

MAXIMUS INC  
Form 4  
October 04, 2016

**FORM 4**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

OMB APPROVAL

OMB Number: 3235-0287  
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
FRANCIS DAVID

(Last) (First) (Middle)

C/O MAXIMUS INC. ATTN:  
TREASURY DEPT, 1891 METRO  
CENTER DRIVE

(Street)

RESTON, VA 20190

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
MAXIMUS INC [MMS]

3. Date of Earliest Transaction  
(Month/Day/Year)  
09/30/2016

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

\_\_\_ Director \_\_\_ 10% Owner  
\_X\_ Officer (give title below) \_\_\_ Other (specify below)  
General Counsel

6. Individual or Joint/Group Filing(Check Applicable Line)  
\_X\_ Form filed by One Reporting Person  
\_\_\_ Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
				(A) or (D)	Price		
			Code	V	Amount		
Common Stock	09/30/2016		F		5,522 (1)	D	
					\$ 56.56		
					31,617 (2)	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474  
(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)**

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1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Owned Following Reporting Transaction (Instr. 6)
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## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
FRANCIS DAVID C/O MAXIMUS INC. ATTN: TREASURY DEPT 1891 METRO CENTER DRIVE RESTON, VA 20190			General Counsel	

## Signatures

David R. Francis - General Counsel  
10/04/2016

\*\*Signature of Reporting Person Date

## Explanation of Responses:

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) These shares were surrendered to satisfy the withholding tax due in connection with the recent vesting of restricted stock units.

In addition, the reporting person holds 24,509 shares that are restricted and subject to future vesting pursuant to the terms of a grant of (2) restricted stock previously made by the issuer to the reporting person. The reporting person does not have voting or dispositive power over these shares of restricted stock.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. nt-family:Times New Roman" SIZE="1">2009 2008 2007 2006 2005

Ratio of earnings to fixed charges(1)

0.9(2) 2.6 2.2 1.8 1.5

(1) For purposes of determining the ratio of earnings to fixed charges, earnings are defined as the sum of (i) pretax income (loss) from continuing operations before adjustment for noncontrolling interests in consolidated subsidiaries or income (loss) from equity investees, (ii) fixed charges, (iii) amortization of capitalized interest, (iv) distributed income of equity investees and (v) the share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges, less (x) interest capitalized, (y) preference

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security dividend requirements of consolidated subsidiaries and (z) noncontrolling interests in pretax income of subsidiaries that have not incurred fixed charges. Fixed charges means the sum of (i) interest expense, including amortization of premiums, discounts and capitalized expenses related to indebtedness, (ii) interest capitalized, (iii) an estimate of the interest component of rental expense and (iv) preference security dividend requirements of consolidated subsidiaries.

- (2) The dollar amount of the deficiency in earnings available to cover fixed charges for the fiscal year ended December 31, 2009 was \$38 million.

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**Table of Contents**

**DESCRIPTION OF THE NOTES**

The old notes were, and the new notes will be, issued under an indenture (the *Indenture*) dated as of August 17, 2009 by and among Case New Holland, the Guarantors and The Bank of New York Mellon Trust Company, N.A as trustee (the *Trustee*). In the following summary, we refer to the old notes as the *Old Notes*, the new notes as the *New Notes* and the *Old Notes* and *New Notes* together as the *Notes*.

The following summary of the Indenture does not include all of the information included in the Indenture and may not include all of the information that you would consider important. This summary is qualified by reference to the Trust Indenture Act of 1939, as amended (the *TIA*), and to all of the provisions of the Indenture, including the definitions of terms therein and those terms made a part of the Indenture by reference to the TIA as in effect on the date of the Indenture. A copy of the Indenture has been filed as an exhibit to the registration statement of which this prospectus is a part.

The definitions of most of the capitalized terms used in the following summary are set forth below under *Certain Definitions*. For purposes of this section, references to *Case New Holland* include only Case New Holland Inc. and not its Subsidiaries and references to *CNH Global* include only CNH Global N.V. and not its Subsidiaries. References to \$ and dollars are to United States dollars. Capitalized terms as used in this section *Description of Notes* may have different meanings than elsewhere in this prospectus and therefore you should read *Certain Definitions* carefully to understand what differences, if any, there may be.

***General***

The *New Notes* will be unsecured obligations of Case New Holland, ranking senior in right of payment to all future obligations of Case New Holland that are, by their terms, expressly subordinated in right of payment to the *New Notes* and *pari passu* in right of payment with all existing and future unsecured obligations of Case New Holland that are not so subordinated.

The *New Notes* will be issued in fully registered form only, without coupons, in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. Payments on the *New Notes* will be made through the office or agency of a payment agent. Initially, the Trustee will act as paying agent and registrar for the *New Notes*. The *New Notes* may be presented for registration or transfer and exchange at the offices of the registrar, which initially will be the Trustee's corporate trust office. Case New Holland may change any paying agent and registrar without notice to Holders. Methods of receiving payments on global notes are governed by provisions described under *Book-Entry, Delivery and Form Payments on Global Notes*. In the case of definitive registered notes, Case New Holland may elect to make payments of interest, premium and Additional Amounts, if any, by check mailed to the Holders at their addresses set forth in the register of Holders.

***Principal, Maturity And Interest***

In the exchange offer (the *Exchange Offer*), Case New Holland will issue up to \$1,000,000,000 aggregate principal amount of the *New Notes*. Case New Holland may issue additional notes from time to time (the *additional notes*). Any additional notes subsequently issued under the Indenture will be treated as a single class with the *Notes* for all purposes under the Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase. The *New Notes* will mature on September 1, 2013. Interest on the *New Notes* will accrue at the rate of 7<sup>3</sup>/<sub>4</sub>% per annum. Interest on the *New Notes* will be payable semiannually in arrears in cash on each March 1 and September 1, commencing on September 1, 2010 to the persons who are registered Holders of the *New Notes* at the close of business on February 15 and August 15, immediately preceding the applicable interest payment date. Interest on the *New Notes* will accrue from and including the most recent date to which interest has been paid or, if no interest has ever been paid, from and including the date of issuance. Interest will be computed on the basis of a 360-day year comprising twelve 30-day months.

The *New Notes* will not be entitled to the benefit of any mandatory sinking fund.

**Table of Contents**

***Guarantees***

The New Notes will be unconditionally, irrevocably, jointly and severally guaranteed by:

CNH Global;

each of the following direct and indirect Subsidiaries of CNH Global that are not also Subsidiaries of Case New Holland:

CNH U.K. Limited

New Holland Holding Limited

CNH Canada, Ltd.

CNH Australia Pty Ltd

CNH Belgium N.V.

New Holland Tractor Limited N.V.

CNH Deutschland GmbH

CNH Trade N.V.

CNH International SA

each of the following direct and indirect Subsidiaries of Case New Holland:

Fiatallis North America LLC

CNH America LLC

HFI Holdings, Inc.

BLI Group, Inc.

Blue Leaf I.P., Inc.

The Guarantee of each Guarantor will be a general unsecured obligation of such Guarantor and will rank senior in right of payment to all future obligations of such Guarantor that are, by their terms, expressly subordinated in right of payment to such Guarantee and *pari passu* in right of payment with all existing and future unsecured Indebtedness of such Guarantor that are not so subordinated. The New Notes will be effectively subordinated to the obligations of each of CNH Global's direct and indirect Subsidiaries that is not a Guarantor of the New Notes. As of December 31, 2009, such non-Guarantor Subsidiaries had \$5.6 billion of outstanding debt, \$651 million of which is debt of Equipment Operations Subsidiaries. The \$5.6 billion does not include \$2.4 billion that Financial Services Subsidiaries owed to Equipment Operations Subsidiaries. None of the entities that comprise CNH's Financial Services Business is a Guarantor of the New Notes nor is any Financial Services Subsidiary expected to become a Guarantor of the New Notes after the issue date of the New Notes.

The Guarantee of a Guarantor (other than the Guarantee of CNH Global) will be released:

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- (1) in connection with any sale or other disposition of all of the Capital Stock of such Guarantor to a Person other than CNH Global or any Subsidiary of CNH Global;
- (2) in connection with the sale or other disposition of all or substantially all of the assets of such Guarantor, including by way of merger, consolidation or otherwise, to a Person other than CNH Global or any Subsidiary of CNH Global;

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**Table of Contents**

- (3) in the case of any Subsidiary which after the Issue Date is required to Guarantee the Notes pursuant to the covenant described under Certain Covenants Issuance of Subsidiary Guarantees, upon either (x) the release or discharge of the guarantee of such Subsidiary of Indebtedness of Case New Holland or any other Person under the 2014 Notes which resulted in the obligation to so Guarantee the Notes or (y) the Notes reaching Investment Grade Status; or
- (4) upon the release of the guarantee of such Subsidiary of Indebtedness represented by the 2014 Notes as a result of such Subsidiary being designated an Unrestricted Subsidiary (as defined in the 2014 Notes Indenture) in accordance with the terms of the 2014 Notes Indenture for so long as such guarantee continues to be so released.

**Except as provided under Certain Covenants Merger, Consolidation and Sale of Assets, the Guarantee of CNH Global may be released and discharged only with the consent of each Holder of Notes to which such Guarantee relates.**

The amount of each Guarantee will be limited to the extent required by laws in various jurisdictions, including fraudulent conveyance and insolvency laws. See Risk Factors Risks Related to the New Notes Your rights under the guarantees may be limited by laws in various jurisdictions, including fraudulent conveyance and insolvency laws.

***Additional Amounts***

All payments made by CNH Global or any Foreign Subsidiary Guarantor under or with respect to a Guarantee will be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto) (hereinafter, *Taxes* ) imposed or levied by or on behalf of the government of the United States, The Netherlands or any other jurisdiction in which CNH Global or any Foreign Subsidiary Guarantor is organized, resident or doing business for tax purposes or within or through which payment is made or any political subdivision or taxing authority or agency thereof or therein (any of the aforementioned being a *Taxing Jurisdiction* ), unless CNH Global or such Guarantor is required to withhold or deduct any such Taxes by law or by the interpretation or administration thereof.

If CNH Global or any Foreign Subsidiary Guarantor is so required to withhold or deduct any amount for or on account of Taxes from any payment made under or with respect to a Guarantee, CNH Global or such Guarantor, as applicable, will pay such additional amounts ( *Additional Amounts* ) as may be necessary so that the net amount received by the Holder of such Note (including Additional Amounts) after such withholding or deduction of such Taxes will not be less than the amount such Holder would have received if such Taxes had not been required to be withheld or deducted; *provided, however*, that notwithstanding the foregoing, Additional Amounts will not be paid with respect to:

- (1) any Taxes that would not have been so imposed, deducted or withheld but for the existence of any present or former connection between the Holder or beneficial owner of a Note (or between a fiduciary, settler, beneficiary, member or shareholder of, or possessor of power over, the Holder or beneficial owner of such Note, if the Holder or beneficial owner is an estate, nominee, trust, partnership or corporation) and the relevant Taxing Jurisdiction (other than the mere receipt of such payment or the ownership or disposition of a Note or the execution, delivery, registration or enforcement of such Note), including U.S. federal income tax imposed because the Holder or beneficial owner (i) is a citizen or resident of the United States, (ii) is engaged in a trade or business in the United States or (iii) has a permanent establishment in the United States.
- (2) any estate, inheritance, gift, sales excise, transfer or personal property tax or similar tax, assessment or governmental charge, subject to the last paragraph of this covenant;

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**Table of Contents**

- (3) any Taxes payable otherwise than by deduction or withholding from payments under or with respect to the Guarantee of such Note;
- (4) any Taxes that would not have been so imposed, deducted or withheld if the Holder or beneficial owner of the Note or beneficial owner of any payment on the Guarantee of such Note had (i) made a declaration of non-residence, or any other claim or filing for exemption, to which it is legally entitled or (ii) complied with any certification, identification, information, documentation or other reporting requirement (that the Holder or beneficial owner was legally eligible to comply with) concerning the nationality, residence, identity or connection with the relevant Taxing Jurisdiction of such Holder or beneficial owner of such Note or any payment on such Note (provided that (x) such declaration of non-residence or other claim or filing for exemption or such compliance is required by the applicable law of the Taxing Jurisdiction as a precondition to exemption from, or reduction in the rate of the imposition, deduction or withholding of, such Taxes and (y) at least 30 days prior to the first payment date with respect to which such declaration of non-residence or other claim or filing for exemption or such compliance is required under the applicable law of the Taxing Jurisdiction, Holders at that time have been notified by CNH Global, any Foreign Subsidiary Guarantor or any other person through whom payment may be made that a declaration of non-residence or other claim or filing for exemption or such compliance is required to be made);
- (5) any Taxes that would not have been so imposed, deducted or withheld if the Holder had presented the Note for payment within 30 days after the date on which such payment or such Note became due and payable or the date on which payment thereof is duly provided for, whichever is later (except to the extent that the Holder would have been entitled to Additional Amounts had the Note been presented on the last day of such 30-day period);
- (6) any Taxes attributable to any Holder that is a fiduciary or partnership or any person other than the sole beneficial owner of such payment or Note, to the extent that a beneficiary or settlor with respect to such fiduciary, a member of such partnership or the beneficial owner of such payment or Note would not have been entitled to the Additional Amounts had such beneficiary, settlor, member or beneficial owner been the actual Holder of such Note;
- (7) any Taxes, withholding or deduction of which is imposed on a payment to an individual and is required to be made pursuant to Council Directive 2003/48/EC of June 3, 2003 or any Directive implementing the conclusions of the ECOFIN Council meetings on November 26-27, 2000 on taxation of savings income in the form of interest payments or any law implementing or complying with, or introduced in order to conform to, that Directive;
- (8) any U.S. Federal withholding taxes charge imposed solely because the Holder (i) is a 10-percent shareholder of Case New Holland Inc. as defined in Section 871(h)(3) of the United States Internal Revenue Code of 1986, as amended or any successor provision or (ii) is a bank receiving payments on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; or
- (9) any combination of items (1) through (8) above.

The foregoing provisions shall survive any termination or discharge of the Indenture and shall apply *mutatis mutandis* to any Taxing Jurisdiction with respect to any successor Person to CNH Global or a Foreign Subsidiary Guarantor.

CNH Global or the applicable Foreign Subsidiary Guarantor will also make any applicable withholding or deduction and remit the full amount deducted or withheld to the relevant authority in accordance with applicable law. CNH Global or the applicable Foreign Subsidiary Guarantor will furnish to the Trustee, within 30 days after the date the payment of any Taxes deducted or withheld is due pursuant to applicable law, certified copies of tax



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## **Table of Contents**

receipts or, if such tax receipts are not reasonably available to CNH Global or such Foreign Subsidiary Guarantor, such other documentation that provides reasonable evidence of such payment by CNH Global or such Foreign Subsidiary Guarantor. Copies of such receipts or other documentation will be made available to the Holders or the paying agents, as applicable, upon request.

At least 30 days prior to each date on which any payment under or with respect to any Notes is due and payable if CNH Global or any Foreign Subsidiary Guarantor will be obligated to pay Additional Amounts with respect to such payment, CNH Global or such Foreign Subsidiary Guarantor will deliver to the Trustee and the applicable paying agent an officers' certificate stating the fact that such Additional Amounts will be payable and the amounts so payable and will set forth such other information necessary to enable such Trustee and applicable paying agent to pay such Additional Amounts to Holders of such Notes on the payment date (unless the obligation to pay Additional Amounts arises after the 30th day prior to such date, in which case the foregoing documentation shall be provided promptly thereafter). Each officers' certificate shall be relied upon until receipt of a further officers' certificate addressing such matters.

Whenever in the Indenture or in this Description of the Notes there is mentioned, in any context, the payment of principal, premium, if any, interest or of any other amount payable under or with respect to any Note, such mention shall be deemed to include mention of the payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

CNH Global and the Foreign Subsidiary Guarantors will pay any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies including penalties, interest and other liabilities related thereto that arise in any jurisdiction from the execution, delivery, enforcement, receipt of any payment thereto, or registration of their respective Guarantees of the Notes, the Indenture or any other document or instrument in relation thereto, excluding all such taxes, charges or similar levies imposed by any jurisdiction that is not a Taxing Jurisdiction, and CNH Global and the Foreign Subsidiary Guarantors will agree to indemnify the Holders of the Notes for any such non-excluded taxes paid by such Holders.

Subject to the extent required by applicable law in force at the relevant time, a Swiss Guarantor that is required to make a payment under the Guarantee may (a) deduct Swiss withholding tax at the rate of 35 percent, or such rate as is in force at that time, from any payment under the Guarantee; (b) pay any such deduction mentioned in (a), to the Swiss Federal Tax Administration; and (c) notify (or procure that the parent company notifies) the Trustee that such a deduction has been made and provide the Trustee with the required evidence. To the extent such a deduction is made, a Swiss Guarantor shall not be obliged to either gross-up or indemnify (or otherwise hold harmless) the Holders in relation to any such deduction or payment. Any beneficiary of a payment by a Swiss Guarantor under the Guarantee shall (a) as soon as possible request a refund of the Swiss withholding tax paid by such Swiss Guarantor under the applicable Swiss tax law; and (b) pay to the Holders upon receipt any amount refunded pursuant to (a) above.

### ***Redemption***

#### ***Optional redemption***

The Notes will be redeemable, at Case New Holland's option, in whole at any time or in part from time to time, at a redemption price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date, plus the Make-Whole Premium (a *Make-Whole Redemption* ).

#### ***Selection and notice of redemption***

In the event that less than all of the Notes are to be redeemed at any time, selection of the Notes for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national securities exchange, on a *pro rata* basis, by lot or by such method as the Trustee shall deem fair and appropriate; *provided* that no Notes of a principal amount of \$2,000 or less shall be redeemed in part.

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**Table of Contents**

Notice of an optional redemption shall be mailed at least 30 but not more than 60 days before the redemption date to each Holder to be redeemed at its registered address. If any Note is to be redeemed in part only, the notice of redemption that relates to such note shall state the portion of the principal amount thereof to be redeemed. A new note in a principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original note. On and after the redemption date, interest will cease to accrue on Notes or portions thereof called for redemption as long as Case New Holland has deposited with the paying agent funds in satisfaction of the applicable redemption price pursuant to the Indenture.

***Repurchase At The Option Of Holders Upon A Change Of Control Triggering Event***

The Indenture provides that, upon the occurrence of a Change of Control Triggering Event, each Holder will have the right to require that Case New Holland purchase all or a portion of such Holder's Notes pursuant to the offer described below (the *Change of Control Offer*), at a purchase price equal to 101% of the principal amount thereof plus accrued interest, if any, thereon to the date of purchase (the *Change of Control Payment*).

Within 30 days following the date upon which the Change of Control Triggering Event occurs, Case New Holland must send, by first class mail, a notice to each Holder, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer. Such notice shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date such notice is mailed (the *Change of Control Payment Date*). Holders electing to have a note purchased pursuant to a Change of Control Offer will be required to surrender the note, with the form entitled *Option of Holder to Elect Purchase* on the reverse of the note completed, to the paying agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Change of Control Payment Date.

On the Change of Control Payment Date, Case New Holland will, to the extent lawful:

- (1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;
- (2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and
- (3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an officers' certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by Case New Holland.

The paying agent will as promptly as practicable mail to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will as promptly as practicable authenticate and mail to each Holder a new note in a principal amount equal to any unpurchased portion of the Notes surrendered, if any; *provided, however*, that each new note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof.

If a Change of Control Offer is required to be made, there can be no assurance that Case New Holland will have available funds sufficient to pay the Change of Control Triggering Event purchase price for all the Notes that might be delivered by Holders seeking to accept the Change of Control Offer. In addition, the terms of our other financing arrangements, including the indenture relating to the 2014 Notes, may require repurchase or repayment of amounts outstanding in the event of a change of control, which could also limit our ability to fund the repurchase of the Notes. In the event Case New Holland is required to purchase outstanding Notes pursuant to a Change of Control Offer, Case New Holland may seek third party financing to the extent it does not have available funds to meet its purchase obligations. However, there can be no assurance that Case New Holland would be able to obtain such financing.

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## **Table of Contents**

Neither Case New Holland nor the Trustee may waive the covenant relating to a Holder's right to require the purchase of Notes upon a Change of Control Triggering Event. Restrictions in the Indenture described herein on the ability of Case New Holland and the Restricted Subsidiaries to incur Funded Debt and to grant Liens on their property may also make more difficult or discourage a takeover of CNH Global, whether favored or opposed by the management of CNH Global. Consummation of any such transaction in certain circumstances may require the purchase of the Notes, and there can be no assurance that CNH Global or the acquiring party will have sufficient financial resources to effect such purchase. Such restrictions may, in certain circumstances, make more difficult or discourage any leveraged buyout of CNH Global or any of its Subsidiaries by the management of CNH Global. While such restrictions cover a wide variety of arrangements which have traditionally been used to effect highly leveraged transactions, the Indenture may not afford the Holders protection in all circumstances from the adverse aspects of a highly leveraged transaction, reorganization, restructuring, merger or similar transaction.

Case New Holland will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws and regulations are applicable in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control Triggering Event provisions of the Indenture, Case New Holland shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the Change of Control Triggering Event provisions of the Indenture by virtue thereof.

### ***Certain Covenants***

***Limitations on Secured Funded Debt.*** CNH Global will not, nor will it permit any Restricted Subsidiary to, incur, issue, assume, guarantee or create any Secured Funded Debt, without effectively providing concurrently with the incurrence, issuance, assumption, guaranty or creation of any such Secured Funded Debt that the outstanding Notes (together with, if CNH Global shall so determine, any other Indebtedness of CNH Global or such Restricted Subsidiary then existing or thereafter created which is not subordinated to the outstanding Notes) will be secured equally and ratably with (or prior to) such Secured Funded Debt, so long as such Secured Funded Debt will be secured by a Lien, unless, after giving effect thereto, the sum of the aggregate amount of all outstanding Secured Funded Debt of CNH Global and its Restricted Subsidiaries together with all Attributable Debt in respect of sale and leaseback transactions relating to a Principal Property (with the exception of Attributable Debt which is excluded pursuant to clauses (1) to (6) inclusive described under Limitations on Sales and Leasebacks below), would not exceed 15% of Consolidated Net Tangible Assets of CNH Global and its Restricted Subsidiaries; *provided, however*, that this restriction will not apply to, and there will be excluded from Secured Funded Debt in any computation under such covenant, Funded Debt secured by:

- (1) Liens on property of any Person existing at the time such Person becomes a Subsidiary;
- (2) Liens on property existing at the time of acquisition thereof or incurred within 180 days of the time of acquisition thereof (including, without limitation, acquisition through merger or consolidation) by CNH Global or any Restricted Subsidiary;
- (3) Liens on property hereafter acquired (or constructed) by CNH Global or any Restricted Subsidiary and created prior to, at the time of, or within 270 days after such acquisition (including, without limitation, acquisition through merger or consolidation) (or the completion of such construction or commencement of commercial operation of such property, whichever is later) to secure or provide for the payment of all or any part of the purchase price (or the construction price) thereof;
- (4) Liens in favor of CNH Global or any Restricted Subsidiary;
- (5) Liens in favor of the United States of America, any State thereof or the District of Columbia, or any agency, department or other instrumentality thereof, to secure partial, progress, advance or other payments pursuant to any contract or provisions of any statute;

**Table of Contents**

- (6) Liens incurred or assumed in connection with the issuance of revenue bonds the interest on which is exempt from Federal income taxation pursuant to Section 103(a) of the Internal Revenue Code of 1954, as amended;
  - (7) Liens securing the performance of any contract or undertaking not directly or indirectly in connection with the borrowing of money, the obtaining of advances or credit or the securing of Funded Debt, if made and continuing in the ordinary course of business;
  - (8) Liens incurred (no matter when created) in connection with CNH Global's or a Restricted Subsidiary's engaging in leveraged or single-investor lease transactions; *provided, however*, that the instrument creating or evidencing any borrowings secured by such Lien will provide that such borrowings are payable solely out of the income and proceeds of the property subject to such Lien and are not a general obligation of CNH Global or such Restricted Subsidiary;
  - (9) Liens under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts or deposits to secure public or statutory obligations of CNH Global or any Restricted Subsidiary, or deposits of cash or obligations of the United States of America to secure surety and appeal bonds to which CNH Global or any Restricted Subsidiary is a party or in lieu of such bonds, or pledges or deposits for similar purposes in the ordinary course of business, or Liens imposed by law, such as laborers' or other employees', carriers', warehousemen's, mechanics', materialmen's and vendors' Liens and Liens arising out of judgments or awards against CNH Global or any Restricted Subsidiary with respect to which CNH Global or such Restricted Subsidiary at the time shall be prosecuting an appeal or proceedings for review and with respect to which it shall have secured a stay of execution pending such appeal or proceedings for review, or Liens for taxes not yet subject to penalties for nonpayment or the amount or validity of which is being in good faith contested by appropriate proceedings by CNH Global or any Restricted Subsidiary, as the case may be, or minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions or Liens as to the use of real properties, which Liens, exceptions, encumbrances, easements, reservations, rights and restrictions do not, in the opinion of CNH Global, in the aggregate materially detract from the value of said properties or materially impair their use in the operation of the business of CNH Global and its Restricted Subsidiaries;
  - (10) Liens incurred to finance construction, alteration or repair of any Principal Property and improvements thereto prior to or within 270 days after completion of such construction, alteration or repair; or
  - (11) any extension, renewal, refunding or replacement of the foregoing.
- Limitations on Sales and Leasebacks.** CNH Global will not, nor will it permit any Restricted Subsidiary to, enter into any arrangement with any Person providing for the leasing by CNH Global or any Restricted Subsidiary of any Principal Property of CNH Global or any Restricted Subsidiary, which Principal Property has been or is to be sold or transferred by CNH Global or such Restricted Subsidiary to such Person (a *sale and leaseback transaction*) unless, after giving effect thereto, the aggregate amount of all Attributable Debt with respect to all such sale and leaseback transactions plus all Secured Funded Debt (with the exception of Funded Debt secured by liens which is excluded pursuant to clauses (1) to (11) inclusive described under *Limitations on Secured Funded Debt* above) would not exceed 15% of Consolidated Net Tangible Assets. This covenant will not apply to, and there will be excluded from Attributable Debt in any computation under such restriction or under *Limitations on Secured Funded Debt* above, Attributable Debt with respect to any sale and leaseback transaction if:
- (1) CNH Global or a Restricted Subsidiary is permitted to create Funded Debt secured by a Lien pursuant to clauses (1) to (11) inclusive described under *Limitations on Secured Funded Debt* above on the Principal Property to be leased, in an amount equal to the Attributable Debt with respect to such sale and leaseback transaction, without equally and ratably securing the Notes;

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**Table of Contents**

- (2) CNH Global or a Restricted Subsidiary, within 270 days after the sale or transfer shall have been made by CNH Global or a Restricted Subsidiary, shall apply an amount in cash equal to the greater of (i) the net proceeds of the sale or transfer of the Principal Property leased pursuant to such arrangement or (ii) the fair market value of the Principal Property so leased at the time of entering into such arrangement (as determined by the President, the Chief Financial Officer or the Treasurer of CNH Global) to the retirement of Secured Funded Debt of CNH Global or any Restricted Subsidiary (other than Secured Funded Debt owned by CNH Global or any Restricted Subsidiary); *provided, however*, that no retirement referred to in this clause (2) may be effected by payment at maturity or pursuant to any mandatory sinking fund payment or any mandatory prepayment provision of Secured Funded Debt;
- (3) CNH Global or a Restricted Subsidiary applies the net proceeds of the sale or transfer of the Principal Property leased pursuant to such transaction to investment in another Principal Property within 270 days prior or subsequent to such sale or transfer; *provided, however*, that this exception shall apply only if such proceeds invested in such other Principal Property shall not exceed the total acquisition, repair, alteration and construction cost of CNH Global or any Restricted Subsidiary in such other Principal Property less amounts secured by any purchase money or construction mortgages on such Principal Property;
- (4) the effective date of any such arrangement is within 270 days of the acquisition of the Principal Property (including, without limitation, acquisition by merger or consolidation) or the completion of construction and commencement of operation thereof, whichever is later;
- (5) the lease in such sale and leaseback transaction is for a period, including renewals, of not more than three years; or

(6) the sale and leaseback transaction is entered into between CNH Global and a Restricted Subsidiary or between Restricted Subsidiaries.

***Limitations on Funded Debt of Certain Restricted Subsidiaries.*** CNH Global will not permit any Non-Guarantor Restricted Subsidiary (other than Case New Holland or any Credit Subsidiary) to incur, issue, assume, guarantee or create any Funded Debt, unless after giving effect thereto, the sum of the aggregate amount of all outstanding Funded Debt of the Non-Guarantor Restricted Subsidiaries (other than Case New Holland and the Credit Subsidiaries) would not exceed 15% of Consolidated Industrial Tangible Assets; *provided, however*, that this restriction will not apply to, and there will be excluded from, Funded Debt in any computation under this restriction, (i) Funded Debt of any Person existing at the time such Person becomes a Restricted Subsidiary and (ii) Indebtedness among CNH Global and its Restricted Subsidiaries and Indebtedness between Restricted Subsidiaries; *provided, further*, that this restriction will not prohibit the incurrence of Indebtedness in connection with any extension, renewal, refinancing, replacement or refunding (including successive extensions, renewals, refinancings, replacements and refundings), in whole or in part, of any Indebtedness of the Restricted Subsidiaries (*provided* that the principal amount of such Indebtedness being extended, renewed, refinanced, replaced or refunded is not increased) but any such Indebtedness shall be included in the computation of Funded Debt under this restriction.

***Merger, Consolidation and Sale of Assets.*** Neither CNH Global nor Case New Holland shall consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and neither CNH Global nor Case New Holland shall permit any Person to consolidate with or merge into CNH Global or Case New Holland or convey, transfer or lease its properties and assets substantially as an entirety to CNH Global or Case New Holland, unless:

- (1) (A) if CNH Global shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which CNH Global is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of CNH Global substantially as an entirety shall be a Person organized and validly existing under the laws of a member state of the European Union (as it exists on the Issue Date), the United States of America, any State thereof or the District of Columbia and shall expressly assume, by a

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**Table of Contents**

supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all obligations of CNH Global under the Indenture, CNH Global's Guarantee and the Registration Rights Agreement;

(B) if Case New Holland shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which Case New Holland is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of Case New Holland substantially as an entirety shall be a Person organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on the Notes and the performance or observance of every covenant of the Indenture on the part of Case New Holland to be performed or observed and shall expressly assume all obligations of Case New Holland under the Registration Rights Agreement, *provided* that if such successor Person is not a corporation there must at all times be a joint and several co-issuer of the Notes that is a wholly-owned Subsidiary of such successor Person that (I) is a corporation organized and validly existing under the laws of any jurisdiction described above in this clause (B) and (II) has no liabilities and engages in no activities other than its obligations under the Notes and activities incidental thereto;

- (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of CNH Global or a Subsidiary as a result of such transaction as having been incurred by CNH Global or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing;
- (3) if, as a result of any such consolidation or merger or such conveyance, transfer or lease, properties or assets of CNH Global or any Subsidiary would become subject to a mortgage, pledge, lien, security interest or other encumbrance which would not be permitted by the Indenture, CNH Global or such successor Person, as the case may be, shall take such steps as shall be necessary effectively to secure the Notes equally and ratably with (or prior to) all indebtedness secured thereby; and
- (4) CNH Global has delivered to the Trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with the applicable provisions of the Indenture and that all conditions precedent therein provided for relating to such transaction have been complied with.

For purposes of the foregoing, the conveyance, transfer or lease of all or substantially as an entirety the properties or assets of one or more Subsidiaries, the Capital Stock of which constitutes all or substantially as an entirety the properties and assets of either CNH Global or Case New Holland shall be deemed to be the transfer of all or substantially as an entirety the properties and assets of CNH Global or Case New Holland, as the case may be.

Upon any consolidation of CNH Global or Case New Holland with, or merger of CNH Global or Case New Holland into, any other Person or any conveyance, transfer or lease of the properties and assets of CNH Global or Case New Holland substantially as an entirety in accordance with the foregoing, the successor Person formed by such consolidation or into which CNH Global or Case New Holland is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, CNH Global or Case New Holland, as the case may be, under the Indenture with the same effect as if such successor Person had been named as CNH Global or Case New Holland, as the case may be, in the Indenture; and in the event of any such conveyance, transfer or lease, CNH Global or Case New Holland, as the case may be (which term shall for this purpose mean the Person named as CNH Global or Case New Holland or any successor corporation which shall have theretofore become such in the manner prescribed above) shall be discharged from all liability under the Indenture and in respect of the Notes or its Guarantee, as the case may be, and be dissolved and liquidated.

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**Table of Contents**

No Guarantor (other than CNH Global or a Guarantor whose Guarantee is to be released in accordance with the terms of the Guarantee and the Indenture) shall consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and CNH Global shall not permit any Person to consolidate with or merge into any other Guarantor or convey, transfer or lease its properties and assets substantially as an entirety to any other Guarantor, unless:

- (1) if such Guarantor shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which such Guarantor is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of such Guarantor substantially as an entirety shall be organized and validly existing under the laws of (x) if such Guarantor is organized and existing under the laws of the United States or any State thereof or the District of Columbia, the United States or any State thereof or the District of Columbia; (y) if such Guarantor is organized and existing under the laws of a member state of the European Union (as it exists on the Issue Date), (i) a member state of the European Union (as it exists on the Issue Date) or (ii) the United States or any State thereof or the District of Columbia; or (z) if such Guarantor is organized and existing under the laws of any other jurisdiction (i) a member state of the European Union (as it exists on the Issue Date), (ii) the United States or any State thereof or the District of Columbia or (iii) the jurisdiction or organization or existence of the Guarantor to which such consolidation or merger relates and in each case, shall expressly assume, by a supplemental indenture, all of the obligations of such Guarantor under the Indenture, such Guarantor's Guarantees and the Registration Rights Agreement;
- (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of such Guarantor as a result of such transaction as having been incurred by such Guarantor at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing;
- (3) if, as a result of any such consolidation or merger or such conveyance, transfer or lease, properties or assets of such Guarantor would become subject to a mortgage, pledge, lien, security interest or other encumbrance which would not be permitted by the Indenture, such Guarantor or such successor Person, as the case may be, shall take such steps as shall be necessary effectively to secure its Guarantee of the Notes equally and ratably with (or prior to) all indebtedness secured thereby; and
- (4) such Guarantor has delivered to the Trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with the applicable provisions of the Indenture and that all conditions precedent therein provided for relating to such transaction have been complied with.

Upon any consolidation of a Guarantor with, or merger of such Guarantor into, any other Person or any conveyance, transfer or lease of the properties and assets of such Guarantor substantially as an entirety in accordance with the foregoing, the successor Person formed by such consolidation or into which such Guarantor is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of such Guarantor under the Indenture with the same effect as if such successor Person had been a Guarantor under the Indenture; and in the event of any such conveyance, transfer or lease, such Guarantor (which term shall for this purpose mean the Person named as such Guarantor or any successor corporation which shall have theretofore become such in the manner prescribed above) shall be discharged from all liability under the Indenture and in respect of its Guarantee of the Notes, and be dissolved and liquidated.

For the avoidance of doubt, notwithstanding anything to the contrary in this Description of the Notes or in the Indenture, the disposition of all or any portion of the Financial Services Business, including without limitation through the disposition of all or any portion of the capital stock of any Financial Services Subsidiary, or all or any

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**Table of Contents**

portion of their respective assets or properties, shall not under any circumstances constitute a conveyance or transfer substantially as an entirety, or a sale of all or substantially all, of the properties or assets of CNH Global Case, New Holland or any Guarantor, for any purposes whatsoever under the Indenture or the Notes.

**Issuance of Subsidiary Guarantees.** CNH Global will not cause or permit any of its Subsidiaries (other than Case New Holland), directly or indirectly, to guarantee the obligation of Case New Holland or any other Person under the 2014 Notes unless such Subsidiary:

- (1) executes and delivers to the Trustee a supplemental indenture pursuant to which such Subsidiary shall unconditionally guarantee (each, a *Guarantee*) all of Case New Holland's obligations under the Notes and the Indenture on the terms set forth in the Indenture; and
- (2) delivers to the Trustee an opinion of counsel (which may contain customary exceptions) that such supplemental indenture has been duly authorized, executed and delivered by such Subsidiary and constitutes a legal, valid, binding and enforceable obligation of such Subsidiary.

Thereafter, such Subsidiary shall be a Guarantor for all purposes of the Indenture until such Guarantee is released in accordance with the provisions of Guarantees above. CNH Global may cause any other Subsidiary of CNH Global to issue a Guarantee and become a Guarantor.

**Payments for Consent.** CNH Global will not, and will not cause or permit any Subsidiary to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture, the Notes or the Guarantees unless such consideration is offered to be paid to all Holders who so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or amendment.

**Reports to Holders.** Whether or not CNH Global is then subject to Section 13(a) or 15(d) of the Exchange Act, CNH Global will furnish to the Trustee and the Holders, so long as any Notes are outstanding: (i) reports on Form 6-K relating to quarterly financial information, which shall include a statement of cash flows on a year-to-date basis and for the corresponding period in the immediately preceding fiscal year and statements of operations for such quarter and on a year-to-date basis and for the corresponding period in the immediately preceding fiscal year and a balance sheet as of the last day thereof and a discussion of the operating results of CNH Global and its consolidated subsidiaries for the fiscal quarter to which such quarterly report relates; *provided*, that such reports on Form 6-K will be so furnished no later than 45 days after the end of such fiscal quarter; and (ii) annual reports on Form 20-F (which shall include information regarding the Guarantors presented in accordance with Rule 3-10 of Regulation S-X under the Securities Act); *provided*, that such reports on Form 20-F will be so furnished no later than the date by which CNH Global would be required so to file such report if then required to file such a report under the Exchange Act; *provided, however*, that to the extent that CNH Global ceases to qualify as a foreign private issuer within the meaning of the Exchange Act, CNH Global will furnish to the Trustee and the Holders, so long as any Notes are outstanding (x) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if CNH Global were required to file such forms, including a Management's Discussion and Analysis of Financial Condition and Results of Operations that describes the financial condition and results of operations of CNH Global and its consolidated subsidiaries and, with respect to the annual information only, a report thereon by CNH Global's certified independent accountants; and (y) all current reports that would be required to be filed with the Commission on Form 8-K if CNH Global were required to file such reports, in each case within the time periods specified in the Commission's rules and regulations.

CNH Global will file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports, if any, with respect to compliance by CNH Global with the conditions and covenants provided for in the Indenture as may be required from time to time by such rules and regulations.



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**Table of Contents**

CNH Global will transmit by mail to all Holders, as the names and addresses of such Holders appear upon the register, within 30 days after the filing thereof with the Trustee, the summaries of information, documents and reports required to be filed by CNH Global, if any, pursuant to the Indenture as may be required by rules and regulations prescribed from time to time by the Commission.

***Events of Default***

The following events are defined in the Indenture as *Events of Default* :

- (1) the failure to pay interest on any Notes when the same becomes due and payable and the default continues for a period of 30 days;
- (2) the failure to pay the principal of any Notes, when such principal becomes due and payable, at maturity, upon redemption or otherwise (including the failure to make a payment to purchase Notes tendered pursuant to a Change of Control Offer);
- (3) a default in the observance or performance of any other covenant or agreement contained in the Indenture which default continues for a period of 30 days after Case New Holland receives written notice specifying the default from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Notes (except in the case of a default with respect to the covenant described under **Certain Covenants** Merger, Consolidation and Sale of Assets, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);
- (4) a default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness of CNH Global, Case New Holland, any Restricted Subsidiary of CNH Global or Guarantor that, in the case of any such Restricted Subsidiary or Guarantor is a Significant Subsidiary or any group of Restricted Subsidiaries of CNH Global and/or Guarantors that together would constitute a Significant Subsidiary (or the payment of which is guaranteed by CNH Global, Case New Holland or any such Restricted Subsidiary of CNH Global or Guarantor or group of Restricted Subsidiaries of CNH Global and/or Guarantors), whether such Indebtedness now exists or is created after the Issue Date, which default (A) is caused by a failure to pay principal of such Indebtedness after any applicable grace period provided in such Indebtedness on the date of such default (a *payment default* ) or (B) results in the acceleration of such Indebtedness prior to its express maturity and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates \$75.0 million;
- (5) one or more judgments in an aggregate amount in excess of \$75.0 million not covered by adequate insurance shall have been rendered against CNH Global, Case New Holland, any Restricted Subsidiary of CNH Global or Guarantor that, in the case of any such Restricted Subsidiary or Guarantor is a Significant Subsidiary or group of Restricted Subsidiaries of CNH Global and/or Guarantors that, together, would constitute a Significant Subsidiary and such judgments remain undischarged, unpaid or unstayed for a period of 60 days after such judgment or judgments become final and nonappealable;
- (6) certain events of bankruptcy as set forth in the Indenture affecting CNH Global, Case New Holland or any Restricted Subsidiary or Guarantor that, in the case of any such Restricted Subsidiary or Guarantor is a Significant Subsidiary or group of Restricted Subsidiaries of CNH Global and/or Guarantors that, together, would constitute a Significant Subsidiary; or
- (7) any Guarantee of any Guarantor ceases to be in full force and effect or any Guarantee of such Guarantor is declared to be null and void and unenforceable or any Guarantee of such Guarantor is found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of such Guarantor in accordance with the terms of the Indenture).

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**Table of Contents**

If an Event of Default (other than an Event of Default specified in clause (6) above) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of outstanding Notes may declare the principal of, premium, if any, and accrued interest on all the Notes to be due and payable by notice in writing to Case New Holland and (if given by the Holders) the Trustee specifying the respective Events of Default and that it is a notice of acceleration, and the same shall become immediately due and payable. If an Event of Default specified in clause (6) above occurs with respect to CNH Global or Case New Holland and is continuing, then all unpaid principal of, premium, if any, and accrued and unpaid interest on all of the outstanding Notes shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Indenture provides that, at any time after a declaration of acceleration with respect to the Notes as described in the preceding paragraph, the Holders of a majority in principal amount of the then outstanding Notes may rescind and cancel such declaration and its consequences:

- (1) if the rescission would not conflict with any judgment or decree;
- (2) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;
- (3) to the extent the payment of such interest is lawful, if interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid;
- (4) if Case New Holland has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and
- (5) in the event of the cure or waiver of an Event of Default of the type described in clause (6) of the description above of Events of Default, the Trustee shall have received an officers' certificate and an opinion of counsel that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or Event of Default or impair any right consequent thereto.

The Holders of a majority in principal amount of the then outstanding Notes may waive any existing Default or Event of Default under the Indenture, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any Notes.

Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture and under the TIA. Subject to the provisions of the Indenture relating to the duties of the Trustee, the Trustee is under no obligation to exercise any of its rights, or powers under the Indenture at the request, order or direction of any of the Holders, unless such Holders have offered to the Trustee reasonable security or indemnity. Subject to all provisions of the Indenture and applicable law, the Holders of a majority in aggregate principal amount of the then outstanding Notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee.

Under the Indenture, Case New Holland is required to provide an officers' certificate to the Trustee promptly upon Case New Holland obtaining knowledge of any Default or Event of Default (*provided* that Case New Holland shall provide such certification at least annually whether or not it knows of any Default or Event of Default) that has occurred and, if applicable, describe such Default or Event of Default and the status thereof.

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**Table of Contents**

***Legal Defeasance and Covenant Defeasance***

Case New Holland may, at its option and at any time, elect to have its obligations and the obligations of any Guarantors discharged with respect to the outstanding Notes ( *legal defeasance* ). Such legal defeasance means that Case New Holland shall be deemed to have paid and discharged the entire indebtedness represented by the outstanding Notes, except for:

- (1) the rights of Holders to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due;
- (2) Case New Holland's obligations with respect to the Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payments;
- (3) the rights, powers, trust, duties and immunities of the Trustee and Case New Holland's obligations in connection therewith; and
- (4) the legal defeasance provisions of the Indenture.

In addition, Case New Holland may, at its option and at any time, elect to have the obligations of Case New Holland released with respect to certain covenants that are described in the Indenture ( *covenant defeasance* ) and thereafter any omission or failure to comply with such obligations shall not constitute a Default or Event of Default with respect to the Notes. In the event covenant defeasance occurs, certain events (not including nonpayment, bankruptcy, receivership, reorganization and insolvency events) described under Events of Default will no longer constitute an Event of Default with respect to the Notes.

In order to exercise legal defeasance or covenant defeasance:

- (1) Case New Holland must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders cash in U.S. dollars, non-callable U.S. government obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants selected by Case New Holland, to pay the principal of, premium, if any, and interest on the Notes on the stated date of payment thereof or on the applicable redemption date, as the case may be; *provided* that the Trustee shall have received an irrevocable written order from Case New Holland instructing the Trustee to apply such cash or the proceeds of such obligations to said payments with respect to such Notes;
- (2) in the case of legal defeasance, Case New Holland shall have delivered to the Trustee an opinion of counsel in the United States reasonably acceptable to the Trustee confirming that (A) Case New Holland has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of the Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel shall confirm that, the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such legal defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred;
- (3) in the case of covenant defeasance, Case New Holland shall have delivered to the Trustee an opinion of counsel in the United States reasonably acceptable to the Trustee confirming that the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;
- (4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending



**Table of Contents**

on the 91st day after the date of deposit (other than a Default or Event of Default resulting from the incurrence of Indebtedness all or a portion of the proceeds of which will be used to defease the Notes concurrently with such incurrence);

- (5) such legal defeasance or covenant defeasance shall not result in a breach or violation of or constitute a default under the Indenture or any other material agreement or instrument to which CNH Global or any of its Subsidiaries is a party or by which CNH Global or any of its Subsidiaries is bound;
- (6) Case New Holland shall have delivered to the Trustee an officers certificate stating that the deposit was not made by Case New Holland with the intent of preferring the Holders over any other creditors of Case New Holland or with the intent of defeating, hindering, delaying or defrauding any other creditors of Case New Holland or others;
- (7) Case New Holland shall have delivered to the Trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent (other than, in the case of such legal opinion, paragraph (6) above as to which such counsel need express no opinion) provided for or relating to the legal defeasance or the covenant defeasance have been complied with; and
- (8) Case New Holland shall have delivered to the Trustee an opinion of counsel to the effect that after the 91st day following the deposit and assuming that no Holder is an insider with respect to Case New Holland, as that term is defined in Section 101 of title 11, United States Bankruptcy Code (the *Bankruptcy Code* ), the cash or securities deposited in trust will not be subject to avoidance and repayment under Sections 547 and 550 of the Bankruptcy Code.

***Satisfaction and Discharge***

The Indenture will be discharged and will cease to be of further effect (except as to surviving rights or registration of transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when:

- (1) either (a) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by Case New Holland and thereafter repaid to Case New Holland or discharged from such trust) have been delivered to the Trustee for cancellation or (b) all of the Notes (i) have become due and payable, (ii) will become due and payable at their stated maturity within one year or (iii) if redeemable at the option of Case New Holland, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of Case New Holland, and Case New Holland has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit together with irrevocable instructions from Case New Holland directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;
- (2) Case New Holland and/or the Guarantors have paid all other sums payable under the Indenture; and
- (3) Case New Holland has delivered to the Trustee an officers certificate and an opinion of counsel stating that all conditions precedent under the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

***Modification of the Indenture***

From time to time, Case New Holland and the Trustee, without the consent of the Holders, may amend the Indenture for certain specified purposes, including curing ambiguities, defects or inconsistencies, so long as such change does not, in the opinion of Case New Holland, adversely affect the rights of any of the Holders in any



## **Table of Contents**

material respect. The Trustee will be entitled to rely on such evidence as it deems appropriate, including, without limitation, solely on an opinion of counsel. Other modifications and amendments of the Indenture may be made with the consent of the Holders of a majority in principal amount of the then outstanding Notes issued under the Indenture, except that, without the consent of each Holder affected thereby, no amendment may:

- (1) reduce the amount of Notes whose Holders must consent to an amendment;
- (2) reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on any Notes;
- (3) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes, or change the date on which any Notes may be subject to redemption or repurchase, or reduce the redemption or repurchase price therefor;
- (4) make any Notes payable in money other than that stated in the Notes;
- (5) make any change in provisions of the Indenture protecting the right of each Holder to receive payment of principal of, premium, if any, and interest on such Notes on or after the stated due date thereof or to bring suit to enforce such payment, or permitting Holders of a majority in principal amount of the then outstanding Notes to waive Defaults or Events of Default;
- (6) amend, change or modify in any material respect the obligation of Case New Holland to make and consummate a Change of Control Offer after the occurrence of a Change of Control Triggering Event or, after such Change of Control Triggering Event has occurred, modify any of the provisions or definitions with respect thereto;
- (7) modify or change any provision of the Indenture or the related definitions affecting the ranking of the Notes or any Guarantee in a manner which adversely affects the Holders; or
- (8) release any Guarantor from any of its obligations under its Guarantee or the Indenture otherwise than in accordance with the terms of the Indenture.

### ***Governing Law***

The Indenture provides that it, the Notes and any Guarantees will be governed by, and construed in accordance with, the laws of the State of New York but without giving effect to applicable principles of conflicts of law to the extent that the application of the law of another jurisdiction would be required thereby.

### ***The Trustee***

The Indenture provides that, except during the continuance of an Event of Default, the Trustee will perform only such duties as are specifically set forth in the Indenture. During the existence of an Event of Default, the Trustee will exercise such rights and powers vested in it by the Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Indenture and the provisions of the TIA contain certain limitations on the rights of the Trustee, should it become a creditor of Case New Holland, to obtain payments of claims in certain cases or to realize on certain property received in respect of any such claim as security or otherwise. Subject to the TIA, the Trustee will be permitted to engage in other transactions; *provided* that if the Trustee acquires any conflicting interest as described in the TIA it must eliminate such conflict or resign.





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## Table of Contents

### *Certain Definitions*

Set forth below is a summary of certain of the defined terms used in the Indenture. Reference is made to the Indenture for the full definition of all such terms, as well as any other terms used herein for which no definition is provided.

**Affiliate** means with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by or is under common control with, such specified Person. The term **control** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms **controlling** and **controlled** have meanings correlative to the foregoing.

**Applicable Treasury Rate** for any redemption date, means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two Business Days prior to the Make-Whole Redemption Date of such note (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Make-Whole Redemption Date to September 1, 2013; *provided, however*, that if the period from the Make-Whole Redemption Date to September 1, 2013 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Applicable Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given except that if the period from the Make-Whole Redemption Date to September 1, 2013 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

**Attributable Debt** means, as to any particular lease under which either CNH Global or any Restricted Subsidiary is at the time liable as lessee for a term of more than 12 months and at any date as of which the amount thereof is to be determined, the total net obligations of the lessee for rental payments during the remaining term of the lease (excluding any period for which such lease has been extended or may, at the option of the lessor, be extended) discounted from the respective due dates thereof to such determination date at a rate per annum equivalent to the greater of (a) the weighted-average Yield to Maturity of the Notes and (b) the interest rate inherent in such lease (as determined in good faith by CNH Global), both to be compounded semi-annually. The net total obligations of the lessee for rental payments under any such lease for any such period shall be the aggregate amount of the rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of maintenance and repairs, services, insurance, taxes, assessments, water rates and similar charges and contingent rents (such as those based on sales or monetary inflation). If any lease is terminable by the lessee upon the payment of a penalty and under the terms of the lease the termination right is not exercisable until after the determination date and the amount of such penalty discounted to the determination date as provided above is less than the net amount of rentals payable after the time as of which such termination could occur (the *termination time*) discounted to the determination date as provided above, then such discounted penalty amount shall be used instead of such discounted amount of net rentals payable after the termination time in calculating the Attributable Debt for such lease. If any lease is terminable by the lessee upon the payment of a penalty and such termination right is exercisable on the determination date and the amount of the net rentals payable under such lease after the determination date discounted to the determination date as provided above is greater than the amount of such penalty, the Attributable Debt for such lease as of such determination date shall be equal to the amount of such penalty.

**Board of Directors** means, as to any Person, the board of directors of such Person or any duly authorized committee thereof.

**Business Day** means a day other than a Saturday, Sunday or other day on which commercial banking institutions in New York City are authorized or required by law to close.

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**Table of Contents**

Capital Stock means

(1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person and

(2) with respect to any Person that is not a corporation, any and all partnership or other equity interests of such Person.

Capital Lease Obligations of either CNH Global or any Restricted Subsidiary means the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date determined in accordance with generally accepted accounting principles.

Change of Control means the occurrence of one or more of the following events:

- (1) any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a *Group*), other than one or more Permitted Holders, becomes the beneficial owner (as defined under Rule 13d-3 or any successor rule or regulation promulgated under the Exchange Act, except that a Person will be deemed to have beneficial ownership of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time) of more than 35% of the total voting power of CNH Global's Capital Stock and the Permitted Holders beneficially own (as so defined), in the aggregate, a lesser percentage of the total voting power of CNH Global's Capital Stock than such other Person or Group and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of CNH Global;
- (2) there is consummated any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of CNH Global and its Subsidiaries taken as a whole to any Person or Group, together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of the Indenture), other than any transfer to (x) CNH Global or one or more Subsidiaries of CNH Global or (y) any Person of which more than 50% of the voting power of such Person's Capital Stock is owned by one or more Permitted Holders;
- (3) there is consummated any consolidation or merger of CNH Global in which CNH Global is not the continuing or surviving Person or pursuant to which the Common Stock of CNH Global would be converted into cash, securities or other property, other than a merger or consolidation of CNH Global (x) in which the Holders of the Capital Stock of CNH Global outstanding immediately prior to the consolidation or merger hold, directly or indirectly, at least a majority of the Capital Stock of the surviving corporation immediately after such consolidation or merger or (y) with any Person of which more than 50% of the voting power of such Person's Capital Stock is owned directly or indirectly by one or more Permitted Holders;
- (4) the approval by the Holders of Capital Stock of CNH Global of any plan or proposal for the liquidation or dissolution of CNH Global or Case New Holland (whether or not otherwise in compliance with the provisions of the Indenture);
- (5) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of CNH Global (together with any new directors whose election by such Board of Directors or whose nomination for election by the stockholders of CNH Global was approved either (x) pursuant to a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved or (y) by the Permitted Holders) cease for any reason to constitute a majority of the Board of Directors of CNH Global then in office; or

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**Table of Contents**

(6) the first day on which CNH Global fails to own, either directly or indirectly, through one or more Subsidiaries, more than 50% of the total voting power of Case New Holland's Capital Stock.

**Change of Control Triggering Event** means both (i) a Change of Control shall have occurred and (ii) either (x) the Notes shall not have Investment Grade Status at the time of the occurrence of such Change of Control and shall not have obtained Investment Grade Status within 30 days after public notice of the occurrence of such Change of Control or (y) the Notes shall have Investment Grade Status at the time of the occurrence of such Change of Control but a Rating Decline shall have occurred and, after giving effect to such Rating Decline, the Notes shall cease to have Investment Grade Status.

**Commission** means the Securities and Exchange Commission, as from time to time constituted, or if at any time after the execution of the Indenture such Commission is not existing and performing the applicable duties now assigned to it, then the body or bodies performing such duties at such time.

**Common Stock** of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person's common stock, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common stock.

**Consolidated Industrial Tangible Assets** means, at any date, the total assets appearing on the most recent industrial consolidated balance sheet of CNH Global and its Restricted Subsidiaries (other than Credit Subsidiaries) as at the end of the fiscal quarter of CNH Global ending not more than 135 days prior to such date, prepared in accordance with generally accepted accounting principles, less (a) Intangible Assets and (b) investments in and advances to Unrestricted Subsidiaries that are consolidated on the consolidated balance sheet of CNH Global and its Subsidiaries.

**Consolidated Net Tangible Assets** means, at any date, the total assets appearing on the most recent consolidated balance sheet of CNH Global and its Restricted Subsidiaries as at the end of the fiscal quarter of CNH Global ending not more than 135 days prior to such date, prepared in accordance with generally accepted accounting principles, less (a) all current liabilities (due within one year) as shown on such balance sheet, (b) applicable reserves, (c) investments in and advances to Unrestricted Subsidiaries that are consolidated on the consolidated balance sheet of CNH Global and its Subsidiaries, and (d) Intangible Assets and liabilities relating thereto.

**Credit Subsidiary** means CNH Capital America LLC and its Subsidiaries and any other Subsidiary (which shall include, without limitation, any Securitization Subsidiary) the principal business of which consists of financing or assisting in financing (i) CNH Global's dealers or distributors or (ii) the acquisition or disposition of products, directly or indirectly, by dealers, distributors or retail customers.

**Default** means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

**Equipment Business** means the manufacture, marketing and distribution of agricultural and construction equipment.

**Equipment Subsidiary** means any Subsidiary of CNH Global that is engaged in the Equipment Business.

**Exchange Act** means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto, and the rules and regulations of the Commission promulgated thereunder.

**Financial Services Business** means the offer and sale of financial services products, including without limitation (i) retail financing for the purchase or lease of equipment manufactured by CNH Global, Equipment

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**Table of Contents**

Subsidiaries or any other manufacturer whose products are from time to time sold through CNH Global's dealer network, (ii) other retail and wholesale financing programs reasonably related thereto and (iii) insurance and credit card products and services reasonably related thereto, together with the underwriting, marketing, servicing and other related support activities incidental to the offer and sale of such financial services products.

Financial Services Subsidiary means any Subsidiary of CNH Global that is engaged in the Financial Services Business.

Foreign Subsidiary means a Subsidiary that is formed or otherwise incorporated in a jurisdiction other than the United States or a State thereof or the District of Columbia.

Funded Debt means (i) any Indebtedness of CNH Global or a Restricted Subsidiary maturing more than 12 months after the time of computation thereof, (ii) guarantees of Funded Debt or of dividends of others (except guarantees in connection with the sale or discount of accounts receivable, trade acceptances and other paper arising in the ordinary course of business), (iii) in the case of any Restricted Subsidiary all Preferred Stock of such Restricted Subsidiary, and (iv) all Capital Lease Obligations.

Guarantee has the meaning set forth under Certain Covenants Issuance of Subsidiary Guarantees.

Guarantor means (1) CNH Global, (2) each Subsidiary of CNH Global that executes a Guarantee on the Issue Date and (3) each other Subsidiary that in the future executes a Guarantee pursuant to the covenant described under Certain Covenants Issuance of Subsidiary Guarantees or otherwise; *provided* that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its Guarantee is released in accordance with the terms of the Indenture.

Holder means any registered holder, from time to time, of any Notes.

Indebtedness means, at any date, without duplication, (i) all obligations for borrowed money of CNH Global or a Restricted Subsidiary of CNH Global or any other indebtedness of CNH Global or a Restricted Subsidiary of CNH Global, evidenced by bonds, debentures, Notes or other similar instruments and (ii) Funded Debt, except in the case of clauses (i) and (ii) such obligations and other indebtedness of CNH Global or a Restricted Subsidiary of CNH Global, and any Funded Debt incurred as a part of a Securitization Transaction.

Initial Purchaser means Credit Suisse Securities (USA) LLC.

Intangible Assets means, at any date, the value (net of any applicable reserves), as shown on or reflected in the most recent consolidated balance sheet of CNH Global and its Restricted Subsidiaries as at the end of the fiscal quarter of CNH Global ending not more than 135 days prior to such date, prepared in accordance with generally accepted accounting principles, of: (i) all trade names, trademarks, licenses, patents, copyrights, service marks, goodwill and other like intangibles; (ii) organizational and development costs; (iii) deferred charges (other than prepaid items such as insurance, taxes, interest, commissions, rents, deferred interest waiver, compensation and similar items and tangible assets being amortized); and (iv) unamortized debt discount and expense, less unamortized premium.

Investment Grade Rating means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P or an equivalent rating by any Successor Rating Agency.

Investment Grade Status means that the Notes shall have an Investment Grade Rating from both Rating Agencies, *provided* that no Default or Event of Default has occurred and is continuing.

Issue Date means August 17, 2009, the date of initial issuance of the Old Notes.

Liens means such pledges, mortgages, security interests and other liens on any Principal Property of CNH Global or a Restricted Subsidiary which secure Secured Funded Debt.

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**Table of Contents**

**Make-Whole Premium** means, as to each note, an amount equal to the greater of (i) 1.0% of the principal amount of such note and (ii) the excess of (x) the present value of the sum of the principal amount and premium, if any, that would be payable on such note on September 1, 2013 and all remaining interest payments to and including September 1, 2013 (but excluding any interest accrued to the Make-Whole Redemption Date), discounted on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) from September 1, 2013 to the Make-Whole Redemption Date at a per-annum interest rate equal to the Applicable Treasury Rate on such Make-Whole Redemption Date plus 0.50%, over (y) the outstanding principal amount of such note.

**Make-Whole Redemption Date** with respect to a Make-Whole Redemption, means the date such Make-Whole Redemption is effected.

**Moody's** means Moody's Investors Service, Inc., or any successor thereto.

**Non-Guarantor Restricted Subsidiary** means any Restricted Subsidiary that is not a Guarantor of the Notes.

**Parent** means, with respect to any Person, any other Person of which such Person is a direct or indirect Subsidiary.

**Permitted Holders** means each of (i) Fiat S.p.A., a corporation organized under the laws of Italy ( *Fiat* ), and any other Person that is a Subsidiary of Fiat or any Person directly or indirectly controlled by any of the following and (ii) any Parent of Fiat, *provided* that in the case of this clause (ii), at all times CNH Global shall also be a direct or indirect Subsidiary of Fiat.

**Person** means an individual, partnership, corporation, unincorporated organization (including a limited liability company), trust or joint venture, or a governmental agency or political subdivision thereof.

**Preferred Stock** of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

**Principal Property** means any manufacturing plant or foundry located in the United States of America and owned and operated by CNH Global or any Restricted Subsidiary on or after the date hereof, and any manufacturing equipment owned by CNH Global or any Restricted Subsidiary on or after the date hereof in such manufacturing plant, and for the purpose of this definition, **manufacturing equipment** means manufacturing equipment in such manufacturing plant directly used in the production of CNH Global's products and parts and components thereof, and shall not include office equipment, rolling stock and other equipment not directly used in the production of CNH Global's products.

**Rating Agencies** mean Moody's and S&P; *provided* that if S&P, Moody's or any Successor Rating Agency (as defined below) shall cease to be in the business of providing rating services for debt securities generally, CNH Global shall be entitled to replace any such Rating Agency or Successor Rating Agency, as the case may be, which has ceased to be in the business of providing rating services for debt securities generally with a security rating agency which is in the business of providing rating services for debt securities generally and which is nationally recognized in the United States (such rating agency, a *Successor Rating Agency* ).

**Rating Decline** shall be deemed to occur if, within 60 days after public notice of the occurrence of a Change of Control (which period shall be extended to up to 180 days after public notice of the occurrence of a Change of Control so long as the rating of the Notes is under publicly announced consideration for possible downgrade as a result of the occurrence of such Change of Control by either of the Rating Agencies), the rating of the Notes by either Rating Agency shall be decreased.

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**Table of Contents**

**Receivables** means any right of payment from or on behalf of any obligor, whether constituting an account, chattel paper, instrument, general intangible or otherwise, arising from the financing by CNH Global or any Subsidiary of CNH Global of property or services, and monies due thereunder, security interests in the property and services financed thereby and any and all other related rights.

**Registration Rights Agreement** means the Registration Rights Agreement to be dated the Issue Date among Case New Holland, the Guarantors and the Initial Purchaser.

**Restricted Subsidiary** means (i) Case New Holland Inc. and (ii) any Subsidiary of CNH Global that has a material interest in any Principal Property and any other Subsidiary designated as a Restricted Subsidiary from time to time by the Board of Directors of CNH Global; *provided, however,* that the Board of Directors of CNH Global shall not, nor shall it cause or permit any Restricted Subsidiary to, transfer or otherwise dispose of any Principal Property to any Unrestricted Subsidiary (unless such Unrestricted Subsidiary shall in connection therewith be redesignated as a Restricted Subsidiary and any Lien arising in connection with any Indebtedness of such Unrestricted Subsidiary so redesignated does not extend to such Principal Property (unless the existence of such Lien would otherwise be permitted under the Indenture)). As of the Issue Date, each of the following subsidiaries of CNH Global will be a Restricted Subsidiary: Case New Holland Inc. and CNH America LLC.

**S&P** means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

**Secured Funded Debt** means Funded Debt which is secured by any pledge of, or mortgage, security interest or other lien on, any Principal Property (whether owned on the date of the Indenture or thereafter acquired or created) of CNH Global or of a Restricted Subsidiary.

**Securities Act** means the Securities Act of 1933, as amended, or any successor statute or statutes thereto, and the rules and regulations of the Commission promulgated thereunder.

**Securitization Subsidiary** means a Subsidiary of CNH Global (a) which is formed for the purpose of effecting one or more Securitization Transactions and engaging in other activities reasonably related thereto and (b) as to which no portion of the indebtedness or any other obligations of which (i) is guaranteed by CNH Global or any Restricted Subsidiary, or (ii) subjects any property or assets of CNH Global or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to any lien, other than pursuant to representations, warranties and covenants (including those related to servicing) entered into in the ordinary course of business in connection with a Securitization Transaction and inter-company Notes and other forms of capital or credit support relating to the transfer or sale of Receivables or asset-backed securities to such Securitization Subsidiary and customarily necessary or desirable in connection with such transactions.

**Securitization Transaction** means any transaction or series of transactions that have been or may be entered into by CNH Global or any of its Subsidiaries in connection with or reasonably related to a transaction or series of transactions in which CNH Global or any of its Subsidiaries may sell, convey or otherwise transfer to (i) a Securitization Subsidiary or (ii) any other Person, or may grant a security interest in, any Receivables or asset-backed securities or interest therein (whether such Receivables or securities are then existing or arising in the future) of CNH Global or any of its Subsidiaries, and any assets related thereto, including, without limitation, all security interests in the property or services financed thereby, the proceeds of such Receivables or asset-backed securities and any other assets which are sold or in respect of which security interests are granted in connection with securitization transactions involving such assets.

**Significant Subsidiary** means, with respect to any Person, any Subsidiary of such Person that satisfies the criteria for a significant subsidiary set forth in Rule 1.02(w) of Regulation S-X under the Securities Act, as such Regulation is in effect on the Issue Date.

**Table of Contents**

Subsidiary, with respect to any Person, means

(1) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person or

(2) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person.

2014 Notes means, collectively, (i) the 7.125% Senior Notes due 2014 issued by Case New Holland and (ii) Indebtedness which refinances, extends, renews, refunds, repays, prepays, redeems, defeases, retires or replaces, in each case, in whole or in part any Indebtedness described in clause (i) above.

2014 Notes Indenture means the Indenture dated as of March 3, 2006 by and among Case New Holland, the Guarantors and JPMorgan Chase Bank, N.A. as in effect of the Issue Date.

Unrestricted Subsidiary means each Subsidiary other than Restricted Subsidiaries and Securitization Subsidiaries.

Yield to Maturity means the yield to maturity, calculated at the time of issuance of the Notes calculated in accordance with generally accepted financial practice.

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**Table of Contents**

**BOOK-ENTRY; DELIVERY AND FORM**

**The Global Notes**

New notes offered pursuant to the exchange offer will be issued in the form of one or more registered notes in global form, without interest coupons (collectively, the *Global Notes*). The Global Notes will be deposited on the issue date with, or on behalf of, The Depository Trust Company ( *DTC* ) and registered in the name of Cede & Co., as nominee of DTC, or will remain in the custody of the trustee pursuant to the FAST Balance Certificate Agreement between DTC and the trustee.

Except as set forth below, the Global Notes may be transferred, in whole and not in part, solely to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may not be exchanged for notes in physical, certificated form ( *Certificated Notes* ) except in the limited circumstances described below.

All interests in the Global Notes may be subject to the procedures and requirements of DTC.

Book-Entry Interests will be shown on, and transfers thereof will be done only through, records maintained in book-entry form by DTC and its participants. The foregoing limitations may impair your ability to own, transfer or pledge Book-Entry Interests. In addition, while the notes are in global form, holders of Book-Entry Interests will not be considered the owners or holders of notes for any purpose.

So long as the notes are held in global form, DTC (or its nominee), will be considered the sole holders of Global Notes for all purposes under the Indenture. In addition, participants in DTC must rely on the procedures of DTC and indirect participants must rely on the procedures of DTC and the participants through which they own Book-Entry Interests, to transfer their interests or to exercise any rights of holders under the Indenture.

Neither the Issuer nor the Trustee will have any responsibility or be liable for any aspect of the records relating to the Book-Entry Interests.

***Redemption of the Global Notes***

In the event any Global Note (or any portion thereof) is redeemed, DTC (or its nominees) will redeem an equal amount of the Book-Entry Interests in such Global Note from the amount received by it in respect of the redemption of such Global Note. The redemption price payable in connection with the redemption of such Book-Entry Interests will be equal to the amount received by DTC, in connection with the redemption of such Global Note (or any portion thereof). We understand that, under existing practices of DTC if fewer than all of the notes are to be redeemed at any time, DTC will credit its participants' accounts on a proportionate basis (with adjustments to prevent fractions) or by lot or on such other basis as they deem fair and appropriate; *provided, however*, that no Book-Entry Interest of \$2,000 principal amount or less may be redeemed in part.

***Payments on Global Notes***

We will make payments of any amounts owing in respect of the Global Notes (including principal, premium, if any, interest, additional interest, if any) to DTC or its nominee, which will distribute such payments to participants in accordance with its procedures; *provided* that, at our option, payment of interest may be made by check mailed to the address of the holders of the notes as such address appears in the note register. We will make payments of all such amounts without deduction or withholding for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature except as may be required by law. We expect that standing customer instructions and customary practices will govern payments by participants to owners of Book-Entry Interests held through such participants.



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## **Table of Contents**

Under the terms of the Indenture, we and the Trustee will treat the registered holders of the Global Notes (e.g., DTC (or its respective nominee)) as the owners thereof for the purpose of receiving payments and for all other purposes. Consequently, none of us, the Trustee, the initial purchaser or any of our and their respective agents has or will have any responsibility or liability for:

any aspect of the records of DTC or any participant or indirect participant relating to payments made on account of a Book-Entry Interest or for maintaining, supervising or reviewing the records of DTC or any participant or indirect participant relating to or payments made on account of a Book-Entry Interest; or

DTC or any participant or indirect participant.

Payments by participants to owners of Book-Entry Interests held through participants are the responsibility of such participants.

### ***Currency of Payment for the Global Notes***

Except as may otherwise be agreed between DTC and any holder, the principal of, premium, if any, and interest on, and all other amounts payable in respect of, the Global Notes will be paid to holders of interests in such notes (the *DTC Holders*) through DTC in U.S. dollars.

Payments will be subject in all cases to any fiscal or other laws and regulations (including any regulations of the applicable clearing system) applicable thereto. None of us, the Trustee, the initial purchaser or any of our and their respective agents will be liable to any holder of a Global Note or any other person for any commissions, costs, losses or expenses in relation to or resulting from any currency conversion or rounding effected in connection with any such payment.

### ***Action by Owners of Book-Entry Interests***

DTC advised us that it will take any action permitted to be taken by a holder of notes (including the presentation of notes for exchange as described below) only at the direction of one or more participants to whose account the Book-Entry Interests in the Global Notes are credited and only in respect of such portion of the aggregate principal amount of notes as to which such participant or participants has or have given such direction. DTC will not exercise any discretion in the granting of consents, waivers or the taking of any other action in respect of the Global Notes. However, if there is an event of default under the notes, DTC reserves the right to exchange the Global Notes for definitive registered notes in certificated form (the *Definitive Registered Notes*), and to distribute Definitive Registered Notes to its participants.

### ***Transfers***

Transfers of beneficial interests in the Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants, which rules and procedures may change from time to time.

### ***Definitive Registered Notes***

Under the terms of the Indenture, owners of the Book-Entry Interests will receive Definitive Registered Notes:

if DTC notifies us that it is unwilling or unable to continue as depository for the Global Note, or DTC ceases to be a clearing agency registered under the Exchange Act and, in either case, a qualified successor depository is not appointed by us within 120 days;

if DTC so requests following an event of default under the Indenture; or

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**Table of Contents**

if the owner of a Book-Entry Interest requests such exchange in writing delivered through DTC following an event of default under the Indenture.

In the case of the issuance of Definitive Registered Notes, the holder of a Definitive Registered Note may transfer such note by surrendering it at the offices of the transfer agent or the Registrar. In the event of a partial transfer or a partial redemption of a holding of Definitive Registered Notes represented by one Definitive Registered Note, a Definitive Registered Note shall be issued to the transferee in respect of the part transferred, and a new Definitive Registered Note in respect of the balance of the holding not transferred or redeemed shall be issued to the transferor or the holder, as applicable; *provided* that no Definitive Registered Note in a denomination less than \$2,000 shall be issued. We will bear the cost of preparing, printing, packaging and delivering the Definitive Registered Notes.

We shall not be required to register the transfer or exchange of Definitive Registered Notes for a period of 15 calendar days preceding (a) the record date for any payment of interest on the notes, (b) any date fixed for redemption of the notes or (c) the date fixed for selection of the notes to be redeemed in part. Also, we are not required to register the transfer or exchange of any notes selected for redemption or that the registered holder of notes has tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer. In the event of the transfer of any Definitive Registered Note, the transfer agent may require a holder, among other things, to furnish appropriate endorsements and transfer documents as described in the Indenture. We may require a holder to pay any taxes and fees required by law or permitted by the Indenture and the notes.

We will pay interest on the notes to Persons who are registered holders at the close of business on the record date immediately preceding the interest payment date for such interest. Such holders must surrender the notes to a Paying Agent to collect principal payments.

If Definitive Registered Notes are issued and a holder thereof claims that such Definitive Registered notes have been lost, destroyed or wrongfully taken or if such Definitive Registered Notes are mutilated and are surrendered to the Registrar or at the office of a transfer agent, we shall issue and the Trustee shall authenticate a replacement Definitive Registered Note if the Trustee's and our requirements are met. The Trustee or we may require a holder requesting replacement of a Definitive Registered Note to furnish an indemnity bond sufficient in the judgment of both the Trustee and us to protect us, the Trustee or the Paying Agent appointed pursuant to the Indenture from any loss which any of them may suffer if a Definitive Registered Note is replaced. We may charge for our expenses in replacing a Definitive Registered Note.

In case any such mutilated, destroyed, lost or stolen Definitive Registered Note has become or is about to become due and payable, or is about to be redeemed or purchased by us pursuant to the provisions of the Indenture, we in our discretion may, instead of issuing a new Definitive Registered Note, pay, redeem or purchase such Definitive Registered Note, as the case may be.

Definitive Registered Notes may be transferred and exchanged for Book-Entry Interests in a Global Note only in accordance with the Indenture and, if required, only after the transferor first delivers to the transfer agent a written certification (in the form provided in the Indenture) to the effect that such transfer will comply with the transfer restrictions applicable to such notes and we may require a holder to pay any taxes and fees required by law or permitted by the Indenture and the notes. See Transfer Restrictions.

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**Table of Contents**

***Information Concerning DTC, Euroclear and Clearstream***

The following description of the operations and procedures of DTC, Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the relevant settlement systems and are subject to changes by them. We take no responsibility for these operations and procedures and investors should contact the systems or their participants directly to discuss these matters.

We understand as follows with respect to DTC, Euroclear and Clearstream:

**DTC.** DTC is:

a limited purpose trust company organized under the New York Banking Law;

a banking organization under New York Banking Law;

a member of the Federal Reserve System;

a clearing corporation within the meaning of the New York Uniform Commercial Code; and

a clearing agency registered under Section 17A of the U.S. Securities Exchange Act of 1934, as amended.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of transactions among its participants. It does this through electronic book-entry changes in the accounts of securities participants, eliminating the need for physical movement of securities certificates. DTC participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC's owners are the New York Stock Exchange, Inc., the American Stock Exchange, Inc. and the Financial Industry Regulatory Authority and a number of its direct participants. Others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a direct participant also have access to the DTC system and are known as indirect participants.

Because DTC can only act on behalf of participants, who in turn act on behalf of indirect participants and certain banks, the ability of an owner of a beneficial interest to pledge such interest to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be limited by the lack of a definitive certificate for that interest. To the extent that certain persons require delivery in definitive form, the ability to transfer beneficial interests to such persons may be limited. In addition, owners of beneficial interests through the DTC system will receive distributions attributable to the Global Notes only through DTC participants.

**Euroclear and Clearstream.** Like DTC, Euroclear and Clearstream hold securities for participating organizations. They also facilitate the clearance and settlement of securities transactions between their respective participants through electronic book-entry changes in the accounts of such participants. Euroclear and Clearstream provide various services to their participants, including the safekeeping, administration, clearance, settlement, lending and borrowing of internationally traded securities. Euroclear and Clearstream interface with domestic securities markets. Euroclear and Clearstream participants are financial institutions such as underwriters, securities brokers and dealers, banks, trust companies and certain other organizations. Indirect access to Euroclear or Clearstream is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Euroclear or Clearstream participant, either directly or indirectly.

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## **Table of Contents**

### ***Global Clearance and Settlement Under the Book-Entry System***

The notes are expected to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such notes will, therefore, be required by DTC to be settled in immediately available funds. We expect that secondary trading in any Definitive Registered Notes will also be settled in immediately available funds. Subject to compliance with the transfer restrictions applicable to the Global Notes, cross-market transfers of Book-Entry Interests in the notes between the participants in DTC, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be done through DTC in accordance with DTC's rules on behalf of each of Euroclear or Clearstream by its common depositary; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream will, if the transaction meets its settlement requirements, deliver instructions to the common depositary to take action to effect final settlement on its behalf by delivering or receiving interests in the Global Notes in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear and Clearstream participants may not deliver instructions directly to the common depositary.

Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in a Global Note from a participant in DTC will be credited, and any such crediting will be reported to the relevant Euroclear or Clearstream participant, during the securities settlement processing day (which must be a business day for Euroclear and Clearstream) immediately following the settlement date of DTC. Cash received in Euroclear and Clearstream as a result of a sale of an interest in a Global Note by or through a Euroclear or Clearstream participant to a participant in DTC will be received with value on the settlement date of DTC but will be available in the relevant Euroclear or Clearstream cash account only as at the business day for Euroclear or Clearstream following DTC's settlement date.

**Although DTC, Euroclear and Clearstream are expected to follow the foregoing procedures in order to facilitate transfers of interests in the Global Notes among participants in DTC, Euroclear or Clearstream, as the case may be, they are under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. None of us, the Trustee, the initial purchaser, the Registrar, any transfer agent or any Paying Agent will have any responsibility for the performance by DTC, Euroclear or Clearstream, or their respective participants or indirect participants, of their respective obligations under the rules and procedures governing their operations.**

### ***Paying Agent and Registrar***

The Bank of New York Mellon Trust Company, N.A. will initially act as paying agent (the *Paying Agent*) and registrar (the *Registrar*) for the notes. We may change the Paying Agent or Registrar for the notes, and we may act as Registrar for the notes.

### ***Notices***

Notices regarding the notes will be (a) sent to a leading newspaper having general circulation in the City of New York (which is expected to be The Wall Street Journal), (b) sent to the Trustee and (c) in the event the notes are in the form of Definitive Registered Notes, sent, by first-class mail, with a copy to the Trustee, to each holder of the notes at such holder's address as it appears on the registration books of the Registrar. If and so long as such notes are listed on any other securities exchange, notices will also be given in accordance with any applicable requirements of such securities exchange. If and so long as any notes are represented by one or more Global Notes and ownership of Book-Entry Interests therein are shown on the records of DTC, notices will also be delivered to DTC for communication to the owners of such Book-Entry Interests. Notices given by publication will be deemed given on the first date on which any of the required publications is made and notices given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing.

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**Table of Contents**

**CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion is a summary of certain material U.S. federal income tax consequences of the acquisition, ownership and disposition of the new notes by beneficial owners ( Holders ) that will receive new notes pursuant to the exchange offer and that will hold the new notes as capital assets (generally, property held for investment). It is the opinion of Sullivan & Cromwell LLP, counsel to CNH. This summary is based on the provisions of the U.S. Internal Revenue Code of 1986, as amended ( Code ), the Treasury regulations promulgated thereunder, and administrative pronouncements of the Internal Revenue Service (the IRS ) and judicial interpretations, all as in effect as of the date hereof and all of which are subject to change (possibly on a retroactive basis).

This summary is intended for general information only, and does not purport to be a complete analysis of all of the potential U.S. federal income tax consideration that may be relevant to the particular circumstances of Holders, or to Holders that may be subject to special U.S. federal income tax rules (such as dealers in securities or foreign currencies, insurance companies, real estate investment trusts, regulated investment companies, financial institutions, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings, partnerships and other pass-through entities (and investors in such entities), expatriates, tax-exempt organizations, United States Holders (as defined below) whose functional currency is not the U.S. dollar, Holders subject to the alternative minimum tax, persons who own 10% or more of our common shares and persons who hold the notes as part of a hedge, straddle, conversion or constructive sale transaction or other risk reduction transaction). Furthermore, this summary does not address any state, local or foreign tax implications, or any aspect of U.S. federal tax law (such as estate and gift tax law) other than income taxation. Each investor should seek advice based on its particular circumstances from an independent tax advisor.

**PROSPECTIVE HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE U.S. FEDERAL INCOME AND OTHER TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE NEW NOTES BASED UPON THEIR PARTICULAR SITUATIONS INCLUDING ANY CONSEQUENCES ARISING UNDER APPLICABLE STATE, LOCAL AND FOREIGN TAX LAWS.**

For purposes of this discussion, a United States Holder means a beneficial owner of a note that, for U.S. federal income tax purposes, is (i) an individual who is a citizen or resident of the United States, (ii) a corporation or other entity taxable as a corporation for U.S. federal income tax purposes created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate the income of which is subject to U.S. federal income taxation regardless of its source, or (iv) a trust (A) if the administration is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust, or (B) if the trust was in existence on August 20, 1996 and an election has been properly made to continue to treat the trust as a United States person under the Code. For purposes of this discussion, a Foreign Holder is a beneficial owner of a note that, for United States federal income tax purposes, is (i) a nonresident alien individual, (ii) a foreign corporation or (iii) an estate or trust that is not a United States Holder. The U.S. federal income tax consequences of a partner in any entity treated as a partnership for U.S. federal income tax purposes that holds notes generally will depend on the status of the partner and the activities of the partnership. Partners in a partnership holding the notes should consult their own tax advisors.

As described elsewhere in this prospectus, we will pay additional interest on the notes if we do not comply with our obligations under the registration rights agreement. In addition, as described elsewhere in this prospectus (see, for example, Description of the Notes Repurchase at the Option of Holders Upon A Change of Control Triggering Event ), we may under certain circumstances be required to repurchase the notes for amounts in excess of stated principal. Our obligation to pay additional amounts on the notes in excess of the accrued interest and principal may implicate the provisions of the Treasury regulations relating to contingent payment debt instruments. Under these regulations, however, one or more contingencies will not cause a debt

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## **Table of Contents**

instrument to be treated as a contingent payment debt instrument if, as of the issue date, each such contingency is remote or is considered to be incidental. Based on our current expectations, the foregoing contingencies should be treated as remote and/or incidental. Accordingly, we intend to take the position that the contingent payments described herein should not cause the notes to be treated as contingent payment debt instruments. A Holder may not take a contrary position unless it discloses such contrary position in the proper manner to the IRS. Prospective purchasers of the notes should consult their own tax advisors with respect to the contingent payments described above. If the IRS takes the position that the contingent payments described above were not remote and/or incidental as of the date of issuance, the amount and timing of interest income a Holder must include in taxable income may have to be redetermined and a Holder could be required to treat as ordinary income, rather than capital gain, any gain recognized on a sale, exchange retirement or redemption of a note. The remainder of this discussion assumes that the notes will not be treated as contingent payment debt instruments.

### **United States Holders**

#### *Payments of Stated Interest*

This discussion assumes that a United States Holder has not made an election to treat stated interest on the notes as original issue discount.

A United States Holder will be taxed on any stated interest on a note as ordinary income at the time the United States Holder receives the interest or when it accrues, depending on the United States Holder's method of accounting for tax purposes.

#### *Original Issue Discount*

The notes will be treated as issued with original issue discount because the amount by which a note's stated principal amount exceeds its issue price is more than a *de minimis* amount. Generally, a note's issue price will be the first price at which a substantial amount of notes included in the issue of which the note is a part is sold to persons other than bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers.

Generally, a United States Holder must include original issue discount, or OID, in income before receiving cash attributable to that income. The amount of OID that a United States Holder must include in income is calculated using a constant-yield method, and generally will include increasingly greater amounts of OID in income over the life of the note.

More specifically, a United States Holder can calculate the amount of OID includible in income by adding the daily portions of OID with respect to a note for each day during the taxable year or portion of the taxable year that the United States Holder holds the note. The daily portion is determined by allocating to each day in any accrual period a pro rata portion of the OID allocable to that accrual period. A United States Holder may select an accrual period of any length with respect to the note and may vary the length of each accrual period over the term of the note. However, no accrual period may be longer than one year and each scheduled payment of interest or principal on the note must occur on either the first or final day of an accrual period.

The amount of OID allocable to an accrual period is determined by multiplying the note's adjusted issue price at the beginning of the accrual period by the note's yield to maturity, and then subtracting from this figure the sum of the payments of stated interest on the note allocable to the accrual period.

The note's yield to maturity is determined on the basis of compounding at the close of each accrual period and adjusting for the length of each accrual period. Further, a note's adjusted issue price is determined at the beginning of any accrual period by adding the note's issue price and any previously accrued OID for each prior accrual period.

**Table of Contents**

The amount of OID allocable to the final accrual period is equal to the difference between the amount payable at the maturity of the note, other than any payment of stated interest, and the note's adjusted issue price as of the beginning of the final accrual period.

*Acquisition Premium*

If a United States Holder purchases a note for an amount that is less than or equal to the sum of all amounts, other than qualified stated interest, payable on the note after the purchase date but is greater than the amount of the note's adjusted issue price, as determined above under United States Holders' Original Issue Discount, the excess is acquisition premium. A United States Holder that purchases a note with acquisition premium must reduce the daily portions of OID by a fraction equal to:

$$\frac{\text{the excess of such United States Holder's adjusted basis in the note immediately after purchase over the adjusted issue price of the note}}{\text{divided by:}}$$

$$\frac{\text{the excess of the sum of all amounts payable, other than qualified stated interest, on the note after the purchase date over the note's adjusted issue price.}}$$

*Amortizable Bond Premium*

If a United States Holder purchases a note for an amount in excess of its principal amount, the United States Holder may elect to treat the excess as amortizable bond premium. If this election is made, the amount required to be included in income each year with respect to interest on the note will be reduced by the amount of amortizable bond premium allocable to that year, based on the note's yield to maturity. The election will apply to all debt instruments, other than debt instruments the interest on which is excludible from gross income, that the electing United States Holder holds at the first day of the first taxable year to which the election applies or that the United States Holder thereafter acquires, and the election may not be revoked without the consent of the IRS.

*Market Discount*

A United States Holder will be treated as if it purchased a note at a market discount, and the note will be a market discount note if the difference between the note's revised issue price and the price paid for the note is equal to or greater than 1/4 of 1 percent of the note's revised issue price multiplied by the number of complete years to the note's maturity. The revised issue price of a note for these purposes is generally the issue price of the note plus any OID that has accrued on the note. If a note's revised issue price exceeds the price paid for the note by less than 1/4 of 1 percent multiplied by the number of complete years to the note's maturity, the excess constitutes *de minimis* market discount, and the rules discussed below are not applicable to the note.

A United States Holder must treat any gain recognized on the maturity or disposition of a market discount note as ordinary income to the extent of the accrued market discount on the note. Alternatively, a United States Holder may elect to include market discount in income currently over the life of the note. If this election is made, it will apply to all debt instruments that the electing United States Holder acquired on or after the first day of the first taxable year to which the election applies. This election may not be revoked without the consent of the IRS. If this election is not made, a United States Holder generally will be required to defer deductions for interest on borrowings allocable to the note in an amount not exceeding the accrued market discount on the note until the maturity or disposition of the note.

Market discount will accrue on a market discount note on a straight-line basis unless a United States Holder elects to accrue market discount using a constant-yield method. If this election is made, it will apply only to the note with respect to which the election is made and the election may not be revoked.

## **Table of Contents**

### *Sales and Other Taxable Dispositions*

In general, subject to the discussion of market discount above, upon the sale, exchange, retirement, redemption or other taxable disposition of a note, a United States Holder will recognize capital gain or loss equal to the difference between the amount realized on such sale or other taxable disposition (not including any amount attributable to accrued but unpaid stated interest, which will be treated as a payment of interest for U.S. federal income tax purposes and therefore will be taxable as ordinary income to the extent not previously so taxed) and such United States Holder's adjusted tax basis in the note. A United States Holder's adjusted tax basis in a note generally will equal the cost of the note to such United States Holder, increased by any OID previously includible in income by the United States Holder. Such gain or loss generally will constitute long-term capital gain or loss if the note was held by such United States Holder for more than one year and otherwise will be short-term capital gain or loss. Under current U.S. federal income tax law, net long-term capital gains of non-corporate United States Holders (including individuals) are eligible for taxation at preferential rates. The deductibility of capital losses is subject to limitations under the Code.

### *Exchange of Old Notes for New Notes*

The exchange of old notes for new notes pursuant to the registered exchange offer will not be considered a taxable exchange for U.S. federal income tax purposes. Accordingly, such exchange should have no U.S. federal income tax consequences to a United States Holder of notes, and the adjusted tax basis and holding period of a United States Holder in a new note will be the same immediately after the exchange as such United States Holder's adjusted tax basis and holding period in the old note immediately prior to the exchange.

## **Foreign Holders**

### *Payments of Interest*

Payments of interest (which, for purposes of this discussion, includes any OID) on a note by us or any paying agent to a Foreign Holder will not be subject to U.S. federal income tax or withholding tax, provided that:

the interest income in respect of the note is not effectively connected with the conduct by the Foreign Holder of a trade or business within the United States;

the Foreign Holder does not own, actually or constructively, 10% or more of the total combined voting power of all classes of our shares entitled to vote;