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To Our Clients:

Share Price Protection Repurchase Rights

We have developed a new strategy to deal with takeovers -- Share Price Protection Repurchase Rights ("repo rights"). They are particularly appropriate for successful companies whose shares are undervalued and who are under pressure to restructure. They telegraph to the market a company's confidence in its future and they are an incentive to institutional investors to be long-term shareholders.

At the time we developed the basic flip-over and flip-in share purchase rights plan, we also developed a rights plan that was designed to assure non-tendering shareholders the right to sell their shares back to the company at a price set by the board of directors. Forms of this "put" plan were used successfully by Phillips Petroleum and Revlon, but put rights have fallen into disuse in the last few years. The nature and extent of takeover activity this year gives rise to reconsideration of put rights in a different form and context from the Phillips and Revlon varieties.

As originally used the put right was issued by the target after a tender offer had been made at an inadequate price. The original put right gave shareholders -- other than the raider -- the right to put their shares to the target at a specified price in excess of the tender offer price if the raider purchased more than a specified percentage of the outstanding shares. Thus, the original put right was a value enhancement device designed to assure nontendering shareholders the value of their shares as determined by the board of directors, rather than the price offered by the raider.

The basic flip-over, flip-in right is more flexible than the put right, does not impact the balance sheet and does not put a price on the company. For these and other reasons it became the universally accepted means to stop abusive and inadequate takeovers and level the playing field. It has performed these functions well. Two-tier tender offers, creeping tender offers and street sweeps have virtually been eliminated by the flip-over, flip-in right. In addition, it has proven to be very effective in providing time to enable targets to maximize shareholder value.

Today, most takeover bids are all cash for all the shares. Very few targets of such a bid remain independent and unrestructured. Almost every target of such a bid either restructures through a leveraged recapitalization or is acquired. The law of the corporate jungle has become leverage or die. Institutional shareholders pressure companies to take on greater and greater leverage and operate to maximize current operating earnings in order to produce short-term share price enhancement. The flip-over, flip-in right was not designed to, and does not, alleviate this pressure. This pressure is one of the most serious problems confronting American business today.

Most companies need to operate on a basis that enables them to develop a five-year plan and invest in research, development, new products and new plants for future growth and profitability. Companies need protection against being pressured by the market's heavy discount of the future returns from these investments. The market makes companies takeover shark-bait by pricing their shares substantially below bust-up value. The put right can be adapted to provide companies with an opportunity to operate for long-term growth of profitability. It can be used to alleviate the pressure to achieve short-term share price enhancement through a bust-up or undue leverage.

The following is a hypothetical illustration of how Share Price Protection Repurchase Rights can be used. The prices, time periods, dividend ratio, percentages and discount rates are illustrative and can be varied to suit the circumstances of each individual company. While repo rights may be used as a response to a takeover bid, they are much more effective as a planning strategy implemented before a company becomes a target. Our hypothetical company is named Growth. Growth already has a flip-over, flip-in rights plan, which will continue in effect.

Growth's shares are selling in the market for $50. Growth has a five-year plan showing 15% compound annual increase in profits. Therefore, Growth can reasonably expect its share price to double to $100 or more by the fifth year. Growth does not want to restructure now. To do so would force it to abandon its five-year plan and dismember an organization that has great promise. Growth is willing to assure its shareholders that, if it does not come reasonably close to meeting its five-year plan or even if it does but the market does not reflect that accomplishment, it will restructure at the end of the five-year period.

Growth distributes a dividend to its shareholders of one repo right for every two shares outstanding. The dividend ratio of repo rights to shares determines the extent of the restructuring to which Growth is committed if it does not meet its goal. The higher the ratio of repo rights to shares, the greater the price protection created and the greater the necessity for Growth to meet its goal.

Each repo right entitles the holder to sell one share to Growth for $100 during a period of 60 days at the end of the five-year period. The $100 strike price is subject to adjustment for reclassifications, reorganizations and recapitalizations. If the Growth shares sell at an average of $100 in the market for 20 consecutive days prior to the end of the five-year period, the repo rights expire automatically without any value or any payment by Growth. The repo right becomes more valuable with decreases in market prices and less valuable with increases in market prices. Indeed, the basic objective is for Growth to achieve a market price greater than the strike price and have the repo rights expire without any value.

If it is assumed that the present value of the $100 strike price would be discounted at a rate of 10% per annum (approximately the rate at which Growth could sell convertible preferred stock) the present value of the strike price on the date of distribution would be about $60 and, with the market price for the shares at $50, each repo right would have a value of $10. While the unique nature of this put makes it impossible to predict what premium, if any, would be accorded to the put, it would appear reasonable to assume that the repo rights would be attractive to institutional holders of Growth's shares and would trade initially in the range of $10 to $20 per repo right which equates, on the basis of one repo right for two shares, to $5 to $10 per share.

Upon maturity of the repo right, Growth has the option to satisfy the put by paying the spread -- the excess of $100 over the average closing price for the 20 days prior to maturity -- rather than buying the shares. Growth is obligated to satisfy the repo right in cash unless Growth is restricted under its financing agreements, does not have sufficient surplus or its board of directors decides that to do so would not be prudent, in which case the repo right can be satisfied by issuing subordinated debt or preferred stock designed to sell at par.

The repo rights are transferable immediately upon their initial issuance and will trade in the market separately from the shares. It is recognized that over a period of time there could be some differences between holdings of shares and holdings of repo rights. However, the most likely circumstance would be that institutional investors would match their holdings of shares and repo rights and thereby create an investment position in Growth somewhat comparable in economic effect to a convertible preferred stock position.

The receipt by a shareholder of the repo right would be taxable as a dividend. The amount of this dividend would be determined by the market price of the repo right on the first day of trading. This and other tax consequences of the repo rights are not likely to be significant.

The liability which the repo rights represent is a balance sheet item similar to redeemable preferred stock. This liability must be adjusted based on the current market price of the shares. The amount of the adjustment is debited or credited to the common stock account. The repo rights have no effect on the profit and loss statement, but could have some impact on the calculation of earnings per share.

The repo rights do have an impact on Growth's debt rating and borrowing capacity.

If Growth does not meet its goal, the repo rights will have a depressing effect on the price of Growth's shares. As the five-year maturity is approached and it appears likely that the $100 share price will not be met, the obligation to repurchase half the outstanding shares at $100 per share reduces the value of the shares that will not be purchased. The greater the value of the repo rights at that time, the lower the value of the shares that will remain after the shares that are put have been redeemed. It is even possible that the $100 per share put value will exceed the value of Growth, and Growth will be forced into a complete liquidation. If the combination of two shares and one repo right is viewed as the total equity interest in Growth, then in the extreme case of the put value absorbing all of the value of Growth at the end of the five-year repo right period, the equity interest will be worth up to $50 per share -- one share redeemed at up to $100 and one share without any value.

It should be noted that prior to the five-year maturity, Growth could adopt various strategies to deal with the repo rights such as buying repo rights in the market, offering to exchange securities for the repo rights or adopting a major recapitalization. While the effect of Growth not meeting its goal by a large amount could be extreme, that effect does not constitute a real impediment to using repo rights. The question for Growth is whether it is better to restructure or accept an inadequate price now or to postpone the need to face that issue for five years. Repo rights do not burden the operations and financial structure of Growth the way a leveraged recapitalization would. There are no asset sales, therefore no taxes on such sales. There are no new borrowings, therefore no additional debt service. Growth remains free to follow various business and financial strategies and revise them as it determines to be appropriate to assure that it meets its goal or, if it cannot, that it avoids any adverse effects of the exercise of the repo rights.

The problem of the ratcheting effect of Growth's failure to meet the $100 share price goal can be met by either putting a cap on the value of the repo right (for example $25 per repo right in Growth's case) or by providing for a market index adjustment which would protect against the situation where Growth meets its earnings goals but the general level of stock prices declines and despite its earnings Growth's shares are selling in the market for less than $100. The market index adjustment can also make the repo right more valuable as the general level of stock prices increases resulting in increases in the strike price of the repo right.

If Growth is meeting its goals and the market reflects its success, the value of the repo right and the protection it affords will decrease as the market price of the shares increases. In this circumstance, Growth could declare a new repo rights dividend when the market price of the shares increases to a level that warrants so doing. For example, when the Growth share price reaches $75, Growth could declare a dividend of a second series of repo rights with a $150 strike price. To facilitate using additional series of repo rights, the repo rights can contain a provision that if a second series is issued, the first series can be called by paying the spread to the holders.

The repo right would not have any special provision to deal with a change of control other than acceleration of maturity in the event someone acquires 50% or more of the Growth shares. If such a change of control takes place the repo right would be immediately exercisable at the $100 strike price.

The repo right is not intended to, and does not, make Growth takeover-proof. It leaves the choice of accepting a tender offer completely in the hands of the holders of the puts and the shares. If a bidder wishes to acquire 50% or more of Growth, it must obtain sufficient shares so that upon the exercise of the repo rights with respect to the shares that remain outstanding the total cost of Growth to the bidder does not exceed the bidder's price. In this connection it should be noted that if the number of repo rights that remain outstanding exceeds the number of shares that remain outstanding, the excess repo rights have no value. It should also be noted that a bidder for Growth could ratchet up its tender offer price depending on the number of shares tendered so as to assure itself of a predetermined blended average price.

By issuing the repo rights, Growth tells its shareholders that it is confident it can meet its five-year plan, but if it fails so to do or if the market does not reflect the attainment of the plan, Growth will restructure by repurchasing half of its shares at $100. This confidence factor should be reflected in the market's valuation of Growth's shares.

Repo rights do not replace flip-over, flip-in rights. They are intended to be used in addition to the flip-over, flip-in rights. Unlike the flip-over, flip-in rights, repo rights are not a standard form. They do not discriminate against a raider, they are not redeemable for a nominal amount and under certain circumstances, they may interfere with a friendly deal. Although it is our opinion that repo rights are legal and the use of repo rights is within the business judgment of the board of directors, this type of put rights has not been tested in litigation.

In addition to its use in the form of a dividend to shareholders, this type of put right is also useful in situations where a company desires to place a block of equity in friendly hands. Usually the buyer of such a block seeks a return on its investment that requires the use of a convertible preferred stock. The dividend on the preferred stock is tax inefficient and dilutive to the common earnings. This dilution often precludes the transaction. A put can substitute for the preferred. Instead of preferred, the company sells common with a repo right. The repo right can be designed to assure the minimum return the buyer seeks without in any way limiting the buyer's upside potential. Since the repo right does not impact the profit and loss statement, it avoids the dilution caused by preferred dividends. In situations where it is desired to place the block of common at a price higher than the current market price of the common, the repo right can be designed to compensate for the premium.

Repo rights can play an important role in enabling a company to avoid today's intense pressure to restructure. They are not for every company. They must be specially designed for each company that wishes to use them. While they will in all likelihood be misnamed as a "poison pill," they quite clearly are not. They are an effective way to achieve price protection and value enhancement without overleveraging and busting-up a company. We would be pleased to discuss repo rights with you and help you determine whether they are appropriate.

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