Negotiating Contingent Value Rights in M&A Transactions
Leveraging CVRs to Bridge the Value Gap and Facilitate Deals

A Live 90-Minute Teleconference/Webinar with Interactive Q&A

Today's panel features:
Steven R. Barth, Partner, Foley & Lardner, Milwaukee
Timothy Carroll, Principal, Consumer and Retail, William Blair & Company, Chicago
Timothy H. Shea, Foley & Lardner, Milwaukee

Tuesday, February 9, 2010
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Negotiating Contingent Value Rights in M&A Transactions: Leveraging CVRs to Bridge the Value Gap

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Sponsored by the Legal Publishing Group of Strafford Publications
Today’s Presenters

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CVRs in M&A Transactions – Agenda

- Contingent Value Rights (CVRs) Overview
  - Key definitions
  - Use and types of CVRs
  - Implications for buyers and sellers

- Deal Considerations
  - Securities law issues
  - Financial issues
  - Tax and accounting issues

- Strategies for Negotiating and Implementing CVRs
Overview
Overview - Types of CVRs

- Contingent Events
  - Milestones
  - Regulatory approval
  - Settlement of litigation or other contingent liabilities

- Share-Based CVRs
  - Tied to the post-closing performance of buyer’s stock issued as consideration in the transaction
Overview - Mechanics and Advantages

- Utility of Share-Based CVRs
  - Buyers can conserve cash and avoid increasing leverage
  - Buyers can use stock as currency without incurring substantial share dilution
  - Opportunity to bridge the valuation gap

- Mechanics of Share-Based CVRs
  - Buyer issues an equal number of shares and share-based CVRs
  - Provides a “guaranteed value” to seller
Overview - Key Definitions

- True-Up Date
- Target Price
- Floor Price
- True Up Value
- CVR Consideration
- Ceiling Price
Overview - Implications for Buyers and Sellers

- Buyers Can Use Stock as Currency Despite Disagreement on:
  - the value of the buyer’s stock
  - the value of the target company

- Buyers Can:
  - Conserve Cash
  - Avoid the need to increase debt or renegotiate credit agreements

- Potential for higher multiples for Sellers
Deal Considerations
Deal Considerations - Securities Law Issues

- Attached/Detachable
- Transferability/CVR Certificates
- Registration Issues (Contract right vs. freely tradable security)
- Registration Rights for CVR Consideration in the Form of Stock
- Shareholder Approval in Connection with CVRs Settled in Shares
- Private Company Considerations
Deal Considerations - Financial Issues

- Determining Appropriate Thresholds
  - Floor Price/Target Price tradeoff
- Considering Risk Involved
  - Seller is “leaving skin in the game”
- Liquidity Issues
Deal Consideration - Tax Issues

- Variety of Tax Treatments
  - Determined based on the specific terms of the transaction

- Key Issues
  - Timing of gain recognition
  - Character of income
Deal Consideration - Accounting Issues

- “Acquisition Date Fair Value” (Accounting Treatment for the Seller)
- Recognition of Changes in Fair Value
- Valuation Work and Earnings Fluctuations
- Disclosure Requirements
- Earnings Per Share Implications
Strategies for Negotiating and Implementing CVRs
Key Negotiating Terms and Conditions

- **Form of Consideration**

- **Valuation Issues**
  - Fair value on the true-up date
  - Value of shares issued as CVR consideration

- **Treatment of Dividends**

- **Floor Price and Ceiling Price**

- **Resetting Floor**
Post Closing Issues

- Ability to Advise on Key Decisions
- Consent Rights for Certain Transactions
- Board Rights
- Change of Control Transactions
- Offset for Seller’s Indemnification Obligations
Herman Miller’s Acquisition of Nemschoff Chairs

- Creative Transaction Structure
- CVRs Used to Bridge the Value Gap
- Cash constraints for Herman Miller
- Key terms of the Transaction
Conclusion

Questions?

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