TELL, LIPTON, ROSEN & KATZ

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To Our Clients:

A Second Generation Share Purchase Rights Plan

In the four years since we developed it, the share purchase rights plan ("poison pill") has proved to be the most effective protection against abusive takeover tactics. It has been upheld by most courts that have considered it. It has been adopted by over 400 companies. But the dynamics of takeovers have changed; the takeover frenzy continues and it is necessary to develop new means to deal with new takeover tactics and the attacks by institutional investors on what they deem to be interference with shareholder determination of takeover matters. We believe that we have developed a new plan designed to cope with the new problems. We recommend that consideration be given to substituting it for the original plan.

In addition to the attacks on the basic legality of the pill, raiders have argued -- so far without success -- that the directors of a target that is protected by a pill have a special fiduciary duty to redeem the pill to permit a cash offer for all the outstanding shares of the target.

Apart from legal attacks on the pill, during the 1987 annual meeting season certain institutional investors proposed proxy resolutions asking for a shareholder referendum on the adoption of the pill. While the resolutions attracted on the average only 20% of the outstanding shares and were in every case defeated, the institutions are planning an expanded proxy campaign in 1988. Also, the SEC continues its opposition to the pill and several of the takeover reform bills now pending in Congress would curb the use of the pill.

The market price of the shares of many companies that adopted a pill in 1985 or 1986 has appreciated substantially since the pill was adopted and, therefore, the exercise price of the rights could be reevaluated with a view to increasing it to accord with current market prices and the company's current prospects.

In light of the foregoing, this is clearly an appropriate time to reexamine the pill.

The pill is made more effective by adding a flip-in at the 20% acquisition threshold. This will prevent a raider from sweeping the street or otherwise acquiring control through market purchases or a partial tender offer. It also protects the shareholders in a case where the raider avoids the effect of the flip-over by not doing a second-step merger after acquiring control. We believe that the special shareholder meeting procedure described below resolves previous questions about the judicial reaction to the flip-in.

The shareholder democracy and fiduciary duty arguments are answered by providing for a shareholder vote if a non-abusive takeover is proposed. To accomplish this, we have added a new provision that if a bidder (who does not hold more than 1% of the shares of the company and therefore is not a greenmailer or a free rider seeking to profit by putting the company in play) proposes to acquire all of the shares of the company for cash at a fair price and has financing or financing commitments, then the company will, if requested by the bidder, hold a special shareholder meeting to vote on a resolution requesting the board of directors to accept the bidder's proposal. A prospective bidder who holds more than 1% could not avail itself of this provision unless it sold down to 1% before making the request. The bidder would have to furnish an investment banker's opinion addressed to the shareholders of the company that the price proposed by the bidder is fair. The bidder would also have to bear one-half of the company's costs of the special shareholder meeting.

In connection with the special shareholder meeting, the bidder could submit any information it wished for inclusion in the company's proxy statement and could mail its own proxy material if it so desired. The company could include any information it wished in its proxy material, including information relating to the "fairness" of the price proposed by the bidder and information about any alternative transactions. There would be no restriction on the board of directors determining that the company should remain independent and unrestructured and concurrently with the proxy solicitation for the special shareholder meeting asserting any litigation or other defenses the company wishes. We recognize that obtaining an injunction against a tender offer is made more difficult by providing for the special shareholder meeting in that the courts will be reluctant to stop a tender offer that the shareholders are about to vote upon; however, we think this is a fair trade-off for the protections of the new pill. Nor would there be any restriction on the bidder pursuing whatever takeover tactics, including litigation to invalidate the pill or require the board of directors to redeem it, it wishes.

To assure sufficient time to consider the bidder's proposal and to seek and evaluate alternatives and to prepare the proxy material, but also to avoid undue delay, the special shareholder meeting would be required to be held not later than 120 days nor earlier than 90 days after the bidder's request (except that if the bidder's request is received after an annual or special shareholder meeting has been scheduled, the meeting requested by the bidder could be held not later than 120 days after the earlier scheduled meeting). We recognize that the meeting procedure permits the vote to be heavily influenced by arbitrageurs (and the bidder and its allies) who purchase after the announcement of the bidder's proposal but before the record date. However, absent statutory authority, there is a substantial question as to the legality of a record date prior to the first announcement of the bidder's proposal and it would raise other legal questions to restrict purchases by the bidder after it makes its request or to deprive the bidder of voting rights on those purchases.

If a majority of the company's outstanding shares vote in favor of the resolution at the special shareholder meeting, the pill would be redeemed so as to permit consummation of the bidder's proposal or a competing better proposal. If following an approving vote the company does not enter into a cash merger agreement with the bidder -- and there would be no obligation to do so -- the bidder could make a tender offer unaffected by the pill, provided the tender offer is for all the shares at a cash price not less than the price the shareholders voted upon. The bidder might actually start its tender offer when it makes the request for the special shareholder meeting or at any time thereafter. If the bidder does so, it could structure the timing so that it consummates its tender offer immediately following the meeting.

To the extent that the new pill channels takeover activity into the special shareholder meeting procedure, it will be more effective than the original pill in discouraging abusive takeover tactics and will provide more time for a target to deal with the cash offer for all shares against which there is today no practical defense other than drastic restructuring. The new pill recognizes the realities of a market dominated by institutional investors and a regulatory system that tolerates junk-bond-financed corporate raiders who are able to put almost any company into play and whose activities invariably result in a bust-up of the target, whether by the raider, a white knight or the target itself in a restructuring. The new pill does not prevent takeovers. Like its predecessor it protects against the worst takeover abuses, it gives all parties a reasonable period of time in which to make decisions on such a fundamentally important question as a takeover, and it strengthens the ability of the board of directors of a target to obtain the best result for the shareholders.

We recognize that the new pill assures a raider that it can obtain a shareholder vote on a proposed takeover, and, therefore, might be said to promote takeovers. However, as a practical matter, a raider can obtain a shareholder vote, or the pragmatic equivalent of a shareholder vote, on a proposed takeover apart from the special shareholder meeting provisions in the new pill. For most major public companies with substantial institutional ownership there is no absolute takeover defense, other than management control of a majority of the voting stock. Therefore, those companies and their shareholders are best served by a pill that provides the most effective protection against takeover abuses and removes much of the profit incentive for a raider putting a company in play. On balance, we believe that, if universally adopted, the new pill would decrease substantially hostile takeover activity.

The new pill borrows from the special shareholder meeting concept of, but is more balanced than, the Indiana-type control share acquisition statute recently upheld by the Supreme Court in the CTS case. The new pill would reduce the pressure for Delaware and other states to enact the Indiana-type statute with all of its drawbacks. Unlike the new pill, the Indiana-type statute does not deter raiders from free-riding or seeking greenmail by accumulating an up to 20% position and then putting the target in play. To avail itself of the special shareholder meeting, the bidder cannot hold more than 1% when it requests the meeting, and can buy more than 1% only after the shareholders of the target have been protected by public disclosure of the bidder's proposal. However, prior to the vote at the special shareholder meeting neither the bidder, nor anyone else, could cross the pill's 20% threshold without triggering the nonredeemability and flip-in provisions of the pill at that level.

The Indiana-type statute does not protect shareholders from two-tier offers, partial offers, unfair second-step freeze-out mergers and being locked into minority positions. The new pill prevents or protects against all of these abuses.

The Indiana-type statute provides only 50 days to evaluate an offer and to seek and evaluate alternatives, a period that is clearly inadequate for the creation and accomplishment of a complex restructuring or the search for, and negotiation of, an alternative acquisition and the preparation and SEC clearance of the requisite proxy material. The new pill does not affect the bidder's voting rights or otherwise prevent a tender offer by the bidder from being completed in the 20 business day period set under the Williams Act. Therefore the pill is not inconsistent with the Williams Act and does not create the sort of preemption question that is thought to limit Indiana-type statutes to the 50-day period. The new pill only establishes a 90 to 120 day period if a bidder desires to avail itself of the special shareholder meeting procedure. If the bidder does not elect to avail itself of this procedure, subject to the other provisions of the pill, it may proceed with a tender offer, open market accumulation or bear hug just as it would at present.

As in the case of the original pill, and most significant legal innovations, there can be no assurance that all courts will agree that the new pill is legal. It is our opinion that it is legal and that it is within the business judgment of the board of directors to substitute the new pill for the original pill.

We are advising our clients to consider substituting the new pill for their existing pill and, in that connection, where appropriate, to set the exercise price of the new rights to reflect the current market price of the common stock. Companies that have first generation pills can in most cases amend such pills to add the second generation pill provisions without redeeming their pills. However, the substitution of a new exercise price in place of the existing exercise price of a company's rights would require that the original pill be redeemed and the new pill issued in the same manner as the original pill.

M. Lipton