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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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| In the Matter of the<br><br>ROY E. FARMER I CHILDREN'S TRUST, pursuant to Children's Trust Agreement, dated October 24, 1957. | Case No. BP 079060<br><br>**DECLARATION OF PROFESSOR LUCIAN A. BEBCHUK** |

I, Lucian A. Bebchuk, declare as follows:

1. I submit this declaration at the request of Loeb & Loeb LLP, counsel for Steven D. Crowe, Petitioner in the above-captioned action. I was asked by Petitioner's counsel to analyze: (1) how proposed reincorporation of Farmer Bro. Co. ("Farmer") would affect the interests of Farmer's shareholders and, in particular, the beneficiaries of the following trusts for the benefit of Petitioner, Petitioner's mother, Catherine Crowe, and Petitioner's sister, Janis Crowe (collectively referred to as the "Crowe trusts"): (a) The Children's Trust, dated October 24, 1957; (b) The Elizabeth H. Farmer Trust ("EFT") fbo Steven D. Crowe, dated December 21, 1964; (c) EFT fbo Steven D. Crowe, dated August 4, 1969; (d) EFT fbo Steven D. Crowe, dated May 3, 1972; (e) EFT fbo Steven D. Crowe, dated March 22, 1995; (f) EFT fbo Janis Crowe, dated December 21, 1964; (g) EFT fbo Janis Crowe, dated August 4, 1969; (h) EFT fbo Janis Crowe, dated May 3, 1972; (i) EFT fbo Catherine Crowe, dated August 4, 1969; and (j) EFT fbo Catherine Crowe, dated May 3, 1972; (2) how a trustee of the Crowe trusts that focuses solely on the interests of the Crowe trusts' beneficiaries should be expected to vote on the proposed

reincorporation; and (3) whether the proposed reincorporation places the private interests of Roy F. Farmer ("Roy II") in conflict with those of Roy II as trustee of the Crowe trusts.

2. As explained below, my analysis concluded that: (1) the proposed reincorporation would have considerable adverse effects on the interests of shareholders of Farmer that are not affiliated with incumbent management and, in particular, on the interests of the beneficiaries of the Crowe trusts; (2) a trustee dedicated to the interests of the beneficiaries of the Crowe trusts should be expected to vote the trusts' shares against the proposed reincorporation, and (3) the effect of the proposed transaction on the private interests of Roy II could well have led to his planning to vote the shares owned by the Crowe trusts in favor of the proposed reincorporation.

**Qualifications**

3. I serve as the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance at Harvard Law School. I am also the Director of the Program on Corporate Governance at Harvard Law School, a Research Associate of the National Bureau of Economic Research, and a Fellow of the American Academy of Arts and Sciences. The views expressed in this declaration are of course my own and should not be attributed to any of the institutions and organizations with which I am affiliated.

4. I am an expert in the economic analysis of corporate governance arrangements. The citation accompanying my induction to the American Academy of Arts and Sciences described me as "one of the nation's leading scholars of law and economics," and lauded my "major contribution to the study of corporate control, governance, and insolvency."

5. I obtained my graduate training in economics at the Harvard Economics Department, from which I received an M.A. and a Ph.D. in Economics. I also have training in law, having obtained LL.M. and S.J.D degrees from Harvard Law School. My training, and my many publications in the economic analysis of corporate governance arrangements in economics journals and law reviews, are detailed in my CV, which is attached as Exhibit A.

6. I have done considerable research on antitakeover arrangements and corporate reincorporations. Recent work includes "The Powerful Antitakeover Force of Staggered

Boards: Theory, Evidence, and Policy," *54 Stanford Law Review* 887-951 (2002), and "Why Firms Adopt Antitakeover Provisions," *University of Pennsylvania Law Review* (forthcoming). The former article, co-authored with John Coates and Guhan Subramanian, provides an empirical study of the effects of takeover defenses and its findings were the focus of a subsequent symposium published by the *Stanford Law Review* in its December 2002 issue. Various other studies on the arrangements governing control contests are listed in my attached CV. My studies in this area have been cited in leading judicial opinions on corporate takeovers and corporate governance, such as the recent *MM Companies v. Liquid Audio* decision by the Supreme Court of Delaware.

**The Proposed Transaction**

7. In a proxy statement recently filed with the Securities and Exchange Commission ("SEC"), Farmer's Board proposed a reincorporation of Farmer from California to Delaware (the "transaction"). The proposed reincorporation would be effected by merging Farmer into Farmer Bros. Delaware ("Delaware Farmer"). Delaware Farmer would have a charter (the "Delaware Charter") and bylaws (the "Delaware Bylaws") that are quite different from those of Farmer.

8. Roy II is Chairman of the Board of Directors of Farmer and father of Roy E. Farmer (Roy III), Farmer's President and Chief Executive Officer. In the aforementioned SEC filing, Roy II indicated that he intends to vote all the shares he now controls as trustee of the Crowe trusts in favor of the proposed transaction. While Roy II and Roy III serve on Farmer's Board, the beneficiaries of the Crowe trusts, including Petitioner, are not part of Farmer's management.

9. Although Roy II and his family currently control a majority of Farmer's shares, this state of affairs is expected to change when the Children's Trust terminates upon the death of Roy II and his sister, Catherine Crowe. This expectation makes the arrangements governing the rights of Farmer's shareholders vis-à-vis the board of great practical significance. This expected change also provides incentives to Roy II and the Farmer family to try to take advantage of their current control of the shares in the Crowe trusts to put in place arrangements that would entrench incumbent directors by insulating them from removal by either a hostile takeover or a proxy contest.

**The Entrenching Nature of the Proposed Reincorporation**

10. The most important consequences that the proposed transaction would have for Farmer's shareholders would not arise from the proposed switch from California corporate law to Delaware corporate law. Rather, the shareholders would be most significantly impacted by the ways in which designers of the transaction elected to set the Delaware Charter and Delaware Bylaws. Farmer's Board of Directors has chosen to design the Delaware Charter and Delaware Bylaws in such ways that, should the proposed transaction be approved in the January 2004 vote, it would entrench Farmer's incumbent management and considerably weaken the power of Farmer's shareholders. Essentially, the designers of the proposed transaction are using a reincorporation to Delaware as a vehicle for effecting a substantial "constitutional" change in the allocation of power between Farmer's management and its shareholders.

11. Existing empirical evidence indicates that the entrenching consequences of the proposed structural changes in allocation of power would be of greater importance to shareholders than the switch from one body of state corporate law to another. Recent empirical studies, which control for other relevant company characteristics and governance provisions, do not identify any statistically significant difference in value between Delaware and non-Delaware firms.[1] In contrast, as will be discussed in detail below, the existing evidence indicates that the adoption of the entrenching provisions included by Farmer's Board of Directors in the Delaware Charter and Bylaws can be expected to have significant adverse effects on shareholder value and firm performance.

12. It is important to recognize that the entrenching features of the proposed transaction are not an integral or a necessary part of a switch from California incorporation to Delaware incorporation. It is far from clear that the interests of the beneficiaries of the Crowe trusts would be served by a switch from California corporate law to Delaware corporate law. However, even assuming that a switch from California corporate law to Delaware corporate law were desirable for Farmer and its shareholders, a reincorporation could easily be accomplished without the massive shift of power from shareholders to incumbent management that Farmer's Board of Directors has elected to include in the proposed transaction. As discussed below, an appropriate design of the Delaware Charter and the Delaware Bylaws would have made it possible

to put forward a reincorporation proposal that would not have the massive entrenching consequences underlying the pending proposal.

**The Massive Array of Entrenching Arrangements**

13. In its recent SEC filing, Farmer included a copy of the Delaware Charter and Bylaws. A review of the various elements of the Delaware Charter and Bylaws reveals that they would operate to weaken the power of shareholders vis-à-vis the board, and to entrench incumbent management, relative to the current state of affairs. After discussing how each of these elements weakens shareholder rights and enhances incumbents' insulation from shareholders, I will comment on their cumulative effect.

14. Blank Check Preferred: The Delaware Charter authorizes the issuance of blank check preferred, a method used to create new classes of preferred stock. With this provision in place, Farmer's management would have the power to install a poison pill without any need for additional shareholder approval. Thus, this provision provides incumbents with the ability to install a poison pill - a powerful takeover defense - whenever it will choose to do so.

15. Staggered Board: Both California corporate law and Delaware corporate law permit companies to have either a classified board or a unitary board. While Farmer does not currently have a classified board, Farmer's Board of Directors has elected to provide for a classified board in both the Delaware Charter and the Delaware Bylaws. The inclusion of a classified board provision not only in the Delaware Bylaws, but also in the Delaware Charter, implies that shareholders would not have the power to de-classify the board, no matter how much shareholder support such a measure would have in the future, without the Board initiative needed for a charter amendment under Delaware corporate law.

16. Staggered boards provide incumbents with a powerful defense from removal, and the significance of this arrangement is worth discussing in some detail.[2] An effective staggered board can prevent shareholders from replacing a majority of the board of directors without the passage of at least two annual elections. As a result, it makes the wresting of control from incumbents - either in a stand-alone proxy contest or in a hostile takeover -- much more difficult. The way in which a staggered board affects the prospect of removal via a stand-

alone proxy contest is straightforward. A staggered board requires a rival team to win two elections to gain control of the board. Challengers considering running a stand-alone proxy contest already face considerable impediments, and having to win two elections one-year apart makes the task all the more difficult. The need to win two such elections requires more resources and patience on the part of the challengers. Furthermore, it could also make shareholders more reluctant to vote for a dissident group the first time around, knowing that election of its slate would lead to a divided board for the next year and that the dissident group would not be able to gain control for another year, by which time some of the issues raised by the dissidents might be moot.

17. Staggered boards also have a major impact on the prospect of a hostile takeover where, as under Delaware corporate law, incumbents enjoy substantial power to maintain poison pills. In the late 1980's and early 1990's, court decisions in Delaware provided incumbents with substantial freedom to maintain a poison pill indefinitely and thus block a hostile offer as long as they are in office. Once the latitude to maintain poison pills was firmly in place, a hostile bidder's main hope of gaining control of a target over the objection of incumbents lay in the possibility of replacing the incumbent directors. By placing an attractive offer on the table, a hostile bidder can attempt to induce shareholders to replace the board with a team of directors (usually nominated by the hostile bidder itself) that announce their willingness to accept the offer. Thus, the extent to which incumbents are protected from a hostile takeover considerably varies based on how long and how difficult it would be to replace the incumbents, and thus on whether an effective staggered board exists.

18. In particular, by preventing a majority of directors from being replaced before the passage of two annual elections, effective staggered boards impede hostile bidders in two ways. First, the bidder cannot be assured of gaining control, no matter how attractive its offer is, without waiting a period that is at least a year and might exceed two years; waiting so long might be rather costly for bidders that seek the target for synergy reasons or to engage in long-range planning. Furthermore, making an irrevocable offer that would be open for such a long period is quite costly to the bidder, and without making such an offer shareholders would be reluctant to vote for the bidder in the first election. Indeed, there is evidence that, at least since

1996 and probably also prior to it, no hostile bidder has ever persisted long enough to win two elections.[3]

19. The evidence indicates that the presence of an effective staggered board is indeed an important determinant of the outcome of hostile bids.[4] This evidence indicates that such a staggered board increases the odds of a target remaining independent 12 months after a hostile bid from 31 % to 64%, and has similarly dramatic effects on the odds of a target still remaining independent 30 months after receiving a hostile bid.

20. Elimination of Action by Written Consent: Whereas Farmer's shareholders now have the power to act by written consent, Farmer's Board of Directors has elected to include in the Delaware Charter and the Delaware Bylaws a prohibition on action by written consent. This prohibition would directly eliminate a primary means for shareholders to take action - e.g., vote on a proposal to remove some directors for a cause -between annual elections.

21. Elimination of Shareholder Power to Call a Special Meeting: At present, shareholders of Farmer with combined holdings of at least 10% have the power to call a special meeting. In contrast, Farmer's Board of Directors elected to include in the Delaware Charter a provision that reserves the power to call a special meeting to the Chairman of the Board, the President, or the Board. Together with the elimination of action by written consent, this provision of the Delaware Charter makes the shareholders completely powerless to act between two annual elections. The combination of these two provisions thus completely eliminates the ability of shareholders to remove even a single director, or to vote on any other measure, between two annual elections. Collectively, this combination significantly operates to entrench and insulate the Board and to weaken shareholder rights.

22. Cumulative Voting: The Delaware Charter would take away from shareholders the power to introduce cumulative voting in the future. Whereas Farmer's current bylaws prohibit cumulative voting, the shareholders presently have the power to amend these bylaws to introduce such voting. In contrast, Farmer's Board of Directors elected to include a prohibition of cumulative voting in the Delaware Charter, which cannot be changed, no matter how much support a change would have among shareholders, without the Board's consent.

23. Board size: The transaction would take away from shareholders the power to change the size of the board of directors within the range of five to nine directors. Farmer's shareholders now have the power to make such a change. Farmer's Board of Directors, however, elected to include in the Delaware Charter a provision that reserves to the board the power to make changes in the number of directors.

24. Filling Vacancies: At present, the shareholders of Farmer have the power to fill any vacancies on the board created by the removal of directors by shareholders. The Delaware Charter would reserve to the power to fill such vacancies to management.

25. Super-majority Requirement for Bylaw Amendments: As described above, the Delaware Bylaws were designed in ways that produce a considerable weakening of shareholders' power vis-à-vis the board. Farmer's Board of Directors took the extra step of making it exceedingly difficult for shareholders to get rid of these entrenching bylaw provisions in the future. This was done by including in the Delaware Charter a provision requiring a super-majority of 80% of all outstanding shares for amending the Bylaws.

26. This super-majority requirement makes it likely that, even if management's current stake substantially declines in the future, management would still be able to block any change in the Delaware Bylaws that, we have seen, include various provisions that operate to entrench incumbents and weaken shareholder rights. Consider a scenario in which the block of shares controlled by the company's insiders declines to as low a level as 12% of the company's stock, and that the turnout among public shareholders other than management is a high 90%.[5] In such a case, even if each and every shareholder not affiliated with management were to vote in favor of eliminating a given entrenching provision of the Bylaws, the amendment would not pass.

27. To highlight the powerful entrenching effect of this super-majority requirement, it is worth comparing it to the super-majority provision for Bylaw amendments considered by Vice-Chancellor Strine of the Delaware Chancery Court in the case of *Chesapeake.*[6] In that case, on the basis of experts' reports, Vice-Chancellor Strine concluded that, in the presence of a 23% block in the hands of insiders (considerably less than the size of the block currently in

the hands of Farmer's insiders), a 66.66% supermajority requirement was an, "extremely aggressive and overreaching" measure that was not "within the range of reasonable responses."

28. Advance Notice Requirement: At present, shareholders that wish to nominate directors or bring proposals to a shareholder vote are not subject to an advance notice procedure. The Delaware Bylaws would impose such a procedure, placing in this way yet another impediment to shareholder action.

29. Having reviewed various ways in which the Delaware Charter and the Delaware Bylaws were designed to weaken shareholder rights and insulate incumbents from removal by shareholders, it should be clear that the choice of these features of the Delaware Charter and Bylaws was not entailed by a mere desire on the part of Farmer's Board to have the company benefit from the "prominence and predictability" of Delaware law." A move to Delaware law could have been proposed without the array of entrenching devices listed above. Specifically, this could have been done by designing the Delaware Charter and the Delaware Bylaws in such a way that they (i) would not authorize a blank check preferred, (ii) would retain the unitary structure of the board, (iii) would retain shareholders' power to act by written consent, (iv) would retain the power of 10%+ shareholders to call a special meeting, (v) would retain the power of shareholders to adopt cumulative voting by a majority vote, (vi) would retain shareholders' power to change the number of directors within the range of five to nine directors, (vii) would retain shareholders' power to fill vacancies created by shareholder removal of directors, and (viii) would retain shareholders' power to amend the bylaws by a vote of a majority of the outstanding shares.

30. It is also worth stressing the all-out nature of the effort by Farmer's Board of Directors to introduce provisions that entrench incumbents and weaken shareholder rights. As will be discussed below, institutional investors generally are unwilling to vote for most of the above provisions even when one of them is offered by itself. Thus, for example, institutional investors generally are unwilling to vote in favor of charter amendments that would stagger the board. What Farmer's Board of Directors is seeking to introduce, however, is not a single insulating antitakeover provision -- but rather a wide array of such provisions. Should the proposed transaction be approved in the January vote, the aggregate effect of the provisions of the

Delaware Charter and the Delaware Bylaws would be to effect a radical change in the "constitutional" ground rules of the company: the company would be transformed from one with relatively few charter and bylaws provisions that entrench the board to one in which the board is highly insulated, and shareholder power is greatly reduced, by a massive array of charter and bylaws provisions.

31. To get a sense of the magnitude of change, it might be instructive to put it in terms of the governance index constructed by Paul Gompers, Joy Ishii, and Andrew Metrick in a recent influential study.[7] They constructed a "governance index" based on twenty-four arrangements that they identified as weakening shareholder rights. A high "score" in the governance index indicates weak shareholder rights and a low score indicating strong shareholder rights. These researchers found that firms with a larger number of the provisions in the governance index have a lower market value.

32. While some of the arrangements included in the above governance index are established by state statutes and executive compensation contracts, many of them are ones that are set by company charters and bylaws. The proposed transaction would move the company from one that has hardly any of the entrenching provisions counting in the governance index to one that has the great majority of such provisions - a radical change indeed in the company's constitutional ground rules.

**Investors' General Opposition to the Arrangements Included in the Delaware Charter and Bylaws**

33. How should a trustee that focuses on the interests of the beneficiaries of the Crowe trusts be expected to vote on the proposed transaction? Since the only asset of the Crowe trusts is Farmer's stock, and since the beneficiaries are not part of the incumbent management group, their interests are similar to those of other shareholders that are not affiliated with management. As will be explained below, a trustee that focuses solely on the interests of these shareholders should be expected to vote against the shift of power from shareholders to management that the proposed transaction would produce.

34. There are two bodies of relevant empirical evidence, and each of them points out to the above conclusion. I will first discuss the evidence that shareholders not affiliated with management generally vote against and otherwise oppose the type of arrangements that the proposed transaction seeks to introduce. Later on I will turn to the evidence that such arrangements indeed have a considerable negative effect on the interests of such shareholders.

35. Since the early nineties, institutional investors, which are regarded as largely informed and knowledgeable about corporate governance arrangements, have been generally unwilling to approve the adoption of board-insulating charter provisions of the type that the proposed transaction would produce. The patterns in this respect are clear and consistent, and they suggest that an informed and knowledgeable trustee with a sole focus on the interests of the beneficiaries of the Crowe trusts should be expected to vote against the proposed transaction.

36. Indeed, during the past decade, the general unwillingness of shareholders to approve antitakeover charter provisions was so well recognized that management of existing companies without such provisions generally all but stopped proposing such amendments, as Michael Klausner documents in detail in a recent study.[8] For example, although a large fraction of existing firms public firms do not currently have a staggered board, in 2000, among the 4000 firms whose voting is followed by the Institutional Responsibility Research Center, only ten had a vote on a proposal to stagger the board. In six of these firms, management had over 35% of the shares, thus having most of the votes needed to assure passage of a charter amendment; and of the remaining four attempts, only one was successful.

37. Furthermore, shareholders' opposition to antitakeover charter provisions is reflected in the large support given to precatory resolutions to dismantle antitakeover arrangements. A review of recent voting on precatory resolutions indicates that, in 2002 and 2003, the average percentage of shareholders voting in favor of precatory resolutions to repeal charter provisions that establish a staggered board exceeded 60%.[9] Recall that such charter provisions that establish a staggered board are an important type of antitakeover arrangements, and that the Delaware Charter would include such a provision.) The only other types of precatory resolutions that attract support from a majority of voting shareholders are also ones that call for eliminating

management insulation - in particular, resolutions to rescind poison pills, to repeal super-majority requirements, and to receive shareholder approval for golden parachutes.

38. Note that institutional investors are not particularly eager to vote against management on precatory, non-binding resolutions. Precatory resolutions on issues that do not involve board-insulating arrangements get average support that falls substantially below 50%.[10] Institutional shareholders' voting for precatory resolutions to repeal board-insulating arrangements is thus all the more telling.

39. The opposition to the adoption of arrangements that entrench management has been evidenced not only in voting decisions, but also in the views expressed, and policies articulated, by leading institutional investors and their advisers. Consider, for example, the Corporate Governance Policies of the Council of Institutional Investors, a broad-based association of institutional investors that works to promote good corporate governance. According to these policies, "Directors should be elected annually . . . " (i.e., no classified boards), and "Shareholders' rights to call a special meeting or act by written consent should not be eliminated or abridged without the approval of the shareholders."[11]

40. Consider also the policies recommended in the Proxy Voting Manual of the Institutional Shareholder Services (ISS), a leading shareholder advisory firm whose recommendations are followed by many institutional shareholders.[12] Among other things, this Manual advises that institutional investors vote against staggered board proposals by management, and that they vote against management proposals to restrict shareholder action by written consent or special meeting. In contrast to ISS advice on many other issues, where the recommendation is that institutions consider issues on a case-by-case basis, the recommendation to vote against staggered boards and limits on action by written consents and special meetings is for all cases.

**The Effects of The Proposed Transaction on Shareholder Interests**

41. I have thus far discussed the evidence that shareholders not affiliated with management vote against the type of arrangements that the proposed transaction seeks to impose on Farmer's shareholders. I now turn to the evidence that such provisions in fact have significant

adverse effects on shareholders. This evidence is consistent, of course, with the voting patterns discussed above.

42. Let us start with the already noted, well-known study by Gompers, Metric, and Ishii who constructed a governance index as a proxy for the presence of provisions that weaken shareholder rights and strengthen management power and management insulation from removal.[13] This study finds that firms with more such provisions have a lower firm value. They also find that, during the 1990s, shareholders of firms with the strongest shareholder rights enjoyed significantly higher returns than shareholders of firms with the weakest shareholder rights.

43. A current study by Alma Cohen and myself provides empirical findings that reinforce and complement those of the study by Gompers, Ishii, and Metrick.[14] This study focuses on the effects on shareholder value of one of the provisions in the governance index - charter-based staggered boards. As discussed, a charter provision establishing a staggered board, which the Delaware Charter includes but Farmer's current charter does not, is an especially significant board-insulating device. The study finds that staggered boards established by company charters are associated with a significantly lower market value. The magnitude of this reduction is economically significant, with a median reduction of about 6% of market value.

44. Finally, there is empirical evidence identifying some of the channels through which board-insulating provisions operate to hurt firm value. A study by Borokohovich, Brunarski, and Parrino reports that firms adopting antitakeover charter provisions are associated with above-market levels of executive compensation.[15] Gompers, Ishii, and Metrick report that firms with more board-insulating provisions are associated with poorer operating performance, including lower profit margins, lower return on equity, and lower sales growth.[16]

**Roy II's Conflict of Interest**

45. When discussing how the arrangements included in the Delaware Charter and the Delaware Bylaws would operate to hurt shareholders, I stressed that my analysis was limited to shareholders that are not affiliated with management. The considered arrangements can clearly have different effects on shareholders affiliated with management. Protection from

removal, while costly to other shareholders, provides incumbents with considerable benefits. Thus, the private interests of Farmer's insiders could well be served by the proposed transaction.

46. The private benefits to Roy II and to the Farmer family from entrenching management, however, are not ones that are shared by the beneficiaries of the Crowe trusts. Thus, with respect to the proposed transaction, the interests of Roy II and the Farmer family do not overlap, and could well conflict, with those of the beneficiaries of the Crowe trusts. Indeed, given that a focus on the beneficiaries'. interest should be expected to lead to a vote against the proposed transaction, the most plausible explanation for Roy II's expressed plan to vote the Crowe trusts' shares in favor of the transaction is rooted in the private gains that the transaction would confer on Roy II and the Farmer family.

**Conclusion**

47. The foregoing analysis leads me to conclude that (1) the proposed transaction would have considerable adverse effects on the interests of the beneficiaries of the Crowe trusts, (2) a trustee focusing on the beneficiaries' interests should be expected to vote against the proposed transaction, and (3) Roy II has private interests in the proposed transaction which could well have led to his decision to vote the shares owned by the Crowe trusts in favor of the transaction.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

Executed on this 24th day of November 2003.

Lucian A. Bebchuk

[1] See Guhan Subramanian, "The Disappearing Delaware Effect," *Journal of Law, Economics & Organization* (forthcoming 2004).

[2] For a comprehensive analysis of the antitakeover force of staggered boards, see Lucian Bebchuk, John Coates, and Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy," *54 Stanford Law Review* 887-951 (2002).

[3] See Bebchuk, Lucian A., John C. Coates IV and Guhan Subramanian, "The Power of Takeover Defenses," (Working Paper, Harvard Law School, 2003).

[4] See Lucian Bebchuk, John Coates, and Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy," *54 Stanford Law Review* 887-951 (2002).

[5] The empirical evidence indicates that a significant percentage of shares are not voted in proxy contests. See, e.g., James Brickley, Ronald C. Lease, Clifford W Smith, Jr., Ownership Structure and Voting on Antitakeover Amendments, *20 Journal of Financial Economics* 267-291 (1988); Phillip Young, James Millar and G. William Glezen, Trading Volume, Management Solicitation, and Shareholder Voting, 33 *Journal of Financial Economics* 57-71 (1993).

[6] Chesapeake Corp. v. Shore, Del. Ch. 771 A. 2d 293 (2000).

[7] See Paul Gompers, Joy Ishii, and Andrew Metrick, "Corporate Governance and Equity Prices," 118 *Quarterly Journal of Economics* 107-155 (2003).

[8] See Michael Klausner, "Institutional Shareholders, Private Equity, and Anti-takeover Protection at the IPO Stage," *University of Pennsylvania Law Review* (forthcoming).

[9] See Georgeson Shareholder, Annual Corporate Governance Review: Shareholder Proposals and Proxy Contests (2002); Georgeson Shareholder, Annual Corporate Governance Review: Shareholder Proposals and Proxy Contests (2003).

[10] See Georgeson Shareholder, Annual Corporate Governance Review: Shareholder Proposals and Proxy Contests (2003).

[11] Council of Institutional Investors, Corporate Governance Policies, at http://www.cii.org/corp governance.asp.

[12] Institutional Shareholder Services, The ISS Proxy Voting Manual (1997).

[13] See Paul Gompers, Joy Ishii, and Andrew Metrick, "Corporate Governance and Equity Prices," 118 *Quarterly Journal of Economics* 107-155 (2003).

[14] See Alma Cohen and Lucian Bebchuk, The Costs of Entrenched Boards (Working paper, Harvard Law School, October 2003).

[15] See Kenneth Borokhovich, Kelly Brunarski, and Robert Parrino, "CEO Contracting and Antitakeover Amendments," *52 Journal of Finance* 1495-1517 (1997).

[16] See Paul Gompers, Joy Ishii, and Andrew Metrick, "Corporate Governance and Equity Prices," 118 *Quarterly Journal of Economics* 107-155 (2003).

Updated August 2003

# *Curriculum Vitae*

**LUCIAN A. BEBCHUK**

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**Current Position:**

William J. Friedman & Alicia Townsend Friedman Professor of Law, Economics, and Finance, Harvard Law School

**Education:**

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|---|---|
| 1974-1977 | University of Haifa<br>B.A. (Summa Cum Laude) (Mathematics and Economics), 1977. |
| 1973-77 | University of Tel-Aviv School of Law<br>LL.B. (Magna Cum Laude), 1979. |
| 1979-85 | Harvard Law School and Harvard Economics Department<br>LL.M. (Master of Laws), 1980.<br>S.J.D. (Doctorate in Law), 1984.<br>S.J.D. dissertation: "Toward Undistorted Choice and Equal Treatment in Corporate Takeovers"<br>M.A. in Economics, 1992<br>Ph.D. in Economics, 1993<br>Ph.D. dissertation: "Essays in the Economics of Uncertainty, Bargaining and Organization" |

**Prior Positions:**

Harvard Law School: Assistant Professor 1986-88; Professor of Law 1988-94; Professor of Law, Economics, and Finance 1994-1998; William J. Friedman & Alicia Townsend Friedman Professor of Law, Economics, and Finance since 1998

The Society of Fellows, Harvard University: Fellow 1983-85.

**Other Current and Recent Affiliations:**

American Academy of Arts and Sciences (Elected Member, 2001-)
European Corporate Governance Institute (Inaugural Fellow, 2002-)
National Bureau of Economic Research, Corporate Finance and Law and Economics Programs (Research Associate)
Center for Economic Policy Research (Fellow)
Tel-Aviv University (Visiting Senior Professor by Special Appointment, 1994-)
Harvard Law School Program on Corporate Governance (Director, 2003).
American Association of Law Schools (Chair, 1999/2000).
American Association for Law and Economics (Member of the Board of Directors, 1997-99).
Harvard Law School John M. Olin Center for Law, Economics, and Business (Board of Directors)
Tilburg University (Visiting professor for the purpose of delivering the first Anton Philips Lectures, 2001)

**Published and Forthcoming Papers**

2003

"Executive Compensation as an Agency Problem," 17, *Journal of Economic Perspectives*, 71-92 (2003) (with J. Fried).

"Why Firms Adopt Antitakeover Arrangements," Forthcoming, *University of Pennsylvania Law Review* (2003).

2002

"The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Participants," *55 Stanford Law Review* 885-917 (2002) (with J. Coates and G. Subramanian).

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**Law Reform:**

Prepared, together with Professor Uriel Procaccia, a report for the Israeli Ministry of Justice, on reforming the Israeli law on corporate acquisitions. Prepared together with Louis Kaplow and Jesse Fried, a report for the Israeli Finance Ministry on bank investments in non-financial corporations. The recommendations of both reports were adopted by Israeli legislation.

**PROOF OF SERVICE**

I, Tara Welch, the undersigned, declare that:

I am employed in the County of Los Angeles, State of California, over the age of 18, and not a party to this cause. My business address is 10100 Santa Monica Boulevard, Suite 2200, Los Angeles, California 90067-4164.

On November 24, 2003, I served a true copy of the DECLARATION OF PROFESSOR LUCIAN A. BEBCHUK on the parties in this cause as follows:

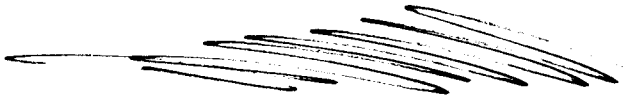
[X] (VIA U.S. MAIL) by placing the above named document in a sealed envelope addressed as set forth below, or on the attached service list and by then placing such sealed envelope for collection and mailing with the United States Postal Service in accordance with Loeb & Loeb LLP's ordinary business practices.

**SEE ATTACHED SERVICE LIST**

I am readily familiar with Loeb & Loeb LLP's practice for collecting and processing correspondence for mailing with the United States Postal Service and Overnight Delivery Service. That practice includes the deposit of all correspondence with the United States Postal Service and/or Overnight Delivery Service the same day it is collected and processed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 24, 2003, at Los Angeles, California.



Tara Welch

**ROY E. FARMER I CHILDREN'S TRUST**
**LASC Case No. BP079060**

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