

This proposal seeks shareholder approval of an amendment to the Company's bylaws by adding to article III as follows:

"(a) Notwithstanding anything in these by-laws to the contrary, the adoption of a stockholder rights plan, rights agreement or any other form of 'poison pill' which is designed to or has the effect of making an acquisition of large holdings of the Company's shares of stock more difficult or expensive ("Stockholder Rights Plan"), or the amendment of any such Stockholder Rights Plan which has the effect of extending the term of the Stockholder Rights Plan or any rights or options provided thereunder, shall require the affirmative vote of 75% of the members of the Board of Directors, and any Stockholder Rights Plan adopted or amended after the effective date of this Section shall expire no later than one year following the later of the date of its adoption and the date of its last such amendment."

"(b) Paragraph (a) of this Section shall not apply to any Stockholder Rights Plan ratified by the stockholders.

"(c) Any decision by the Board of Directors to repeal or amend this Section shall require the affirmative vote of all the members of the Board of Directors."

If approved, the amendment would be effective immediately and automatically on the date of approval by shareholders.

Proponent's Perspective

The proponent, Lucian Bebchuk, offers three main reasons why shareholders should vote in favor of this proposal: (i) it is undesirable for a poison pill not ratified by shareholders to remain in place indefinitely without periodic determinations by the board that maintaining the pill continues to be advisable; (ii) a board should not extend the life of a poison pill beyond one year without shareholder ratification when a significant fraction of the directors do not support such an extension; and (iii) the proposed amendment would not preclude the board from maintaining a poison pill not ratified by shareholders for as long as the board deems necessary, but would simply ensure that the board not do so without considering, within one year following the last decision to adopt or extend the pill, whether maintaining the pill is in the best interests of the Company and its shareholders.

Board's Perspective

The board offers the following five reasons why shareholders should vote against this proposal: (i) the Company has not had a poison pill since 1999 and is not considering the adoption of such a plan; (ii) poison pills can be a useful tool in some circumstances to protect the best interests of shareholders, and can allow boards to protect strategies for realizing long-term value and to maximize the value of shareholder investment by encouraging potential purchasers to negotiate directly with the board; (iii) the proposed amendment would limit the ability of the board to adopt poison pills on terms that may be necessary to protect shareholder interests, and could allow a small group of directors representing special interests to block action that other directors favor; (iv) the

limitation of plans to one year would permit potential purchasers to "wait out" the expiration of the plan and could hamper the ability of the board to identify, negotiate and complete a financially superior alternative in a timely manner; and (v) a Delaware court recently deferred ruling on the legality of a similar proposal made by the same proponent at a different company until a bylaw was actually adopted, leaving an open legal question as to whether the bylaw would be enforceable if adopted.

Glass Lewis' Analysis

In general, we support those shareholder proposals seeking to adopt new bylaws when we favor the inclusion of the underlying provisions that are being amended. We recognize that Section 109 of the Delaware code provides an important limitation on the scope of permissible shareholder-adopted bylaws. We believe that bylaws adopted by shareholders must not prevent the board from exercising its fiduciary obligations in managing the corporation. In our view, this proposed amendment does not undermine the board of directors' ability to fulfill their fiduciary obligations in the context of a hostile takeover bid that they deem unfavorable to shareholders or other circumstances.

We note that the proposed amendment requires the affirmative vote of 75% of the members of the board of directors to approve the rights plan, and limits the duration of such a rights plan to one year, unless the plan has been ratified by shareholders. The requirement of 75% approval of the board is supported by Section 141(b) of the Delaware statute, which provides: "The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number." To the extent that the board believes that their fiduciary duties require them to adopt or extend a rights plan as a defensive measure in opposition to a hostile takeover bid, the board can approve the rights plan each year or seek shareholder approval. Conversely, the board could, by 75% vote, amend or repeal the shareholder-initiated bylaw if it improperly impedes the board in discharging its fiduciary duties.

Furthermore, we do not believe that the bylaw amendment infringes upon the board's statutory authority to manage the Company's business and affairs. As a matter of statutory construction, we believe the board's authority conferred in Section 141(a) is properly construed as being subject to the right of shareholders to adopt bylaw provisions. At minimum, we believe that shareholders should have the right to unilaterally adopt bylaw provisions concerning matters of fundamental importance to protect their interests as shareholders. In our view, the underlying subject of this proposal meets such a standard, and, thus, shareholders should be allowed to have a meaningful voice in deciding the manner in which a poison pill is adopted and whether it should be extended or redeemed.

We recognize that the 75% vote requirement means that under some circumstances a group of directors may be able to block the collective will of the other directors. This result may be undesirable where (i) certain investors, with interests separate from other shareholders, hold board seats or (ii) certain executives are motivated to refrain from adopting a pill to profit from a golden parachute payment made on a change in control. However, individual directors will still be required to exercise judgment consistent with their fiduciary duties in regard to a poison pill. We believe this obviates the concern that a tyranny of a small group of directors with a conflict of interest will prevent the remainder of the board from taking action in shareholders best interests.

In our opinion, the presence of these bylaw provisions is preferable to their absence. Given that the scope of shareholders' right to unilaterally amend the bylaws to restrict board action is uncharted territory under Delaware law, we believe the one-year duration before reconsideration of the pill provides the appropriate balance of power between the board and shareholders on this fundamental

issue at this time. In our view, rather than merely serving as a model for other companies to adopt similar bylaw provisions, this proposal, if approved by shareholders, will likely encourage other shareholder-initiated bylaws that further define the contours of the law in Delaware. If the Delaware courts uphold the validity of a bylaw that further restrains the board from implementing or extending a rights plan, the Company's shareholders or board can amend the bylaws to be consistent with the guidance of the courts.

We believe that there is a substantial likelihood of a divergence of views between managers and shareholders in this context due to differing incentives. Managers are often motivated to preserve their own jobs or to arrange for substantial payouts and, as a result, may not act in the best interests of shareholders when it comes to potential takeovers. One study found that target CEOs are willing to accept lower acquisition premia in situations where they stand to earn personal, monetary or professional gains (Jay Hartzell, Eli Ofek, and David Yermack. *What's In It For Me?: Personal Benefits Obtained by CEOs Whose Firms Are Acquired*. Working Paper (2000), page 21).

In addition, Glass Lewis believes that, in general, poison pills are not conducive to good corporate governance. Specifically, they can reduce management accountability by substantially limiting opportunities for corporate takeovers. Studies have shown that an increase in protection through anti-takeover statutes is associated with a decrease in management accountability (Marianne Bertrand and Sendhil Mullinathan. "Is there Discretion in Wage Setting? A Test Using Takeover Legislation." *Rand Journal of Economics* (1999), page 535; Gerald T. Garvey and Gordon Hanka. "Capital Structure and Corporate Control: The Effect of Antitakeover Statutes on Firm Leverage." *Journal of Finance* (1999), pages 519, 520). Other studies have found that companies with greater protection from takeovers are associated with poorer operating performance (Paul A. Gompers, Joy L. Ishii and Andrew Metrick. *Corporate Governance and Equity Prices*, NBER Working Paper No. 8449 (2001)).

We do note that the Company's poison pill expired in 1999 and has not been replaced to date. Nonetheless, given our opinion that poison pills are a matter of fundamental importance to shareholders, as they may prevent shareholders from realizing a premium associated with a corporate takeover, and our view that the proposed bylaw amendment does not compromise the board's ability to exercise its fiduciary duties, we believe that this proposal is in the best interest of shareholders.

Accordingly, we recommend that shareholders vote **FOR** this proposal.