedge funds keen on instant gratification, it would have been more credible. But he seems to consider even thoughtful people, who are trying to persuade directors to exercise their fiduciary duties, as enemies of corporate America.

Frederick E. Rowe Jr., a money manager in Dallas and president of Investors for Director Accountability, is an example. His organization, founded last year by a group of entrepreneurs and businesspeople, is working to remind directors of their duties to shareholders.

“Resistance makes people think clearly and a C.E.O. does a better job if he has smart people who make him spell out what he’s going to do,” Mr. Rowe said. “That includes directors who think, act, vote and hold management to account like interested, informed, long-term owners.”

One of Mr. Lipton’s most persistent themes is the death — boohoo — of collegiality in the boardroom. “Many director candidates are declining to serve on boards,” he said, “due to the unpleasantness of filling out extensive questionnaires to enable appropriate disclosures and qualification determinations.”

Service on a board used to be such fun. Now that there are so many pesky details involved, we’re taking our marbles and going home.

If shareholders are wreaking such havoc in the boardroom by, for example, filing nettlesome lawsuits against able directors, wouldn’t the costs of directors’ and officers’ liability insurance be skyrocketing as a result?

Yes. But instead they have plummeted. Loretta Waters, vice president at the Insurance Information Institute in New York, said that rates on so-called D.& O. insurance fell almost 40 percent in 2005, dropped an additional 10 percent last year and would probably decline again this year.

“Directors are under greater pressure by shareholders to be more transparent, provide more information,” Ms. Waters said. “I would say that the changes in corporate governance practices and transparency to shareholders as a result of the Sarbanes-Oxley Act have likely contributed to the decline in D.& O. rates.”

If the public corporation is an endangered species, as Mr. Lipton argued, it is not because of shareholders. Those who owned stock in Enron, WorldCom, Adelphia and Tyco did not create the scandals that rocked those companies and sowed mistrust among others. Selfish managers and passive directors did that work handily.

Almost everyone gets nostalgic, of course. And Mr. Lipton may pine for the days when the poison pill reigned supreme, his chief-executive clients were safe and boards resided quietly in their Amen corner.

But those days are over. Greater shareholder involvement in director elections and other board matters is coming, in part because so much wealth has been destroyed at companies with lax oversight. Mr. Lipton’s fear-mongering about its consequences will please his corporate clients, but it won’t stop the train.