Jazz Pharmaceuticals plc
Form 10-K
February 24, 2015
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

ý ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2014

or

.. TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to
Commission File Number: 001-33500

JAZZ PHARMACEUTICALS PUBLIC LIMITED COMPANY
(Exact name of registrant as specified in its charter)

| | |
|---|---|
| Ireland | 98-1032470 |
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |

Fourth Floor, Connaught House,
One Burlington Road, Dublin 4, Ireland
011-353-1-634-7800
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Name of each exchange on which registered |
|---|---|
| Ordinary shares, nominal value $0.0001 per share | The NASDAQ Stock Market LLC |

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ý No ¨
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ¨ No ý
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ý No ¨
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ý No ¨

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ý

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer x Accelerated filer ¨ Non-accelerated filer ¨ Smaller reporting company ¨
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ¨ No ý

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, as of June 30, 2014, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $8,420,403,204 based upon the last sale price reported for the registrant's ordinary shares on such date on The NASDAQ Global Select Market. The calculation of the aggregate market value of voting and non-voting common equity excludes 2,311,701 ordinary shares of the registrant held by executive officers, directors and shareholders that the registrant concluded were affiliates of the registrant on that date. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant.

As of February 18, 2015, a total of 60,657,182 ordinary shares, nominal value $0.0001 per share, of the registrant were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2015 Annual General Meeting of Shareholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Form 10-K are incorporated by reference in Part III, Items 10-14 of this Form 10-K.

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We own or have rights to various copyrights, trademarks, and trade names used in our business in the United States and/or other countries, including the following: Jazz Pharmaceuticals®, Xyrem® (sodium oxybate) oral solution, Xyrem Success Program®, Erwinaze® (asparaginase Erwinia chrysanthemi), Erwinase®, Defitelio® (defibrotide), Prialt® (ziconotide) intrathecal infusion, FazaClo® (clozapine, USP), Versacloz® (clozapine) oral suspension, Leukotac™ (inolimomab) and ProstaScint® (capromab pendetide). This report also includes trademarks, service marks, and trade names of other companies. Service marks, trademarks and trade names appearing in this Annual Report on Form 10-K are the property of their respective owners.

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to the "safe harbor" created by those sections. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expect," "plan," "anticipate," "believ "estimate," "project," "predict," "propose," "intend," "continue," "potential," "possible," "foreseeable," "likely," "unforeseen" expressions intended to identify forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance, time frames or achievements to be materially different from any future results, performance, time frames or achievements expressed or implied by the forward-looking statements. We discuss many of these risks, uncertainties and other factors in this Annual Report on Form 10-K in greater detail under the heading "Risk Factors." Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date of this filing. You should read this Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. We hereby qualify our forward-looking statements by our cautionary statements. Except as required by law, we assume no obligation to update our forward-looking statements publicly, or to update the reasons that actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

## NOTE REGARDING COMPANY REFERENCE

In this report, unless otherwise indicated or the context otherwise requires, all references to "Jazz Pharmaceuticals," "the registrant," "we," "us," and "our" refer to Jazz Pharmaceuticals plc and its consolidated subsidiaries, except when the context makes clear that the time period being referenced is prior to January 18, 2012, in which case such terms are references to Jazz Pharmaceuticals, Inc. and its consolidated subsidiaries. On January 18, 2012, the businesses of Jazz Pharmaceuticals, Inc. and Azur Pharma Public Limited Company, or Azur Pharma, were combined in a merger transaction, or the Azur Merger, in connection with which Azur Pharma was re-named Jazz Pharmaceuticals plc and we became the parent company of and successor to Jazz Pharmaceuticals, Inc., with Jazz Pharmaceuticals, Inc. becoming our wholly-owned subsidiary. Jazz Pharmaceuticals, Inc. was treated as the acquiring company in the Azur Merger for accounting purposes, and as a result, the historical consolidated financial statements of Jazz Pharmaceuticals, Inc. became our consolidated financial statements.

## PART I

### Item 1. Business

### Overview

Jazz Pharmaceuticals plc is an international biopharmaceutical company focused on improving patients' lives by identifying, developing and commercializing meaningful products that address unmet medical needs.

Our strategy is to create shareholder value by:

- Growing sales of the existing products in our portfolio, including by identifying new growth opportunities;
- Acquiring additional differentiated products that are on the market or product candidates that are in late-stage development; and
- Pursuing focused development of a pipeline of post-discovery differentiated product candidates.

We have made substantial progress in the execution of our strategy. We have a diverse portfolio of products and product candidates, with a focus in the areas of sleep and hematology/oncology.

Our lead marketed products are:

- Xyrem® (sodium oxybate) oral solution, the only product approved by the United States Food and Drug Administration, or FDA, for the treatment of both cataplexy and excessive daytime sleepiness, or EDS, in patients with narcolepsy;

- Erwinaze® (asparaginase Erwinia chrysanthemi), a treatment approved in the United States and in certain markets in Europe (where it is marketed as Erwinase®) for patients with acute lymphoblastic leukemia, or ALL, who have developed hypersensitivity to E. coli-derived asparaginase; and
- Defitelio® (defibrotide), a product approved in Europe for the treatment of severe hepatic veno-occlusive disease, or VOD, in adults and children undergoing hematopoietic stem cell transplantation, or HSCT, therapy.

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Our research and development activities include clinical development of new product candidates, line extensions for existing products and the generation of additional clinical data for existing products. A summary of our development pipeline activities is provided below:

| Project | Disease Area | Status |
|---|---|---|
| Sleep | | |
| JZP-110 | EDS in narcolepsy | Expect to initiate a Phase 3 clinical trial in the second quarter of 2015 |
| | EDS in obstructive sleep apnea, or OSA | Expect to initiate two Phase 3 clinical trials in the second quarter of 2015 |
| JZP-386 | EDS in narcolepsy | Phase 1 clinical trial in progress; expect additional data in the second quarter of 2015 |
| Xyrem | Cataplexy in narcolepsy in children and adolescents | Phase 3 clinical trial initiated in the fourth quarter of 2014 |
| Hematology/Oncology | | |
| Defibrotide | Severe VOD | Rolling new drug application, or NDA, submission initiated in the United States in December 2014; expect to complete the submission in mid-2015 |
| Erwinaze | ALL in young adult population | Pharmacokinetic study in Phase 2 initiated in the second quarter of 2014 |
| JZP-416 | ALL | Phase 1 clinical trial in Europe completed; enrollment suspended in pivotal Phase 2 clinical trial in North America in first quarter of 2015 |
| Leukotac™ | Steroid refractory acute graft vs. host disease, or GvHD | Phase 3 clinical trial enrollment complete; expect preliminary data in mid-2015 |

Our Products

Xyrem® (sodium oxybate) oral solution

Xyrem is the only treatment approved by the FDA for both EDS and cataplexy in patients with narcolepsy. Sodium oxybate, the active pharmaceutical ingredient in Xyrem, is a formulation of the sodium salt of gamma-hydroxybutyrate, an endogenous neurotransmitter and metabolite of gamma-aminobutyric acid. Xyrem was approved in the United States for the treatment of cataplexy in patients with narcolepsy in 2002 and was approved for EDS in patients with narcolepsy in 2005. The American Academy of Sleep Medicine recommended Xyrem as a standard of care for the treatment of both EDS and cataplexy associated with narcolepsy.

Narcolepsy is a chronic neurological disorder caused by a loss of neurons that produce the neurotransmitter hypocretin (also known as orexin), which is hypothesized to stabilize sleep-wake states. The primary symptoms of narcolepsy include EDS, cataplexy, sleep paralysis, hypnogogic hallucinations and disrupted nighttime sleep. EDS is an essential symptom of narcolepsy, is present in all narcolepsy patients and is characterized by chronic, pervasive sleepiness as well as sudden irresistible and overwhelming urges to sleep (inadvertent naps and sleep attacks). Cataplexy, the sudden loss of muscle tone, can be one of the most debilitating symptoms of narcolepsy. Cataplexy is present in approximately 70% of patients with narcolepsy. Cataplexy can range from slight weakness or a drooping of facial muscles to the complete loss of muscle tone resulting in postural collapse. It may also impair a patient's vision or speech. Cataplexy is often triggered by strong emotions such as laughter, anger or surprise. Cataplexy can severely impair a patient's quality of life and ability to function.

Narcolepsy may affect many areas of life, including limiting a patient's education and employment opportunities and leading to driving or machinery accidents or difficulties at work resulting in disability or job dismissal. Patients with narcolepsy may also suffer from significant medical comorbidities, including social anxiety disorder, OSA, bipolar disorder, depression, hypercholesterolaemia, diseases of the digestive system, cardiovascular diseases, upper respiratory tract diseases and hypertension.

It is estimated that narcolepsy affects approximately 1 in 2,000 people in the United States, or approximately 160,000 people in 2014. Less than half of those people have been definitively diagnosed with narcolepsy. In the fourth quarter of 2014, the average number of patients in the United States receiving Xyrem treatment was approximately 12,250

patients, and we believe that there are significantly more patients with narcolepsy and cataplexy and/or EDS who might benefit from treatment with Xyrem. In an effort to reach more patients, we have implemented a number of initiatives including increased outreach to prescribers who treat narcolepsy and physician/healthcare provider disease education programs.

In 2014, net product sales of Xyrem were $778.6 million, which represented 67.0% of our total net product sales. We promote Xyrem in the United States through a specialty sales force of approximately 100 sales professionals dedicated to Xyrem. Our marketing, sales and distribution of Xyrem are subject to a risk management and controlled distribution system, or Xyrem Risk Management Program, which was required in conjunction with Xyrem's approval by the

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FDA to ensure the safe distribution of Xyrem and minimize the risk of misuse, abuse and diversion of sodium oxybate. The Xyrem Risk Management Program includes a number of elements including patient and physician education, a database of information so that we may track and report certain information, and the use of a single central pharmacy to distribute Xyrem.

Under our current Xyrem Risk Management Program, all of the Xyrem sold in the United States must be dispensed and shipped directly to patients through a single central pharmacy, Express Scripts Specialty Distribution Services and its affiliate CuraScript, Inc., or ESSDS. Xyrem may not be stocked in retail pharmacies. Physicians and patients must enroll in the Xyrem Success Program®, which is part of our Xyrem Risk Management Program, prior to fulfillment of Xyrem prescriptions. Each physician and patient receives materials concerning the risks and benefits of Xyrem before the physician can prescribe, or a patient can receive, the product. Whenever a prescription is received by the central pharmacy, the central pharmacy verifies the prescription and must speak with the patient before each prescription of Xyrem is filled and sent to the patient. The central pharmacy ships the product directly to the patient by a courier service, and the patient or his/her designee signs for the package. The initial shipment may only be for up to a one-month supply, and refill orders may only be for up to a three-month supply.

Pursuant to our agreement, ESSDS exclusively distributes Xyrem in the United States and provides customer support services related to the sales and marketing of Xyrem. For example, ESSDS provides reimbursement support to patients by coordinating insurance coverage for Xyrem, and as applicable, referring qualified patients to various patient savings or assistance programs. Our agreement with ESSDS, which has been in effect since July 2002, expires on June 30, 2015, subject to automatic two-year extensions unless either party provides notice to the other of its intent to terminate the agreement not less than 120 days before the end of the then current term. We do not intend to exercise our termination right, and ESSDS has informed us that it does not intend to exercise its termination right, in connection with the expiration of the current term. Under the agreement, we own all of the standard operating procedures, business rules and intellectual property, and the agreement provides for ESSDS to assist in the orderly transfer of the services that ESSDS provides to us and the related intellectual property, including intellectual property related to the patient database, to any new pharmacy that we may we engage.

Elements of the Xyrem Risk Management Program, adopted in 2002 before the FDA had authority to require a risk evaluation and mitigation strategy, or REMS, are deemed to be an approved REMS pursuant to the Food and Drug Administration Amendments Act of 2007, or the FDAAA. The Xyrem Risk Management Program, however, is not in the form that is now required for REMS documents. The FDAAA requires that deemed REMS and related documents be updated to comply with the current requirements for REMS documents. We are engaged in ongoing communications with respect to our REMS documents for Xyrem, but have not reached agreement with the FDA on certain significant terms. In late 2013, the FDA notified us that it would exercise its claimed authority to modify our REMS and that it would finalize the REMS as modified by the FDA unless we initiated dispute resolution procedures with respect to the modification of the Xyrem deemed REMS. Given these circumstances, we initiated dispute resolution procedures with the FDA at the end of February 2014, and the process is ongoing. See more discussion regarding this matter under “Business—Government Regulation—Approval of Pharmaceutical Products” in Part I, Item 1 of this Annual Report on Form 10-K.

Five companies have notified us that they have filed abbreviated new drug applications, or ANDAs, with the FDA seeking FDA approval to market a generic version of Xyrem. We initiated lawsuits against each of these companies, and the litigation proceedings are ongoing. In addition, certain of the ANDA filers have sought to challenge the validity of our patents covering the distribution system for Xyrem by filing petitions for covered business method, or CBM, post-grant patent review and/or inter partes review, or IPR, by the Patent Trial and Appeal Board, or PTAB, of the U.S. Patent and Trademark Office, or USPTO. The PTAB has issued decisions denying institution of CBM review for all of the CBM petitions and has not yet determined whether to institute proceedings with respect to the petitions for IPR. For a description of these matters, see “Legal Proceedings” in Part I, Item 3 of this Annual Report on Form 10-K.

We also expect to face pressure to license or share our Xyrem Risk Management Program, which is the subject of multiple issued patents, or elements of it, with generic competitors. In January 2014, the FDA held an initial meeting

with us and the then-current Xyrem ANDA applicants to facilitate the development of a single shared system REMS for Xyrem (sodium oxybate). The parties have had numerous interactions with respect to a single shared system REMS since the initial meeting, and we expect the interactions to continue. In addition, if we do not develop a single shared system REMS or license or share our REMS with a generic competitor within a time frame or on terms that the FDA considers acceptable, the FDA may assert that its waiver authority permits it to allow the generic competitor to market a generic drug with a REMS that does not include the same elements that are in our deemed REMS or, when Xyrem REMS documents are approved, with a separate REMS that includes different, but comparable, elements to assure safe use, or ETASU. Similarly, it is possible that, consistent with the position that the FDA articulated in its December 2012 response denying a Citizen Petition we filed in July 2012, the FDA could approve an ANDA with a risk management plan that is separate from our Xyrem deemed REMS, rather than with a final REMS or a shared REMS for both the generic and Xyrem. For a more detailed explanation and discussion regarding these matters, see "Business—Government Regulation—The Hatch Waxman Act" in Part I, Item 1 of this Annual Report on Form 10-K.

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For further discussion regarding the challenges we face with respect to Xyrem, see the risk factors in Part 1, Item 1A of this Annual Report on Form 10-K entitled "The manufacture, distribution and sale of Xyrem are subject to significant regulatory oversight and restrictions and the requirements of a risk management program, and these restrictions and requirements, as well as the potential impact of changes to these restrictions and requirements, subject us to increased risks and uncertainties, any of which could negatively impact sales of Xyrem," "If generic versions of Xyrem or other sodium oxybate products that compete with Xyrem are approved and launched, sales of Xyrem would be adversely affected," "It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection," and "We have incurred and expect to continue to incur substantial costs as a result of litigation or other proceedings relating to patents, other intellectual property rights and related matters, and we may be unable to protect our rights to, or commercialize, our products."

Xyrem is a controlled substance in the United States, subject to regulation by the U.S. Drug Enforcement Administration, or DEA, under the Controlled Substances Act, or CSA. Therefore, its manufacturing and distribution are highly restricted. The finished product and active pharmaceutical ingredient for Xyrem are each manufactured for us by a single source contract manufacturer. See more details regarding Xyrem supply under "Business—Manufacturing" in Part I, Item 1 of this Annual Report on Form 10-K.

Outside of the United States, UCB Pharma Limited, or UCB, has an exclusive license to market Xyrem for the treatment of narcolepsy in 54 countries and currently sells the product in 19 countries. We have licensed to Valeant Canada Limited, or Valeant, the Canadian marketing rights to Xyrem for the treatment of narcolepsy. We supply Xyrem to UCB and Valeant.

We have 19 U.S. patents covering Xyrem, which expire at various times from December 2019 to March 2033. Our issued patents relate to Xyrem's stable and microbially resistant formulation, its manufacturing process, its method of use, including its restricted distribution system, and its method of administration.

Erwinaze® / Erwinase® (asparaginase Erwinia chrysanthemi)

Erwinaze, a biologic product, is used in conjunction with chemotherapy to treat patients with ALL who have developed hypersensitivity to E. coli-derived asparaginase. Erwinaze is an asparaginase, a type of enzyme that can deprive leukemic cells of an amino acid essential for their growth. It is derived from a rare bacterium (Erwinia chrysanthemi) and is immunologically distinct from E. coli-derived asparaginase and suitable for patients with hypersensitivity to E. coli-derived treatments. For ALL patients with hypersensitivity to E. coli-derived asparaginase, Erwinaze can be a crucial component of their therapeutic regimen. Erwinaze was originally developed by Public Health England, or PHE, a U.K. national executive agency. First approved by the FDA under a biologics license application, or BLA, for administration via intramuscular injection in conjunction with chemotherapy, Erwinaze was launched in the United States in November 2011. In December 2014, the FDA approved a supplemental BLA for administration of Erwinaze via intravenous infusion in conjunction with chemotherapy. Outside of the United States, Erwinaze is sold under the name Erwinase pursuant to marketing authorizations, named patient programs, temporary use authorizations or similar authorizations in multiple countries in Europe and elsewhere.

ALL is the most common childhood cancer. Based on data from the U.S. National Cancer Institute, the U.S. Census Bureau and the American Cancer Society, we estimate that approximately 5,000 to 6,000 new cases of ALL were diagnosed in the United States in 2013. Approximately 50% of ALL patients were diagnosed under age 15 and approximately 20% were diagnosed between 15 and 39 years of age, which suggests that approximately 3,500 to 4,200 ALL patients were pediatric, adolescent or young adults. A study published by Dana Farber Cancer Institute, with median follow-up of 57 months, concluded that the intensive use of high-dose asparaginase has an important role in the treatment of children with ALL. Data reported in two separate papers published in Pediatric Blood & Cancer and Journal of Clinical Oncology, respectively suggest that up to 20% of ALL patients may develop hypersensitivity to E. coli-derived asparaginase. Current treatment guidelines and protocols recommend switching a patient receiving E. coli-derived asparaginase to treatment with Erwinaze if the patient's hypersensitivity reaction to the E. coli-derived asparaginase is Grade 2-4, indicating that the hypersensitivity reaction has resulted in an intervention or interruption in infusion occurring in the patient's treatment regimen. While pediatric treatment protocols commonly include asparaginase, adult protocols do not. A retrospective comparison to determine whether the outcome for ALL patients

between 15 and 39 years of age differed depending on their enrollment in pediatric compared with adult cooperative group trials showed that the seven-year overall survival rate among the adolescent and young adult ALL patients treated on pediatric protocols was 67% compared to 46% for those patients treated on adult protocols. As more treatment protocols in adult centers incorporate the use of asparaginase-based regimens, we expect to see increased use of Erwinaze. In addition, we believe that Erwinaze has the potential for use in patients with silent hypersensitivity, a situation in which E. coli-derived asparaginase may induce antibodies that can neutralize the enzyme or increase its clearance, thereby depriving patients of its therapeutic benefits without manifesting the clinical symptoms of hypersensitivity. A third party has introduced an assay to determine the enzyme activity of asparaginase in patients who have been treated with any E. coli-derived asparaginase or Erwinaze. With this assay, physicians may be able to monitor asparaginase levels to identify patients with silent hypersensitivity and maintain asparaginase activity by switching asparaginase preparations. We expect adoption of this assay to be limited until its use is included in existing pediatric and adult treatment protocols.

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In 2014, net product sales of Erwinaze/Erwinase were $199.7 million, which represented 17.2% of our total net product sales.

We promote Erwinaze in the United States through a specialty sales force of approximately 25 sales professionals. We provide reimbursement support through our JumpStart™ Access & Reimbursement Solutions program, a dedicated Erwinaze call center. Our field-based and office-based reimbursement team provides additional reimbursement support, dealing specifically with the more complex needs of physicians and payors.

In Europe and elsewhere around the world, Erwinase is sold pursuant to marketing authorizations, named patient programs, temporary use authorizations or similar authorizations. Our hematology and oncology sales force outside of the United States has approximately 25 hematology field specialists responsible for promoting Erwinase and Defitelio in approved markets where we commercialize these products. In those markets where Erwinase is not currently approved, approximately 15 medical science liaisons and medical directors are responsible for responding to medical information requests and for providing information consistent with local treatment protocols.

Erwinaze is exclusively licensed to us for worldwide marketing, sales and distribution by PHE, which also manufactures the product for us. PHE is our sole supplier for Erwinaze. We are obligated to make tiered royalty payments to PHE based on worldwide net sales of Erwinaze and Erwinase. See more details regarding the supply of Erwinaze under “Business—Manufacturing” in Part I, Item 1 of this Annual Report on Form 10-K.

Erwinaze has no patent protection, although it has orphan drug exclusivity for the treatment of ALL in the United States until November 2018, and it is expected to receive exclusivity that prevents approval of a biosimilar in the United States through late 2023 under the U.S. Biologics Price Competition and Innovation Act, or BPCIA.

Defitelio® (defibrotide) / defibrotide

Defibrotide, the active pharmaceutical ingredient in Defitelio, is the sodium salt of a complex mixture of single-stranded oligodeoxyribonucleotides derived from porcine DNA. In in vitro studies, defibrotide has shown a number of pharmacological effects that suggest it has a role in both protection of the endothelial cells that form the inner lining of blood vessels and the restoration of the balance between clot formation and breakdown in the blood. Defibrotide has been developed for the treatment and prevention of VOD, a potentially life-threatening complication of HSCT. Stem cell transplantation is a frequently used treatment modality for hematologic cancers and other conditions in both adults and children. Certain conditioning regimens used as part of HSCT can damage the lining cells of hepatic vessels which is thought to lead to the development of VOD, a blockage of the small vessels in the liver, that leads to liver failure and can result in significant dysfunction in other organs such as the kidneys and lungs. The condition is also referred to as “sinusoidal obstruction syndrome.” Severe VOD is the most extreme form of VOD and is associated with multi-organ failure and high rates of morbidity and mortality. An analysis of retrospective data, prospective cohort studies and clinical trials published between 1979 and 2007 found that the 100-day mortality rate in severe VOD cases is greater than 80%. Based on data from published surveys and our market research, we calculated that: in Europe, of the estimated approximately 35,000 patients undergoing HSCT in 2014, approximately 6,300 were considered at high risk for the development of VOD and the incidence of VOD was approximately 3,600 patients; and, in the United States, of the estimated approximately 20,000 patients undergoing HSCT in 2014, approximately 3,000 were considered at high risk for the development of VOD and the incidence of VOD was approximately 1,000 to 2,000 patients. Our review of relevant literature and market research also suggests that about one-third to two-thirds of VOD patients may be eligible for treatment using defibrotide.

In October 2013, the European Commission, or EC, granted marketing authorization under exceptional circumstances for Defitelio for the treatment of severe VOD in adults and children undergoing HSCT therapy. Defitelio is the first approved treatment in the European Union, or EU, for this potentially life-threatening condition. Defitelio has generally been well-tolerated; the most frequent adverse reactions observed during pre-marketing use of the product are hemorrhage, hypotension and coagulopathy.

During 2014, Defitelio was launched in a number of European countries. We expect to continue to launch the product in additional European countries on a rolling basis in 2015 and are in the process of making pricing and reimbursement submissions with respect to Defitelio, and discussing them with regulatory authorities, in those European countries where Defitelio is not yet launched, including in countries where pricing and reimbursement

approvals are required for launch. We promote Defitelio along with Erwinase to many of the same hematology and oncology specialists, and believe that we benefit from operational synergies in commercializing these products to the same targeted audience. In addition, in those European markets where Defitelio is approved but not yet launched, our medical science liaisons and medical directors respond to medical information requests regarding defibrotide and provide information consistent with local treatment protocols. We intend eventually to commercialize Defitelio in all European markets where it has marketing authorization. We also continue to provide patients access to defibrotide where it is not commercially available through an expanded access treatment protocol that is open under an investigational new drug application, or IND, in the United States and on a named patient basis elsewhere.

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Defitelio/defibrotide product sales in 2014, beginning from the closing on January 23, 2014 of our acquisition of a controlling interest in Gentium S.p.A., or Gentium, which we refer to as the Gentium Acquisition, were $70.5 million, which represented 6.1% of our total net product sales. On a pro forma basis, assuming the Gentium Acquisition had closed on January 1, 2014, Defitelio/defibrotide product sales in 2014 were $73.4 million. For a detailed discussion of the Gentium Acquisition, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of this Annual Report on Form 10-K.

In August 2014, we acquired from Sigma-Tau Pharmaceuticals, Inc., or Sigma-Tau, the rights to defibrotide for the treatment and prevention of VOD in North America, Central America and South America. In exchange for the rights to defibrotide in the Americas, we made an upfront payment of $75.0 million to Sigma-Tau and are also obligated to make milestone payments of up to $175.0 million comprised of (i) $25.0 million upon the acceptance for filing by the FDA of the first NDA for defibrotide for VOD; and (ii) up to an additional $150.0 million based on the timing of potential FDA approval of defibrotide for VOD.

There are currently no approved treatments for VOD in the United States. Defibrotide has been granted orphan drug designation by the FDA to treat and prevent VOD and has also received Fast Track designation by the FDA to treat severe VOD. The Fast Track program is designed to enable more frequent interactions with the FDA during drug development and to expedite the FDA's review of a new drug candidate. In December 2014, we initiated a rolling submission of an NDA to the FDA for defibrotide for the treatment of severe VOD. We expect to complete the submission in mid-2015. See more details regarding the rolling submission under "Business—Government Regulation—Approval of Pharmaceutical Products" in Part I, Item 1 of this Annual Report on Form 10-K.

We are also assessing the potential for approval of defibrotide in other countries and for development of defibrotide in indications in addition to the treatment of severe VOD. For example, defibrotide has received orphan drug designation to treat and prevent VOD from the European Medicines Agency, or EMA, and the Korean Ministry of Food and Drug Safety. The Commonwealth of Australia-Department of Health has granted defibrotide orphan drug designation for the treatment of VOD. In addition, the EMA also granted orphan drug designation to defibrotide for the prevention of GvHD, another potentially fatal complication of HSCT that afflicts up to 50% of all donor transplant patients.

The drug substance defibrotide was developed and is manufactured in a facility in Italy that we acquired through the Gentium Acquisition. The finished product is manufactured for us by a single source contract manufacturer.

The unique process of deriving defibrotide from porcine DNA is extensive and uses both chemical and biological processes which rely on complex characterization methods. We have a portfolio of U.S. and non-U.S. patents and patent applications relating to various compositions, methods of use and methods of characterization, which will expire at various times between April 2017 and June 2032.

Prialt® (ziconotide) intrathecal infusion and other products

We also commercialize a portfolio of other products, including Prialt. Prialt is an intrathecally administered infusion of ziconotide, approved by the FDA in December 2004 for the management of severe chronic pain in patients for whom intrathecal therapy is warranted, and who are intolerant of or refractory to other treatment, such as systemic analgesics, adjunctive therapies or intrathecal morphine. Intrathecal therapy is the delivery of the drug into the intrathecal space in the spine through an infusion system comprised of a programmable infusion pump and catheter. For most patients who achieve good pain relief and tolerability with Prialt, pain relief can be maintained over time without cumulative toxicity. Prialt is the only FDA-approved non-opioid intrathecal analgesic. We have worldwide rights to Prialt, excluding 34 countries outside of the United States licensed by Eisai Co. Limited, or Eisai, from Elan Pharmaceuticals, Inc. (subsequently acquired by Perrigo Company plc) in May 2010. We supply Prialt to Eisai.

Other products we sell include a number of psychiatry products in the United States and products in the oncology, critical care and oncology supportive care therapeutic areas, primarily in markets outside of the United States.

Research and Development

Our development pipeline projects currently include clinical development of new product candidates, line extensions for existing products and the generation of additional clinical data for existing products. These projects are concentrated in our sleep and hematology/oncology therapeutic areas.

In the sleep area, we have ongoing and planned clinical trials for our product and product candidates.

JZP-110. JZP-110 is a late-stage investigational compound being developed for potential treatment of EDS in patients with narcolepsy and EDS in patients with OSA. Based on feedback from the FDA on our development plans for JZP-110, we expect to commence our planned Phase 3 clinical program in the second quarter of 2015, subject to the availability of clinical trial materials. We plan to conduct one Phase 3 clinical trial in patients with EDS associated with narcolepsy and two Phase 3 clinical trials in patients with EDS associated with OSA. Approximately

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900 patients are expected to be enrolled in these three trials in the aggregate. In addition, we plan to evaluate the long-term safety of JZP-110 in an open label extension trial and expect to enroll up to 450 patients from the three Phase 3 clinical trials in this extension trial. The co-primary endpoints for all three Phase 3 clinical trials are change in the scores from baseline on the Maintenance of Wakefulness Test and Epworth Sleepiness Scale, with a key secondary endpoint of patient global impression of change.

In January 2014, we entered into an asset purchase agreement with Aerial BioPharma LLC, or Aerial, to acquire the worldwide development, manufacturing and commercial rights to JZP-110, other than in certain jurisdictions in Asia where SK Biopharmaceuticals Co., Ltd, or SK, retains rights. Under the agreement, we made an upfront payment of $125.0 million to Aerial. We also paid a $2.0 million milestone to SK on assignment of the JZP-110 rights from Aerial to us. We are obligated to make milestone payments, in an aggregate amount of up to $270.0 million, based on development, regulatory and sales milestones and to pay tiered royalties from high single digits to mid-teens based on potential future sales of JZP-110.

- JZP-386. JZP-386 is a deuterium-modified analog of sodium oxybate, the active pharmaceutical ingredient in Xyrem, which we licensed from Concert Pharmaceuticals, Inc., or Concert, in February 2013. We have conducted preclinical research and development work on JZP-386 for potential use in patients with narcolepsy. We submitted an investigational medicinal product dossier, or IMPD, for JZP-386 in Europe at the end of 2013 and received approval of the IMPD in January 2014. The first study of JZP-386 in humans to evaluate the safety, pharmacokinetics and pharmacodynamics of the compound was conducted in 2014, and we initiated a second Phase 1 study in the first quarter of 2015, with data expected in the second quarter of 2015.
- Xyrem. While in many patients narcolepsy can begin during childhood and adolescence, there is limited information on the treatment of pediatric narcolepsy patients with Xyrem. We have worked with the FDA and several leading specialists to design a clinical trial to generate additional data on the treatment of pediatric narcolepsy patients with Xyrem. As a result, in the fourth quarter of 2014, we initiated a Phase 3 clinical trial to assess the safety and efficacy of Xyrem in children and adolescents aged seven to 17 who have narcolepsy with cataplexy.

In the hematology and oncology area, we also have a number of ongoing clinical trials.

- Erwinaze. In the second quarter of 2014, we initiated a pharmacokinetics study in Phase 2 to further evaluate the use of Erwinaze in young adults age 18 to 39 with ALL who are hypersensitive to E. coli-derived asparaginase.
- JZP-416 (formerly known as Asparec). We completed a Phase 1 clinical trial in Europe of JZP-416 (pegcrisantaspase), a PEGylated recombinant Erwinia chrysanthemi L-asparaginase, being developed for the treatment of patients with ALL who are hypersensitive to E. coli-derived asparaginase. In June 2013, the FDA granted Fast Track designation to the investigation of JZP-416 for the treatment of ALL. We initiated our first study of JZP-416 in children in a pivotal Phase 2 clinical trial in North America in late 2014. In February 2015, we voluntarily suspended patient enrollment in this trial. Our decision to suspend enrollment and to discontinue treatment with JZP-416 for enrolled patients is based on the occurrence of hypersensitivity-like reactions following the administration of JZP-416 in some treated patients. We are in the process of collecting and evaluating the available data and plan to conduct additional research and analysis prior to determining whether to resume the study and determining next steps regarding the development of JZP-416. We license worldwide rights to develop and commercialize JZP-416 from Alizé Pharma II, or Alizé. Under our license agreement with Alizé, we are subject to contractual obligations to meet certain development milestones within certain timeframes.
- Leukotac. We are conducting a Phase 3 clinical trial in Europe of Leukotac (inolimomab), an anti-CD25 monoclonal antibody for the treatment of steroid-refractory acute GvHD. We completed enrollment for this study in March 2014 and expect to receive preliminary data in mid-2015. We acquired the rights to Leukotac from Biotest AG.

We are also engaged in activities related to the potential approval of defibrotide in the United States. We initiated a rolling submission of an NDA to the FDA for defibrotide for the treatment of severe VOD in December 2014 and expect to complete the submission in mid-2015. We are also assessing the potential for approval of defibrotide in other countries and for development of defibrotide in indications in addition to the treatment of severe VOD. See more details regarding the rolling submission under “Business—Government Regulation—Approval of Pharmaceutical Products” in Part I, Item 1 of this Annual Report on Form 10-K.

For the years ended December 31, 2014, 2013 and 2012, we recorded $85.2 million, $41.6 million and $20.5 million, respectively, in research and development expenses. We also recorded charges of $202.6 million and $5.0 million, respectively, to in-process research and development in the years ended December 31, 2014 and 2013, and none in the year ended December 31, 2012.

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Sales and Marketing

We have commercial operations primarily in the United States and Europe. In the United States, our products are marketed through our commercial teams, including approximately 150 trained, experienced sales professionals who promote Xyrem, Erwinaze and Prialt directly to physicians in specialties appropriate for each product. Outside of the United States, our hematology and oncology sales force has approximately 25 hematology field specialists responsible for promoting Erwinase and Defitelio in approved markets where we commercialize these products.

Our commercial activities include marketing-related services, distribution services and commercial support services. We employ third party vendors, such as advertising agencies, market research firms and suppliers of marketing and other sales support-related services, to assist with our commercial activities.

We currently have a relatively small number of sales representatives compared with the number of sales representatives of most other pharmaceutical companies with marketed products. Each of our sales representatives is responsible for a geographic territory of significant size. We believe that the size of our sales force is appropriate to effectively reach our target audience for our marketed products in the specialty markets in which we currently operate. Continued growth of our current marketed products and the launch of any future products may require expansion of our sales force and sales support organization in the United States and internationally, and we may need to commit significant additional funds, management and other resources to the growth of our sales organization.

Competition

The pharmaceutical industry is highly competitive and characterized by a number of established, large pharmaceutical companies, as well as specialty pharmaceutical companies that market products and develop product candidates in sleep, hematology/oncology, pain and other therapeutic areas. Many of these companies, particularly large pharmaceutical and life sciences companies, have substantially greater financial, operational and human resources than we do. They can spend more on, and have more expertise in, research and development, regulatory, manufacturing, distribution and sales activities. As a result, our competitors may obtain FDA, EC or other regulatory approvals for their product candidates more rapidly than we may and may market their products more effectively than we do. Smaller or earlier stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies.

Our ability to continue to grow requires that we compete successfully with other specialty pharmaceutical companies for product and product candidate acquisition and in-licensing opportunities. These competitors include established companies that may have a competitive advantage over us due to their size and financial resources.

We also face competition from manufacturers of generic drugs. Generic competition often results in decreases in the prices at which branded products can be sold, particularly when there is more than one generic available in the marketplace. In addition, legislation enacted in the United States allows for, and in a few instances in the absence of specific instructions from the prescribing physician mandates, the dispensing of generic products rather than branded products where a generic version is available.

Our products and product candidates may also compete in the future with new products currently under development by others. Any products that we develop are likely to be in a highly competitive market, and many of our competitors may succeed in developing products that may render our products obsolete or noncompetitive. In particular, our lead marketed products face competition as described below:

- Xyrem. Xyrem is the only product approved for the treatment of both cataplexy and EDS in patients with narcolepsy. No product other than Xyrem is approved for the treatment of cataplexy. The only other products approved by the FDA for the treatment of EDS in patients with narcolepsy are Provigil® (modafinil) and Nuvigil® (armodafinil), which are marketed by Teva Pharmaceutical Industries Limited, or Teva, and the generic versions of Provigil. Provigil, its generic equivalents and Nuvigil are also approved for improving wakefulness in patients with EDS associated with treated OSA or shift work disorder. Xyrem is often used in conjunction with stimulants and wake-promoting drugs, which are administered during the day.

As alternatives to Xyrem, cataplexy is often treated with tricyclic antidepressants and selective serotonin reuptake inhibitors, or SSRIs, or selective norepinephrine reuptake inhibitors, or SNRIs, although these products are not approved by the FDA for the treatment of cataplexy. Tricyclic antidepressants are a class of antidepressant drugs first

used in the 1950s. The use of these drugs can often result in somnolence, which exacerbates the EDS already experienced by all patients with narcolepsy. SSRIs and SNRIs are compounds typically used for the treatment of clinical depression. Somnolence and insomnia are commonly reported side effects with SSRIs, while loss of sleep is a commonly reported side effect with SNRIs. These side effects may be problematic for patients with narcolepsy.
Five companies have notified us that they have filed ANDAs with the FDA seeking FDA approval to market a generic version of Xyrem. We initiated lawsuits against each of these companies, and the litigation proceedings are ongoing. If generic products that compete with Xyrem are approved and launched, sales of Xyrem would be

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adversely affected. For a description of these matters, please see "Legal Proceedings" in Part I, Item 3 of this Annual Report on Form 10-K.

Other companies could also develop products that are similar, but not identical, to Xyrem, such as an alternative formulation or an alternative formulation combined with a different delivery technology, and seek approval in the United States by referencing Xyrem and relying, to some degree, on the FDA's approval of Xyrem and related determinations of safety and efficacy. For example, in April 2014, we learned about the completion of a "first in man" clinical trial by a company using its proprietary technology for delivery of a sodium oxybate formulation to eliminate second nighttime dosing for narcolepsy patients. This company has stated its intent to submit an NDA, referencing Xyrem, to the FDA by the end of 2016. If this company is successful in developing a sodium oxybate formulation that could be effectively used with its delivery technology and is able to obtain FDA or other regulatory approval for its product to treat narcolepsy patients, we expect sales of Xyrem would be adversely affected.

- Erwinaze / Erwinase. Erwinaze is a biologic product used in conjunction with chemotherapy and is indicated for patients with ALL who have developed hypersensitivity to E. coli-derived asparaginase. While there is currently no direct competition to Erwinaze to treat ALL patients with hypersensitivity to E. coli-derived asparaginase, other companies have developed or are developing new treatments for ALL, including new asparaginase treatments that could reduce the rate of hypersensitivity in patients with ALL and new treatment protocols for ALL that may not include asparaginase-containing regimens. Any of these potential new treatments could reduce the market for Erwinaze. As a biologic product, Erwinaze also faces potential competition from biosimilar products.
- Defitelio / defibrotide. Defitelio is the first approved treatment in the EU for the treatment of severe VOD in adults and children undergoing HSCT. Various anti-clotting strategies have been tried by researchers in patients with VOD with mixed results, including Activase (Alteplase), a recombinant tissue plasminogen activator, marketed by Genentech, Inc., generic heparin sodium injection, and Thrombate III (antithrombin III (human)), marketed by Grifols Therapeutics, Inc. While there is currently no direct competition to Defitelio to treat severe VOD, changes in the types of conditioning regimens used as part of HSCT may affect the incidence rate of VOD and demand for Defitelio.

With respect to all of our products and product candidates, we believe that our ability to successfully compete will depend on, among other things:

- the existence of competing or alternative products in the marketplace, including generic competition, and the relative price of those products;
- the efficacy, safety and reliability of our products and product candidates compared to competing or alternative products;
- product acceptance by physicians, other health care providers and patients;
- our ability to comply with applicable laws, regulations and regulatory requirements with respect to the commercialization of our products, including any changes or increases to regulatory restrictions;
- protection of our proprietary rights;
- obtaining reimbursement for our products in approved indications;
- our ability to complete clinical development and obtain regulatory approvals for our product candidates, and the timing and scope of regulatory approvals;
- our ability to provide a reliable supply of commercial quantities of a product to the market; and
- our ability to recruit, retain and develop skilled employees, including sales and marketing and clinical development employees.

Customers and Information About Geographic Areas

In the United States, our lead marketed product Xyrem is sold to one specialty pharmacy, ESSDS, which ships Xyrem directly to patients. Erwinaze is sold through an exclusive wholesaler and distributor, Accredo Health Group, Inc., to hospitals. Among the other products we commercialize in the United States, Prialt is sold through an exclusive wholesale distributor and pharmacy to medical facilities, while the others are sold primarily to distributors who distribute the product to pharmacies and hospitals. We have standard distribution services agreements made in the ordinary course of business with these distributors, which include prompt payment discounts and various standard fee or rebate arrangements. Purchases are made on a purchase order basis.

Outside of the United States, we distribute Erwinase through Durbin PLC, a U.K.-based wholesaler and distributor, to hospitals and local wholesalers in Europe where we market Erwinase directly and, in markets where we do not market Erwinase directly, to local distributors and wholesalers in Europe and elsewhere in the world. We distribute Defitelio primarily

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through IDIS Limited, or IDIS, a U.K. based distributor, to the European countries where the product has been launched commercially. We also work with IDIS and a number of local distributors in Europe and elsewhere in the world to distribute defibrotide on a named patient basis. Xyrem is currently sold in 19 countries by UCB (which has rights to market Xyrem in 54 countries) and in Canada by Valeant. Eisai has rights to market Prialt in 34 countries outside of the United States. While we retain the rights to Prialt in the rest of the non-U.S. territories, we are not currently selling the product outside of the United States.

Information on our total revenues attributed to United States and non-U.S. sources and customers who represented at least 10% of our total revenues in each of 2014, 2013 and 2012, as well as the location of our long-lived assets, is included in Note 15 to our consolidated financial statements in this Annual Report on Form 10-K.

We are headquartered in Dublin, Ireland, and have offices in Palo Alto, California and Philadelphia, Pennsylvania in the United States and offices in Oxford, United Kingdom, Lyon, France, Villa Guardia (Como), Italy and elsewhere in Europe. For a discussion of risks related to our non-U.S. operations, see “Risk Factors—Risks Related to Our Business,” “—Risks Related to Our Industry” and “—Risks Relating to Our Financial Condition” in Part I, Item 1A of this Annual Report on Form 10-K and “Quantitative and Qualitative Disclosure About Market Risk” in Part II, Item 7A of this Annual Report on Form 10-K.

Manufacturing

Other than the manufacturing plant in Italy where we produce some active pharmaceutical ingredients, including the defibrotide drug substance, discussed in more detail below, we do not currently have our own manufacturing capability for our products or product candidates, or their active pharmaceutical ingredients, or the capability to package our products. Currently, we have a single source of supply for each of our marketed products and our product candidates and for the active pharmaceutical ingredients used in these products and product candidates. Our ability to develop and deliver products in a timely and competitive manner depends on our third party suppliers and manufacturers being able to continue to meet our ongoing commercial and clinical trial needs (except with respect to the defibrotide drug substance, which we manufacture for ourselves). Manufacturers of pharmaceutical products often encounter difficulties in production, including difficulties with production yields, process controls, quality control and quality assurance, including testing of stability, impurities and impurity levels and other product specifications by validated test methods, and compliance with strictly enforced U.S., state and non-U.S. regulations. These difficulties can be heightened when a supplier or manufacturer is required to scale up to produce increased quantities to meet growing demand.

In April 2010, we entered into an agreement with Siegfried (USA) Inc., subsequently renamed Siegfried USA, LLC, or Siegfried, for the supply of sodium oxybate, the active pharmaceutical ingredient of Xyrem. Siegfried was approved by the FDA as our supplier in November 2011. Although Siegfried has been our only supplier of sodium oxybate since 2012, we have the right to purchase a portion of our worldwide requirements of sodium oxybate from other suppliers. Under our agreement, we provide periodic rolling forecasts to Siegfried, and a portion of each rolling forecast constitutes a firm purchase order. The agreement with Siegfried expires in April 2018, subject to automatic three-year extensions until either party provides notice to the other of its intent to terminate the agreement at least 18 months before the end of the then-current term. Either party has the right to terminate the agreement in the event of the other party’s uncured material breach or insolvency. During the term of the agreement and, under certain circumstances for 18 months after the agreement terminates, Siegfried is not permitted to manufacture sodium oxybate for any other company.

We have an exclusive agreement with Patheon Pharmaceuticals, Inc., or Patheon, which became effective in 2008, under which we have agreed to purchase exclusively from Patheon (except in very limited circumstances), and Patheon has agreed to manufacture, supply and package, our worldwide supply of Xyrem. The current term of the agreement with Patheon, which is our sole supplier of Xyrem, extends until July 2016 and may be extended, at our option, for additional two-year terms with written notice at least twelve months before the end of the then current term. Either party has the right to terminate the agreement in the event of the other party’s uncured material breach or insolvency.

Quotas from the DEA are required in order to manufacture and package sodium oxybate and Xyrem. DEA quotas are required for Siegfried to supply us with sodium oxybate and for Patheon to supply us with Xyrem. Since the DEA typically grants quota on an annual basis and requires a detailed submission and justification for a quota request, obtaining a sufficient DEA quota can be a difficult and time-consuming process. The need for quota has prevented us in the past, and may prevent us in the future, from building significant inventories. For information related to this quota requirement of the DEA, see “Business—Government Regulation—Other Regulatory Requirements—Controlled Substance Regulations” in Part I, Item 1 of this Annual Report on Form 10-K.

Erwinaze is exclusively licensed to us, and manufactured for us, by PHE, which is our sole supplier for Erwinaze. Our agreement with PHE expires in December 2020, subject to automatic extension for additional five-year periods unless terminated by either party in writing prior to a fixed date before the end of the then-current term. Either party has the right to terminate the agreement in the event of the other party’s uncured material breach or insolvency. We provide periodic rolling forecasts to PHE, and a portion of each rolling forecast constitutes a firm purchase order. We are obligated to make tiered

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royalty payments to PHE based on worldwide net sales of Erwinaze and Erwinase. The BLA approving Erwinaze includes a number of post-marketing commitments related to the manufacture of Erwinaze by PHE.

We have limited inventory of Erwinaze. The current manufacturing capacity for Erwinaze is nearly completely absorbed by demand for the product. As a consequence of constrained manufacturing capacity, we have had an extremely limited ability to build an excess level of product inventory that could be used to absorb disruptions to supply resulting from quality or other issues. If we continue to be subject to capacity constraints or experience quality or other manufacturing challenges in the future, we may be unable to build a desired excess level of product inventory, and our ability to supply the market may be compromised. Although we are taking steps to improve the Erwinaze manufacturing process, if our ongoing efforts are not successful, we could experience additional Erwinaze supply interruptions in the future, which could have a material adverse effect on our sales of and revenues from Erwinaze and limit our potential future maintenance and growth of the market for this product. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled “We depend on single source suppliers and manufacturers for each of our products, product candidates and their active pharmaceutical ingredients. The loss of any of these suppliers or manufacturers, or delays or problems in the supply or manufacture of our products for commercial sale or our product candidates for use in our clinical trials, could materially and adversely affect our business, financial condition, results of operations and growth prospects” for a discussion of the challenges we face with respect to Erwinaze supply.

We manufacture the defibrotide drug substance in a single facility located in Villa Guardia, near Como, Italy. We are our sole supplier of, and we believe that we are currently the sole worldwide producer of, the defibrotide drug compound. Patheon UK Limited, or Patheon UK, currently processes the defibrotide compound into its finished vial form, and is the sole provider of our commercial supply of the finished product in Europe and of our future clinical supply. We are in the process of evaluating an appropriate provider to process defibrotide into finished product for the U.S. market in preparation for the potential approval of the product by the FDA.

In order to commence any of our planned clinical programs for JZP-110 or JZP-386, we need to have sufficient quantities of clinical product manufactured. While we believe that we will be able to obtain sufficient supplies of JZP-110 or JZP-386 before the commencement of our planned clinical trials, there can be no assurance that our suppliers will be able to produce sufficient clinical supplies of JZP-110 or JZP-386 in a timely manner. Any delay in receiving adequate supplies of JZP-110 or JZP-386 for our planned studies could negatively impact our development programs.

Our active pharmaceutical ingredient and finished product manufacturers may not be able to continue to meet our requirements for quality, quantity and timeliness. In addition, our manufacturers and suppliers are subject to the FDA’s current Good Manufacturing Practices, or cGMP, requirements, DEA regulations and other rules and regulations prescribed by non-U.S. regulatory authorities. We depend on our third party suppliers and manufacturers for compliance with these requirements, and they may not be able to continue to do so.

Patents and Proprietary Rights

We actively seek to patent, or to obtain licenses to or to acquire third party patents, to protect our products and related inventions and improvements that we consider important to our business. We own a portfolio of U.S and non-U.S. patents and patent applications and have licensed rights to a number of issued patents and patent applications. Our owned and licensed patents and patent applications cover or relate to our products and product candidates, including certain formulations, uses to treat particular conditions, distribution methods and methods of administration, drug delivery technologies and delivery profiles and methods of production. Patents extend for varying periods according to the date of the patent filing or grant and the legal term of patents in the various countries where patent protection is obtained. The patent laws of non-U.S. countries differ from those in United States, and the degree of protection afforded by non-U.S. patents may be different from the protection offered by U.S. patents.

The patents and patent applications that relate to our lead marketed products include:

- Xyrem. Xyrem is covered by 19 U.S. patents that expire at various times from December 2019 to March 2033, of which 14 are listed in the FDA’s publication “Approved Drug Products with Therapeutic Equivalence Evaluations,” or Orange Book. These patents relate to Xyrem’s stable and microbially resistant formulation, its manufacturing process, its method of use, including its restricted distribution system, and its method of administration. Of the patents listed in

the Orange Book, four are formulation patents expiring between December 2019 and July 2020; seven are method of use patents covering the distribution of Xyrem expiring between December 2022 and June 2024; two are method of use patents covering Xyrem's use in narcolepsy, both of which expire in December 2019; and one is a method of administration patent expiring in March 2033. An additional method of use patent covering Xyrem's use in narcolepsy expiring December 2019 is expected to be listed in the Orange Book. Four patents are not listed in the Orange Book but also relate to Xyrem: two for methods for making the formulation expiring December 2019, one for a distribution system expiring June 2024 and one for method of administration expiring March 2033. A Xyrem

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formulation patent has issued in multiple non-U.S. countries and will expire in December 2019. In addition to our issued patents, we have patent applications relating to Xyrem pending in the United States and other countries.

Five companies have notified us that they have filed ANDAs with the FDA seeking FDA approval to market a generic version of Xyrem. We initiated lawsuits against each of these companies, and the litigation proceedings are ongoing. In addition, certain of the ANDA filers have sought to challenge the validity of our patents covering the distribution system for Xyrem by filing petitions for CBM post-grant patent review and/or IPR by the PTAB. The PTAB has issued decisions denying institution of CBM review for all of the CBM petitions and has not yet determined whether to institute proceedings with respect to the petitions for IPR. For a description of these matters, see "Legal Proceedings" in Part I, Item 3 of this Annual Report on Form 10-K.

- Defitelio. The unique process of deriving defibrotide from porcine DNA is extensive and uses both chemical and biological processes that rely on complex characterization methods. We have a portfolio of U.S. and non-U.S. patents and patent applications relating to various compositions, methods of use and methods of characterization, which will expire at various times between April 2017 and June 2032.

Erwinaze has no patent protection, although it has orphan drug exclusivity for the treatment of ALL in the United States until November 2018, and it is expected to receive exclusivity that prevents approval of a biosimilar in the United States through late 2023 under the BPCIA. See "Business—Government Regulation—Orphan Drug and Other Exclusivities" in Part I, Item 1 of this Annual Report on Form 10-K for more details.

The patents and patent applications that relate to our product candidates include:

- JZP-110. JZP-110 and its associated uses are claimed in multiple U.S. and non-U.S. patents and applications. We acquired rights to JZP-110 from Aerial in January 2014, including Aerial's patent rights relating to JZP-110, other than in certain jurisdictions in Asia where SK retains rights. The U.S. composition of matter patents begin to expire in September 2015. Two U.S. method of use patents covering treatment of sleep related conditions will expire in June 2026 and August 2027, subject to any patent term extension.
- JZP-386. Two U.S. patents cover the composition of deuterated analogs of sodium oxybate, including JZP-386, and their methods for treating certain diseases and disorders, including narcolepsy. The first patent expires in July 2030 and the second patent expires in February 2032. A European patent that corresponds to the first U.S. patent expires in April 2030. Further, patent applications corresponding to the second U.S. patent were filed in the United States, Europe and Japan, and, if issued, would expire in February 2032. We were granted exclusive licenses to these patent rights by Concert.
- JZP-416. JZP-416 is not yet covered by any issued U.S. patents. We have rights to patent applications for JZP-416 pending in the United States and many other countries that, if issued, would expire in July 2030, subject to any patent term extension. In addition, JZP-416 was granted orphan drug designation for the treatment of ALL by the EMA and by the FDA subject to certain conditions. See "Business—Government Regulation—Orphan Drug and Other Exclusivities" in Part I, Item 1 of this Annual Report on Form 10-K for more details.

We cannot be certain that any of our patent applications, or those of our licensors, will result in issued patents, that the patents we own and license, or any additional patents we may own or license, will prevent other companies from developing similar or therapeutically equivalent products, or that others will not be issued patents that may prevent the sale of our products or require licensing and the payment of significant fees or royalties.

We also rely on our trade secrets and those of our licensors, as well as other unpatented proprietary information, to protect our products and commercial position, particularly with respect to our products with limited or no patent protection, such as Erwinaze and Defitelio. To the extent that our products have a competitive edge as a result of our reliance on trade secrets and unpatented know-how, our competitive position may be compromised if others independently develop products using the same or similar technologies or trade secrets.

We seek to protect our trade secrets and proprietary knowledge in part through confidentiality agreements with our employees, consultants, advisors and collaboration partners. Nevertheless, these agreements may not effectively prevent disclosure of our confidential information and may not provide us with an adequate remedy in the event of unauthorized disclosure of our confidential information. In addition, if our employees, consultants, advisors or collaboration partners develop inventions or processes independently or jointly with us that may be applicable to our

products under development, disputes may arise about ownership or proprietary rights to those inventions and processes. Such inventions and processes will not necessarily become our property, but may remain the property of those third parties or their employers. Protracted and costly litigation could be necessary to enforce and determine the scope of our proprietary rights. In addition, courts outside of the United States are sometimes less willing to protect trade secrets.

Failure to obtain or maintain patent and trade secret protection, for any reason, could have a material adverse effect on our business. See the risk factors in Part I, Item 1A of this Annual Report on Form 10-K entitled “It is difficult and costly to

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protect our proprietary rights, and we may not be able to ensure their protection" and "We have incurred and expect to continue to incur substantial costs as a result of litigation or other proceedings relating to patents, other intellectual property rights and related matters, and we may be unable to protect our rights to, or commercialize, our products." In addition, we have a number of trademarks and service marks to further protect the proprietary position of our products. We also have pending trademark and service mark applications in the United States and elsewhere in the world.

Government Regulation

The manufacturing, labeling, packaging, adverse event reporting, storage, advertising, promotion, sale, distribution, recordkeeping, importing and exporting of our products and our research and development activities are subject to extensive regulation by the FDA, the EC, the competent authorities of the EU member states and other regulatory authorities. Regulations differ from country to country. As a result of these regulations, product development, approval and commercialization processes are expensive and time-consuming.

Approval of Pharmaceutical Products

We are not permitted to market a pharmaceutical product in the United States or in the EU member states until we receive approval from the FDA, the EC or the competent authorities of the EU member states, as applicable. An application for marketing approval must contain information demonstrating the quality, safety and efficacy of the pharmaceutical product, including data from preclinical and clinical trials, information pertaining to the preparation and manufacture of the drug or biologic, analytical methods, product formulation, details on the manufacture and stability of the finished pharmaceutical product and proposed product packaging and labeling.

In the United States, the FDA, under the Federal Food, Drug and Cosmetic Act, or FDCA, and its implementing regulations, regulates the review, approval, manufacturing and marketing of our products. Our failure, or the failure of any of our third party partners, to comply with applicable requirements could subject us to administrative or judicial sanctions or other negative consequences, such as delays in approval or refusal to approve a product candidate, withdrawal of product approval, notices of violation, untitled letters, warning letters, fines and other monetary penalties, unanticipated expenditures, product recall or seizure, total or partial suspension of production or distribution, interruption of manufacturing or clinical trials, operating restrictions, injunctions, suspension of licenses, civil penalties and/or criminal prosecution.

To obtain FDA approval of a product candidate, an applicant, also called a sponsor, must, among other things, submit the data and information described above in the form of an NDA or BLA, as applicable, and include payment of a user fee. The testing and collection of data and the preparation of necessary applications are expensive and time-consuming, and the outcomes are uncertain. The steps required before a drug or biologic may be approved for marketing in the United States generally include: preclinical laboratory tests and animal tests; submission to the FDA of an IND for human clinical testing, which must become effective before human clinical trials commence; adequate and well-controlled human clinical trials to establish the safety and efficacy of the drug or biologic for each indication; the submission to the FDA of the NDA or BLA; satisfactory completion of an FDA inspection of the manufacturing facilities at which the product is made, analyzed and stored to assess compliance with cGMP; potential FDA audit of the nonclinical and clinical trial sites that generated the data in support of the application; and FDA review and approval of the application.

Human clinical trials conducted before approval of a product for a specific indication generally proceed in three sequential phases, although the phases may overlap. In Phase 1, the initial introduction of the drug into human subjects, frequently healthy volunteers, the drug is tested to assess metabolism, pharmacokinetics, pharmacological actions, side effects associated with increasing doses and, if possible, early evidence of effectiveness. Phase 2 usually involves clinical trials in a limited patient population to determine the effectiveness of the drug for a particular indication or indications, dosage tolerance and optimum dosage and to identify common adverse effects and safety risks. If a drug demonstrates evidence of effectiveness and an acceptable safety profile in Phase 2, Phase 3 clinical trials are undertaken to obtain additional information about clinical efficacy and safety in a larger number of patients, typically at geographically dispersed clinical trial sites. In addition, Phase 4, or post-approval, clinical trials may be required by the FDA and are used to gain additional experience from the treatment of patients in the intended

therapeutic indication and to document a clinical benefit in the case of products approved under accelerated approval regulations.

The FDA reviews an NDA or BLA submitted before it accepts them for filing and may request additional information rather than, or before, accepting an application for filing. For example, a prior NDA submission by Gentium seeking approval in the United States for defibrotide for the treatment of VOD was voluntarily withdrawn from consideration in 2011 in order to address issues raised by the FDA. We held pre-NDA meetings with the FDA relating to our plans for the submission of an NDA for defibrotide for the treatment of severe VOD. Based on these meetings and in light of the current status of our acquisition and remediation of key information to be included in the data package for the NDA, in December 2014, we initiated a rolling submission of an NDA to the FDA for defibrotide for the treatment of severe VOD and expect to complete the submission of the NDA in mid-2015. We do not expect to be required to complete any additional clinical trials prior to the

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completion of the NDA submission. However, we may be unable to acquire and remediate key information in the data package in a timely manner, which would delay or preclude the completion of our NDA submission. Furthermore, if we fail to acquire and remediate key information or if analysis of this data does not support an NDA submission, we may be required to complete additional clinical trials in order to obtain appropriate data for an NDA submission. Even if we are able to complete the NDA submission as planned, we may be required to conduct time-consuming and costly clinical trials as a condition of any U.S. marketing approval for the product. In any event, we may be unable to obtain regulatory approval of defibrotide in the United States in a timely manner, if at all.

Once an NDA or BLA submission is accepted for filing, the FDA begins an in-depth review of the application. Under the goals and policies agreed to by the FDA under the Prescription Drug User Fee Act, or PDUFA, the FDA has twelve months from submission in which to complete its initial review of a standard application and respond to the applicant, and eight months for a priority application. The FDA does not always meet its PDUFA goal dates, and in certain circumstances the PDUFA goal date may be extended. The FDA may not act quickly or favorably in reviewing applications, and we may encounter significant difficulties or costs in any efforts to obtain FDA approvals, which could delay or preclude us from marketing our product candidates.

If the FDA determines that a REMS is necessary to ensure that the benefits of the drug outweigh the risks, a sponsor may be required to include, as part of the application or after approval, a proposed REMS, which may include a patient package insert or a medication guide to provide information to consumers about the product's risks and benefits, a plan for communication to healthcare providers, and restrictions on the product's distribution referred to as ETASU. For example, Xyrem is required to have a REMS. Elements of the Xyrem Risk Management Program, adopted in 2002 before the FDA had authority to require REMS, are deemed to be an approved REMS pursuant to the FDAAA. The Xyrem Risk Management Program, however, is not in the form that is now required for REMS documents. The FDAAA, which amended the FDCA, requires that deemed REMS and related documents be updated to comply with the current requirements for REMS documents.

We are engaged in ongoing communications with the FDA with respect to our REMS documents for Xyrem, but we have not reached agreement on certain significant terms. In late 2013, the FDA notified us that it would exercise its claimed authority to modify our REMS and that it would finalize the REMS as modified by the FDA unless we initiated dispute resolution procedures with respect to the modification of the Xyrem deemed REMS. Among other things, we disagree with the FDA's position in the late 2013 notice that, as part of the current REMS process, the Xyrem deemed REMS should be modified to enable the distribution of Xyrem through more than one pharmacy, or potentially through retail pharmacies and wholesalers, as well as with certain modifications proposed by the FDA that would, in the FDA's view, be sufficient to ensure that the REMS includes only those elements necessary to ensure that the benefits of Xyrem outweigh its risks, and that would, in the FDA's view, reduce the burden on the healthcare system. Given these circumstances, we initiated dispute resolution procedures with the FDA at the end of February 2014. We received the FDA's denial of our initial dispute resolution submission in the second quarter of 2014, and our dispute is currently subject to further supervisory review at the next administrative level of the FDA. We have received interim responses from the FDA, but the FDA has not yet communicated a decision on our further appeal to us. We expect to receive the FDA's decision in the first quarter of 2015. We cannot predict whether, or on what terms, we will reach agreement with the FDA on final REMS documents for Xyrem, the outcome or timing of the current dispute resolution procedure, whether we will initiate additional dispute resolution proceedings with the FDA or other legal proceedings prior to finalizing the REMS documents, or the outcome or timing of any such proceedings. We expect that final REMS documents for Xyrem will include modifications to, and/or requirements that are not currently implemented in, the Xyrem Risk Management Program. Any such modifications or additional requirements could potentially make it more difficult or expensive for us to distribute Xyrem, make it easier for future generic competitors, and/or negatively affect sales of Xyrem. See the discussion regarding REMS in the context of potential generic competition under "Business—Government Regulations—The Hatch-Waxman Act" below and in the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "The manufacture, distribution and sale of Xyrem are subject to significant regulatory oversight and restrictions and the requirements of a risk management program, and these restrictions and requirements, as well as the potential impact of changes to these restrictions and requirements,

subject us to increased risks and uncertainties, any of which could negatively impact sales of Xyrem."

After the FDA evaluates a marketing application, including a REMS program when applicable, it also evaluates any manufacturing and nonclinical and clinical trial facilities for the proposed product. When the FDA's evaluation is complete, it issues an approval letter or a complete response letter. A complete response letter generally outlines the deficiencies in the submission and may require substantial additional testing or information in order for the FDA to reconsider the application. If and when those deficiencies have been addressed to the FDA's satisfaction in a resubmission of the application, the FDA will issue an approval letter. The FDA may also refer an application to the appropriate advisory committee, typically a panel of clinicians, for review, evaluation and a recommendation as to whether the application should be approved. The FDA is not bound by the recommendations of the advisory committee.

The FDA has and has used various programs, including fast track, priority review, breakthrough therapy and accelerated approval (Subpart H and E), that are intended to expedite or simplify the process for reviewing certain applications and/or provide for approval on the basis of surrogate endpoints or restricted distribution. Generally, drugs and biologics may be

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eligible for one or more of these programs if they are intended for serious or life-threatening diseases or conditions, have potential to address unmet medical needs, or may provide meaningful benefit over existing treatments. For example, the FDA has granted Fast Track designation to the investigation of JZP-416 for ALL and to defibrotide to treat severe VOD. We cannot be sure that any of our other product candidates will qualify for any of these programs, or that, if a product candidate does qualify, such as JZP-416 and defibrotide, that the review time will be shorter than a standard review.

Outside of the United States, our ability to market a medicinal product generally depends upon receiving a marketing authorization from the appropriate regulatory authority. The requirements governing the conduct of clinical trials, obtaining marketing authorization, obtaining pricing and reimbursement and related matters vary widely from country to country. In any country, however, we will generally be permitted to commercialize our products if the appropriate regulatory authority is satisfied that we have presented adequate evidence of safety, quality and efficacy. The time needed to secure approval for medicinal products may be longer or shorter than that required for FDA approval. The regulatory approval and oversight process in other countries includes all of the risks associated with regulation by the FDA and certain state regulatory agencies as described below. In addition, many countries have adopted specific legal frameworks and procedures to enable the supply of unauthorized medicinal products in the context of named patient or compassionate use programs. These programs are subject to different requirements and subject to different rules in the countries where we operate.

In the EU, marketing authorization for medicinal products can be obtained through several different procedures. The centralized procedure allows a company to submit a single application to the EMA which will provide a positive opinion regarding the application if it meets certain quality, safety and efficacy requirements. The EC can, based on the opinion of the EMA, grant a centralized marketing authorization that is valid in all EU member states and three additional European countries. The centralized procedure is mandatory for certain medicinal products, including orphan medicinal products and biologic products, and optional for certain other products. Unlike the centralized authorization procedure, the national authorization procedure requires a separate application to, and leads to separate approval by, the competent authorities of each EU member state in which the product is to be marketed. There are two possible routes for companies to gain national authorization and both rely on the principal of mutual recognition. One is the decentralized procedure, which allows companies to file identical applications to several EU member states simultaneously for medicinal products that have not yet been authorized in any EU member state. The competent authority of one EU member state, selected by the applicant, assesses the application for marketing authorization. The competent authorities of the other EU member states are subsequently required to grant marketing authorization for their territories on the basis of this assessment except where grounds of potential serious risk to public health require this authorization to be refused. The other is the mutual recognition procedure which allows companies that have a medicinal product already authorized in one EU member state to apply for this authorization to be recognized in other EU member states.

The making available or placing on the EU market of unauthorized medicinal products is prohibited. However, the competent authorities of the EU member states may exceptionally and temporarily allow the making available of such products to individual patients or a group of patients with a chronically or seriously debilitating disease or whose disease is considered to be life-threatening, and who cannot be treated satisfactorily by an authorized medicinal product.

Clinical studies must be conducted in accordance with the requirements of the EU Clinical Trials Directive and applicable good clinical practice standards, as implemented into national legislation by EU member states. All marketing authorization holders will be required to comply with the requirements of a new EU Clinical Trials Regulation which will come into force no later than May 28, 2016. As a regulation, it will be directly binding in all EU member states without the need for any national implementing legislation. The new EU Clinical Trials Regulation, which will replace the EU Clinical Trials Directive, introduces a complete overhaul of the existing regulation of clinical trials for medicinal products in the EU, including a new coordinated procedure for authorization of clinical trials which is reminiscent of the mutual recognition procedure for marketing authorization of medicinal products.

The initial marketing authorization granted in the EU is valid for five years, but once renewed is usually valid for an unlimited period unless the national competent authority or the EMA, decides, on justified grounds relating to pharmacovigilance, including exposure of an insufficient number of patients to the medicinal product concerned, to proceed with one additional five-year renewal. The renewal of a marketing authorization is subject to a re-evaluation of the risk-benefit balance of the product by the national competent authorities or the EMA. In addition, products for which the applicant can demonstrate that comprehensive data on the efficacy and safety of the medicinal product under normal conditions of use cannot be provided as a result of certain specified objective and verifiable reasons may be eligible for marketing authorization under exceptional circumstances. A marketing authorization granted under exceptional circumstances is also valid for five years, but is subject to an annual reassessment of conditions imposed by the competent authorities, including conditions relating to the safety of the medicinal product, notification to the national competent authorities of any incident relating to its use, and action to be taken. In October 2013, the EC granted marketing authorization under exceptional circumstances for Defitelio for the treatment of severe VOD in adults and children undergoing HSCT therapy.

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The Hatch-Waxman Act

The approval process described above for the United States is premised on the applicant being the owner of, or having obtained a right of reference to, all of the data required to prove the safety and effectiveness of a drug product. This type of marketing application, sometimes referred to as a "full" or "stand-alone" NDA, is governed by Section 505(b)(1) of the FDCA. A Section 505(b)(1) NDA contains full reports of investigations of safety and effectiveness, which includes the results of preclinical and clinical trials, together with detailed information on the manufacture and composition of the product, in addition to other information as described above.

Alternatively, the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, which updated certain sections of the FDCA, establishes two abbreviated approval pathways for drug products that are in some way follow-on versions of products already covered by an approved NDA. The first path, under Section 505(b)(2), is for the approval of a product that is similar, but not identical, to a previously-approved brand-name product, which is referred to as the "referenced drug." Under this path, the applicant is permitted to rely to some degree on the FDA's finding that the referenced drug is safe and effective, and must submit its own product-specific data of safety and effectiveness to an extent necessary because of the differences between the products. The FDA may then approve the new drug product for all or some of the label indications for which the referenced product has been approved, or for a new indication sought by the Section 505(b)(2) applicant.

The second path established under the Hatch-Waxman Act is for the approval of generic drugs. Section 505(j) of the FDCA permits the submission of an ANDA for a generic version of an approved, brand-name drug. Generally, an ANDA must contain data and information showing that the proposed generic product and the approved referenced drug (1) have the same active ingredient, in the same strength and dosage form, to be delivered via the same route of administration, (2) are intended for the same uses, and (3) are bioequivalent. This data and information are provided instead of independently demonstrating the proposed generic product's safety and effectiveness, which are inferred from the fact that the generic product is the same as the referenced drug, which the FDA previously found to be safe and effective. To date, five generic drug manufacturers have filed an ANDA with the FDA requesting approval to market a generic version of Xyrem. ANDAs have been filed in the past seeking approval to market generic versions of certain of our other products, and additional ANDAs may be filed in the future seeking approval to market generic forms of Xyrem and/or other products. For a description of these matters, see "Legal Proceedings" in Part I, Item 3 of this Annual Report on Form 10-K.

To the extent that an ANDA or a Section 505(b)(2) NDA applicant is relying on the FDA's findings for an already-approved product, the applicant is required to certify that there are no patents listed for that product in the Orange Book, or that for each Orange Book-listed patent the listed patent has expired, or will expire on a particular date and approval is sought after patent expiration, or the listed patent is invalid or will not be infringed by the manufacture, use or sale of the new product. A certification that the new product will not infringe the referenced product's Orange Book-listed patents or that such patents are invalid is called a "Paragraph IV Patent Certification." If the patent is for an approved method of use, an ANDA or Section 505(b)(2) applicant can also file a statement, called a "section viii statement," that the application does not seek approval of the use covered by the listed patent. If the applicant does not challenge the listed patents, the ANDA or the Section 505(b)(2) NDA will not be approved until all the listed patents claiming the referenced product have expired, as well as any additional period of exclusivity that might be obtained for completing pediatric studies pursuant to the FDA's written request. The ANDA or the Section 505(b)(2) NDA may also be subject to delay in review or approval based on applicable non-patent exclusivities, such as exclusivity that results from obtaining approval of a new chemical entity or of a new use of a previously approved active ingredient.

If the applicant has provided a Paragraph IV Patent Certification, or Paragraph IV Certification, to the FDA, the applicant must also send a notice of such certification to the holder of the NDA and the relevant patent holders once the ANDA or the Section 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a legal challenge to the proposed generic product for infringing the patent. The filing of a patent infringement lawsuit within 45 days of receipt of a notice of Paragraph IV Certification automatically prevents the FDA from approving the ANDA or the Section 505(b)(2) NDA until the earliest of 30 months after the NDA holder's

receipt of the notice of Paragraph IV Certification, expiration of the patent, settlement of the lawsuit or a decision in the infringement case that is favorable to the ANDA applicant. The 30-month stay period may also be shortened or lengthened upon order of the court in the infringement lawsuit. For drugs with five-year exclusivity, if an action for patent infringement is initiated after year four of that exclusivity period, then the 30-month stay period is extended by such amount of time so that 7.5 years has elapsed since the approval of the NDA for the referenced drug. This period could be extended by six months if the NDA sponsor obtains pediatric exclusivity. Alternatively, if the listed patent holder does not file a patent infringement lawsuit within the required 45-day period, the applicant will not be subject to the 30-month stay. The FDA may issue tentative approval of an ANDA if the generic applicant meets all conditions for approval but cannot receive effective approval because the 30-month stay or a period of statutory exclusivity has not expired.

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We intend to submit for Orange Book listing all relevant patents for our products and product candidates, and to vigorously defend any patents for our approved products, including Orange Book-listed patents. We have received notices of Paragraph IV Certification from five generic drug manufacturers notifying us that each had filed an ANDA with the FDA requesting approval to market a generic version of Xyrem before the expiration of the Orange Book-listed patents relating to Xyrem. We have sued each of these ANDA filers seeking to prevent them from introducing a generic version of Xyrem that would infringe our patents. For a description of these matters, see "Legal Proceedings" in Part I, Item 3 of this Annual Report on Form 10-K. If an ANDA is approved after the 30-month stay and before conclusion of any relevant patent litigation at the district, and potentially appellate, court, a generic manufacturer could nonetheless choose to commercialize the generic product, also known as a "launch at risk." In the event of such commercialization, the generic manufacturer generally would be liable to us for damages if we ultimately prevail in the patent litigation.

Section 505-1(i)(1) of the FDCA generally provides that (i) an ANDA with a referenced drug subject to the REMS requirements is required to have a REMS with the same elements as the referenced drug, such as a medication guide, a patient package insert and other ETASU, and (ii) the ANDA drug and the referenced drug shall use a single shared system to assure safe use. However, the FDA may waive this requirement for a single shared system and permit the ANDA holder to submit separate but comparable REMS documents if the FDA either determines that the burden of creating a single shared system outweighs its benefit, or if the ANDA applicant certifies that it has been unable to obtain a license to any aspects of the REMS for the referenced drug product that are covered by a patent or a trade secret. The FDCA provides that the FDA may seek to negotiate a license between the ANDA sponsor and the sponsor of the listed product before granting a waiver of the single shared system requirement. The FDCA further states that a REMS shall not be used by an NDA holder to block or delay generic drugs from entering the market. Accordingly, we expect to face pressure to license or share our Xyrem Risk Management Program, which is the subject of multiple issued patents, or elements of it, with generic competitors. We cannot predict the outcome or impact on our business of any future action that we may take with respect to licensing or sharing our REMS, or the FDA's response to a certification that a third party has been unable to obtain a license.

In the FDA's December 2012 response denying a Citizen Petition that we filed in July 2012, the FDA stated that when an NDA holder has a deemed REMS, the FDA directs the ANDA applicant(s) to work with the NDA holder to create a single shared system to implement the ETASU that will be approved as a final REMS. More broadly, the FDA has stated that it expects the negotiation of a single shared REMS between an NDA holder and ANDA applicants to proceed concurrently with the FDA's review of ANDA applications. The FDA has further stated that it typically monitors the progress of industry working groups attempting to develop shared REMS systems, and that it has acted to help ensure that sponsors were cooperating and that there were no obstacles to developing a single shared system. In January 2014, the FDA held an initial meeting with us and the then-current Xyrem ANDA applicants to facilitate the development of a single shared system REMS for Xyrem (sodium oxybate). The parties have had numerous interactions with respect to a single shared system REMS since the initial meeting, and we expect the interactions to continue. We cannot predict the timing, outcome or impact on our business of discussions with the FDA and/or any ANDA applicant with respect to the potential creation of a single shared system REMS for Xyrem (sodium oxybate), including the impact of the ongoing process with respect to potential modifications to the Xyrem deemed REMS as discussed above, or the impact of any single shared system REMS on our ongoing litigation with each of the ANDA applicants. See the risk factor in Part I, Item 1A entitled "We have incurred and expect to continue to incur substantial costs as a result of litigation or other proceedings relating to patents, other intellectual property rights and related matters, and we may be unable to protect our rights to, or commercialize, our products."

If we do not develop a single shared system REMS or license or share our REMS with a generic competitor within a time frame or on terms that the FDA considers acceptable, the FDA may assert that its waiver authority permits it to allow the generic competitor to market a generic drug with a REMS that does not include the same elements that are in our deemed REMS or, when Xyrem REMS documents are approved, with a separate REMS that includes different, but comparable, ETASU.

It is also possible that the FDA may take the position that a potential generic competitor does not need a REMS that has the same ETASU as our Xyrem deemed REMS in order to obtain approval of its ANDA. In the denial of our Citizen Petition described above, the FDA stated that if the FDA determines that an ANDA may be ready for approval before final approval of the REMS of a sponsor holding a deemed REMS, the FDA will direct the ANDA applicant to submit a proposed risk management plan with ETASU that are comparable to the ETASU that are approved for the referenced drug in order to have adequate risk management elements in place for the ANDA until the final REMS is approved. The legal basis for this position is uncertain. However, it is possible that the FDA may rely on this position as a basis to grant approval of an ANDA with a risk management plan rather than a final REMS. The 30-month stay of FDA approval of the ANDA filed by Roxane Laboratories, Inc., or Roxane, the first ANDA filer, expired on April 18, 2013, and we have not yet received approval of final REMS documents for Xyrem. Accordingly, it is possible that, consistent with the position that the FDA articulated in its denial of our Citizen Petition, the FDA could approve an ANDA with a risk management plan that is separate from our Xyrem deemed REMS, rather than with a final REMS or a shared REMS for both the generic and Xyrem. We expect that the approval of an ANDA that results in the launch of a generic version of Xyrem would have a material adverse effect on our business, financial

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condition, results of operations and growth prospects. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled “We have incurred and expect to continue to incur substantial costs as a result of litigation or other proceedings relating to patents, other intellectual property rights and related matters, and we may be unable to protect our rights to, or commercialize, our products.”

Under the Hatch-Waxman Act, newly-approved drugs and indications may benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Act provides five-year marketing exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, meaning that the FDA has not previously approved any other new drug containing the same active moiety. The Hatch-Waxman Act prohibits the FDA accepting for review an ANDA or a Section 505(b)(2) NDA for another version of such drug during the five-year exclusive period; however, as explained above, submission of an ANDA or Section 505(b)(2) NDA containing a Paragraph IV Certification is permitted after four years, which may trigger litigation leading to a 30-month stay of approval of the ANDA or Section 505(b)(2) NDA that could extend to 7.5 years after approval of the referenced drug. Protection under the Hatch-Waxman Act will not prevent the submission or approval of another “full” NDA; however, the applicant would be required to conduct its own preclinical and adequate and well-controlled clinical trials to demonstrate safety and effectiveness. The Hatch-Waxman Act also provides three years of marketing exclusivity for the approval of new and supplemental NDAs, including Section 505(b)(2) NDAs, for, among other things, new indications, dosages, or strengths of an existing drug, if new clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application.

The Hatch-Waxman Act also permits a patent term extension of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, a patent term extension cannot extend the remaining term of a patent beyond a total of 14 years after the FDA approves a marketing application. The patent term extension period is generally equal to the sum of one-half the time between the effective date of an IND and the submission date of an NDA, and all of the time between the submission date of an NDA and the approval of that application, up to a total of five years. Only one patent applicable to a product or its use may be extended, and only if the regulatory review leads to the first commercial marketing of that drug, and the extension must be applied for prior to expiration of the patent. The USPTO, in consultation with the FDA, reviews and approves the application for patent term extension. We will consider applying for a patent term extension for some of our patents to add patent life beyond the expiration date, if we meet the legal requirements permitting an extension and depending on the expected length of clinical trials and other factors involved in the submission of an NDA.

Orphan Drug and Other Exclusivities

Some jurisdictions, including the United States, may designate drugs or biologics for relatively small patient populations as orphan drugs. The FDA grants orphan drug designation to drugs or biologics intended to treat a rare disease or condition that affects fewer than 200,000 individuals in the United States, or more than 200,000 individuals in the United States if there is no reasonable expectation that the cost of developing and making available in the United States a drug or biologic for this type of disease or condition will be recovered from sales in the United States for that product. In the United States, in order to obtain orphan drug designation, the designation must be requested before submitting an application for marketing approval. An orphan drug designation does not shorten the duration of the regulatory review and approval process. However, if a product that has orphan drug designation subsequently receives the first FDA approval for the indication for which it has such designation, the product is entitled to orphan drug exclusivity, which means the FDA may not approve any other application to market the same product for the same indication for a period of seven years from the time of FDA approval, except in limited circumstances, such as a showing of clinical superiority to the product with orphan drug exclusivity. Competitors may receive approval of different drugs or biologics for the indications for which the orphan product has exclusivity.

The FDA approved Xyrem as an orphan drug for the treatment of EDS and cataplexy in patients with narcolepsy, but those periods of orphan drug exclusivity have expired. Erwinaze has orphan drug exclusivity for the treatment of ALL until November 2018, seven years from its FDA approval. JZP-416 was granted orphan drug designation for the treatment of ALL by the FDA subject to certain conditions. Defibrotide has been granted orphan drug designation to treat and prevent VOD by the FDA.

Separately, Erwinaze, as a biologic product approved under a BLA, is subject to the BPCIA. The BPCIA authorizes the FDA to license a biological product that is biosimilar to an FDA-licensed biologic through an abbreviated pathway. The BPCIA establishes criteria for determining whether a product is biosimilar to an already-licensed biologic, or reference product, and establishes a process for an abbreviated BLA for a biosimilar product to be submitted, reviewed and approved. The BPCIA provides periods of exclusivity that protect a reference product from competition by biosimilars. Under the BPCIA, the FDA may not accept a biosimilar application for review until four years after the date of first licensure of the reference product, and the biosimilar cannot be licensed until 12 years after the reference product was first licensed. Because the BPCIA is a relatively new law, we anticipate that its impact on both reference product sponsors and biosimilar applicants will evolve over a period of years. Its implementation likely will be shaped by a variety of factors, including FDA issuance of guidance documents,

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proposed regulations, and decisions in the course of considering specific applications. Erwinaze is expected to receive exclusivity that prevents approval of a biosimilar in the United States through late 2023 under the BPCIA.

Products also may be eligible for six months of additional exclusivity and patent protection if the sponsor submits pediatric data that fairly respond to a written request from the FDA for such data. The data do not need to show the product to be effective in the pediatric population studied; rather, if the clinical trial is deemed to fairly respond to the FDA's request, the additional protection is granted. If reports of requested pediatric studies are submitted to and accepted by the FDA within statutory time limits, whatever statutory or regulatory periods of exclusivity or listed patent protection cover the drug are extended by six months. This is not a patent term extension, but it effectively extends the period during which, because of regulatory exclusivity or listed patents, the FDA cannot approve an ANDA or 505(b)(2) NDA. We will consider seeking pediatric exclusivity if we meet the legal requirements and believe it will be commercially beneficial. For example, in the fourth quarter of 2014, in response to a written request from the FDA to generate additional data, we initiated a Phase 3 clinical trial to assess the safety and efficacy of Xyrem in children and adolescents aged seven to 17 who have narcolepsy with cataplexy.

In the EU, orphan drug designation may be granted to products that can be used to treat life-threatening diseases or chronically debilitating conditions with an incidence of no more than five in 10,000 people and that, for economic reasons, would be unlikely to be developed without incentives. In order to receive orphan designation, there must also be no satisfactory method of diagnosis, prevention or treatment of the condition, or if such a method exists, the medicine must potentially be of a significant benefit to those affected by the condition. Once authorized, orphan medicinal products are entitled to ten years of market exclusivity in all EU member states and a range of other benefits during the development and regulatory review process, including scientific assistance for study protocols, access to the centralized marketing authorization procedure and a reduction or elimination of registration and marketing authorization fees. However, marketing authorization may be granted to a similar medicinal product with the same orphan indication during the ten year period with the consent of the marketing authorization holder for the original orphan medicinal product or if the manufacturer of the original orphan medicinal product is unable to supply sufficient quantities. Marketing authorization may also be granted to a similar medicinal product with the same orphan indication if the similar product is deemed safer, more effective or otherwise clinically superior to the original orphan medicinal product. The period of market exclusivity may, in addition, be reduced to six years if it can be demonstrated on the basis of available evidence that the original orphan medicinal product is sufficiently profitable not to justify maintenance of market exclusivity. JZP-416 has received orphan drug designation for the treatment of ALL from the EMA subject to certain conditions. Defibrotide has received orphan drug designation to treat and prevent VOD from the EMA and the Korean Ministry of Food and Drug Safety. The Commonwealth of Australia-Department of Health has granted defibrotide orphan drug designation for the treatment of VOD. In addition, the EMA also granted orphan drug designation to defibrotide for the prevention of GvHD, another potentially fatal complication of HSCT.

Post-Approval Regulation

After approval, certain changes to the approved product, such as adding new indications, making certain manufacturing changes, modifying a REMS or making certain additional labeling claims, are subject to further regulatory review and approval. Obtaining approval for a new indication generally requires that additional clinical studies be conducted.

Often, even after a drug or biologic has been approved by the FDA for sale, the FDA may require that certain post-approval requirements be satisfied, including the conduct of additional clinical studies and trials. If such post-approval conditions are not satisfied, the FDA may impose civil money penalties, declare the product misbranded or prohibit the introduction of the drug in interstate commerce. Holders of an approved NDA or BLA are required to: report certain adverse reactions to the FDA; comply with certain requirements concerning advertising and promotional labeling for their products; submit drug safety or adverse event reports; and continue to have quality control and manufacturing procedures conform to cGMP after approval. For example, the FDA's approval of the BLA for Erwinaze includes a number of post-marketing commitments related to the manufacture of Erwinaze by us and the PHE.

Similarly, outside of the United States, we are subject to a variety of post-authorization regulations, including with respect to clinical studies, product manufacturing, advertising and promotion, distribution, and safety reporting. For example, the marketing authorization in the EU for Defitelio was granted under exceptional circumstances and requires us to comply with a number of post-marketing obligations, including obligations relating to the manufacturing of the drug substance and finished product, the submission of data concerning patients treated with the product collected through a third-party patient registry and the establishment of a multi-center, multinational and prospective observational patient registry.

We monitor adverse events resulting from the use of our commercial products, as do the regulatory authorities, and we file periodic reports with the authorities concerning adverse events. The FDA also periodically inspects the sponsor's records related to safety reporting. Following such inspections, the FDA may issue notices on Form FDA 483 and warning letters that could cause us to modify certain activities. A Form FDA 483 notice, if issued at the conclusion of an FDA inspection, can list conditions the FDA investigators believe may have violated relevant FDA regulations or guidance. Failure to adequately and

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promptly correct the observation(s) can result in further regulatory enforcement action. For example, in April 2014, we received a Form FDA 483 at the conclusion of a pharmacovigilance inspection conducted by the FDA. The Form FDA 483 included observations relating to certain aspects of our adverse drug experience, or ADE, reporting system for all of our products, including Xyrem. We responded to the Form FDA 483 with a description of the corrective actions and improvements we had implemented before or shortly following the inspection and additional improvements that we planned to implement, and have now implemented, to address the observations in the Form FDA 483. In August 2014, the FDA issued an Establishment Inspection Report to us, which indicates that the inspection is closed.

The authorities review these events and reports, and if they determine that any events and/or reports indicate a trend or signal, they can require a change in a product label, restrict sales and marketing and/or require or conduct other actions, potentially including withdrawal or suspension of the product from the market. From time to time, the FDA issues drug safety communications on its adverse event reporting system based on its review of reported adverse events. In December 2012, the FDA issued a drug safety communication reminding physicians and patients that the use of Xyrem with alcohol or central nervous system depressants can impair consciousness and lead to severe breathing problems. At that time, we agreed with the FDA on a change to our label that included a new contraindication for the use of alcohol with Xyrem. See also the risk factor in Part 1, Item 1A of this Annual Report on Form 10-K entitled “The manufacture, distribution and sale of Xyrem are subject to significant regulatory oversight and restrictions and the requirements of a risk management program, and these restrictions and requirements, as well as the potential impact of changes to these restrictions and requirements, subject us to increased risks and uncertainties, any of which could negatively impact sales of Xyrem.”

The holder of an EU marketing authorization for a medicinal product must also comply with the EU’s new pharmacovigilance legislation which entails many new and revised requirements for conducting pharmacovigilance, or the assessment and monitoring of the safety of medicinal products. This new legislation enhanced the authority of the EMA and the competent authorities of the EU member states to require companies to conduct additional post-approval clinical efficacy and safety studies and increased the burden on companies with respect to additional monitoring, adverse event management and reporting. As part of the legislation and its related regulations and guidelines, marketing authorization holders may be required to conduct a labor intensive collection of data regarding the risks and benefits of marketed products and may be required to engage in ongoing assessments of those risks and benefits, including the possible requirement to conduct additional clinical studies, which may be time consuming and expensive and could impact profitability. The EMA reviews periodic safety update reports submitted by marketing authorization holders. If the EMA has concerns that the risk benefit profile of a product has varied, it can adopt an opinion advising that the existing marketing authorization for the product be varied and requiring the marketing authorization holder to conduct post-authorization safety studies. The opinion is then submitted for approval by the EC. Non-compliance with such obligations can lead to the variation, suspension or withdrawal of marketing authorization or imposition of financial penalties or other enforcement measures.

The manufacturing process for pharmaceutical products is highly regulated and regulators may shut down manufacturing facilities that they believe do not comply with regulations. We and our third party manufacturers are subject to cGMP, which are extensive regulations governing manufacturing processes, stability testing, record keeping and quality standards as defined by the FDA, the EMA, the competent authorities of EU member states and other regulatory authorities. The FDA also periodically inspects the sponsor’s records related to manufacturing facilities, which effort includes assessment of compliance with cGMP. Following such inspections, the FDA may also issue notices on Form FDA 483 and warning letters. For example, the FDA inspected the PHE facility where Erwinaze is manufactured in January 2015 and issued a Form FDA 483 with observations relating to the manufacturing process. We and our third party manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain cGMP compliance. In addition to Form FDA 483 notices and warning letters, failure to comply with the statutory and regulatory requirements may result in suspension of manufacturing, product seizure, withdrawal of the product from the market, criminal penalties, and withdrawal of approved products, among other enforcement remedies. Marketing authorization holders may also be subject to civil, criminal or administrative

sanctions in case of non-compliance with the EU or EU member states' requirements applicable to the manufacturing and marketing of medicinal products.

Irrespective of the different marketing authorization procedures, various additional requirements apply to the manufacturing and placing on the EU market of medicinal products. The manufacturing of medicinal products in the EU requires a manufacturing authorization, and the manufacturing authorization holder must comply with various requirements set out in the applicable EU laws, regulations and guidance. These requirements include compliance with EU equivalent cGMP standards when manufacturing medicinal products and active pharmaceutical ingredients, including the manufacture of active pharmaceutical ingredients outside of the EU with the intention to import the active pharmaceutical ingredients into the EU. Similarly, the distribution of medicinal products into and within the EU is subject to compliance with the applicable EU laws, regulations and guidelines, including the requirement to hold appropriate authorizations for distribution granted by the competent authorities of the EU member states.

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United States Healthcare Reform

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, together the Healthcare Reform Act, is a sweeping measure intended to expand healthcare coverage within the United States, primarily through the imposition of health insurance mandates on employers and individuals and expansion of the Medicaid program. This law substantially changes the way healthcare is financed by both governmental and private insurers, and significantly impacts the pharmaceutical industry. The Healthcare Reform Act contains a number of provisions that may impact our business and operations, in some cases in ways we cannot currently predict. Changes that may affect our business include those governing enrollment in federal healthcare programs, reimbursement changes, benefits for patients within a coverage gap in the Medicare Part D prescription drug program (commonly known as the "donut hole"), rules regarding prescription drug benefits under the health insurance exchanges, changes to the Medicare Drug Rebate program, expansion of the Public Health Service's 340B drug pricing discount program, or 340B program, fraud and abuse and enforcement. These changes impact existing government healthcare programs and are resulting in the development of new programs, including Medicare payment for performance initiatives and improvements to the physician quality reporting system and feedback program. Details of the changes to the Medicaid Drug Rebate program and the 340B program are discussed under "Business—Pharmaceutical Pricing and Reimbursement" in Part I, Item 1 of this Annual Report on Form 10-K.

Some states have elected not to expand their Medicaid programs by raising the income limit to 133% of the federal poverty level, as is permitted under the Healthcare Reform Act. For each state that does not choose to expand its Medicaid program, there may be fewer insured patients overall, which could impact our sales, business and financial condition. Where Medicaid patients receive insurance coverage under any of the new options made available through the Healthcare Reform Act, the possibility exists that manufacturers may be required to pay Medicaid rebates on drugs used under these circumstances, a decision that could impact manufacturer revenues. In addition, the federal government has also announced delays in the implementation of key provisions of the Healthcare Reform Act, including the employer mandate. The implications of these delays for our sales, business and financial condition, if any, are not yet clear.

Moreover, legislative changes to the Healthcare Reform Act remain possible. We expect that the Healthcare Reform Act, as currently enacted or as it may be amended in the future, and other healthcare reform measures that may be adopted in the future, could have a material adverse effect on our industry generally and on our ability to maintain or increase sales of our existing products or to successfully commercialize our product candidates, if approved.

Other Regulatory Requirements

We are also subject to regulation by other regional, national, state and local agencies, including the DEA, the U.S. Department of Justice, or DOJ, the Federal Trade Commission, or FTC, the U.S. Department of Commerce, or DOC, the Office of Inspector General, or OIG, of the U.S. Department of Health and Human Services, or HHS, and other regulatory bodies. In addition to the FDCA, other statutes and regulations govern to varying degrees the research, development, manufacturing and commercial activities relating to prescription pharmaceutical products, including preclinical testing, approval, production, labeling, sale, distribution, import, export, post-market surveillance, advertising, dissemination of information, promotion, marketing, and pricing to government purchasers and government healthcare programs. Our partners, including our suppliers, manufacturers and distributors and the central pharmacy for Xyrem, are subject to many of the same requirements.

Controlled Substance Regulations

The DEA imposes various quota, registration, recordkeeping and reporting requirements, labeling and packaging requirements, importing, exporting, security controls and a restriction on prescription refills on certain pharmaceutical products under the CSA. The states also impose similar requirements for handling controlled substances. A principal factor in determining the particular requirements, if any, applicable to a product is the actual or potential abuse profile. Sodium oxybate, in the form of an active pharmaceutical ingredient, is regulated by the DEA as a Schedule I controlled substance, a category reserved for products believed to present the highest risk of substance abuse and with no approved medicinal use. When contained in Xyrem, sodium oxybate is regulated as a Schedule III controlled substance.

The DEA limits the quantity of certain Schedule I controlled substances that may be produced in the United States in any given calendar year through a quota system. Our supplier of sodium oxybate, as well as our finished product manufacturer, must each obtain separate DEA quotas in order to supply us with sodium oxybate and Xyrem. Since the DEA typically grants quotas on an annual basis, our sodium oxybate supplier and Xyrem manufacturer are required to request and justify allocation of sufficient annual DEA quotas as well as additional DEA quotas if our commercial or clinical requirements exceed the allocated quotas throughout the year. In the past, we have had to engage in lengthy efforts to obtain the needed quotas after the original annual quotas had first been allocated. For 2015, both our active pharmaceutical ingredient supplier and finished product manufacturer have been allocated most, but not all, of their respective requested quotas. If, in the future, we and our supplier and manufacturer cannot obtain the quotas that are needed on a timely basis, or at all, our business, financial condition, results of operations and growth prospects could be materially and adversely affected.

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As a Schedule III drug, Xyrem is also subject to DEA and state regulations relating to manufacturing, storage, distribution and physician prescription procedures, including limitations on prescription refills.

The third parties who perform our clinical and commercial manufacturing, distribution, dispensing and clinical studies for Xyrem are required to maintain necessary DEA registrations and state licenses. The DEA periodically inspects facilities for compliance with its rules and regulations. Failure to comply with current and future regulations of the DEA or relevant state authorities could lead to a variety of sanctions, including revocation or denial of renewal of DEA registrations, fines, injunctions, or civil or criminal penalties, and could have an adverse effect on our business and financial condition.

The United States and the EU member states are parties to the Convention on Psychotropic Substances (1971), or the 1971 Convention. In October 2012, the World Health Organization, or the WHO, sent a recommendation to the United Nations Commission on Narcotic Drugs, or the CND, to reschedule gamma-hydroxybutyrate, or GHB, under the 1971 Convention from its current Schedule IV status to Schedule II status. In March 2013, the CND voted to reschedule GHB from Schedule IV to Schedule II under the 1971 Convention. While the DEA imposes its own scheduling requirements in the United States under the CSA, the United States is obligated as a signatory to the 1971 Convention to ensure that drug scheduling in the United States is consistent with its obligations under the international treaties. Because sodium oxybate, the active pharmaceutical ingredient in Xyrem, is a derivative of GHB, the international rescheduling of GHB means that Xyrem and/or sodium oxybate may be subject to more restrictive registration, recordkeeping, reporting, importing, exporting and other requirements in the EU and certain other countries than the restrictions currently in place. In the United States, under DEA regulations, the Xyrem finished product is currently classified as a Schedule III controlled substance, with sodium oxybate, classified as a Schedule I controlled substance. Although the HHS has taken the position in the past that the United States would not be required to alter the domestic control of GHB should it be rescheduled to Schedule II under the 1971 Convention, we cannot guarantee that international rescheduling of GHB from Schedule IV to Schedule II will not impact restrictions on Xyrem in the United States. Failure by us or any of our partners, including suppliers, manufacturers and distributors, to comply with such requirements could result in, among other things, additional operating costs to us, delays in shipments outside or into the United States and adverse regulatory actions.

Sales and Marketing Regulations

We are also subject to various U.S. federal and state laws restricting certain marketing practices in the pharmaceutical industry, including anti-kickback laws and false claims laws. The U.S. federal healthcare program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce or in return for purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of any healthcare item or service reimbursable under Medicare, Medicaid or other federally financed healthcare programs. Liability under the federal anti-kickback statute may be established without a person or entity having actual knowledge of the statute or specific intent to violate it. Violations of the federal anti-kickback statute may be punished by civil and criminal fines, imprisonment, and/or exclusion from participation in federal healthcare programs. The U.S. federal False Claims Act, or the False Claims Act, prohibits, among other things, any person from knowingly presenting, or causing to be presented, a false claim for payment of federal funds, or knowingly making, or causing to be made, a false statement to get a false claim paid. Violations of the False Claims Act may be punished by significant financial penalties. In addition, the Physician Payment Sunshine provisions of the Healthcare Reform Act require extensive tracking of payments and transfers of value to physicians and teaching hospitals and public reporting of the data collected.

The majority of states also have statutes or regulations similar to the federal anti-kickback law and the False Claims Act, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. A number of states now require pharmaceutical companies to report expenses relating to the marketing and promotion of pharmaceutical products and to report gifts and payments to individual physicians in the states. Other states restrict when pharmaceutical companies may provide meals to prescribers or engage in other marketing related activities. Some states require the posting of information relating to clinical studies and their outcomes. In addition, California, Connecticut, Massachusetts and Nevada require pharmaceutical companies to

implement compliance programs or marketing codes of conduct. Other states have considered similar proposals in recent years and may adopt them in the future. Non-U.S. governments often have similar regulations which we are also subject to in those countries where we market and sell products.

The number and complexity of both U.S. federal and state laws continue to increase, and additional governmental resources are being added to enforce these laws and to prosecute companies and individuals who are believed to be violating them. See more discussions regarding these laws and regulations under the risk factor in Part 1, Item 1A of this Annual Report on Form 10-K entitled “We are subject to significant ongoing regulatory obligations and oversight, which may result in significant additional expense and limit our ability to commercialize our products—Other Regulatory Authorities.”

The FDA, the competent authorities of the EU member states and other governmental authorities require advertising and promotional labeling to be truthful and not misleading, and products to be marketed only for their approved indications and in accordance with the provisions of the approved label. The FDA routinely provides its interpretations of that authority in informal communications and also in more formal communications such as untitled letters or warning letters, and although

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such communications may not be considered final agency decisions, companies may decide not to contest the agency's interpretations so as to avoid disputes with the FDA, even if they believe the claims to be truthful, not misleading and otherwise lawful.

The FDA, the competent authorities of the EU member states and other governmental authorities also actively investigate allegations of off-label promotion activities in order to enforce regulations prohibiting these types of activities. A company that is found to have promoted an approved product for off-label uses may be subject to significant liability, including civil and administrative financial penalties and other remedies as well as criminal financial penalties and other sanctions. Even when a company is not determined to have engaged in off-label promotion, the allegation from government authorities or market participants that a company has engaged in such activities could have a significant impact on the company's sales, business and financial condition. The U.S. government has also required companies that have engaged in such activities to enter into complex corporate integrity agreements and/or non-prosecution agreements that impose significant reporting and other burdens on the affected companies. For example, a predecessor company to Jazz Pharmaceuticals, Inc. was investigated for off-label promotion of Xyrem, and, while Jazz Pharmaceuticals, Inc. was not prosecuted, as part of the settlement Jazz Pharmaceuticals, Inc. entered into a corporate integrity agreement with the OIG which extended through mid-2012. The investigation resulted in significant fines and penalties, which Jazz Pharmaceuticals, Inc. has paid, and the corporate integrity agreement required us to maintain a comprehensive compliance program. For all of our products, it is important that we maintain a comprehensive compliance program. Failure to maintain a comprehensive and effective compliance program, and to integrate the operations of acquired businesses into a combined comprehensive and effective compliance program on a timely basis, could subject us to a range of regulatory actions that could affect our ability to commercialize our products and could harm or prevent sales of the affected products, or could substantially increase the costs and expenses of commercializing and marketing our products.

In the EU, the advertising and promotion of our products are subject to EU member states' laws governing promotion of medicinal products, interactions with physicians, misleading and comparative advertising and unfair commercial practices. In addition, other legislation adopted by individual EU member states may apply to the advertising and promotion of medicinal products. These laws require that promotional materials and advertising in relation to medicinal products comply with the product's Summary of Product Characteristics, or SmPC, as approved by the competent authorities. The SmPC is the document that provides information to physicians concerning the safe and effective use of the medicinal product. It forms an intrinsic and integral part of the marketing authorization granted for the medicinal product. Promotion of a medicinal product that does not comply with the SmPC is considered to constitute off-label promotion. The off-label promotion of medicinal products is prohibited in the EU. The applicable laws at EU level and in the individual EU member states also prohibit the direct-to-consumer advertising of prescription-only medicinal products. Violations of the rules governing the promotion of medicinal products in the EU could be penalized by administrative measures, fines and imprisonment. These laws may further limit or restrict the advertising and promotion of our products to the general public and may also impose limitations on our promotional activities with health care professionals.

To help patients afford our products, we have various programs to assist them, including patient assistance programs, a Xyrem free product voucher program and co-pay coupon programs for certain products. These programs and related risks are discussed in greater detail under the risk factor in Part 1, Item 1A of this Annual Report on Form 10-K entitled "Changes in healthcare law and implementing regulations, including those based on recently enacted legislation, as well as changes in healthcare policy, may impact our business in ways that we cannot currently predict and these changes could have a material adverse effect on our business and financial condition."

Anti-Corruption Legislation

Our business activities outside of the United States are subject to the U.S. Foreign Corrupt Practices Act, or FCPA, and similar anti-bribery or anti-corruption laws, regulations, industry self-regulation codes of conduct and physicians' codes of professional conduct or rules of other countries in which we operate, including the U.K. Bribery Act of 2010, or the UK Bribery Act. The FCPA and similar anti-corruption laws generally prohibit the offering, promising, giving, or authorizing others to give anything of value, either directly or indirectly, to non-U.S. government officials in order

to improperly influence any act or decision, secure an improper advantage, or obtain or retain business. Excepted from the FCPA are payments to facilitate or expedite routine government action and bona fide, reasonable reimbursement of expenses. The FCPA also requires public companies to make and keep books and records that accurately and fairly reflect the transactions of the company and to devise and maintain an adequate system of internal accounting controls. The UK Bribery Act prohibits giving, offering, or promising bribes to any person, including non-UK government officials and private persons, as well as requesting, agreeing to receive, or accepting bribes from any person. In addition, under the UK Bribery Act, companies which carry on a business or part of a business in the UK may be held liable for bribes given, offered or promised to any person, including non-UK government officials and private persons, by employees and persons associated with the company in order to obtain or retain business or a business advantage for the company. Liability is strict, with no element of a corrupt state of mind, but a defense of having in place adequate procedures designed to prevent bribery is available. Furthermore, under the UK Bribery Act there is no exception for facilitation payments. As described above, our business is heavily regulated and therefore involves significant interaction with public officials, including officials of non-U.S. governments. Additionally, in many other countries, the health

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care providers who prescribe pharmaceuticals are employed by their government, and the purchasers of pharmaceuticals are government entities; therefore, our dealings with these prescribers and purchasers may be subject to the FCPA. Recently the Securities and Exchange Commission, or SEC, and the DOJ have increased their FCPA enforcement activities with respect to pharmaceutical companies. In addition, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, or Dodd-Frank Act, private individuals who report to the SEC original information that leads to successful enforcement actions may be eligible for a monetary award. We are engaged in ongoing efforts that are designed to ensure our compliance with these laws, including due diligence, training, policies, procedures, and internal controls. However, there is no certainty that all employees and third party business partners (including our distributors, wholesalers, agents, contractors, and other partners) will comply with anti-bribery laws. In particular, we do not control the actions of manufacturers and other third party agents, although we may be liable for their actions. Violation of these laws may result in civil or criminal sanctions, which could include monetary fines, criminal penalties, and disgorgement of past profits, which could have a material adverse impact on our business and financial condition.

Data Privacy and Protection

We are also subject to laws and regulations covering data privacy and the protection of health-related and other personal information. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing focus on privacy and data protection issues which may affect our business, including recently enacted laws in all jurisdictions where we operate. Numerous U.S. federal and state laws, including state security breach notification laws, state health information privacy laws and federal and state consumer protection laws, govern the collection, use and disclosure of personal information. In addition, we obtain patient health information from most healthcare providers who prescribe our products and research institutions we collaborate with, and they are subject to privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, or HIPAA. Although we are not directly subject to HIPAA other than with respect to providing certain employee benefits, we could potentially be subject to criminal penalties if we knowingly obtain or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

EU member states and other jurisdictions have adopted data protection laws and regulations, which impose significant compliance obligations. For example, the EU Data Protection Directive, as implemented into national laws by the EU member states, imposes strict obligations and restrictions on the ability to collect, analyze and transfer personal data, including health data from clinical trials and adverse event reporting. Furthermore, there is a development toward the public disclosure of clinical trial data in the EU which also adds to the complexity of processing health data from clinical trials. Such public disclosure obligations are provided in the new EU Clinical Trials Regulation, EMA disclosure initiatives and voluntary commitments by industry. Data protection authorities from the different EU member states may interpret the EU Data Protection Directive and national laws differently, which adds to the complexity of processing personal data in the EU, and guidance on implementation and compliance practices are often updated or otherwise revised. Failing to comply with these laws could lead to government enforcement actions and significant penalties against us, and adversely impact our operating results. The EU Data Protection Directive prohibits the transfer of personal data to countries outside of the European Economic Area, or EEA, that are not considered by the EC to provide an adequate level of data protection, including the United States. There are also similar data transfer restrictions in Switzerland. However, there are a number of legal mechanisms to allow for the transfer of personal data from the EEA and Switzerland to the United States, including, among others, a voluntary U.S. - EU Safe Harbor Framework, a voluntary U.S. - Switzerland Safe Harbor Framework and the EU's set of standard form contractual clauses for the transfer of personal data outside of the EEA. Our United States subsidiary, Jazz Pharmaceuticals, Inc., has certified compliance with the U.S. - EU Safe Harbor Framework and the U.S. - Switzerland Safe Harbor Framework through the DOC. A proposal for an EU Data Protection Regulation, intended to replace the current EU Data Protection Directive, is currently under consideration and, if adopted, could lead to additional and stricter requirements and penalties in the event of non-compliance.

Additional requirements and restrictions regarding, among other things, the export and importation of products, intellectual property rights, the environment, taxation and work safety apply in individual countries, and non-compliance with such requirements may result in civil, criminal or administrative sanctions.

Pharmaceutical Pricing and Reimbursement

Our ability to commercialize our products successfully, and to attract commercialization partners for our products, depends in significant part on the availability of adequate financial coverage and reimbursement from third party payors, including, in the United States, governmental payors such as the Medicare and Medicaid programs, managed care organizations, and private health insurers. Both Medicare and Medicaid are administered by the Centers for Medicare and Medicaid Services, or CMS. In 2012, the CMS issued proposed regulations to implement the changes to the Medicaid Drug Rebate program under the Healthcare Reform Act but has not yet issued final regulations. The CMS is currently scheduled to issue final regulations in April 2015.

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Political, economic and regulatory influences are subjecting the healthcare industry in the United States to fundamental changes. There have been, and we expect there will continue to be, legislative and regulatory proposals to change the healthcare system in ways that could impact our ability to sell our products profitably. We expect to experience pricing pressure in the United States in connection with the sale of our products due to managed healthcare, the increasing influence of health maintenance organizations and additional legislative proposals. We anticipate that the U.S. Congress, state legislatures and the private sector will continue to consider and may adopt healthcare policies intended to curb rising healthcare costs. These cost containment measures include: controls on government-funded reimbursement for drugs; new or increased requirements to pay prescription drug rebates to government health care programs, controls on healthcare providers; challenges to the pricing of drugs or limits or prohibitions on reimbursement for specific products through other means; requirements to try less expensive products or generics before a more expensive branded product; changes in drug importation laws; expansion of use of managed care systems in which healthcare providers contract to provide comprehensive healthcare for a fixed cost per person; and public funding for cost effectiveness research, which may be used by government and private third party payors to make coverage and payment decisions. For example, much attention has been paid to legislation proposing federal rebates on Medicare Part D and Medicare Advantage utilization for drugs issued to certain groups of lower income beneficiaries and the desire to change the provisions that treat these dual-eligible patients differently from traditional Medicare patients. Any such changes could have a negative impact on revenues from sales of our products.

In addition, beginning April 1, 2013, Medicare payments for all items and services, including drugs and biologics, were reduced by 2% under the sequestration (i.e., automatic spending reductions) required by the Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012. The Bipartisan Budget Act of 2013 extended the 2% reduction to 2023, and the Protecting Access to Medicare Act of 2014 extended the 2% reduction, on average, to 2024. These cuts reduce reimbursement payments related to our products, which could potentially negatively impact our revenue.

Third party payors decide which drugs they will pay for and establish reimbursement and co-pay levels. Third party payors are increasingly challenging the prices charged for medical products and services and examining their cost effectiveness, in addition to their safety and efficacy. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the cost effectiveness of our products. Even with studies, our products may be considered less safe, less effective or less cost-effective than other products, and third party payors may not provide coverage and reimbursement for our products or any of our product candidates that we commercialize, in whole or in part. The process for determining whether a payor will provide coverage for a product may be separate from the process for setting the price or reimbursement rate that the payor will pay for the product once coverage is approved. Third-party payors may limit coverage to specific products on an approved list, or formulary, which might not include all of the approved products for a particular indication. For example, third party payors have started to require discounts and/or exclusivity arrangements with some drug manufacturers in exchange for including a specific product on their formularies. Any such requirements could have a negative impact on revenues from sales of our products.

Payors also are increasingly considering new metrics as the basis for reimbursement rates, such as average sales price, average manufacturer price and actual acquisition cost. The existing data for reimbursement based on these metrics is relatively limited, although certain states have begun to survey acquisition cost data for the purpose of setting Medicaid reimbursement rates and, since November 2013, CMS has been publishing final National Average Drug Acquisition Cost, or NADAC, data, which reflect retail community pharmacy invoice costs, on a weekly basis. Therefore, it may be difficult to project the impact of these evolving reimbursement mechanics on the willingness of payors to cover our products.

We participate in and have certain price reporting obligations to the Medicaid Drug Rebate program, several state Medicaid supplemental rebate programs and other governmental pricing programs, and we have obligations to report the average sales price for the Medicare program. Under the Medicaid Drug Rebate program, we are required to pay a rebate to each state Medicaid program for our covered outpatient drugs that are dispensed to Medicaid beneficiaries and paid for by a state Medicaid program as a condition of having federal funds being made available to the states for our drugs under Medicaid and Part B of the Medicare program. Those rebates are based on pricing data reported by us

on a monthly and quarterly basis to the CMS. These data include the average manufacturer price and, in the case of innovator products, the best price for each drug which, in general, represents the lowest price available from the manufacturer to any entity in the United States in any pricing structure, calculated to include all sales and associated rebates, discounts and other price concessions. The status of price reporting submissions for two radiopharmaceutical products is discussed under the risk factor in Part 1, Item 1A of this Annual Report on Form 10-K entitled “If we fail to comply with our reporting and payment obligations under the Medicaid Drug Rebate program or other governmental pricing programs, we could be subject to additional reimbursement requirements, penalties, sanctions and fines, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.” In addition, a significant portion of our revenue from sales of Erwinaze is obtained through government payors, including Medicaid, and any failure to qualify for reimbursement for Erwinaze under those programs would have a material adverse effect on revenues from sales of Erwinaze.

Federal law also requires that a company that participates in the Medicaid rebate program report the average sales price information each quarter to CMS for certain categories of drugs that are paid under Part B of the Medicare program.

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Manufacturers calculate the average sales price based on a statutorily defined formula and interpretations of the statute by CMS. CMS uses these submissions to determine payment rates for drugs under Medicare Part B for our products and the resulting Medicare payment rate, and could negatively impact our results of operations.

Federal law requires that any company that participates in the Medicaid rebate program also participate in the Public Health Service's 340B drug pricing discount program in order for federal funds to be available for the manufacturer's drugs under Medicaid and Medicare Part B. The 340B pricing program requires participating manufacturers to agree to charge statutorily-defined covered entities no more than the 340B "ceiling price" for the manufacturer's covered outpatient drugs. These 340B covered entities include a variety of community health clinics and other entities that receive health services grants from the Public Health Service, as well as hospitals that serve a disproportionate share of low-income patients. The 340B ceiling price is calculated using a statutory formula, which is based on the average manufacturer price and rebate amount for the covered outpatient drug as calculated under the Medicaid rebate program. Changes to the definition of average manufacturer price and the Medicaid rebate amount under the Healthcare Reform Act and CMS's issuance of final regulations implementing those changes also could affect our 340B ceiling price calculations and negatively impact our results of operations.

In order to be eligible to have our products paid for with federal funds under the Medicaid and Medicare Part B programs and purchased by certain federal agencies, we participate in the Department of Veterans Affairs, or VA, Federal Supply Schedule, or FSS, pricing program. Under this program, we are obligated to make our product available for procurement on an FSS contract and charge a price to four federal agencies - the VA, U.S. Department of Defense, or DoD, Public Health Service and Coast Guard - that is no higher than the statutory Federal Ceiling Price, or FCP. The FCP is based on the non-federal average manufacturer price, or Non-FAMP, which we calculate and report to the VA on a quarterly and annual basis. We also participate in the Tricare Retail Pharmacy program, under which we pay quarterly rebates on utilization of innovator products that are dispensed through the Tricare Retail Pharmacy network to Tricare beneficiaries. The rebates are calculated as the difference between the annual Non-FAMP and FCP.

Outside of the United States, political, economic and regulatory developments are also subjecting the healthcare industry to fundamental changes and challenges. Pressure by governments and other stakeholders on prices and reimbursement levels continue to exist. In various EU member states we expect to be subject to continuous cost-cutting measures, such as lower maximum prices, lower or lack of reimbursement coverage and incentives to use cheaper, usually generic, products as an alternative. Health Technology Assessment, or HTA, of medicinal products is becoming an increasingly common part of the pricing and reimbursement procedures in some EU member states. These EU member states include the United Kingdom, France, Germany and Sweden. The HTA process, which is governed by the national laws of these countries, is the procedure according to which the assessment of the public health impact, therapeutic impact and the economic and societal impact of use of a given medicinal product in the national healthcare systems of the individual country is conducted. HTA generally focuses on the clinical efficacy and effectiveness, safety, cost, and cost-effectiveness of individual medicinal products, as well as their potential implications for the healthcare system. Those elements of medicinal products are compared with other treatment options available on the market. The outcome of HTA regarding specific medicinal products will often influence the pricing and reimbursement status granted to these medicinal products by the competent authorities of individual EU member states. For example, France requires the evaluation of the medical benefits of a new product as well as the added clinical value of a new product in comparison with existing therapies, and we are evaluating the impact of this evaluation on our ability to obtain favorable pricing and reimbursement for Defitelio in France. If we are unable to ultimately obtain favorable pricing and reimbursement approvals in countries that represent significant markets, including France, especially where a country's reimbursed price influences other countries, our growth prospects in Europe could be negatively affected.

In the EU, our products are marketed through various channels and within different legal frameworks. In certain EU member states, reimbursement for unauthorized products is provided through national named patient or compassionate use programs. Such reimbursement may no longer be available if authorization for named patient or compassionate use programs expire or are terminated. In other EU member states, authorization and reimbursement policies may also

delay commercialization of our products, or may adversely affect our ability to sell our products on a profitable basis. After initial price and reimbursement approvals, reductions in prices and changes in reimbursement levels can be triggered by multiple factors, including reference pricing systems and publication of discounts by third party payors or authorities in other countries. In the EU, prices can be reduced further by parallel distribution and parallel trade, or arbitrage between low-priced and high-priced member states.

We are unable to predict what additional legislation, regulations or policies, if any, relating to the healthcare industry or third party coverage and reimbursement may be enacted in the future or what effect such legislation, regulations or policies would have on our business. Any cost containment measures, including those listed above, or other healthcare system reforms that are adopted, could have a material adverse effect on our ability to operate profitably in the EU.

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Employees

As of February 18, 2015, we had approximately 870 employees worldwide. We consider our employee relations to be good.

Environment, Health and Safety

Our operations are subject to complex and increasingly stringent environmental, health and safety laws and regulations in the countries where we operate and, in particular, in Italy where we have, and in Ireland where we are building, manufacturing facilities. Environmental and health and safety authorities in the relevant jurisdictions administer laws, which implement EU directives and regulations governing, among other matters, the emission of pollutants into the air (including the workplace), the discharge of pollutants into bodies of water, the storage, use, handling and disposal of hazardous substances, the exposure of persons to hazardous substances, and the general health, safety and welfare of employees and members of the public. In certain cases, such laws, directives and regulations may impose strict liability for pollution of the environment and contamination resulting from spills, disposals or other releases of hazardous substances or waste and/or any migration of such hazardous substances or waste. Costs, damages and/or fines may result from the presence, investigation and remediation of such contamination at properties currently or formerly owned, leased or operated by us and/or off-site locations, including where we have arranged for the disposal of hazardous substances or waste. In addition, we may be subject to third party claims, including for natural resource damages, personal injury and property damage, in connection with such contamination. For our facility in Italy, we have obtained certification under the UNI EN ISO 14001 Standard for our environmental management system and have an Eco-management and Audit Scheme (EMAS). Our environmental policy for our Italian facility is designed to comply with current EU laws and regulations on environmental protection, to provide for continuous improvement of our manufacturing performance, to protect our employees' health, to protect the safety of people working at the location and to respect the safety of people living close to our facility and in the surrounding community.

About Jazz Pharmaceuticals plc

Jazz Pharmaceuticals plc was originally formed under the laws of Ireland (registered number 399192) as a private limited liability company in March 2005 under the name Azur Pharma Limited, and was subsequently re-registered as a public limited company under the name Azur Pharma Public Limited Company, or Azur Pharma, in October 2011. On January 18, 2012, the business of Jazz Pharmaceuticals, Inc. and Azur Pharma were combined in a merger transaction, in connection with which Azur Pharma was re-named Jazz Pharmaceuticals plc and we became the parent company of and successor to Jazz Pharmaceuticals, Inc. We refer to this transaction as the Azur Merger.

Our predecessor, Jazz Pharmaceuticals, Inc., was originally incorporated in California in March 2003 and was reincorporated in Delaware in January 2004. In the Azur Merger, all outstanding shares of Jazz Pharmaceuticals, Inc.'s common stock were canceled and converted into the right to receive, on a one-for-one basis, our ordinary shares.

On June 12, 2012, we completed the acquisition of EUSA Pharma Inc., or EUSA Pharma, which we refer to as the EUSA Acquisition. In January 2014, we completed the Gentium Acquisition.

Available Information

We file or furnish pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, or Exchange Act, as applicable, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, amendments to those reports, proxy statements and other information electronically with the SEC. Further copies of these reports are located at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding our filings, at www.sec.gov.

The mailing address of our headquarters is Fourth Floor, One Burlington Road, Dublin 4, Ireland, and our telephone number at that location is 353-1-634-7800. Our website is www.jazzpharmaceuticals.com. Through a link entitled "SEC Filings" under the "Investors & Media" section of our website, we make copies of our periodic and current reports, proxy statements and other information available, free of charge, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Information found on, or accessible through, our

website is not a part of, and is not incorporated into, this Annual Report on Form 10-K.

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Item 1A. Risk Factors

We have identified the following risks and uncertainties that may have a material adverse effect on our business, financial condition or results of operations. The risks described below are not the only ones we face. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. Our business could be harmed by any of these risks. The trading price of our ordinary shares could decline due to any of these risks, and you may lose all or part of your investment. In assessing these risks, you should also refer to the other information contained in this Annual Report on Form 10-K, including our consolidated financial statements and accompanying notes.

Risks Relating to Xyrem and the Significant Impact of Xyrem Sales

Xyrem is our largest selling product, and our inability to maintain or increase sales of Xyrem would have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Xyrem is our largest selling product and our financial results are significantly influenced by sales of Xyrem, which accounted for 67.0% of our net product sales for the year ended December 31, 2014 and 65.8% of our net product sales for the year ended December 31, 2013. Our future plans assume that sales of Xyrem will increase. While Xyrem product sales grew from 2012 to 2013 and from 2013 to 2014, we cannot assure you that we can maintain sales of Xyrem at or near current levels, or that Xyrem sales will continue to grow. We have periodically increased the price of Xyrem, most recently in February 2015, and we cannot assure you that price adjustments we have taken or may take in the future will not negatively affect Xyrem sales volumes.

In addition to other risks described herein, our ability to maintain or increase Xyrem product sales is subject to a number of risks and uncertainties, the most important of which are discussed below, including those related to:

- the potential introduction of a generic version of Xyrem or an alternative sodium oxybate product for treating cataplexy and/or EDS in narcolepsy;
- changed or increased regulatory restrictions, including changes to our risk management program and the terms of the final REMS documents for Xyrem, and the pressure to develop a single shared system REMS with potential generic competitors, or regulatory actions by the FDA, as discussed in more detail in the risk factors below;
- our manufacturing partners' ability to obtain sufficient quota from the DEA to satisfy our needs for Xyrem;
- any supply, manufacturing or distribution problems arising with any of our manufacturing and distribution partners, all of whom are sole source providers for us;
- any increase in restrictive conditions for reimbursement required by, and the availability of reimbursement from, third party payors, as discussed in more detail in the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "Price approvals and reimbursement may not be available for our products, which could diminish our sales or affect our ability to sell our products profitably;"
- changes in healthcare laws and policy, including changes in requirements for rebates, reimbursement and coverage by federal healthcare programs;
- continued acceptance of Xyrem as safe and effective by physicians and patients, even in the face of negative publicity that surfaces from time to time; and
- changes to our label, including new safety warnings or changes to our boxed warning, that further restrict how we market and sell Xyrem.

These and the other risks described below related to Xyrem product sales and protection of our proprietary rights could have a material adverse effect on our ability to maintain or increase sales of Xyrem.

If sales of Xyrem were to decline significantly, we might need to reduce our operating expenses or to seek to raise additional funds, which would have a material adverse effect on our business, financial condition, results of operations and growth prospects, or we might not be able to acquire, in-license or develop new products in the future to grow our business.

If generic versions of Xyrem or other sodium oxybate products that compete with Xyrem are approved and launched, sales of Xyrem would be adversely affected.

Although Xyrem is covered by patents covering its manufacture, formulation, distribution system and method of use, five third parties have filed ANDAs seeking FDA approval of generic versions of Xyrem, and additional third parties

may also seek to introduce generic versions of Xyrem or other sodium oxybate products for treatment of cataplexy and/or EDS in narcolepsy. If one or more companies receive FDA approval of an ANDA for generic versions of Xyrem or an NDA for other sodium oxybate products, it is possible that such company or companies could introduce generic versions of Xyrem or other sodium oxybate products before our patents expire if they do not infringe our patents, if it is determined that our patents are invalid or

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unenforceable, or if such company or companies decide, before applicable ongoing patent litigation is concluded, to launch competition to Xyrem at risk of potentially being held liable for damages for patent infringement.

Five companies have sent us notices of Paragraph IV Certification that each has filed an ANDA with the FDA seeking approval to market a generic version of Xyrem before the expiration of the Orange Book-listed patents relating to Xyrem. We have sued all five ANDA filers seeking to prevent them from introducing a generic version of Xyrem that would infringe our patents, but we cannot assure you that any of the lawsuits will prevent the introduction of a generic version of Xyrem for any particular length of time, or at all. Additional ANDAs could also be filed requesting approval to market generic versions of Xyrem. If any of these applications is approved, and a generic version of Xyrem is introduced, our sales of Xyrem would be adversely affected. Although no trial date has been set in any of the ANDA suits, we anticipate that trial on some of the patents in the Roxane case could occur as early as the third quarter of 2015. However, the actual timing of events may be significantly earlier or later than we currently anticipate, and we cannot predict the timing or outcome of events in this or the other ANDA litigation.

In addition, between June and October 2014, petitions seeking CBM post-grant patent review by the PTAB were filed by certain of the ANDA filers with respect to the validity of six of our patents covering the distribution system for Xyrem. In early 2015, the PTAB issued decisions denying institution of CBM review for all of these petitions. In January 2015, petitions for IPR were filed by certain of the ANDA filers with respect to the validity of six of our patents covering the distribution system for Xyrem. The PTAB has not yet determined whether to institute proceedings with respect to the petitions for IPR. We cannot predict whether PTAB will institute any of the petitioned IPR proceedings, whether additional post-grant patent review challenges will be filed, the outcome of any IPR or other proceeding if instituted, or the impact any IPR or other proceeding might have on ongoing ANDA litigation proceedings.

In accordance with the Hatch-Waxman Act, as a result of our having filed a timely lawsuit against Roxane, FDA approval of Roxane's ANDA was stayed until April 18, 2013, but that stay has expired. We do not know the status of Roxane's ANDA and cannot predict what actions the FDA or Roxane may take with respect to Roxane's ANDA. If Roxane's ANDA is approved by the FDA, Roxane may seek to launch a generic version of Xyrem prior to a District Court, or potential appellate court, decision in our ongoing patent litigation. While, in the event of such commercialization, Roxane would be liable to us for damages in the event we ultimately prevail in the patent litigation, we expect that the introduction of generic competition for Xyrem would have a material adverse effect on our business, financial condition, results of operations and growth prospects. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "The manufacture, distribution and sale of Xyrem are subject to significant regulatory oversight and restrictions and the requirements of a risk management program, and these restrictions and requirements, as well as the potential impact of changes to these restrictions and requirements, subject us to increased risks and uncertainties, any of which could negatively impact sales of Xyrem."

Other companies could also develop products that are similar, but not identical, to Xyrem, such as an alternative formulation or an alternative formulation combined with a different delivery technology, and seek approval in the United States by referencing Xyrem and relying, to some degree, on the FDA's approval of Xyrem and related determinations of safety and efficacy. For example, in April 2014, we learned about the completion of a "first in man" clinical trial by a company using its proprietary technology for delivery of a sodium oxybate formulation to eliminate second nighttime dosing for narcolepsy patients. This company has stated its intent to submit an NDA, referencing Xyrem, to the FDA by the end of 2016. If this company is successful in developing a sodium oxybate formulation that could be effectively used with its delivery technology and is able to obtain FDA or other regulatory approval for its product to treat narcolepsy patients, we expect the launch of such a product would have a material adverse effect on our business, financial condition, results of operations and growth prospects.

A generic manufacturer or manufacturer of an alternative sodium oxybate product would need to obtain quota from the DEA in order to manufacture both the active pharmaceutical ingredient and the finished product to compete with Xyrem. The DEA publishes an annual aggregate quota for the active pharmaceutical ingredient of Xyrem, and our supplier is required to request and justify allocation of sufficient annual manufacturing quota as well as additional manufacturing quota if needed throughout the year. Through 2011, our active pharmaceutical ingredient supplier

obtained substantially all of the published annual aggregate quota for use in the manufacture of Xyrem. However, for the last few years, our supplier was allocated only a portion of the published annual aggregate quota for the active pharmaceutical ingredient. Consequently, a generic manufacturer or manufacturer of an alternative sodium oxybate product may be able to obtain a portion of the annual aggregate active pharmaceutical ingredient quota. In the past, we have also had to engage in lengthy efforts to obtain the needed quotas after the original annual quotas had first been allocated. For 2015, both our active pharmaceutical ingredient supplier and finished product manufacturer have been allocated most, but not all, of their respective requested quotas. If, in the future, we and our supplier and manufacturer cannot obtain the quotas that are needed on a timely basis, or at all, our business, financial condition, results of operations and growth prospects could be materially and adversely affected.

After any introduction of a generic competitor, a significant percentage of the prescriptions written for Xyrem may be filled with the generic version, resulting in a loss in sales of Xyrem. Generic competition often results in decreases in the prices at which branded products can be sold, particularly when there is more than one generic available in the marketplace. In

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addition, legislation enacted in the United States allows for, and in a few instances in the absence of specific instructions from the prescribing physician mandates, the dispensing of generic products rather than branded products where a generic version is available. We expect that generic competition for Xyrem would have a material adverse effect on our business, financial condition, results of operations and growth prospects.

The manufacture, distribution and sale of Xyrem are subject to significant regulatory oversight and restrictions and the requirements of a risk management program, and these restrictions and requirements, as well as the potential impact of changes to these restrictions and requirements, subject us to increased risks and uncertainties, any of which could negatively impact sales of Xyrem.

As a condition of approval of Xyrem, the FDA mandated that we maintain the Xyrem Risk Management Program, which includes parts of the Xyrem Success Program and was required in conjunction with Xyrem's approval by the FDA to ensure the safe distribution of Xyrem and minimize the risk of misuse, abuse and diversion of sodium oxybate. The Xyrem Risk Management Program includes a number of elements including patient and physician education, a database of information so that we may track and report certain information, and the use of a single central pharmacy to distribute Xyrem. Elements of the Xyrem Risk Management Program, adopted in 2002 before the FDA had authority to require REMS, are deemed to be an approved REMS pursuant to the FDAAA. The Xyrem Risk Management Program, however, is not in the form that is now required for REMS documents. The FDAAA, which amends the FDCA, requires that deemed REMS and related documents be updated to comply with the current requirements for REMS documents. We are engaged in ongoing communications with respect to ours REMS documents for Xyrem, but have not reached agreement with the FDA on certain significant terms. In late 2013, the FDA notified us that it would exercise its claimed authority to modify our REMS and that it would finalize the REMS as modified by the FDA unless we initiated dispute resolution procedures with respect to the modification of the Xyrem deemed REMS. Among other things, we disagree with the FDA's position in the late 2013 notice that, as part of the current REMS process, the Xyrem deemed REMS should be modified to enable the distribution of Xyrem through more than one pharmacy, or potentially through retail pharmacies and wholesalers, as well as with certain modifications proposed by the FDA that would, in the FDA's view, be sufficient to ensure that the REMS includes only those elements necessary to ensure that the benefits of Xyrem outweigh its risks, and that would, in the FDA's view, reduce the burden on the healthcare system. Given these circumstances, we initiated dispute resolution procedures with the FDA at the end of February 2014. We received the FDA's denial of our initial dispute resolution submission in the second quarter of 2014, and our dispute is currently subject to further supervisory review at the next administrative level of the FDA. We have received interim responses from the FDA, but the FDA has not yet communicated a decision on our further appeal to us. We expect to receive the FDA's decision in the first quarter of 2015. We cannot predict whether, or on what terms, we will reach agreement with the FDA on final REMS documents for Xyrem, the outcome or timing of the current dispute resolution procedure, whether we will initiate additional dispute resolution proceedings with the FDA or other legal proceedings prior to finalizing the REMS documents, or the outcome or timing of any such proceedings. We expect that final REMS documents for Xyrem will include modifications to, and/or requirements that are not currently implemented in, the Xyrem Risk Management Program. Any such modifications or additional requirements could potentially make it more difficult or expensive for us to distribute Xyrem, make it easier for future generic competitors, and/or negatively affect sales of Xyrem.

Section 505-1(i)(1) of the FDCA generally provides that (i) an ANDA with a referenced drug subject to the REMS requirements is required to have a REMS with the same elements as the referenced drug, such as a medication guide, a patient package insert and other ETASU, and (ii) the ANDA drug and the referenced drug shall use a single shared system to assure safe use. However, the FDA may waive this requirement for a single shared system and permit the ANDA holder to submit separate but comparable REMS documents if the FDA either determines that the burden of creating a single shared system outweighs its benefit, or if the ANDA applicant certifies that it has been unable to obtain a license to any aspects of the REMS for the referenced drug product that are covered by a patent or a trade secret. The FDCA provides that the FDA may seek to negotiate a license between the ANDA sponsor and the sponsor of the listed product before granting a waiver of the single shared system requirement. Accordingly, we expect to face pressure to license or share our Xyrem Risk Management Program, which is the subject of multiple issued patents, or

elements of it, with generic competitors. We cannot predict the outcome or impact on our business of any future action that we may take with respect to licensing or sharing our REMS, or the FDA's response to a certification that a third party has been unable to obtain a license.

In the FDA's December 2012 response denying a Citizen Petition that we filed in July 2012, the FDA stated that when an NDA holder has a deemed REMS, the FDA directs the ANDA applicant(s) to work with the NDA holder to create a single shared system to implement the ETASU that will be approved as a final REMS. More broadly, the FDA has stated that it expects the negotiation of a single shared REMS between an NDA holder and ANDA applicants to proceed concurrently with the FDA's review of ANDA applications. The FDA has further stated that it typically monitors the progress of industry working groups attempting to develop shared REMS systems, and that it has acted to help ensure that sponsors were cooperating and that there were no obstacles to developing a single shared system. In January 2014, the FDA held an initial meeting with us and the then-current Xyrem ANDA applicants to facilitate the development of a single shared system REMS for Xyrem (sodium oxybate). The parties have had numerous interactions with respect to a single shared system REMS since

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the initial meeting, and we expect the interactions to continue. We cannot predict the timing, outcome or impact on our business of discussions with the FDA and/or any ANDA applicant with respect to the potential creation of a single shared system REMS for Xyrem (sodium oxybate), including the impact of the ongoing process with respect to potential modifications to the Xyrem deemed REMS as discussed above, or the impact of any single shared system REMS on our ongoing litigation with each of the ANDA applicants. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "We have incurred and expect to continue to incur substantial costs as a result of litigation or other proceedings relating to patents, other intellectual property rights and related matters, and we may be unable to protect our rights to, or commercialize, our products."

If we do not develop a single shared system REMS or license or share our REMS with a generic competitor within a time frame or on terms that the FDA considers acceptable, the FDA may assert that its waiver authority permits it to allow the generic competitor to market a generic drug with a REMS that does not include the same elements that are in our deemed REMS or, when Xyrem REMS documents are approved, with a separate REMS that includes different, but comparable, ETASU.

The FTC has been paying increasing attention to the use of REMS by companies selling branded products, in particular to whether REMS may be deliberately being used to reduce the risk of competition from generic drugs in a way that may be deemed to be anticompetitive. It is possible that the FTC or others could claim that our REMS or other practices are being used in an anticompetitive manner. The FDCA further states that a REMS shall not be used by an NDA holder to block or delay generic drugs from entering the market. Three of the ANDA applicants have asserted that our patents covering the distribution system for Xyrem should not have been listed in the Orange Book, and that the Xyrem REMS is blocking competition. We cannot predict the outcome of these claims in the ongoing litigation, or the impact of any similar claims that may be made in the future.

It is also possible that the FDA may take the position that a potential generic competitor does not need a REMS that has the same ETASU as our Xyrem deemed REMS in order to obtain approval of its ANDA. In the denial of our Citizen Petition described above, the FDA stated that if the FDA determines that an ANDA may be ready for approval before final approval of the REMS of a sponsor holding a deemed REMS, the FDA will direct the ANDA applicant to submit a proposed risk management plan with ETASU that are comparable to the ETASU that are approved for the referenced drug in order to have adequate risk management elements in place for the ANDA until the final REMS is approved. The legal basis for this position is uncertain. However, it is possible that the FDA may rely on this position as a basis to grant approval of an ANDA with a risk management plan rather than a final REMS. The 30-month stay of FDA approval of the ANDA filed by Roxane, the first ANDA filer, expired on April 18, 2013, and we have not yet received approval of final REMS documents for Xyrem. Accordingly, it is possible that, consistent with the position that the FDA articulated in its denial of our Citizen Petition, the FDA could approve an ANDA with a risk management plan that is separate from our Xyrem deemed REMS, rather than with a final REMS or a shared REMS for both the generic and Xyrem. We expect that the approval of an ANDA that results in the launch of a generic version of Xyrem would have a material adverse effect on our business, financial condition, results of operations and growth prospects. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "We have incurred and expect to continue to incur substantial costs as a result of litigation or other proceedings relating to patents, other intellectual property rights and related matters, and we may be unable to protect our rights to, or commercialize, our products."

Currently, our Xyrem deemed REMS requires that all of the Xyrem sold in the United States must be dispensed and shipped directly to patients through a single central pharmacy. The process under which patients receive Xyrem under our program is complex and includes multiple mandatory steps, such as the enrollment of the patient in the Xyrem Success Program and calls between the central pharmacy and the patient before each prescription of Xyrem is filled and sent to the patient. While we have an exclusive agreement with the central pharmacy for Xyrem, ESSDS, through June 2015, if the central pharmacy does not fulfill its contractual obligations to us, provides timely notice that it wants to terminate our agreement, refuses or fails to adequately serve patients, or fails to promptly and adequately address operational challenges, whether expected or unexpected, the fulfillment of Xyrem prescriptions and our sales would be adversely affected. If we change our central pharmacy, new contracts might be required with government and

other insurers who pay for Xyrem, and the terms of any new contracts could be less favorable to us than current agreements. In addition, any new central pharmacy would need to be registered with the DEA and would also need to implement the particular processes, procedures and activities necessary to distribute Xyrem under our Xyrem Risk Management Program or any REMS that we are subject to in the future. Transitioning to a new pharmacy could result in product shortages, which would adversely affect sales of Xyrem in the United States, result in additional costs and expenses for us, and/or take a significant amount of time, any of which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

As required by the FDA and other regulatory agencies, the adverse event information that we collect for Xyrem is regularly reported to the FDA and could result in the FDA requiring changes to the Xyrem label or taking or requiring us to take other actions that could have an adverse effect on Xyrem's commercial success. Our Xyrem deemed REMS includes unique features that provide more extensive information about adverse events, including deaths, than is generally available for other products that are not subject to similar risk management programs. For example, in April 2011, we learned that deaths of

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patients who had been prescribed Xyrem between 2003 and 2010 had not always been reported to us by ESSDS and therefore to the FDA by us, as required. We reported these cases to the FDA when we discovered them, investigated the related data from ESSDS as well as additional data we gathered, and submitted an analysis of the data to the FDA. In October 2011, we received a warning letter from the FDA regarding certain aspects of our adverse event reporting system for Xyrem and drug safety procedures related to the deaths that we discovered in April 2011 which had not been reported. We completed the actions and submitted the data required to address the observations in the 2011 warning letter and arising from a subsequent inspection. In August 2013, we received a close-out letter from the FDA. In April 2014, we received a Form FDA 483 at the conclusion of a pharmacovigilance inspection conducted by the FDA. The Form FDA 483 included observations relating to certain aspects of our adverse drug experience, or ADE, reporting system for all of our products, including Xyrem. We responded to the Form FDA 483 with a description of the corrective actions and improvements we had implemented before or shortly following the inspection and additional improvements that we planned to implement, and have now implemented, to address the observations in the Form FDA 483. In August 2014, the FDA issued an Establishment Inspection Report to us, which indicates that the inspection is closed. Although we have implemented improvements to our ADE reporting system, there can be no assurance that the FDA or other regulatory agencies will not identify additional matters in future pharmacovigilance inspections or that we will be able to adequately address any matters identified by the FDA or other regulatory agencies in the future, and the failure to do so could have a material adverse effect on our business, financial condition and results of operations.

Any failure to demonstrate our substantial compliance with applicable regulatory requirements to the satisfaction of the FDA or any other regulatory authority could result in such regulatory authorities taking actions in the future, which could have a material adverse effect on Xyrem sales and therefore on our business, financial condition, results of operations and growth prospects. See also the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled “We are subject to significant ongoing regulatory obligations and oversight, which may result in significant additional expense and limit our ability to commercialize our products.”

The FDA has required that Xyrem’s label include a boxed warning regarding the risk of abuse. A boxed warning is the strongest type of warning that the FDA can require for a drug product and warns prescribers that the drug carries a significant risk of serious or even life-threatening adverse effects. A boxed warning also means, among other things, that the product cannot be advertised through reminder ads, or ads that mention the pharmaceutical brand name but not the indication or medical condition it treats. We cannot predict whether the FDA will require additional warnings, including boxed warnings, to be included on Xyrem’s label. Moreover, Xyrem’s FDA approval under the FDA’s Subpart H regulations requires that all of the promotional materials for Xyrem be provided to the FDA for review at least 30 days prior to the intended time of first use. Warnings in the Xyrem label and any limitations on our ability to advertise and promote Xyrem may have affected, and could in the future negatively affect, Xyrem sales and therefore our business, financial condition, results of operations and growth prospects.

Risks Relating to Our Business

While Xyrem remains our largest product, our success also depends on our ability to effectively commercialize our other products. Our inability to do so could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

In addition to Xyrem, we are commercializing a portfolio of products, including our other lead marketed products Erwinaze (called Erwinase in markets outside the United States) and Defitelio.

Erwinaze, a biologic product, is used in conjunction with chemotherapy to treat patients with ALL with hypersensitivity to E. coli-derived asparaginase. Erwinaze is exclusively licensed to us, and manufactured for us, by PHE, was approved by the FDA under a BLA and was launched in the U.S. market in November 2011. It is also being sold under marketing authorizations, named patient programs, temporary use authorizations or similar authorizations in multiple countries in Europe and elsewhere.

Erwinaze represents an important part of our strategy to grow sales of our existing products. However, our ability to successfully and sustainably maintain or grow sales of Erwinaze is subject to a number of challenges, including the limited population of patients with ALL and the incidence of hypersensitivity reactions to E. coli-derived asparaginase

within that population, our ability to obtain clinical data on the use of Erwinaze in young adults age 18 to 39 with ALL who are hypersensitive to E. coli-derived asparaginase, as well as our need to apply for and receive marketing authorizations, through the EU's, mutual recognition procedure or otherwise, in certain additional countries so we can launch promotional efforts in those countries. Another significant challenge to our ability to maintain the current sales level and to increase sales is our limited inventory of Erwinaze and our need to avoid supply interruptions of Erwinaze due to capacity constraints, production delays, quality challenges or other manufacturing difficulties. See the discussion regarding Erwinaze supply issues in the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "We depend on single source suppliers and manufacturers for each of our products, product candidates and their active pharmaceutical ingredients. The loss of any of these suppliers or

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manufacturers, or delays or problems in the supply or manufacture of our products for commercial sale or our product candidates for use in our clinical trials, could materially and adversely affect our business, financial condition, results of operations and growth prospects."

We also face numerous other risks that may impact Erwinaze sales, including regulatory risks, the development of new asparaginase treatments that could reduce the rate of hypersensitivity in patients with ALL, the development of new treatment protocols for ALL that may not include asparaginase-containing regimens, difficulties with obtaining and maintaining favorable pricing and reimbursement arrangements and potential competition from future biosimilar products. In addition, if we fail to comply with our obligations under our agreement with PHE or lose exclusive rights to Erwinaze, or otherwise fail to maintain or grow sales of Erwinaze, our growth prospects could be negatively affected.

We made a significant investment in Defitelio/defibrotide in 2014, adding the product to our portfolio as a result of the Gentium Acquisition and then securing worldwide rights to the product by acquiring rights to defibrotide in the Americas in August 2014. Our ability to realize the anticipated benefits from this investment is subject to a number of risks and uncertainties, including our ability to successfully maintain or grow sales of Defitelio in Europe, or obtain marketing approval of defibrotide in other countries, including the United States, so that we can commercialize the product in those countries. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "We may not be able to successfully maintain or grow sales of Defitelio in Europe, or obtain marketing approval of defibrotide in other countries, including the United States, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects."

We also face other challenges that could impact the anticipated value of Defitelio/defibrotide, including the limited size of the population of patients who undergo HSCT therapy and develop severe VOD, the need to establish U.S. pricing and reimbursement support for the product in the event we are able to obtain U.S. marketing approval for defibrotide, the possibility that we may be required to conduct time-consuming and costly clinical trials as a condition of any U.S. marketing approval for the product, the lack of experience of U.S. physicians in diagnosing and treating VOD, and challenges to our ability to develop the product for indications in addition to the treatment of severe VOD. If sales of Defitelio/defibrotide do not reach the levels we expect, our anticipated revenue from the product would be negatively affected, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Failure to maintain or increase prescriptions and revenue from sales of our products, including Erwinaze and Defitelio, could have a material adverse effect on our business, financial condition, results of operations and growth prospects. We may choose to increase the price of our products, and we cannot assure you that price adjustments will not negatively affect our sales volumes. In addition, sales of Erwinaze may fluctuate significantly from quarter to quarter, depending on the number of patients receiving treatment, the availability of supply to meet the demand for the product, the dosing requirements of treated patients and other factors. The market price of our ordinary shares may decline if the sales of our products do not continue or grow at the rates anticipated by financial analysts or investors. In addition, if we fail to obtain approvals for certain of our products in new indications or formulations, we will be unable to commercialize our products in new indications or formulations, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We may not be able to successfully maintain or grow sales of Defitelio in Europe, or obtain marketing approval of defibrotide in other countries, including the United States, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We expect to continue to launch Defitelio in additional European countries on a rolling basis in 2015 and are in the process of making pricing and reimbursement submissions with respect to Defitelio, and discussing them with regulatory authorities, in those European countries where Defitelio is not yet launched, including in countries where pricing and reimbursement approvals are required for launch. We cannot predict the timing of Defitelio's launch in countries where we are engaged in pricing and reimbursement submissions. If we experience delays and unforeseen difficulties in obtaining favorable pricing and reimbursement approvals, planned launches in the affected countries would be delayed, which could negatively impact anticipated revenue from Defitelio. Similarly, the process for

obtaining pricing and reimbursement approvals is complex and can vary from country-to-country. For example, France requires the evaluation of the medical benefits of a new product as well as the added clinical value of a new product in comparison with existing therapies, and we are evaluating the impact of this evaluation on our ability to obtain favorable pricing and reimbursement in France. If we are unable to ultimately obtain favorable pricing and reimbursement approvals in countries that represent significant markets, including France, especially where a country's reimbursed price influences other countries, our growth prospects in Europe could be negatively affected.

We have developed estimates of anticipated pricing, which are based on our research and understanding of the product and target market. However, due to efforts to provide for containment of health care costs, one or more countries may not support our estimated level of governmental pricing and reimbursement for Defitelio, particularly in light of the budget crises faced by a number of countries in Europe, which would negatively impact anticipated revenue from Defitelio. Furthermore,

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after initial price and reimbursement approvals, reductions in prices and changes in reimbursement levels can be triggered by multiple factors, including reference pricing systems and publication of discounts by third party payors or authorities in other countries. In the EU, prices can be reduced further by parallel distribution and parallel trade, or arbitrage between low-priced and high-priced countries. If any of these events occurs, our anticipated revenue from Defitelio would be negatively affected.

Due to the recent commercialization of Defitelio in Europe and the limited amount of historical sales data, our Defitelio sales will be difficult to predict from period to period, particularly since we may experience delays and unforeseen difficulties in obtaining favorable pricing and reimbursement approvals in additional countries. As a result, you should not rely on Defitelio sales results in any period as being indicative of future performance. In addition, if sales of Defitelio do not reach the levels we expect, our anticipated revenue from Defitelio would be negatively affected which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Defitelio was authorized under "exceptional circumstances" because it was not possible to obtain complete information about the product due to the rarity of the disease and because ethical considerations prevented conducting a study directly comparing Defitelio with best supportive care or a placebo. A marketing authorization granted under exceptional circumstances is subject to approval conditions and an annual reassessment of the risk-benefit balance by the EMA. As a result, if we fail to meet the approval condition for Defitelio, which requires that we set up a patient registry to investigate the long-term safety, health outcomes and patterns of utilization of Defitelio during normal use, or if it is determined that the balance of risks and benefits of using Defitelio changes materially, the EMA could vary, suspend or withdraw the marketing authorization for Defitelio. This could negatively impact our anticipated revenue from Defitelio and could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

At the time of the Gentium Acquisition, Gentium had licensed to Sigma-Tau the rights to defibrotide for the treatment and prevention of VOD in North America, Central America and South America. We acquired these rights from Sigma-Tau in August 2014. Defibrotide has been, and continues to be, made available as an investigational drug to patients diagnosed with VOD in the United States through an expanded access treatment protocol open under an IND. We are engaged in activities related to the potential approval of defibrotide in the United States. A prior NDA submission by Gentium seeking approval in the United States for defibrotide for the treatment of VOD was voluntarily withdrawn from consideration in 2011 in order to address issues raised by the FDA. We held pre-NDA meetings with the FDA relating to our plans for the submission of an NDA for defibrotide for the treatment of severe VOD. Based on these meetings and in light of the current status of our acquisition and remediation of key information to be included in the data package for the NDA, in December 2014, we initiated a rolling submission of an NDA to the FDA and expect to complete the submission in mid-2015. We do not expect to be required to complete any additional clinical trials prior to the completion of the NDA submission. However, we may be unable to acquire and remediate key information in the data package in a timely manner, which would delay or preclude the completion of our NDA submission. Furthermore, if we fail to acquire and remediate key information or if analysis of this data does not support an NDA submission, we may be required to complete additional clinical trials in order to obtain appropriate data for an NDA submission. Even if we are able to complete the NDA submission as planned, we may be required to conduct time-consuming and costly clinical trials as a condition of any U.S. marketing approval for the product. In any event, we may be unable to obtain regulatory approval of defibrotide in the United States in a timely manner, if at all.

We are also assessing the potential for approval of defibrotide in other countries and for development of defibrotide in indications in addition to the treatment of severe VOD. We cannot know when, if ever, defibrotide will be approved in any other country or under what circumstances, and what, if any, additional clinical or other development activities will be required in order to potentially obtain such regulatory approval and the cost associated with such required activities, if any. If we fail to obtain approval for defibrotide in other countries or for new indications, our anticipated revenue from defibrotide and our growth prospects would be negatively affected.

The Marketing Authorization Application, or MAA, Gentium initially filed with the EMA in 2011 sought approval for defibrotide for the treatment and prevention of VOD in adults and children. The approval Gentium received from the EC in October 2013 was for the narrower indication of treatment of severe VOD in adults and children undergoing HSCT therapy. The scope of any future approvals we receive may negatively affect defibrotide's growth prospects.
We cannot predict whether historical revenues from named patient programs for our hematology/oncology products will continue or whether we will be able to continue to distribute those products on a named patient basis.
In certain European countries, reimbursement for products that have not yet received marketing authorization may be provided through national named patient programs. Erwinase and defibrotide are available on a named patient basis in many countries where they are not commercially available. Such reimbursement may cease to be available if authorization for a named patient program expires or is terminated. While we generate revenue from the distribution of these products through named patient programs, we cannot predict whether historical revenues from these programs will continue, whether we will be able to continue to distribute our products on a named patient basis in these countries, whether we will be able to commercialize our products in countries where the products have historically been available on a named patient basis, or

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whether commercial revenues will exceed revenues historically generated from sales on a named patient basis. Any failure to maintain revenues from sales of Erwinase and/or defibrotide on a named patient basis and/or to generate revenues from commercial sales of these products exceeding historical sales on a named patient basis could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We depend on single source suppliers and manufacturers for each of our products, product candidates and their active pharmaceutical ingredients. The loss of any of these suppliers or manufacturers, or delays or problems in the supply or manufacture of our products for commercial sale or our product candidates for use in our clinical trials, could materially and adversely affect our business, financial condition, results of operations and growth prospects.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of process controls required to consistently produce the active pharmaceutical ingredient and the finished product in sufficient quantities while meeting detailed product specifications on a repeated basis. Manufacturers of pharmaceutical products often encounter difficulties in production, including difficulties with production costs and yields, process controls, quality control and quality assurance, including testing of stability, impurities and impurity levels and other product specifications by validated test methods, and compliance with strictly enforced U.S., state and non-U.S. regulations. If we or any of our third party suppliers or manufacturers encounter these or any other manufacturing, quality or compliance difficulties with respect to any of our products, particularly Xyrem and Erwinaze since we maintain limited inventories for these products, we may be unable to meet commercial demand for such products, which could adversely affect our business, financial condition, results of operations and growth prospects.

Other than the manufacturing plant in Italy where we produce some active pharmaceutical ingredients, including the defibrotide drug substance, we do not currently have our own manufacturing capability for our products or product candidates, or their active pharmaceutical ingredients, or the capability to package our products. The availability of our products for commercial sale depends upon our ability to procure the ingredients, raw materials, packaging materials and finished products we need from third parties. In part due to the limited market size for our products and product candidates, we have entered into supply and manufacturing agreements with suppliers and manufacturers, each of which is currently our single source for each of our marketed products and for the active pharmaceutical ingredients used in some of these products.

We maintain limited inventories of Xyrem and Erwinaze, as well as the ingredients or raw materials used to make them. Our limited inventory puts us at significant risk of not being able to meet product demand. The current manufacturing capacity for Erwinaze is nearly completely absorbed by demand for the product. As a consequence of constrained manufacturing capacity, we have had extremely limited ability to build an excess level of product inventory that could be used to absorb disruptions to supply resulting from quality or other issues. If we continue to be subject to capacity constraints or experience quality or other manufacturing challenges in the future, we may be unable to build a desired excess level of product inventory, and our ability to supply the market may be compromised.

Although we are taking steps to improve the Erwinaze manufacturing process, if our ongoing efforts are not successful, or we are subject to other challenges described elsewhere in this risk factor, we could experience additional Erwinaze supply interruptions in the future, which could have a material adverse effect on our sales of and revenues from Erwinaze and limit our potential maintenance and growth of the market for this product. If, for any reason, our suppliers and manufacturers, including any new suppliers, do not continue to supply us with our products or product candidates in a timely fashion and in compliance with applicable quality and regulatory requirements, or otherwise fail or refuse to comply with their obligations to us under our supply and manufacturing arrangements, we may not have adequate remedies for any breach, and their failure to supply us could result in a shortage of our products or product candidates, which could adversely affect our business, financial condition, results of operations and growth prospects.

In addition, if one of our suppliers or manufacturers fails or refuses to supply us for any reason, it would take a significant amount of time and expense to qualify a new supplier or manufacturer. The loss of one of our suppliers or manufacturers could require us to obtain regulatory clearance in the form of a “prior approval supplement” and to incur validation and other costs associated with the transfer of the active pharmaceutical ingredient or product

manufacturing process. We believe that it could take up to two years, or longer in certain cases, to qualify a new supplier or manufacturer, and we may not be able to obtain active pharmaceutical ingredients or finished products from new suppliers or manufacturers on acceptable terms and at reasonable prices, or at all. Should we lose either an active pharmaceutical ingredient supplier or a finished product manufacturer, we may not, as applicable, have sufficient salable product to meet market demands or a sufficient quantity of a product candidate for use in clinical trials while we wait for FDA or similar international regulatory body approval of a new supplier or manufacturer. Siegfried has been our sole supplier of sodium oxybate since 2012. We expect that Siegfried will continue to be our sole supplier of sodium oxybate for the foreseeable future, and we cannot assure you that Siegfried can or will continue to supply on a timely basis, or at all, sufficient quantities of active pharmaceutical ingredient to enable the manufacture of the quantities of Xyrem that we need.

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Erwinaze is licensed to us, and manufactured for us, by PHE, which is our sole supplier for Erwinaze. The FDA's approval of the BLA for Erwinaze includes a number of post-marketing commitments related to the manufacture of Erwinaze. Inability to comply with regulatory requirements, including compliance with manufacturing-related post-marketing commitments that are part of the BLA approval, as well as other requirements monitored by the FDA, could adversely affect Erwinaze supply and could result in FDA approval being revoked or product recalls, either of which could have a material adverse effect on our sales of and revenues from Erwinaze and limit our potential future maintenance and growth of the market for this product. In addition, if the FDA or any non-U.S. regulatory authority mandates any changes to the specifications for Erwinaze, we may face challenges having product produced to meet such specifications, and PHE may increase its price to supply Erwinaze meeting such specifications, which may result in additional costs to us and may decrease any profit we would otherwise achieve with Erwinaze.

Although there are long-term plans to expand production capacity of Erwinaze, we cannot assure you that our supplier will be able to continue to supply our ongoing commercial needs for the product in a timely manner, or at all, especially if our demand for product increases. If production difficulties occur as described elsewhere in this risk factor and result in a disruption to supply or capacity constraints, we do not have the right to engage a backup supplier for Erwinaze except in very limited circumstances, such as following the termination of the agreement by us due to the uncured material breach or the cessation of manufacturing by our supplier. If we are required to engage a backup or alternative supplier, the transfer of technical expertise and manufacturing process to the backup or alternative supplier would be difficult, costly and time-consuming, might not be successful and would increase the likelihood of a delay or interruption in manufacturing or a shortage of supply of Erwinaze. While we continue to work with our supplier to evaluate potential steps to increase the supply of Erwinaze over the longer term to address worldwide demand, our ability to maintain or increase sales of Erwinaze may be limited by our ability to obtain a sufficient supply of the product. Failure to obtain a sufficient supply of Erwinaze could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We are our sole supplier of, and we believe that we are currently the sole worldwide producer of, the defibrotide drug compound. We manufacture the defibrotide drug compound in a single facility located in Villa Guardia, near Como, Italy. This facility could be damaged by fire, flood, earthquake, power loss, telecommunication and information system failure, terrorism or similar events. Any of these events could cause a delay or interruption in manufacturing and potentially a supply shortage of defibrotide, which could negatively impact our anticipated revenues. Patheon UK currently processes the defibrotide compound into its finished vial form, and is the sole provider of our commercial supply of the finished product in the EU and of our future clinical supply. If Patheon UK does not or is not able to perform these services for any reason, it may take time and resources to implement and execute the necessary technology transfer to another processor, and such delay could negatively impact our product launch and anticipated revenues and potentially cause us to breach contractual obligations with customers or to violate local laws requiring us to deliver the product to those in need.

We are also in the process of evaluating an appropriate provider to process defibrotide into finished product for the U.S. market in preparation for the potential approval of the product by the FDA. Part of the process to obtain FDA approval for defibrotide is to obtain certification from the FDA that the facilities we and our third party provider operate are in compliance with cGMP. The FDA may deny approval to manufacture defibrotide if the FDA determines that either our facility or our third party processor's facility does not meet applicable manufacturing and quality requirements. Following initial approval, if any, the FDA will continue to inspect and evaluate these facilities for ongoing compliance with applicable requirements. In addition, defibrotide is derived from porcine DNA. Our supplier of porcine materials may also be evaluated and inspected by the FDA in connection with our application for approval of defibrotide in the United States. If our supplier experiences safety or other issues that impact its ability to supply porcine materials to us as needed, we may not be able to find alternative suppliers in a timely fashion, which could negatively impact our supply of defibrotide.

In order to commence any of our planned clinical programs for JZP-110 or JZP-386, we need to have sufficient quantities of clinical product manufactured. While we believe that we will be able to obtain sufficient supplies of JZP-110 or JZP-386 before the commencement of our planned clinical trials, there can be no assurance that our

suppliers will be able to produce sufficient clinical supplies of JZP-110 or JZP-386 in a timely manner. Any delay in receiving adequate supplies of JZP-110 or JZP-386 for our planned studies could negatively impact our development programs.

The DEA limits the quantity of certain Schedule I controlled substances that may be produced in the United States in any given calendar year through a quota system. Because the active pharmaceutical ingredient of Xyrem, sodium oxybate, is a Schedule I controlled substance, our supplier of sodium oxybate, as well as our finished product manufacturer, must each obtain separate DEA quotas in order to supply us with sodium oxybate and Xyrem. Since the DEA typically grants quotas on an annual basis, our sodium oxybate supplier and Xyrem manufacturer are required to request and justify allocation of sufficient annual DEA quotas as well as additional DEA quotas if our commercial or clinical requirements exceed the allocated quotas throughout the year. In the past, we have had to engage in lengthy efforts to obtain the needed quotas after the original annual quotas had first been allocated. For 2015, both our active pharmaceutical ingredient supplier and finished product manufacturer were allocated most, but not all, of their respective requested quotas. If, in the future, we and our supplier and

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manufacturer cannot obtain the quotas that are needed on a timely basis, or at all, our business, financial condition, results of operations and growth prospects could be materially and adversely affected.

In addition, the FDA and similar international regulatory bodies must approve manufacturers of the active and inactive pharmaceutical ingredients and certain packaging materials used in our products. If there are delays in qualifying new manufacturers or facilities or a new manufacturer is unable to obtain a sufficient quota from the DEA, if required, or to otherwise meet FDA or similar international regulatory body's requirements for approval, there could be a shortage of the affected products for the marketplace or for use in clinical studies, or both, particularly since we do not have secondary sources for supply and manufacture of the active pharmaceutical ingredients for our products or backup manufacturers for our finished products.

Failure by our third party manufacturers to comply with regulatory requirements could adversely affect their ability to supply products or ingredients to us. All facilities and manufacturing techniques used for the manufacture of pharmaceutical products must be operated in conformity with the FDA's current cGMP requirements. DEA regulations also govern facilities where controlled substances such as Xyrem's active pharmaceutical ingredient are manufactured. Manufacturing facilities of our suppliers have been and are subject to periodic unannounced inspection by the FDA, the DEA and other regulatory authorities, including state authorities and similar authorities in non-U.S. jurisdictions. For example, the FDA inspected the PHE facility where Erwinaze is manufactured in January 2015 and issued a Form FDA 483 with observations relating to the manufacturing process. We and our third party manufacturers must continually expend time, money and effort in production, record-keeping and quality assurance and control to ensure that our products and product candidates meet applicable specifications and other requirements for product safety, efficacy and quality. Failure to comply with applicable legal and regulatory requirements subjects our suppliers to possible legal or regulatory action, including shutdown, which may adversely affect a supplier's ability to supply us with the ingredients or finished products we need.

Our ability to develop and deliver products in a timely and competitive manner depends on our third party suppliers and manufacturers being able to continue to meet our ongoing commercial needs. Any delay in supplying, or failure to supply, products by any of our suppliers could result in our inability to meet the commercial demand for our products, or our needs for use in clinical trials, and could adversely affect our business, financial condition, results of operations and growth prospects.

We have substantially expanded our international footprint and operations, and we may expand further in the future, but we do not yet have substantial historical experience in international markets and may not achieve the results that we or our shareholders expect.

We are headquartered in Dublin, Ireland and have multiple offices in the United States, the United Kingdom, Italy and other countries in Europe. Our headcount has grown from approximately 260 employees at the end of 2011 to approximately 870 in February 2015. This includes employees in fourteen countries in North America and Europe, a European commercial presence, a complex distribution network for products in Europe and additional territories, a manufacturing facility in Italy and a manufacturing facility under construction in Ireland. In addition, we may expand our international operations into other countries in the future, either organically or by acquisition. While we have acquired significant management and other personnel with substantial international experience, conducting our business in multiple countries subjects us to a variety of risks and complexities that may materially and adversely affect our business, results of operations and financial condition, including, among other things:

- the increased complexity and costs inherent in managing international operations;
- diverse regulatory, financial and legal requirements, and any future changes to such requirements, in one or more countries where we are located or do business;
- country-specific tax, labor and employment laws and regulations;
- applicable trade laws, tariffs, export quotas, custom duties or other trade restrictions and any changes to them;
- challenges inherent in efficiently managing employees in diverse geographies, including the need to adapt systems, policies, benefits and compliance programs to differing labor and other regulations, as well as maintaining positive interactions with unionized employees in one of our international locations;
- liabilities for activities of, or related to, our international operations, products or product candidates;

- changes in currency rates; and
- regulations relating to data security and the unauthorized use of, or access to, commercial and personal information.

Failure to effectively manage these risks could have a material adverse effect on our business.

As a result of our rapid growth, our business and corporate structure has become substantially more complex. There can be no assurance that we will effectively manage the increased complexity without experiencing operating inefficiencies or control deficiencies. Significant management time and effort is required to effectively manage the increased complexity of our

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company, and our failure to successfully do so could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

In recent years, the global economy has been impacted by the effects of an ongoing global financial crisis, including the European sovereign debt crisis, which has caused extreme disruption in the financial markets, including severely diminished liquidity and credit availability. In addition, we expect to continue to grow our product sales in Europe. Continuing worldwide economic instability, including challenges faced by the Eurozone and certain of the countries in Europe and the ongoing budgetary difficulties faced by a number of EU member states, including Greece and Spain, has led and may continue to lead to substantial delays in payment and payment partially with government bonds rather than cash for medicinal drug products, which could negatively impact our revenues and profitability.

The commercial success of our products depends upon their market acceptance by physicians, patients, third party payors and the medical community.

Physicians may not prescribe our products, in which case we would not generate the revenues we anticipate from product sales. Market acceptance of any of our products by physicians, patients, third party payors and the medical community depends on:

- the clinical indications for which a product is approved, including any restrictions placed upon the product in connection with its approval, such as a REMS, patient registry or labeling restrictions;
- the prevalence of the disease or condition for which the product is approved and the severity of side effects;
- acceptance by physicians and patients of each product as a safe and effective treatment;
- perceived advantages over alternative treatments;
- relative convenience and ease of administration;
- the cost of treatment in relation to alternative treatments, including generic products;
- the extent to which the product is approved for inclusion on formularies of hospitals and managed care organizations; and
- the conditions for reimbursement required by, and the availability of reimbursement from, third party payors.

Because of our dependence upon market acceptance of our products, any adverse publicity associated with harm to patients or other adverse events resulting from the use or misuse of our products or any similar products distributed by other companies, including generic versions of our products, could materially and adversely affect our business, financial condition, results of operations and growth prospects. For example, from time to time, there is negative publicity about illicit GHB and its effects, including with respect to illegal use, overdoses, serious injury and death. Because sodium oxybate, the active pharmaceutical ingredient in Xyrem, is a derivative of GHB, Xyrem sometimes also receives negative mention in publicity relating to GHB. Patients, physicians and regulators may therefore view Xyrem as the same as or similar to illicit GHB. In addition, there are regulators and some law enforcement agencies that oppose the prescription and use of Xyrem generally because of its connection to GHB. Xyrem's label includes information about adverse events from GHB. Similarly, negative publicity resulting from our receipt of a Form FDA 483 in April 2014 or other related regulatory actions could adversely affect sales of our products.

In addition, we have periodically increased the price of Xyrem and may do so again in the future. We also have made and may in the future make similar price increases on our other products. Price increases of our products and publicity regarding price increases of any products distributed by other pharmaceutical companies could negatively affect market acceptance of our products.

For additional discussion about payor acceptance, see the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "Price approvals and reimbursement may not be available for our products, which could diminish our sales or affect our ability to sell our products profitably."

We may not be able to successfully identify and acquire, in-license or develop additional products or product candidates to grow our business, and, even if we are able to do so, we may not be able to successfully manage the risks associated with integrating any products or product candidates we may acquire in the future into our product portfolio or we may otherwise fail to realize the anticipated benefits of these acquisitions.

We intend to grow our business over the long term by acquiring or in-licensing and developing additional products and product candidates that we believe have significant commercial potential. Future growth through acquisition or

in-licensing will depend upon the availability of suitable products and product candidates for acquisition or in-licensing on acceptable prices, terms and conditions. Any growth through development will depend upon our identifying and obtaining product candidates, our ability to develop those product candidates and the availability of funding to complete the development of,

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obtain regulatory approval for and commercialize these product candidates. Even if appropriate opportunities are available, we may not be able to successfully identify them, or we may not have the financial resources necessary to pursue them. Other companies, many of which may have substantially greater financial, marketing and sales resources, compete with us for these opportunities. In order to compete successfully to acquire attractive products or product candidates in the current business climate, we may have to pay higher prices for assets than may have been paid historically, which may make it more difficult for us to realize an adequate return on any acquisition.

We cannot assure you that we will be able to successfully manage these risks or other anticipated and unanticipated problems in connection with an acquisition or in-licensing. We may not be able to realize the anticipated benefits of any acquisition or in-licensing for a variety of reasons, including the possibility that a product candidate proves not to be safe or effective in later clinical trials, a product fails to reach its forecasted commercial potential or the integration of a product or product candidate gives rise to unforeseen difficulties and expenditures. Any failure in identifying and managing these risks and uncertainties effectively would have a material adverse effect on our business.

In addition, product and product candidate acquisitions create other uncertainties and risks, particularly when the acquisition takes the form of a merger or other business consolidation. Our business acquisitions have required, and any similar future transactions will also require, significant efforts and expenditures, including with respect to integrating the acquired business with our historical business. We may encounter unexpected difficulties, or incur unexpected costs, in connection with transition activities and integration efforts, which include:

- high acquisition costs;
- the need to incur substantial debt or engage in dilutive issuances of equity securities to pay for acquisitions;
- the potential disruption of our historical core business;
- the strain on, and need to continue to expand, our existing operational, technical, financial and administrative infrastructure;
- the difficulties in assimilating employees and corporate cultures;
- the failure to retain key managers and other personnel;
- the challenges in controlling additional costs and expenses in connection with and as a result of the acquisition;
- the need to write down assets or recognize impairment charges;
- the diversion of our management's attention to integration of operations and corporate and administrative infrastructures; and
- any unanticipated liabilities for activities of or related to the acquired business or its operations, products or product candidates.

If any of these or other factors impair our ability to integrate any acquired business efficiently and successfully, we may be required to spend time or money on integration activities that otherwise would be spent on the development and expansion of our business. If we fail to integrate or otherwise manage an acquired business successfully and in a timely manner, resulting operating inefficiencies could increase costs and expenses more than we planned, could negatively impact the market price of our ordinary shares and could otherwise distract us from execution of our strategy. Failure to maintain effective financial controls and reporting systems and procedures could also impact our ability to produce timely and accurate financial statements.

Conducting clinical trials is costly and time-consuming, and the outcomes are uncertain. A failure to prove that our product candidates are safe and effective in clinical trials, or to generate data in clinical trials to support expansion of the therapeutic uses for our existing products, could materially and adversely affect our business, financial condition, results of operations and growth prospects.

Since 2014, we have made significant investments into expanding our product development pipeline and expect to continue to increase our research and development organization to pursue targeted development activities. Significant clinical, development and financial resources will be required to progress product candidates through clinical trials and the regulatory approval process to develop them into commercially viable products. We have a number of product candidates under development, including JZP-110 and JZP-386 in the sleep area and JZP-416 and Leukotac in the hematology/oncology area. We also intend to pursue clinical development of other product candidates that we may acquire or in-license in the future. Any failure or delay in completing clinical trials for our product candidates would

prevent or delay the commercialization of our product candidates, which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

As a condition to regulatory approval, each drug product candidate must undergo extensive and expensive preclinical studies and clinical trials to demonstrate to a statistically significant degree that the product candidate is safe and effective. The

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results at any stage of the development process may lack the desired safety, efficacy or pharmacokinetic characteristics. Results of limited preclinical studies, including studies of our product candidates in animal models, may not predict the results of human clinical trials of those product candidates. Similarly, results from early clinical trials may not be predictive of results obtained in later and larger clinical trials, and product candidates in later clinical trials may fail to show the desired safety and efficacy despite having progressed successfully through initial clinical testing. In that case, the FDA or any equivalent non-U.S. regulatory agency may determine our data is not sufficiently compelling to warrant marketing approval and may require us to engage in additional clinical trials or provide further analysis which may be costly and time-consuming. A number of companies in the pharmaceutical industry, including us, have suffered significant setbacks in clinical trials, even in advanced clinical trials after showing positive results in preclinical studies or earlier clinical trials. If a product candidate fails at any stage of development, it will not receive regulatory approval, we will not be able to commercialize it, and we will not receive any return on our investment from that product candidate.

Our development pipeline projects may not be successful, and any adverse events or other information generated during the course of our studies related to existing products could result in action by the FDA or any non-U.S. regulatory agency, which may restrict our ability to sell, or sales of, currently marketed products, or such events or other information could otherwise have a material adverse effect on a related commercial product. Any failure or delay in completing clinical trials for line extensions or the generation of additional clinical data could materially and adversely affect the maintenance and growth of the markets for the related marketed products, which could adversely affect our business, financial condition, results of operations and overall growth prospects.

In addition to issues relating to the results generated in clinical trials, clinical trials can be delayed or halted for a variety of reasons, including:

- delays or failures in obtaining regulatory authorization to commence a trial because of safety concerns of regulators relating to our product candidates or similar product candidates of our competitors or failure to follow regulatory guidelines;
- delays or failures in obtaining clinical materials and manufacturing sufficient quantities of the product candidate for use in trials;
- delays or failures in reaching agreement on acceptable terms with prospective study sites;
- delays or failures in obtaining approval of our clinical trial protocol from an institutional review board, also known as Ethics Committees in Europe, to conduct a clinical trial at a prospective study site;
- delays or failures in recruiting patients to participate in a clinical trial;
- failure of our clinical trials and clinical investigators to be in compliance with the FDA and other regulatory agencies' good clinical practice guidelines;
- unforeseen safety issues, including negative results from ongoing preclinical studies and clinical trials and adverse events associated with product candidates;
- inability to monitor patients adequately during or after treatment;
- difficulty monitoring multiple study sites;
- failure of our third party clinical trial managers to satisfactorily perform their contractual duties, comply with regulations or meet expected deadlines; or
- insufficient funds to complete the trials.

For example, we initiated our first study of JZP-416 in children in a pivotal Phase 2 trial in North America in late 2014. In February 2015, we voluntarily suspended patient enrollment in this trial. Our decision to suspend enrollment and to discontinue treatment with JZP-416 for enrolled patients is based on the occurrence of hypersensitivity-like reactions following the administration of JZP-416 in some treated patients. We are in the process of collecting and evaluating the available data and plan to conduct additional research and analysis prior to determining whether to resume the study and determining next steps regarding the development of JZP-416. We cannot predict whether we will continue development of JZP-416 or resume enrollment in the pivotal Phase 2 clinical trial in a timely fashion, if at all. Under our license agreement with Alizé, under which we obtained rights to develop and commercialize

JZP-416, we are subject to contractual obligations to meet certain development milestones within the applicable timeframes provided under the license agreement. Our ability to meet some of these milestones is uncertain, and depends upon a number of factors, including our ability to obtain clinical material, to recruit study centers with appropriate expertise and patient populations and to develop a clinical program meeting the development requirements of both the FDA and European regulatory authorities in a timely fashion. If our development activities are delayed for reasons that are not excused under our license agreement, we may have to pay Alizé for extensions to meet our licensing obligations or we may lose our rights to develop and commercialize JZP-416.

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The FDA has granted Fast Track designation to the investigation of JZP-416 for ALL. Defibrotide has also been granted Fast Track designation by the FDA to treat severe VOD. The Fast Track program is designed to enable more frequent interactions with the FDA during drug development and to expedite new drug candidate review. Although we have obtained Fast Track designation from the FDA for JZP-416 and defibrotide, receipt of Fast Track designation may not result in a faster development process, review or approval compared to drugs considered for approval under conventional FDA procedures, and Fast Track designation may be withdrawn by the FDA at any time. In addition, Fast Track designation does not guarantee that we will be able to take advantage of the expedited review procedures and does not increase the likelihood that either JZP-416 or defibrotide will receive any regulatory approvals.

The clinical trial we initiated in the second quarter of 2014 to further evaluate the use of Erwinaze in young adults age 18 to 39 with ALL who are hypersensitive to E. coli-derived asparaginase has not yet enrolled a patient, which has delayed our ability to generate additional clinical data necessary to support the expansion of Erwinaze's therapeutic uses and could materially and adversely affect the maintenance and growth of the market for Erwinaze.

We rely on third parties to conduct our clinical trials, and if they do not properly and successfully perform their legal and regulatory obligations, as well as their contractual obligations to us, we may not be able to obtain regulatory approvals for our product candidates.

We rely on contract research organizations and other third parties to assist us in designing, managing, monitoring and otherwise carrying out our clinical trials, including with respect to site selection, contract negotiation and data management. We do not control these third parties and, as a result, they may not treat our clinical studies as a high priority, or in the manner in which we would prefer, which could result in delays. We are responsible for confirming that each of our clinical trials is conducted in accordance with its general investigational plan and protocol, as well as the FDA's and non-U.S. regulatory agencies' requirements, commonly referred to as good clinical practices, for conducting, recording and reporting the results of clinical trials to ensure that the data and results are credible and accurate and that the trial participants are adequately protected. The FDA and non-U.S. regulatory agencies enforce good clinical practices through periodic inspections of trial sponsors, principal investigators and trial sites. If we, contract research organizations or other third parties assisting us or our study sites fail to comply with applicable good clinical practices, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or its non-U.S. counterparts may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection, the FDA or non-U.S. regulatory agencies will determine that any of our clinical trials comply with good clinical practices. In addition, our clinical trials must be conducted with product produced under the FDA's cGMP regulations and similar regulations outside of the United States. Our failure, or the failure of our product manufacturers, to comply with these regulations may require us to repeat or redesign clinical trials, which would delay the regulatory approval process.

If third parties do not successfully carry out their duties under their agreements with us, if the quality or accuracy of the data they obtain is compromised due to failure to adhere to our clinical protocols, including dosing requirements, or regulatory requirements, or if they otherwise fail to comply with clinical trial protocols or meet expected deadlines, our clinical trials may not meet regulatory requirements. If our clinical trials do not meet regulatory requirements or if these third parties need to be replaced, our clinical trials may be extended, delayed, suspended or terminated. If any of these events occur, we may not be able to obtain regulatory approval of our product candidates or succeed in our efforts to create approved line extensions for certain of our existing products or generate additional useful clinical data in support of these products.

We face substantial competition from other companies, including companies with greater resources, including larger sales organizations and more experience working with large and diverse product portfolios, than we have.

The commercial potential of our current products and any future products may be reduced or eliminated if our competitors develop or acquire and commercialize generic or branded products that are safer or more effective, have fewer side effects, are easier to administer or are less expensive than our products. Many of our competitors, particularly large pharmaceutical and life sciences companies, have substantially greater financial, operational and human resources than we do. They can spend more on, and have more expertise in, research and development, regulatory, manufacturing, distribution and sales activities. As a result, our competitors may obtain FDA or other

regulatory approvals for their product candidates more rapidly than we may and may market their products more effectively than we do. Smaller or earlier stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies.

In addition, many of our competitors are able to deploy more personnel to market and sell their products than we do. We currently have a relatively small number of sales representatives compared with the number of sales representatives of most other pharmaceutical companies with marketed products. Each of our sales representatives is responsible for a territory of significant size. The continued growth of our current products and the launch of any future products may require expansion of our sales force and sales support organization internationally, and we may need to commit significant additional funds, management and other resources to the growth of our sales organization. We may not be able to achieve any necessary growth in a timely or cost-effective manner or realize a positive return on our investment, and we may not have the financial resources

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to achieve the necessary growth in a timely manner or at all. We also have to compete with other pharmaceutical and life sciences companies to recruit, hire, train and retain sales and marketing personnel, and turnover in our sales force and marketing personnel could negatively affect sales of our products. If our specialty sales force and sales organization are not appropriately sized to adequately promote any current or potential future products, the commercial potential of our current products and any future products may be diminished.

We compete with a significant number of pharmaceutical and life sciences companies with extensive sales, marketing and promotional experience in hematology/oncology markets, and our failure to compete effectively in this area could negatively affect our sales of Erwinaze, Defitelio and other products.

We also face competition, and may in the future face additional competition, from manufacturers of generic drugs. Generic competition often results in decreases in the prices at which branded products can be sold, particularly when there is more than one generic available in the marketplace. In addition, legislation enacted in the United States allows for, and in a few instances in the absence of specific instructions from the prescribing physician mandates, the dispensing of generic products rather than branded products where a generic version is available. Other companies could also develop products that are similar, but not identical, to our marketed products, such as an alternative formulation of our product or an alternative formulation combined with a different delivery technology, and seek approval in the United States by referencing our products and relying, to some degree, on the FDA's finding that our products are safe and effective. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "If generic versions of Xyrem or other sodium oxybate products that compete with Xyrem are approved and launched, sales of Xyrem would be adversely affected."

Our products and product candidates may also compete in the future with new products currently under development by others. Any products that we develop are likely to be in a highly competitive market, and many of our competitors may succeed in developing products that may render our products obsolete or noncompetitive.

If we fail to attract, retain and motivate key personnel or to retain the members of our executive management team, our operations and our future growth may be adversely affected.

Our success and our ability to grow depend in part on our continued ability to attract, retain and motivate highly qualified personnel and on our ability to develop and maintain important relationships with leading academic institutions, clinicians and scientists. We are highly dependent upon our executive management team and other critical personnel, all of whom work on many complex matters that are essential to our success. We do not carry "key person" insurance. The loss of services of one or more members of our executive management team or other key personnel could delay or prevent the successful completion of some of our vital activities. Any employee may terminate his or her employment at any time without notice or with only short notice and without cause or good reason. The resulting loss of institutional knowledge may negatively impact our operations and future growth.

In addition, to grow our company we will need additional personnel. Competition for qualified personnel in the pharmaceutical industry is very intense. If we are unable to attract, retain and motivate quality individuals, including in our research and development operations, which are continuing to expand, our business, financial condition, results of operations and growth prospects could be adversely affected.

We also depend on the unique abilities, industry experience and institutional knowledge of the members of our board of directors to efficiently set company strategy and effectively guide our executive management team. We cannot be certain that future board turnover will not negatively affect our business.

Significant disruptions of information technology systems or breaches of data security could adversely affect our business.

We are increasingly dependent on information technology systems and infrastructure, including mobile technologies, to operate our business. In the ordinary course of our business, we collect, store and transmit large amounts of confidential information, including intellectual property, proprietary business information and personally identifiable information. It is critical that we do so in a secure manner to maintain the confidentiality and integrity of such confidential information. We have also outsourced elements of our information technology infrastructure, and as a result we manage a number of third party vendors who may or could have access to our confidential information. The size and complexity of our information technology systems, and those of third party vendors with whom we contract,

and the volume of data we retain, make such systems potentially vulnerable to breakdown, malicious intrusion, security breaches and other cyber-attacks. From time to time, our systems have been subject to cyber-attacks. A security breach or privacy violation that leads to disclosure or modification of or prevents access to patient information, including personally identifiable information or protected health information, could harm our reputation, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data, resulting in increased costs or loss of revenue. If we are unable to prevent such security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated

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information, including sensitive patient data. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent such events. Significant disruptions of our information technology systems or breaches of data security could adversely affect our business.

Risks Related to Our Intellectual Property

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection.

Our commercial success depends in part on obtaining and maintaining patent protection of our products and product candidates and their use and the methods used to manufacture and distribute them, as well as successfully defending these patents against third party challenges, and successfully protecting our trade secrets. Our ability to protect our products and product candidates from unauthorized making, using, selling, offering to sell or importation by third parties depends on the extent to which we have rights under valid and enforceable patents or have trade secrets that cover these activities.

The patent position of pharmaceutical companies can be highly uncertain and involve complex legal, regulatory and factual questions. We own a portfolio of United States and non-U.S. patents and patent applications and have licensed rights to a number of issued patents and patent applications that cover or relate to our products and product candidates, including Xyrem and Defitelio. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Even if we are able to obtain patents covering our products and product candidates, any patent may be challenged, invalidated, held unenforceable or circumvented, potentially including by FDA approval of an ANDA that avoids infringement of our intellectual property.

On September 16, 2011, the Leahy-Smith America Invents Act, or the America Invents Act, was signed into law. The final substantive provisions of the America Invents Act, including the first to file system, became effective on March 16, 2013. The America Invents Act includes a number of significant changes to U.S. patent law. These changes include provisions that affect the way patent applications are being filed, prosecuted and litigated. For example, the America Invents Act enacted proceedings involving post-issuance patent review procedures, such as IPR, CBM reviews and other post grant reviews. These proceedings are conducted before the PTAB. Each proceeding has different eligibility criteria and different patentability challenges that can be raised. The IPR process permits any person (except a party who has been litigating the patent for more than a year) to challenge the validity of the patent on the grounds that it was anticipated or made obvious by prior art. The America Invents Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Although Xyrem is covered by patents covering its formulation, distribution system and method of use, third parties are seeking to introduce generic versions of Xyrem, and additional third parties may also attempt to invalidate or design around the patents, or assert that they are invalid or otherwise unenforceable, and seek to introduce generic versions of Xyrem or other sodium oxybate products for treatment of cataplexy and/or EDS in narcolepsy. If one or more companies receive FDA approval of an ANDA for generic versions of Xyrem or an NDA for other sodium oxybate products, it is possible that such company or companies could introduce generic versions of Xyrem or other sodium oxybate products before our patents expire, if it is determined that our patents are invalid, unenforceable or non-infringed, or if such company or companies decide, before applicable ongoing patent litigation is concluded, to launch competition to Xyrem at risk of potentially being held liable for damages for patent infringement.

Five companies have sent us notices of Paragraph IV Certification that each has filed an ANDA with the FDA seeking approval to market a generic version of Xyrem before the expiration of the Orange Book-listed patents relating to Xyrem. We have sued all five ANDA filers seeking to prevent them from introducing a generic version of Xyrem that would infringe our patents, but we cannot assure you that any of the lawsuits will prevent the introduction of a generic

version of Xyrem for any particular length of time, or at all. Additional ANDAs could also be filed requesting approval to market generic versions of Xyrem. If any of these applications is approved, and a generic version of Xyrem is introduced, our sales of Xyrem would be adversely affected. Although no trial date has been set in any of the ANDA suits, we anticipate that trial on some of the patents in the Roxane case could occur as early as the third quarter of 2015. However, the actual timing of events may be significantly earlier or later than we currently anticipate, and we cannot predict the timing or outcome of events in this or the other ANDA litigation.

In addition, certain of the ANDA filers have also sought to challenge the validity of our patents covering the distribution system for Xyrem in the PTAB. Between June and October 2014, petitions seeking CBM post-grant patent review by the PTAB were filed by certain of the ANDA filers with respect to the validity of six of our patents covering the distribution system for Xyrem. In early 2015, the PTAB issued decisions denying institution of CBM review for all of these petitions. In January 2015, petitions for IPR were filed by certain of the ANDA filers with respect to the validity of six of our patents covering the

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distribution system for Xyrem. The PTAB has not yet determined whether to institute proceedings with respect to the petitions for IPR. We cannot predict whether PTAB will institute any of the petitioned IPR proceedings, whether additional post-grant patent review challenges will be filed, the outcome of any IPR or other proceeding if instituted, or the impact any IPR or other proceeding might have on ongoing ANDA litigation proceedings.

In April 2014, we became aware of the completion of a "first in man" clinical trial by a company using its proprietary technology for delivery of a sodium oxybate formulation to eliminate second nighttime dosing for narcolepsy patients. This company has stated its intent to submit an NDA referencing Xyrem to the FDA by the end of 2016. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "If generic versions of Xyrem or other sodium oxybate products that compete with Xyrem are approved and launched, sales of Xyrem would be adversely affected."

The existence of a patent will not necessarily prevent other companies from developing similar or therapeutically equivalent products or protect us from claims of third parties that our products infringe their issued patents, which may require licensing and the payment of significant fees or royalties. Competitors may successfully challenge our patents, produce similar products that do not infringe our patents, or manufacture products in countries where we have not applied for patent protection or that do not respect our patents. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents, our licensed patents or in third party patents.

The degree of future protection to be afforded by our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- others may be able to make products that are similar to our product candidates but that are not covered by the claims of our patents, or for which we are not licensed under our license agreements;
- we or our licensors or partners might not have been the first to invent or file, as appropriate, subject matters covered by our issued patents or pending patent applications or the pending patent applications or issued patents of our licensors or partners;
- others may independently develop similar or alternative products without infringing our intellectual property rights;
- our pending patent applications may not result in issued patents;
- our issued patents and the issued patents of our licensors or partners may not provide us with any competitive advantages, or may be held invalid or unenforceable as a result of legal challenges by third parties;
- our issued patents may not cover our competitors' products;
- our issued patents and the issued patents of our licensors or partners may be vulnerable to legal challenges as a result of changes in applicable law;
- we may not develop additional proprietary products that are patentable; or
- the patents of others may have an adverse effect on our business.

We also may rely on trade secrets and other unpatented proprietary information to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets and other unpatented proprietary information, our employees, consultants, advisors and partners may unintentionally or willfully disclose our proprietary information to competitors, and we may not have adequate remedies for such disclosures.

If our employees, consultants, advisors and partners develop inventions or processes independently, or jointly with us, that may be applicable to our products under development, disputes may arise about ownership or proprietary rights to those inventions and processes. Enforcing a claim that a third party illegally obtained and is using any of our inventions or trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside of the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

Certain of the products we sell have no patent protection and, as a result, potential competitors face fewer barriers in introducing competing products. We rely on trade secrets and other unpatented proprietary information to protect our commercial position with respect to such products, which we may be unable to do. In some instances, we also rely on regulatory exclusivity. For example, Erwinaze has no patent protection. In addition to protection using trade secrets, Erwinaze has orphan drug exclusivity in the United States for a seven-year period from its FDA approval, which

precludes approval of another product with the same principal molecular structure for the same indication until November 2018. Erwinaze, as a biologic product approved under a BLA, is also subject to the BPCIA. Under the BPCIA, Erwinaze is expected to receive exclusivity that prevents approval of a biosimilar in the United States through late 2023. Because the BPCIA is a relatively new law, we anticipate that its impact on both reference product sponsors and biosimilar applicants will evolve over a period of

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years. Its implementation likely will be shaped by a variety of factors, including FDA issuance of guidance documents, proposed regulations, and decisions in the course of considering specific applications. As a result, it is possible that a potential competing drug product might obtain FDA approval before the orphan drug and expected BCPIA exclusivity periods have expired, which would adversely affect sales of Erwinaze. In the EU, the regulatory data protection and thus regulatory exclusivity period for Erwinase has lapsed. This also means that any new marketing authorizations for Erwinase in other EU member states will not receive any regulatory data protection. If a biosimilar product to Erwinaze is approved in the United States as interchangeable to Erwinaze or in other countries where Erwinaze is sold, a significant percentage of the prescriptions that would have been written for Erwinaze may be filled with the biosimilar version, resulting in a loss in sales of Erwinaze, and there may be a decrease in the price at which Erwinaze can be sold. Competition from a biosimilar product to Erwinaze could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Similarly, although there are patent applications for JZP-416 pending in the United States and the product is covered by some patents outside of the United States, it is not yet covered by any U.S. patents. JZP-416 was granted orphan drug designation for the treatment of ALL by the EMA and by the FDA subject to certain conditions. JZP-416 is still in the early stage of clinical development and in February 2015, we voluntarily suspended enrollment in our first study of JZP-416 in children in a pivotal Phase 2 trial in North America. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled “Conducting clinical trials is costly and time-consuming, and the outcomes are uncertain. A failure to prove that our product candidates are safe and effective in clinical trials, or to generate data in clinical trials to support expansion of the therapeutic uses for our existing products, could materially and adversely affect our business, financial condition, results of operations and growth prospects.” There is no guarantee that we will continue development of JZP-416 or resume enrollment in the pivotal Phase 2 clinical trial or that JZP-416 will succeed in clinical trials, that we will be able to file marketing applications for it, that it will receive marketing approval, or that JZP-416 will meet the conditions for orphan drug exclusivity. If we continue development, but fail to obtain orphan drug exclusivity and/or exclusivity under the BCPIA, and if we also fail to successfully execute on other strategies to protect our intellectual property with respect to JZP-416, including protection by one or more issued patents, JZP-416 would be subject to competition, which could have a material adverse effect on our ability to recognize any return on our investment in the development of this product as well as on our future growth prospects.

Our research and development collaborators may have rights to publish data and other information to which we have rights. In addition, we sometimes engage individuals or entities to conduct research that may be relevant to our business. While the ability of these individuals or entities to publish or otherwise publicly disclose data and other information generated during the course of their research is subject to contractual limitations, these contractual provisions may be insufficient or inadequate to protect our trade secrets and may impair our patent rights. If we do not apply for patent protection prior to such publication, or if we cannot otherwise maintain the confidentiality of our innovations and other confidential information, then our ability to obtain patent protection or protect our proprietary information may be jeopardized. Moreover, a dispute may arise with our research and development collaborators over the ownership of rights to jointly developed intellectual property. Such disputes, if not successfully resolved, could lead to a loss of rights and possibly prevent us from pursuing certain new products or product candidates.

We have incurred and expect to continue to incur substantial costs as a result of litigation or other proceedings relating to patents, other intellectual property rights and related matters, and we may be unable to protect our rights to, or commercialize, our products.

Our ability, and that of our partners, to commercialize any approved products will depend, in part, on our ability to obtain patents, enforce those patents and operate without infringing the proprietary rights of third parties. The patent positions of pharmaceutical companies can be highly uncertain and involve complex legal and factual questions. We have filed multiple U.S. patent applications and non-U.S. counterparts, and may file additional U.S. and non-U.S. patent applications. There can be no assurance that any issued patents we own or control will provide sufficient protection to conduct our business as presently conducted or as proposed to be conducted. Moreover, for a variety of reasons, including the existence of relevant prior research performed and the existence of conflicting patent applications submitted in the same manner or similar fields, there can be no assurance that any patents will issue from

the patent applications owned by us, or that we will remain free from infringement claims by third parties.
If we choose to go to court to stop a third party from infringing our patents, our licensed patents or our partners' patents, that third party has the right to ask the court to rule that these patents are invalid and/or should not be enforced. Under the America Invents Act, a third party may also have the option to challenge the validity of certain patents with the PTAB, whether they are accused of infringing our patents or not, and certain hedge funds have announced their intention of challenging valuable pharmaceutical patents through the IPR process. These lawsuits and administrative proceedings are expensive and consume time and other resources, and we may not be successful in these proceedings or in stopping infringement. In addition, there is a risk that a court will decide that these patents are not valid or infringed, or that the PTAB will decide that certain patents are not valid, and that we do not have the right to stop a third party from using the patented subject matter.

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For example, five companies have notified us that they have filed ANDAs with the FDA seeking FDA approval to market a generic version of Xyrem. We initiated lawsuits against each of these companies, and the litigation proceedings are ongoing. In addition, certain of the ANDA filers have sought to challenge the validity of our patents covering the distribution system for Xyrem by filing CBM post-grant patent review and/or IPR by the PTAB. The PTAB has issued decisions denying institution of CBM review for all of the CBM petitions and has not yet determined whether to institute proceedings with respect to the petitions for IPR. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection." We cannot assure you that our pending lawsuits, other lawsuits or proceedings we may file in the future, or our defense against any lawsuits or other proceeding that have been or will be brought against us will be successful in stopping the infringement of our patents, that any such litigation or other proceedings will be cost-effective, or that any of them will have a satisfactory result for us.

A third party may claim that we or our manufacturing or commercialization partners are using inventions covered by the third party's patent rights, or that we or such partners are infringing, misappropriating or otherwise violating other intellectual property rights, and may go to court to stop us from engaging in our normal operations and activities, including making or selling our products. Such lawsuits are costly and could affect our results of operations and divert the attention of management and development personnel. There is a risk that a court could decide that we or our partners are infringing, misappropriating or otherwise violating third party patent or other intellectual property rights, which could be very costly to us and have a material adverse effect on our business.

In the pharmaceutical and life sciences industry, like other industries, it is not always clear to industry participants, including us, which patents cover various types of products or methods. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid or unenforceable, which we may not be able to do.

Because some patent applications in the United States may be maintained in secrecy until the patents are issued, because patent applications in the United States and many non-U.S. jurisdictions are typically not published until 18 months after their priority date, and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for inventions covered by our or our licensors' issued patents or pending applications, or that we or our licensors were the first inventors. Our competitors may have filed, and may in the future file, patent applications covering subject matter similar to ours. Any such patent application may have priority over our or our licensors' patents or applications and could further require us to obtain rights to issued patents covering such subject matter. If another party has filed a U.S. patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the USPTO to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful, resulting in a loss of our U.S. patent position with respect to such inventions. Patent interferences are limited or unavailable for patent applications filed after March 16, 2013.

Some of our competitors may be able to sustain the costs of complex patent and other intellectual property litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

We own patents that cover, among other things, the formulation and method of use covering the administration for Xyrem. In July 2014, the USPTO issued us a new method of use patent relating to the safe and effective use of Xyrem by decreasing the dose of Xyrem when used concomitantly with divalproex sodium, which information was added to the Xyrem label in April 2014. We have listed this new patent in the Orange Book. While we believe the additional safety information is critical for the safe use of Xyrem and should be required to be included in the label for any proposed generic form of Xyrem, we do not know whether the FDA will require any proposed generic form of Xyrem to include this information in its product label or whether we will be successful in maintaining the validity of the applicable patent and protecting the patent from infringement.

We also own method of use patents and trade secrets that cover elements of the Xyrem deemed REMS, including patents that cover the use of a single central pharmacy to distribute Xyrem. We are engaged in ongoing communications with respect to ours REMS documents for Xyrem, but have not reached agreement with the FDA on certain significant terms. In late 2013, the FDA notified us that it would exercise its claimed authority to modify our REMS and that it would finalize the REMS as modified by the FDA unless we initiated dispute resolution procedures with respect to the modification of the Xyrem deemed REMS. Among other things, we disagree with the FDA's position in the late 2013 notice that, as part of the current REMS process, the Xyrem deemed REMS should be modified to enable the distribution of Xyrem through more than one pharmacy, or potentially through retail pharmacies and wholesalers, as well as with certain modifications proposed by the FDA that would, in the FDA's view, be sufficient to ensure that the REMS includes only those elements necessary to ensure that the benefits of Xyrem outweigh its risks, and that would, in the FDA's view, reduce the burden on the healthcare system. Given these circumstances, we initiated dispute resolution procedures with the FDA at the end of February 2014. We received the FDA's

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denial of our initial dispute resolution submission in the second quarter of 2014, and our dispute is currently subject to further supervisory review at the next administrative level of the FDA. We have received interim responses from the FDA, but the FDA has not yet communicated a decision on our further appeal to us. We expect to receive the FDA's decision in the first quarter of 2015. We cannot predict whether, or on what terms, we will reach agreement with the FDA on final REMS documents for Xyrem, the outcome or timing of the current dispute resolution procedure, whether we will initiate additional dispute resolution proceedings with the FDA or other legal proceedings prior to finalizing the REMS documents, or the outcome or timing of any such proceedings. See the risk factor in Part I, Item 1A of this Annual Report on Form 10-K entitled "The manufacture, distribution and sale of Xyrem are subject to significant regulatory oversight and restrictions and the requirements of a risk management program, and these restrictions and requirements, as well as the potential impact of changes to these restrictions and requirements, subject us to increased risks and uncertainties, any of which could negatively impact sales of Xyrem."

We expect that final REMS documents for Xyrem will include modifications to, and/or requirements that are not currently implemented in, the Xyrem Risk Management Program. Any such modifications or additional requirements could potentially make it more difficult or expensive for us to distribute Xyrem, make it easier for future generic competitors, and/or negatively affect sales of Xyrem. In particular, depending on the extent to which certain provisions of our Xyrem deemed REMS which are currently protected by our method of use patents covering the distribution of Xyrem are changed, the ability of our existing patents to protect our Xyrem distribution system from generic competitors may be reduced. Certain claims of our patents may not provide as much protection in the context of a modified REMS structure. In addition, the extent of protection provided by our method of use patents covering the distribution of Xyrem depends on the nature of the distribution system that may be used by any generic competitor, including whether the distribution system is as restricted as the distribution system set forth in our current Xyrem deemed REMS. If a generic competitor is able to obtain ANDA approval for a generic version of Xyrem based on a risk management plan or REMS that does not fall within the scope of any of the claims of our distribution patents, those patents will not be a barrier to the generic version's entry into the market. We cannot be certain whether our existing distribution patents or patents that may be granted in the future will be construed to cover any generic REMS or risk management plan that might be approved by the FDA. The interpretation of intellectual property protections and the effect of these protections are extremely complex, and we cannot predict the impact of any of these matters on our business.

Risks Related to Our Industry

The regulatory approval process is expensive, time-consuming and uncertain and may prevent us or our partners from obtaining approvals for the commercialization of some or all of our product candidates.

The manufacturing, labeling, packaging, adverse event reporting, storage, advertising, promotion, sale, distribution, recordkeeping, importing and exporting of our products and our research and development activities are subject to extensive regulation by the FDA, the EC and other regulatory authorities. Regulations differ from country to country. As a result of these regulations, product development, approval and commercialization processes are expensive and time-consuming. For example, we are not permitted to market a pharmaceutical product in the United States or in the EU member states until we receive approval from the FDA, the EC or the competent authorities of the EU member states, as applicable. An application for marketing approval must contain information demonstrating the quality, safety and efficacy of the pharmaceutical product, including data from preclinical and clinical trials, information pertaining to the preparation and manufacture of the active pharmaceutical ingredient, analytical methods, product formulation, details on the manufacture and stability of the finished pharmaceutical product and proposed product packaging and labeling. Submission of an application for marketing authorization does not assure approval for marketing in any jurisdiction, and we may encounter significant difficulties or costs in our efforts to obtain approval to market products. If we are unable to obtain regulatory approval of our product candidates, we will not be able to commercialize them and recoup our research and development costs. Any delay or failure in obtaining approval of a drug candidate, or receiving approval for narrower indications than sought, can have a negative impact on our financial performance.

If the FDA, the EC or the competent authorities of the EU member states determine that a REMS or the imposition of post-marketing obligations is necessary to ensure that the benefits of the drug outweigh the risks, we may be required

to include a proposed REMS as part of an NDA or BLA or to propose post-marketing obligations to be included in the marketing authorization for our products in the EU. We may also be required to include a patient package insert or a medication guide to provide information to consumers about the product's risks and benefits, a plan for communication to healthcare providers, and restrictions on the product's distribution. For example, the FDA requires a REMS for Xyrem, discussed in detail under the risk factor "The manufacture, distribution and sale of Xyrem are subject to significant regulatory oversight and restrictions and the requirements of a risk management program, and these restrictions and requirements, as well as the potential impact of changes to these restrictions and requirements, subject us to increased risks and uncertainties, any of which could negatively impact sales of Xyrem" above, and other products that we sell are or may become subject to a REMS specific to our product or shared with other products in the same class of drug. We cannot predict the impact that any new REMS requirements applicable to any of our products would have on our business.

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As another example, the marketing authorization in the EU for Defitelio requires us to comply with a number of post-marketing obligations, including obligations relating to the establishment of a patient registry to investigate the long-term safety, health outcomes and patterns of utilization of Defitelio during normal use. If we fail to meet the post-marketing obligations imposed as part of the marketing authorization for Defitelio or if it is determined that the balance of risks and benefits of using Defitelio changes materially, the EMA could vary, suspend or withdraw the marketing authorization for Defitelio.

Changes in healthcare law and implementing regulations, including those based on recently enacted legislation, as well as changes in healthcare policy, may impact our business in ways that we cannot currently predict and these changes could have a material adverse effect on our business and financial condition.

The Healthcare Reform Act is a sweeping measure intended to expand healthcare coverage within the United States, primarily through the imposition of health insurance mandates on employers and individuals and expansion of the Medicaid program. This law substantially changes the way healthcare is financed by both governmental and private insurers, and significantly impacts the pharmaceutical industry. The Healthcare Reform Act contains a number of provisions that are expected to impact our business and operations, in some cases in ways we cannot currently predict. Changes that may affect our business include those governing enrollment in federal healthcare programs, reimbursement changes, benefits for patients within a coverage gap in the Medicare Part D prescription drug program (commonly known as the “donut hole”), rules regarding prescription drug benefits under the health insurance exchanges, changes to the Medicare Drug Rebate program, expansion of the Public Health Service’s 340B drug pricing discount program, fraud and abuse and enforcement. These changes will impact existing government healthcare programs and will result in the development of new programs, including Medicare payment for performance initiatives and improvements to the physician quality reporting system and feedback program.

Details of the changes to the Medicaid Drug Rebate program and the 340B program are are discussed under the risk factor “If we fail to comply with our reporting and payment obligations under the Medicaid Drug Rebate program or other governmental pricing programs, we could be subject to additional reimbursement requirements, penalties, sanctions and fines, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.”

Some states have elected not to expand their Medicaid programs by raising the income limit to 133% of the federal poverty level, as is permitted under the Healthcare Reform Act. For each state that does not choose to expand its Medicaid program, there may be fewer insured patients overall, which could impact our sales, business and financial condition. Where Medicaid patients receive insurance coverage under any of the new options made available through the Healthcare Reform Act, the possibility exists that manufacturers may be required to pay Medicaid rebates on drugs used under these circumstances, a decision that could impact manufacturer revenues. In addition, the federal government has also announced delays in the implementation of key provisions of the Healthcare Reform Act, including the employer mandate. The implications of these delays for our sales, business and financial condition, if any, are not yet clear.

Moreover, legislative changes to the Healthcare Reform Act remain possible. We expect that the Healthcare Reform Act, as currently enacted or as it may be amended in the future, and other healthcare reform measures that may be adopted in the future, could have a material adverse effect on our industry generally and on our ability to maintain or increase sales of our existing products or to successfully commercialize our product candidates, if approved.

In addition to the Healthcare Reform Act, there will continue to be proposals by legislators at both the federal and state levels, regulators and third party payors to keep healthcare costs down while expanding individual healthcare benefits. Likewise, in the countries in the EU, legislators, policymakers and healthcare insurance funds continue to propose and implement cost-containing measures to keep healthcare costs down, due in part to the attention being paid to healthcare cost containment and other austerity measures in the EU. Certain of these changes could impose limitations on the prices we will be able to charge for our products and any approved product candidates or the amounts of reimbursement available for these products from governmental agencies or third party payors, may increase the tax obligations on pharmaceutical companies such as ours, or may facilitate the introduction of generic competition with respect to our products. Further, an increasing number of EU member states and other foreign

countries use prices for medicinal products established in other countries as “reference prices” to help determine the price of the product in their own territory. Consequently, a downward trend in prices of medicinal products in some countries could contribute to similar downward trends elsewhere. In addition, the ongoing budgetary difficulties faced by a number of EU member states, including Greece and Spain, have led and may continue to lead to substantial delays in payment and payment partially with government bonds rather than cash for medicinal drug products, which could negatively impact our revenues and profitability. Moreover, in order to obtain reimbursement for our products in some countries, including some EU member states, we may be required to conduct clinical trials that compare the cost-effectiveness of our products to other available therapies. There can be no assurance that our products will obtain favorable reimbursement status in any country.

To help patients afford our products, we have various programs to assist them, including patient assistance programs, a Xyrem free product voucher program and co-pay coupon programs for certain products. Co-pay coupon programs, including

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our program for Xyrem, have received some negative publicity related to their use to promote branded pharmaceutical products over other less costly alternatives. In recent years, other pharmaceutical manufacturers have been named in class action lawsuits challenging the legality of their co-pay programs under a variety of federal and state laws. In addition, at least one insurer has directed its network pharmacies to no longer accept co-pay coupons for certain specialty drugs the insurer identified. Our co-pay coupon programs could become the target of similar lawsuits or insurer actions. In addition, in November 2013, CMS issued guidance to the issuers of qualified health plans sold through the Healthcare Reform Act's marketplaces encouraging such plans to reject patient cost-sharing support from third parties and indicating that CMS intends to monitor the provision of such support and may take regulatory action to limit it in the future. In September 2014, the OIG issued a Special Advisory Bulletin warning manufacturers that they may be subject to sanctions under the federal anti-kickback statute and/or civil monetary penalty laws if they do not take appropriate steps to exclude Medicare Part D beneficiaries from using co-pay coupons. It is possible that the outcome of litigation against other manufacturers, changes in insurer policies regarding co-pay coupons, and/or the introduction and enactment of new legislation or regulatory action could restrict or otherwise negatively affect these programs, which could result in fewer patients using affected products, which could include Xyrem, and therefore could have a material adverse effect on our sales, business and financial condition.

We are subject to significant ongoing regulatory obligations and oversight, which may result in significant additional expense and limit our ability to commercialize our products.

Oversight by FDA and Equivalent Non-U.S. Regulatory Authorities

We are subject to significant ongoing regulatory obligations with respect to our marketed products, such as safety reporting requirements and additional post-marketing obligations, including regulatory oversight of the promotion and marketing of our products. In addition, research, testing, manufacturing, labeling, packaging, adverse event reporting, storage, advertising, promotion, sale, distribution, recordkeeping, importing and exporting of our products are, and any of our product candidates that may be approved by the FDA, the EC, the competent authorities of the EU member states and other non-U.S. regulatory authorities will be, subject to extensive and ongoing regulatory requirements. These requirements apply both to us and to third parties we contract with to perform services and supply us with products. Failure by us or any of our third party partners, including suppliers, manufacturers, distributors and our respective central pharmacies for Xyrem and for Prialt, to comply with applicable requirements could subject us to administrative or judicial sanctions or other negative consequences, such as delays in approval or refusal to approve a product candidate, withdrawal, suspension or variation of product approval, untitled letters, warning letters, fines and other monetary penalties, unanticipated expenditures, product recall, withdrawal or seizure, total or partial suspension of production or distribution, interruption of manufacturing or clinical trials, operating restrictions, injunctions; suspension of licenses, civil penalties and/or criminal prosecution, any of which could have a significant impact on our sales, business and financial condition.

We monitor adverse events resulting from the use of our commercial products, as do the regulatory authorities, and we file periodic reports with the authorities concerning adverse events. The authorities review these events and reports, and if they determine that any events and/or reports indicate a trend or signal, they can require a change in a product label, restrict sales and marketing and/or require or conduct other actions, potentially including withdrawal or suspension of the product from the market, any of which could result in reduced market acceptance and demand for our products, could harm our reputation and our ability to market our products in the future, and could have a material adverse effect on our business, financial condition and results of operations.

The FDA also periodically inspects the sponsor's records related to safety reporting. Following such inspections, the FDA may issue notices on Form FDA 483 and warning letters that could cause us to modify certain activities. A Form FDA 483 notice, if issued at the conclusion of an FDA inspection, can list conditions the FDA investigators believe may have violated relevant FDA regulations or guidance. Failure to adequately and promptly correct the observation(s) can result in further regulatory enforcement action. For example, in April 2014, we received a Form FDA 483 at the conclusion of a pharmacovigilance inspection conducted by the FDA. The Form FDA 483 included observations relating to certain aspects of our ADE reporting system for all of our products, including Xyrem. We responded to the Form FDA 483 with a description of the corrective actions and improvements we had implemented

before or shortly following the inspection and additional improvements that we planned to implement, and have now implemented, to address the observations in the Form FDA 483. In August 2014, the FDA issued an Establishment Inspection Report to us, which indicates that the inspection is closed. Although we have implemented improvements to our ADE reporting system, there can be no assurance that the FDA or other regulatory agencies will not identify additional matters in future pharmacovigilance inspections or that we will be able to adequately address any matters identified by the FDA or other regulatory agencies in the future, and the failure to do so could have a material adverse effect on our business, financial condition and results of operations.

If we receive regulatory approvals to sell our products, the FDA, the EC, the competent authorities of the EU member states and other non-U.S. regulatory authorities where our products are approved may impose significant restrictions on the indicated uses or marketing of our products, or impose requirements for burdensome post-approval study commitments. The terms of any product approval, including labeling, may be more restrictive than we desire and could affect the commercial

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potential of the product. If we become aware of problems with any of our products in the United States, the EU or elsewhere in the world or at our contract manufacturers' facilities, a regulatory agency may impose restrictions on our products, our contract manufacturers or us. In such an instance, we could experience a significant drop in the sales of the affected products, our product revenues and reputation in the marketplace may suffer, and we could become the target of lawsuits. The EU has adopted a new legislation related to pharmacovigilance, or the assessment and monitoring of the safety of medicinal products, and this new legislation enhanced the authority of the EMA and the competent authorities of the EU member states to require companies to conduct additional post-approval clinical efficacy and safety studies and increased the burden on companies with respect to additional monitoring, adverse event management and reporting. Under the legislation and its related regulations and guidelines, we may be required to conduct a labor intensive collection of data regarding the risks and benefits of marketed products and may be required to engage in ongoing assessments of those risks and benefits, including the possible requirement to conduct additional clinical studies, which may be time consuming and expensive and could impact our profitability. Non-compliance with such obligations can lead to the variation, suspension or withdrawal of marketing authorization or imposition of financial penalties or other enforcement measures.

The FDA approved the BLA for Erwinaze in the United States in November 2011, subject to certain post-marketing requirements, including developing and validating assays and conducting certain non-clinical studies. In addition, the BLA approval for Erwinaze is subject to compliance with numerous post-marketing commitments, including certain commitments which must be met by PHE with respect to product manufacturing, which are outside of our control. While activities are underway to complete the post-marketing requirements and to comply with the post-marketing commitments, if we and/or PHE fail to do so within the timeframe established by the FDA, or if the results of the non-clinical studies raise concerns or other issues for the FDA, our approval to market Erwinaze in the United States may be withdrawn or otherwise jeopardized.

The marketing authorization in the EU for Defitelio requires us to comply with a number of post-marketing obligations. These include obligations relating to the establishment of a patient registry. We may be unable to comply with this or other post-marketing obligations imposed as part of the marketing authorization for Defitelio. Failure to comply with these requirements may lead to the suspension, variation or withdrawal of the marketing authorization for Defitelio in the EU.

Erwinase and defibrotide are available on a named patient basis in many countries where they are not commercially available. While we believe we have satisfied the regulations regarding our communications and medical affairs activities in those countries, if any such country's regulatory authorities determine that we are promoting Erwinase or defibrotide without proper authorization, we could be found to be in violation of pharmaceutical advertising law or the regulations permitting sales under named patient programs. In that case, we may be subject to financial or other penalties.

The FDA, the competent authorities of the EU member states and other governmental authorities require advertising and promotional labeling to be truthful and not misleading, and products to be marketed only for their approved indications and in accordance with the provisions of the approved label. The FDA routinely provides its interpretations of that authority in informal communications and also in more formal communications such as untitled letters or warning letters, and although such communications may not be considered final agency decisions, companies may decide not to contest the agency's interpretations so as to avoid disputes with the FDA, even if they believe the claims to be truthful, not misleading and otherwise lawful.

The FDA, the competent authorities of the EU member states and other governmental authorities also actively investigate allegations of off-label promotion activities in order to enforce regulations prohibiting these types of activities. A company that is found to have promoted an approved product for off-label uses may be subject to significant liability, including civil and administrative financial penalties and other remedies as well as criminal financial penalties and other sanctions. Even when a company is not determined to have engaged in off-label promotion, the allegation from government authorities or market participants that a company has engaged in such activities could have a significant impact on the company's sales, business and financial condition. The U.S. government has also required companies to enter into complex corporate integrity agreements and/or non-prosecution

agreements that impose significant reporting and other burdens on the affected companies. For example, a predecessor company to Jazz Pharmaceuticals, Inc. was investigated for off-label promotion of Xyrem, and, while Jazz Pharmaceuticals, Inc. was not prosecuted, as part of the settlement Jazz Pharmaceuticals, Inc. entered into a corporate integrity agreement with the OIG, which extended through mid-2012. The investigation resulted in significant fines and penalties, which Jazz Pharmaceuticals, Inc. has paid, and the corporate integrity agreement required us to maintain a comprehensive compliance program. For all of our products, it is important that we maintain a comprehensive compliance program. Failure to maintain a comprehensive and effective compliance program, and to integrate the operations of acquired businesses into a combined comprehensive and effective compliance program on a timely basis, could subject us to a range of regulatory actions that could affect our ability to commercialize our products and could harm or prevent sales of the affected products, or could substantially increase the costs and expenses of commercializing and marketing our products.

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Other Regulatory Authorities

We are also subject to regulation by other regional, national, state and local agencies, including the DEA, the DOJ, the FTC, the DOC, the OIG and other regulatory bodies, as well as governmental authorities in those non-U.S. countries in which we commercialize our products. In addition to the FDCA, other federal, state and non-U.S. statutes and regulations govern to varying degrees the research, development, manufacturing and commercial activities relating to prescription pharmaceutical products, including preclinical testing, approval, production, labeling, sale, distribution, import, export, post-market surveillance, advertising, dissemination of information, promotion, marketing, and pricing to government purchasers and government healthcare programs. Our partners, including our suppliers, manufacturers and distributors and the central pharmacy for Xyrem, are subject to many of the same requirements.

These requirements include obtaining sufficient quota from the DEA each year to manufacture sodium oxybate and Xyrem. In addition to quota requirements, the DEA imposes various registration, importing, exporting, recordkeeping and reporting requirements, labeling and packaging requirements, security controls and a restriction on prescription refills on certain pharmaceutical products under the CSA. The states also impose similar requirements for handling controlled substances. The United States and the EU member states are parties to the 1971 Convention. In October 2012, the World Health Organization sent a recommendation to the CND to reschedule GHB, under the 1971 Convention from its current Schedule IV status to Schedule II status. In March 2013, the CND voted to reschedule GHB from Schedule IV to Schedule II under the 1971 Convention. While the DEA imposes its own scheduling requirements in the United States under the CSA, the United States is obligated as a signatory to the 1971 Convention to ensure that drug scheduling in the United States is consistent with its obligations under the international treaties. Because sodium oxybate, the active pharmaceutical ingredient in Xyrem, is a derivative of GHB, the international rescheduling of GHB means that Xyrem and/or sodium oxybate may be subject to more restrictive registration, recordkeeping, reporting, importing, exporting and other requirements in the EU and certain other countries than the restrictions currently in place. In the United States, under DEA regulations, the Xyrem finished product is currently classified as a Schedule III controlled substance, with sodium oxybate, classified as a Schedule I controlled substance. Although the HHS has taken the position in the past that the United States would not be required to alter the domestic control of GHB should it be rescheduled to Schedule II under the 1971 Convention, we cannot guarantee that international rescheduling of GHB from Schedule IV to Schedule II will not impact restrictions on Xyrem in the United States. Failure by us or any of our partners, including suppliers, manufacturers and distributors, to comply with the requirements of the CSA and other regulatory bodies could result in, among other things, additional operating costs to us, delays in shipments outside or into the United States and adverse regulatory actions.

The U.S. federal healthcare program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of any healthcare item or service reimbursable under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical companies on one hand and prescribers, purchasers and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common manufacturer business arrangements and activities from prosecution and administrative sanction, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchases or recommendations of our products may be subject to scrutiny if they do not qualify for an exemption or safe harbor. We seek to comply with the exemptions and safe harbors whenever possible, but our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability.

The False Claims Act prohibits, among other things, any person from knowingly presenting, or causing to be presented, a false claim for payment of federal funds, or knowingly making, or causing to be made, a false statement to get a false claim paid. Many pharmaceutical and other healthcare companies have been investigated and have reached substantial financial settlements with the federal government under the False Claims Act for a variety of alleged improper marketing activities, including providing free product to customers with the expectation that the customers would bill federal programs for the product; providing consulting fees, grants, free travel, and other benefits to physicians to induce them to prescribe the company’s products; and inflating prices reported to private price

publication services, which are used to set drug reimbursement rates under government healthcare programs. In addition, in recent years the government has pursued False Claims Act cases against a number of pharmaceutical companies for causing false claims to be submitted as a result of the marketing of their products for unapproved uses. Pharmaceutical and other healthcare companies also are subject to other federal false claim laws, including federal criminal healthcare fraud and false statement statutes that extend to non-government health benefit programs.

In addition, the Physician Payment Sunshine provisions of the Healthcare Reform Act require extensive tracking of payments and transfers of value to physicians and teaching hospitals and public reporting of the data collected. On September 30, 2014, CMS published the first set of data collected under the Sunshine provisions. On or before March 31, 2015, and on or before the 90th day of each subsequent calendar year, manufacturers covered under the Sunshine provisions will be required to submit a report disclosing payments and transfers of value made in the preceding calendar year, and CMS then will publish the reported data on or before June 30 of the reporting year. It is widely anticipated that public reporting under the

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Physician Payment Sunshine provisions will result in increased scrutiny of the financial relationships between industry, teaching hospitals and physicians, and such scrutiny may negatively impact our ability to engage with physicians on matters of importance to us. In addition, if the data reflected in our reports are found to be in violation of any of the Physician Payment Sunshine provisions or any other U.S. federal, state or local regulations that may apply, we may be subject to significant civil, criminal and administrative penalties, damages or fines.

The majority of states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. A number of states now require pharmaceutical companies to report expenses relating to the marketing and promotion of pharmaceutical products and to report gifts and payments to individual physicians in the states. Other states restrict when pharmaceutical companies may provide meals to prescribers or engage in oe: 12.67px; text-align: left; ">guarantee other indebtedness without guaranteeing the notes offered hereby;

- n consolidate, amalgamate, merge, sell or otherwise dispose of all or substantially all of our assets; and
- n enter into transactions with our affiliates.

Many of these covenants will cease to apply to the 2020 notes and the 2021 notes after the 2020 notes and the 2021 notes, as applicable, are rated investment grade from two of Moody’s Investor Service, Inc., Standard & Poor’s and Fitch, Inc. See Description of the Additional 2020 Notes—Certain Covenants—Covenant Suspension and Description of the 2021 Notes—Certain Covenants—Covenant Suspension.

In addition, the agreements governing certain of our indebtedness require us to maintain specified financial ratios and tests. Our ability to meet those financial ratios and tests can be affected by events beyond our control, and we may be unable to meet them. See Item 5. Operating and Financial Review and Prospects—Financing in our Annual Report on Form 20-F for the fiscal year ended December 31, 2013 and Item 2. Management's Discussion & Analysis of Financial Condition and Results of Operations—Financing in our Interim Report for the six months ended June 30, 2014 filed as Exhibit 99.1 to our Current Report on Form 6-K, filed August 6, 2014, each of which is incorporated herein by reference.

A breach of the covenants or restrictions under the indenture governing the 2020 notes, the indenture governing the 2021 notes or under the agreements governing our other indebtedness could result in an event of default under the applicable indebtedness. Such a default may allow holders of our debt securities or our lenders, as applicable, to accelerate the related indebtedness, which may result in the acceleration of other indebtedness to which a cross-acceleration or cross-default provision applies. In addition, such lenders or debtholders could terminate commitments to lend money, if any. Furthermore, if we were unable to repay the indebtedness then due and payable, secured lenders could proceed against the assets, if any, securing such indebtedness. In the event our lenders or holders of our debt securities accelerate the repayment of our borrowings, we may not have sufficient assets to repay that indebtedness. As a result of these restrictions, we may be:

- n limited in how we conduct and grow our business; or
- n unable to compete effectively or to take advantage of new business opportunities.

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These restrictions may affect our ability to grow in accordance with our strategy.

***The notes will be effectively subordinated to our secured indebtedness to the extent of the value of the property securing that indebtedness.***

The notes will not be secured by any of our or our subsidiaries' assets; provided, however, that we may be required to secure the notes in connection with our incurrence of certain liens under indebtedness in the future. As a result, the notes and the Note Guarantees, if any, are given in the future by our subsidiaries, will be effectively subordinated to our and such subsidiary guarantors' indebtedness with respect to the assets that secure such indebtedness. As of June 30, 2014, we and our subsidiaries had $2.4 billion of total indebtedness on a consolidated basis, net of unamortized debt discount, of which $2.1 billion was secured by the aircraft in our portfolio and the related leases, and our subsidiaries had commitments of approximately $325.8 million available to borrow under a secured credit facility. In addition, we and our subsidiaries may incur additional secured debt in the future. As a result of this effective subordination, upon a default in payment on, or the acceleration of, any of this secured indebtedness, or in the event of bankruptcy, insolvency, liquidation, dissolution or reorganization of our company or a subsidiary, the proceeds from the sale of assets securing our or such subsidiary's secured indebtedness will be available to pay obligations on the 2020 notes, the 2021 notes and other unsecured obligations only after such secured debt has been paid in full. Consequently, the holders of the 2020 notes and the 2021 notes may receive less, ratably, than the holders of secured debt in the event of our or our subsidiaries' bankruptcy, insolvency, liquidation, dissolution or reorganization even if those subsidiaries in the future guarantee the 2020 notes and the 2021 notes.

***The notes will be structurally subordinated to all obligations of our existing and future subsidiaries.***

The notes will not be guaranteed by any of our subsidiaries on the date the notes are issued; provided, however, that each of our existing and subsequently acquired or organized subsidiaries that guarantee certain of our unsecured indebtedness will be required to guarantee the notes. Other than any subsidiaries that provide future Note Guarantees, our subsidiaries will have no obligation, contingent or otherwise, to pay amounts due under the 2020 notes or the 2021 notes or to make any funds available to pay those amounts, whether by dividend, distribution, loan or other payment. The notes will be structurally subordinated to all indebtedness and other obligations of any non-guarantor subsidiary such that in the event of bankruptcy, insolvency, liquidation, reorganization, dissolution or other winding up of any such subsidiary, all of that subsidiary's creditors (including trade creditors) would be entitled to payment in full out of that subsidiary's assets before we would be entitled to any payment. The indenture governing the 2020 notes and the indenture governing the 2021 notes will permit these subsidiaries to incur additional indebtedness and will not contain any limitation on the amount of other liabilities, such as trade payables, that may be incurred by these subsidiaries.

Our subsidiaries generate substantially all of our consolidated revenue. As of June 30, 2014, our subsidiaries held 100% of our aircraft assets and had $2.1 billion of total indebtedness, net of unamortized debt discount, all of which would have been structurally senior to the notes.

In addition, our subsidiaries that provide future Note Guarantees will be automatically released from those Note Guarantees upon the occurrence of certain events, including the following:

- the release or discharge of each guarantee that resulted in the obligation of such subsidiary guarantor to guarantee the notes; or
- the sale or other disposition, including the sale of substantially all the assets, of that subsidiary guarantor.

If any Note Guarantee is released, no holder of the notes will have a claim as a creditor against that subsidiary, and the indebtedness and other liabilities, including trade payables and preferred stock, if any, whether secured or unsecured, of that subsidiary will be effectively senior to the claim of any holders of the notes. See Description of the Additional 2020 Notes—2020 Note Guarantees and Description of the 2021 Notes—2021 Note Guarantees.

***We may not be able to repurchase the notes upon a change of control.***

Upon the occurrence of specific kinds of change of control events, we will be required to offer to repurchase all outstanding 2020 notes and 2021 notes at 101% of their principal amount, plus accrued and unpaid interest to the repurchase date. Additionally, under certain of the agreements governing our other indebtedness, a change of control (as defined therein) may constitute an event of default thereunder permitting the lenders to accelerate the maturity of such indebtedness or requiring us to offer to purchase such other indebtedness, often at a premium. The source of funds for any purchase of the 2020 notes and the 2021 notes and other debt securities and repayment of accelerated

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indebtedness would be our available cash or cash generated from our subsidiaries' operations or other sources, including borrowings, sales of assets or sales of equity. We may not be able to repurchase the 2020 notes and the 2021 notes upon a change of control because we may not have sufficient financial resources to purchase all of the debt securities that are tendered upon a change of control and repay our other indebtedness that will become due. If we fail to repurchase the 2020 notes and 2021 notes in that circumstance, we will be in default under the indenture. In addition, our ability to repurchase the 2020 notes and the 2021 notes may be limited by law. In order to avoid the obligations to repurchase the 2020 notes and the 2021 notes and resulting events of default and potential breaches of our various credit facilities, we may have to avoid certain change of control transactions that would otherwise be beneficial to us.

In addition, certain important corporate events, such as leveraged recapitalizations, may not, under the indenture governing the 2020 notes and the indenture governing the 2021 notes, constitute a change of control that would require us to repurchase the 2020 notes and the 2021 notes, even though those corporate events could increase the level of our indebtedness or otherwise adversely affect our capital structure, credit ratings or the value of the notes. See Description of the Additional 2020 Notes—Repurchase at the Option of Holders—Change of Control and Description of the 2021 Notes—Repurchase at the Option of Holders—Change of Control.

The exercise by the holders of the 2020 notes and the 2021 notes of their right to require us to repurchase such notes pursuant to a change of control offer could cause a default under the agreements governing our other indebtedness, including future agreements, even if the change of control itself does not cause such a default, due to the financial effect such repurchases could have on us. In the event a change of control offer is required to be made at a time when we are prohibited from purchasing the 2020 notes and the 2021 notes, we could attempt to refinance the borrowings that contain such prohibitions. If we do not obtain a consent or repay those borrowings, we will remain prohibited from purchasing the 2020 notes and the 2021 notes. In that case, our failure to purchase tendered 2020 notes and 2021 notes would constitute an event of default under the indenture governing the 2020 notes and the indenture governing the 2021 notes which may, in turn, constitute a default under some or all of our other indebtedness. Finally, our ability to pay cash to the holders of such notes upon a repurchase may be limited by our then existing financial resources.

***Holders of the notes may not be able to determine when a change of control giving rise to their right to have the notes repurchased has occurred following a sale of substantially all of our assets.***

One of the circumstances under which a change of control may occur is upon the sale, lease or other transfer of all or substantially all of our consolidated assets. There is no precise, established definition of the phrase substantially all under applicable law and the interpretation of that phrase will likely depend upon particular facts and circumstances. Accordingly, the ability of a holder of 2020 notes or 2021 notes to determine that such holder may require us to repurchase its notes as a result of a sale of all or substantially all of our consolidated assets to another person may be uncertain.

***Federal and state fraudulent transfer laws may permit a court to void the notes and/or the Note Guarantees, if any, and if that occurs, you may not receive any payments on the notes.***

Federal and state fraudulent transfer and conveyance statutes may apply to the issuance of the notes and the incurrence of the Note Guarantees, if any. Under federal bankruptcy law and comparable provisions of state fraudulent transfer or conveyance laws, which may vary from state to state, the notes or the guarantees thereof could be voided as a fraudulent transfer or conveyance if we or any of the subsidiary guarantors, as applicable, (a) issued the notes or incurred the Note Guarantees with the intent of hindering, delaying or defrauding creditors or (b) received less than reasonably equivalent value or fair consideration in return for issuing the notes or incurring the Note Guarantees and, in the case of (b) only, one of the following is also true at the time thereof:

- we or any of the subsidiary guarantors, as applicable, were insolvent or rendered insolvent by reason of the issuance of the notes or the incurrence of the Note Guarantees;
- the issuance of the notes or the incurrence of the Note Guarantees left us or any of the subsidiary guarantors, as applicable, with an unreasonably small amount of capital or assets to carry on the business; or
- we or any of the subsidiary guarantors, as applicable, intended to, or believed that we or such subsidiary guarantor would, incur debts beyond our or such subsidiary guarantor's ability to pay as they mature.

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As a general matter, value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or a valid antecedent debt is secured or satisfied. A court would likely find that a subsidiary guarantor did not receive reasonably equivalent value or fair consideration for its Note Guarantee to the extent the subsidiary guarantor did not obtain a reasonably equivalent benefit directly or indirectly from the issuance of the notes.

We cannot be certain as to the standards a court would use to determine whether or not we or a subsidiary guarantor were insolvent at the relevant time or, regardless of the standard that a court uses, whether the notes or the Note Guarantees, if any, would be subordinated to our or any of our subsidiary guarantors' other debt. In general, however, a court would deem an entity insolvent if:

- the sum of its debts, including contingent and unliquidated liabilities, was greater than the fair saleable value of all of its assets;
- the present fair saleable value of its assets was less than the amount that would be required to pay its probable liabilities on its existing debts, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they became due.

If a court were to find that the issuance of the notes or the incurrence of a Note Guarantee was a fraudulent transfer or conveyance, the court could void the payment obligations under the notes or that Note Guarantee, could subordinate the notes or that Note Guarantee to presently existing and future indebtedness of ours or of the related subsidiary guarantor or could require the holders of the notes to repay any amounts received with respect to that Note Guarantee. In the event of a finding that a fraudulent transfer or conveyance occurred, you may not receive any repayment on the notes. Further, the avoidance of the notes could result in an event of default with respect to our and our subsidiaries' other debt that could result in acceleration of that debt.

Finally, as a court of equity, the bankruptcy court may subordinate the claims in respect of the notes to other claims against us under the principle of equitable subordination if the court determines that (1) the holder of notes engaged in some type of inequitable conduct, (2) the inequitable conduct resulted in injury to our other creditors or conferred an unfair advantage upon the holders of notes and (3) equitable subordination is not inconsistent with the provisions of the bankruptcy code.

***Your ability to transfer the notes may be limited by the absence of an active trading market and an active trading market may not develop for the notes.***

The 2021 notes will be a new issue of securities for which there is no established trading market. The underwriters have advised us that they intend to make a market in the notes as permitted by applicable laws and regulations. However, the underwriters are not obligated to make a market in the notes and, if commenced, they may discontinue their market-making activities at any time without notice.

Therefore, an active market for the notes may not develop or be maintained, which would adversely affect the market price and liquidity of the notes. In that case, the holders of the notes may not be able to sell their notes at a particular time or at a favorable price.

We will apply and use our commercially reasonable efforts to obtain approval to list the additional 2020 notes and the 2021 notes on the Official List of the Irish Stock Exchange and to trade them on the Global Exchange Market of such exchange. If maintaining the listing of the notes on the Irish Stock Exchange would require us to publish or produce financial information either more regularly than we otherwise would be required to according to accounting principles or standards that are different from generally accepted accounting practices in the United States, or otherwise imposes requirements on us that we, at our discretion, determine are impracticable or unduly burdensome, we may apply to delist the notes from the Official List of the Irish Stock Exchange and seek an alternative admission to listing, trading and/or quotation for the notes by another listing authority, stock exchange and/or quotation system. Although the

existing 2020 notes are admitted to the Official List and traded on the Global Exchange Market of the Irish Stock Exchange, we cannot assure you that any such listing in respect of the additional 2020 notes or the 2021 notes will be obtained or maintained. If the notes are not listed on the Official List of the Irish Stock Exchange or any other exchange, it is unlikely that an active trading market will develop for the notes.

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Even if an active trading market for the notes does develop, there is no guarantee that it will continue. Historically, the market for non-investment grade debt has been subject to severe disruptions that have caused substantial volatility in the prices of securities similar to the notes. The market, if any, for the notes may experience similar disruptions and any such disruptions may adversely affect the liquidity in that market or the prices at which you may sell your notes. In addition, subsequent to their initial issuance, the notes may trade at a discount from their initial offering price, depending upon prevailing interest rates, the market for similar notes, our performance and other factors.

***A lowering or withdrawal of any existing or future rating assigned to our debt by rating agencies may increase our future borrowing costs and reduce our access to capital.***

Our corporate rating, the rating of our existing debt and the rating for the 2020 notes or the 2021 notes could be lowered or withdrawn entirely by a rating agency if, in that rating agency's judgment, future circumstances relating to the basis of the rating, such as an increase in our indebtedness or adverse changes in our business, so warrant. Consequently, real or anticipated changes in our credit ratings will generally affect the market value of the notes and such changes may result in a significant diminution in the value of your notes. Credit ratings are not recommendations to purchase, hold or sell the notes. Additionally, credit ratings may not reflect the potential effect of risks relating to the structure or marketing of the notes.

If any future rating assigned to our debt is lowered or withdrawn entirely by a rating agency, it would likely be more difficult or more expensive for us to obtain additional debt financing than prior to such change taking effect. If any future rating assigned to the notes is subsequently lowered or withdrawn for any reason, you may experience a significant diminution in the value of your notes.

***You must rely on the procedures and the relevant clearing systems to exercise your rights and remedies.***

Owners of book-entry interests will not be considered owners or holders of notes and therefore will not be entitled to exercise any rights of such owners or holders. Instead, The Depository Trust Company ( DTC ) or its nominee will be the sole holder of the notes. We will make payments of principal, premium, if any, interest and other amounts owing on or in respect of the notes in global form to the paying agent, which will make payments to DTC. Thereafter, those payments will be credited to DTC participants' accounts that hold book-entry interests in the notes in global form and credited by such participants to indirect participants. Unlike holders of certificated notes, owners of book-entry interests do not have the direct right to act upon our solicitations for consents or requests for waivers or other actions from holders of the notes. Instead, you will be permitted to act only to the extent you have received appropriate proxies to do so from DTC or, if applicable, a participant. Procedures implemented for the granting of such proxies may not be sufficient to enable you to vote on any requested actions on a timely basis.

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**USE OF PROCEEDS**

We expect that we will receive approximately $ million in net proceeds from this offering, after deducting the underwriters' discounts and commissions and estimated offering expenses payable by us. We intend to use the net proceeds of this offering for general corporate purposes, including the acquisition of aircraft.

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**CAPITALIZATION**

The following table sets forth our consolidated cash and cash equivalents and capitalization as of June 30, 2014:

- on an actual basis; and
- as adjusted to give effect to the completion of the offering of the notes offered hereby.

This table should be read in conjunction with Summary—Summary Historical Consolidated Financial and Other Data and Use of Proceeds appearing elsewhere in this prospectus supplement, Item 2. Management's Discussion & Analysis of Financial Condition and Results of Operations—Financing in our Interim Report for the six months ended June 30, 2014 filed as Exhibit 99.1 to our Current Report on Form 6-K, filed August 6, 2014, incorporated by reference into this prospectus supplement, and our consolidated financial statements, including the accompanying notes, incorporated by reference into this prospectus supplement.

| | AS OF JUNE 30, 2014 | |
|---|---|---|
| | ACTUAL | AS ADJUSTED |
| | (Dollar amounts in thousands) | |
| **Cash and cash equivalents** | | |
| Cash and cash equivalents | $ 253,171 | $ |
| Restricted cash and cash equivalents | 125,229 | |
| **Total cash and cash equivalents** | $ **378,400** | $ |
| **Long–term debt[1]:** | | |
| Secured borrowings | $ 2,141,045 | $ |
| Notes Payable | 551,903 | |
| Nord LB Facility | 423,833 | |
| CBA Facility | 118,359 | |
| Term Loan | 454,256 | |
| Fly Acquisition II Facility | 124,178 | |
| Other aircraft secured borrowings | 468,516 | |
| 6.75% Senior Notes due 2020 | 292,173 | |
| % Senior Notes due 2021 | — | |
| **Total long-term debt** | **2,433,218** | |
| **Shareholders' equity** | | |
| Common shares, $0.001 par value per share; 499,999,900 shares authorized; 41,432,998 shares issued and outstanding | 41 | |
| Manager shares, $0.001 par value per share; 100 shares authorized, issued and outstanding | — | |
| Additional paid-in capital | 658,456 | |
| Retained earnings | 107,660 | |
| Accumulated other comprehensive loss, net | (20,103) | |
| **Total shareholders' equity** | **746,054** | |

| | | |
|---|---|---|
| **Total capitalization** | $ **3,179,272** | $ |

(1) Net of unamortized debt discounts.

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**DESCRIPTION OF THE ADDITIONAL 2020 NOTES**

**General**

On December 11, 2013, we issued $300,000,000 aggregate principal amount of our 6.750% senior notes due 2020 (the existing 2020 notes ) under an indenture, dated December 11, 2013 (the Base Indenture ), between us and Wells Fargo Bank, National Association, as Indenture Trustee (the Trustee ), as supplemented and modified by a supplemental indenture, dated as of December 11, 2013 (the First Supplemental Indenture ), between us and the Trustee. We refer to the Base Indenture, as supplemented and modified by the First Supplemental Indenture, as the 2020 Indenture.

We will issue the 6.750% senior notes due 2020 offered hereby (the additional 2020 notes ) as additional notes under the 2020 Indenture. The additional 2020 notes will form a part of a single class of securities with the existing 2020 notes for all purposes under the 2020 Indenture and will have the same terms as the existing 2020 notes. The additional 2020 notes and the existing 2020 notes are herein collectively referred to as the 2020 notes.

For purposes of this summary, the terms Company , we , us and our refer only to Fly Leasing Limited and not to any its Subsidiaries. In addition, the terms Closing Date and date of the 2020 Indenture refer to December 11, 2013, the date of issue of the existing 2020 notes.

The 2020 Indenture is subject to and governed by the Trust Indenture Act of 1939, as amended (the Trust Indenture Act, or TIA ). The terms of the 2020 notes include those stated in the 2020 Indenture and those made part of the 2020 Indenture by reference to the Trust Indenture Act. The following is a summary of the material terms and provisions of the 2020 notes and the 2020 Indenture. The following summary does not purport to be a complete description of the 2020 notes or such agreements and is subject to the detailed provisions of, and qualified in its entirety by reference to, the 2020 Indenture. We urge you to read the 2020 Indenture because it, and not this description, defines your rights as a holder of the 2020 notes. You may request a copy of the 2020 Indenture from us. The Base Indenture is incorporated by reference as an exhibit to the registration statement of which the accompanying prospectus is a part. We filed the First Supplemental Indenture as an exhibit to our Current Report on Form 6-K, filed with the SEC on December 11, 2013. See Where You Can Find More Information in this prospectus supplement.

Holders of additional 2020 notes will vote together with the holders of the existing 2020 notes for all relevant purposes under the 2020 Indenture. In that regard, the 2020 Indenture requires that certain actions by the holders under the 2020 Indenture (including acceleration after an Event of Default) must be taken, and certain rights must be exercised, by specified minimum percentages of the aggregate principal amount of all 2020 notes issued under the 2020 Indenture. In determining whether holders of the requisite percentage in principal amount have given any notice, consent or waiver or taken any other action permitted under the 2020 Indenture, the additional 2020 notes will be aggregated with the existing 2020 notes, and the holders of the additional 2020 notes and the existing 2020 notes will vote together as a single series for all such purposes. Accordingly, all references in this Description of the Additional 2020 Notes to specified percentages in aggregate principal amount of the 2020 notes mean, at any time after this offering is consummated, such percentage in aggregate principal amount of the additional 2020 notes and the existing 2020 notes then outstanding.

You can find definitions of certain terms used in this description under the heading —Certain Definitions.

**Brief Description of the 2020 Notes**

The 2020 notes will be:

- general senior obligations of the Company;

- *pari passu* in right of payment with any existing and future senior Indebtedness of the Company;
- senior in right of payment to any Subordinated Indebtedness of the Company; and
- structurally subordinated to all liabilities and preferred stock of subsidiaries of the Company that do not guarantee the 2020 notes.

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Without limitation on the generality of the foregoing, the 2020 notes will be effectively subordinated to secured Indebtedness and other obligations of the Company to the extent of the value of the assets securing such Indebtedness and other obligations. In the event of the Company's bankruptcy, liquidation, reorganization or other winding up, the Company's assets that secure such secured Indebtedness and other obligations will be available to pay obligations on the 2020 notes only after all Indebtedness under such secured Indebtedness and other obligations have been repaid in full from such assets.

On the Closing Date, the 2020 notes will not be guaranteed by any subsidiary of the Company. The 2020 notes will be structurally subordinated to all liabilities and obligations of the Company's subsidiaries. Claims of creditors of the Company's subsidiaries, including trade creditors, secured creditors and creditors holding debt and guarantees issued by those subsidiaries, and claims of preferred shareholders (if any) of those subsidiaries generally will have priority with respect to the assets and earnings of those subsidiaries over the claims of creditors of the Company, including Holders of the 2020 notes.

On the Closing Date, all of the Company's subsidiaries will be Restricted Subsidiaries. Under the circumstances described below under the subheading —Certain Covenants—Limitation on Restricted Payments, the Company will be permitted to designate other of the Company's Subsidiaries as Unrestricted Subsidiaries. The Company's Unrestricted Subsidiaries will not be subject to many of the restrictive covenants in the 2020 Indenture.

**Listing**

Application has been made to the Irish Stock Exchange for the additional 2020 notes to be admitted to the Official List and traded on the Global Exchange Market. Although the existing 2020 notes are admitted to the Official List and traded on the Global Exchange Market of the Irish Stock Exchange, there can be no assurance that any such approval will be granted in respect of the additional 2020 notes or, if granted, that such listing will be maintained. Application has been made to the Irish Stock Exchange to approve this prospectus supplement. We do not intend to apply for the additional 2020 notes to be listed on any securities exchange or to arrange for the additional 2020 notes to be quoted on any quotation system other than the Official List of the Irish Stock Exchange (Global Exchange Market).

***Irish Listing Agent***

The Bank of New York Mellon SA/NV, Dublin Branch is the Irish listing agent in respect of the 2020 notes. The Company will maintain such appointment so long as the 2020 notes are listed on the Global Exchange Market of the Irish Stock Exchange and the rules of the exchange so require. The address of the Irish Listing Agent is Hanover Building, Windmill Lane, Dublin 2, Ireland.

**2020 Note Guarantees**

The obligations of the Company pursuant to the 2020 notes will be fully and unconditionally guaranteed (a 2020 Note Guarantee ), jointly and severally, by each Restricted Subsidiary of the Company, but only under the conditions set out below. The 2020 notes will not be guaranteed initially by any of the Company's subsidiaries or any third party.

The 2020 Note Guarantees will be:

- senior unsecured obligations of each Guarantor;
- rank *pari passu* in right of payment with any existing and future senior indebtedness of each Guarantor;
- effectively subordinated to all existing and future secured indebtedness of each Guarantor to the extent of the value of the assets securing such indebtedness; and
- structurally subordinated to any indebtedness of the Guarantor's subsidiaries that are not Guarantors.

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From and after the Closing Date, the Company will not cause or permit any of its Restricted Subsidiaries (other than a Securitization Subsidiary or a Guarantor), directly or indirectly, to guarantee any Capital Markets Debt or unsecured Credit Facility (other than Standard Securitization Undertakings in connection with a Qualified Securitization Financing) of the Company or any Guarantor unless, such Restricted Subsidiary:

(a) within five Business Days of the date on which it guarantees Capital Markets Debt or an unsecured Credit Facility of the Company or any Guarantor executes and delivers to the Trustee a supplemental indenture pursuant to which such Restricted Subsidiary shall guarantee in a 2020 Note Guarantee all of the Company's obligations under the 2020 notes and the 2020 Indenture and other terms contained in the applicable supplemental indenture and subject to the conditions contained in such supplemental indenture; and

(b) delivers to the Trustee an Officers' Certificate and an Opinion of Counsel (which may contain customary exceptions) that such supplemental indenture and 2020 Note Guarantee have been duly authorized, executed and delivered by such Restricted Subsidiary and constitute legal, valid, binding and enforceable obligations of such Restricted Subsidiary.

Thereafter, such Subsidiary of the Company shall be a Guarantor for all purposes of the 2020 Indenture until such 2020 Note Guarantee is released in accordance with the provisions of the 2020 Indenture. In the event of a sale or other transfer or disposition of all of the Capital Stock in any subsidiary of the Company that is a Guarantor to any Person that is not an Affiliate of the Company in compliance with the terms of the 2020 Indenture, or in the event all or substantially all the assets or Capital Stock of a subsidiary of the Company that is a Guarantor are sold or otherwise transferred, by way of merger, consolidation or otherwise, to a Person that is not an Affiliate of the Company in compliance with the terms of the 2020 Indenture, then, without any further action on the part of the Trustee or any Holder, such Guarantor (or the Person concurrently acquiring such assets of such Guarantor) shall be deemed automatically and unconditionally cancelled, released and discharged of any obligations under its 2020 Note Guarantee, as evidenced by a written instrument or confirmation executed by the Trustee, upon request; provided, however that the Company delivers an Officers' Certificate to the Trustee certifying that the net cash proceeds of such sale or other disposition will be applied in accordance with the Asset Sales covenant and, if evidence of such cancellation, discharge or release is requested to be executed by the Trustee, an Officers' Certificate and an Opinion of Counsel. In addition, the 2020 Note Guarantee of a Subsidiary of the Company that is a Guarantor will be released:

(a) if the Company designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of the 2020 Indenture;

(b) if the Guarantor ceases to be a guarantor under any Capital Markets Debt or unsecured Credit Facilities, including the guarantee that resulted in the obligation of such Guarantor to guarantee the 2020 notes, and is released or discharged from all obligations thereunder; provided that if such Person has incurred any Indebtedness in reliance on its status as a Guarantor under the covenant —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock such Guarantor's obligations under such Indebtedness, as the case may be, so incurred are satisfied in full and discharged or are otherwise permitted to be Incurred by a Restricted Subsidiary (other than a Guarantor) under —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; or

(c) upon legal defeasance, covenant defeasance or satisfaction and discharge of the 2020 Indenture as provided below under the captions —Legal Defeasance and Covenant Defeasance and —Satisfaction and Discharge.

The Company may cause any other Subsidiary of the Company to issue a 2020 Note Guarantee and become a Guarantor.

Each 2020 Note Guarantee by a Restricted Subsidiary will be limited to an amount not to exceed the maximum amount that can be guaranteed by that Restricted Subsidiary without rendering the 2020 Note Guarantee, as it relates to such Restricted Subsidiary, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

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**Principal, Maturity and Interest**

The 2020 notes will mature on December 15, 2020. The Company previously issued existing 2020 notes with an aggregate principal amount of $300 million. The Company will issue aggregate principal amount of additional 2020 notes in this offering. The Company may issue additional notes of the same series from time to time after this offering under the 2020 Indenture ( Additional 2020 Notes ). Any offering of Additional 2020 Notes is subject to the covenants described below under the caption —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock. The existing 2020 notes, the additional 2020 notes offered hereby and any Additional 2020 Notes subsequently issued under the 2020 Indenture will be treated as a single class for all purposes under the 2020 Indenture. Unless the context requires otherwise, references to 2020 notes for all purposes of the 2020 Indenture and this Description of the Additional 2020 Notes include any Additional 2020 Notes that are actually issued. The 2020 notes are issued in minimum denominations of $200,000 and any integral multiple of $1,000 in excess thereof.

Interest on the 2020 notes accrues at the rate of 6.750% per annum and is payable semi-annually in arrears on June 15 and December 15 to Holders of record on the immediately preceding June 1 and December 1. The first interest payment date on the additional 2020 notes will be December 15, 2014. Interest on the 2020 notes will accrue from the last interest payment date on which interest was paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. The statute of limitations for enforcement of claims under the 2020 notes and the 2020 Indenture is six years.

**Payment of Additional Amounts**

All payments made under or with respect to the 2020 notes or any 2020 Note Guarantee by the Company, any Guarantor or any successor to any of them (each such person, a Payor ) will be made free and clear of and without withholding or deduction for or on account of any present or future taxes, duties, levies, imposts, assessments or other government charges and any interest, penalties or other liabilities with respect thereto ( Taxes ), unless the withholding or deduction of such Taxes is required by law. If any withholding or deduction for or on account of Taxes is required by applicable law of a Relevant Tax Jurisdiction (as defined below), the applicable Payor will pay to Holders of the 2020 notes such additional amounts ( Additional Amounts ) as may be necessary so that every net payment of interest (including any premium paid upon redemption of the 2020 notes and any discount deemed interest under applicable law of a Relevant Tax Jurisdiction), principal or other amount on that note or the 2020 Note Guarantee will not be less than the amount such Holders would have received if such Taxes had not been withheld or deducted.

Net payment shall mean the amount that any Holder receives from any Payor or our Paying Agent after deduction or withholding of any amount for or on account of any Taxes imposed with respect to that payment (including any withholding or deduction attributable to Additional Amounts) by Bermuda, Ireland or any jurisdiction where any Payor is incorporated, resident or engaged in business for tax purposes or from or through which any payment in respect of the 2020 notes or any 2020 Note Guarantee is made, or any political subdivision or taxing authority thereof or therein (each, a Relevant Tax Jurisdiction ).

The Company (and Guarantors) will also indemnify and reimburse Holders for:

- taxes (including any interest, penalties and related expenses) imposed on the Holders (or if a Holder is not the beneficial owner, the beneficial owner) by a Relevant Tax Jurisdiction if and to the same extent that a Holder would have been entitled to receive Additional Amounts if the Company (or a Guarantor) or other applicable withholding agent had been required to deduct or withhold those taxes from payments on the 2020 notes or the 2020 Note Guarantees; and
- 

stamp, court, documentary or similar taxes or charges (including any interest, penalties and related expenses) imposed by a Relevant Tax Jurisdiction in connection with the execution, delivery, enforcement or registration of the 2020 notes or the 2020 Note Guarantees or other related documents and obligations.

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This obligation to pay Additional Amounts is subject to several important exceptions, however. The Company (or a Guarantor) will not pay Additional Amounts to any Holder for or on account of any of the following:

- any Tax imposed solely because at any time there is or was a connection between the Holder (or between a fiduciary, settlor, beneficiary, member or shareholder of or possessor of power over the relevant Holder if the Holder is an estate, nominee, trust, partnership, limited liability company, or corporation) and the Relevant Tax Jurisdiction imposing the tax (including having a permanent establishment in, being a citizen, resident or national of or incorporated in or carrying on a business in such Relevant Tax Jurisdiction), other than the mere receipt of a payment or the acquisition, ownership, disposition or holding of, or enforcement of rights under, a 2020 note or the 2020 Note Guarantees;
- any estate, inheritance, gift, excise, transfer, property, transfer or any similar tax, assessment or other governmental charge;
- any Taxes imposed solely because the Holder (or if the Holder is not the beneficial owner, the beneficial owner) fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with the taxing jurisdiction of the Holder or any beneficial owner of the 2020 note or the 2020 Note Guarantees, if compliance is required by law or by an applicable income tax treaty to which the jurisdiction imposing the tax is a party, as a precondition to an exemption from the tax, assessment or other governmental charge for which such Holder is eligible and the Company (or a Guarantor) has given the Holders written notice within a reasonable period of time prior to the first payment date with respect to which such information or identification is required under applicable law that Holders will be required to provide such information and identification;
- any Taxes with respect to a 2020 note or a 2020 Note Guarantee presented for payment more than 30 days after the date on which payment became due and payable or the date on which payment thereof is duly provided for and notice thereof given to Holders, whichever occurs later, except to the extent that the Holder of the 2020 note would have been entitled to Additional Amounts had the 2020 notes been presented on the last day of such 30-day period;
- any withholding or deduction imposed on a payment to an individual that is required to be made pursuant to the European Union Directive on the taxation of savings income, which was adopted by the ECOFIN Council on June 3, 2003, or any law implementing or complying with, or introduced in order to conform to, such Directive;
- any Tax imposed on or with respect to a payment made to a Holder or beneficial owner of 2020 notes who would have been able to avoid such withholding or deduction by presenting the relevant 2020 notes to another paying agent in a member state of the European Union;
- any Tax payable other than by deduction or withholding from payments to a Holder or beneficial owner under, or with respect to, the 2020 notes or with respect to any 2020 Note Guarantee; or
- any combination of above items.

The Payor will (i) make any such withholding or deduction required by applicable law and (ii) remit the full amount deducted or withheld to the relevant authority in accordance with applicable law. The Payor will make reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Relevant Tax Jurisdiction imposing such Taxes. The Payor will provide to the Trustee, within a reasonable time after the date the payment of any Taxes so deducted or withheld are due pursuant to applicable law, either a certified copy of tax receipts evidencing such payment, or, if such tax receipts are not reasonably available to the Payor, such other documentation that provides reasonable evidence of such payment by the Payor.

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The tax gross-up and indemnity obligations described above will survive any termination, defeasance or discharge of the 2020 Indenture and will apply mutatis mutandis to any successor Person to any Payor and to any jurisdiction in which such successor is organized or is otherwise resident or doing business for tax purposes or any jurisdiction from or through which payment is made by such successor or its respective agents. Whenever the 2020 Indenture or this Description of the Additional 2020 Notes refers to, in any context, the payment of principal, premium, if any, interest or any other amount payable under or with respect to any 2020 note or any guarantee, such reference includes the payment of Additional Amounts or indemnification payments as described hereunder, if applicable.

**Payments**

Principal, premium, if any, and interest on the 2020 notes will be payable at the office or agency of the Company maintained for such purpose or, at the option of the Company, payment of interest may be made by check mailed to the Holders of the 2020 notes at their respective addresses set forth in the register of Holders; provided that all payments of principal, premium, if any, and interest with respect to 2020 notes represented by one or more global notes registered in the name of or held by DTC or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof. Until otherwise designated by the Company, the Company's office or agency will be the office of the Trustee maintained for such purpose.

**Ranking**

The Indebtedness evidenced by the 2020 notes will be senior Indebtedness of the Company, and will rank *pari passu* in right of payment with all existing and future senior Indebtedness of the Company. The Indebtedness evidenced by the 2020 notes will be senior in right of payment to all existing and future Subordinated Indebtedness of the Company.

As of June 30, 2014, on an as adjusted basis after giving effect to this offering and the use of proceeds therefrom, the Company and its Subsidiaries would have had $2.8 billion aggregate principal amount of Indebtedness outstanding, $2.1 billion of which was secured Indebtedness and none of which was Subordinated Indebtedness. All of the operations of the Company are conducted through its Subsidiaries. Claims of creditors on such Subsidiaries, including trade creditors, and claims of preferred shareholders (if any) of such Subsidiaries generally will have priority with respect to the assets and earnings of such Subsidiaries over the claims of creditors of the Company, including the Holders of the 2020 notes. The 2020 notes, therefore, will be structurally subordinated to holders of Indebtedness and other creditors (including trade creditors) and preferred shareholders (if any) of the Subsidiaries of the Company.

Although the 2020 Indenture will limit the incurrence of Indebtedness by certain of the Company's Subsidiaries, such limitation is subject to a number of significant qualifications. See —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

**Mandatory Redemption**

The Company is not required to make mandatory redemption or sinking fund payments with respect to the 2020 notes, but the Company may be required to offer to purchase the 2020 notes as set forth below under —Repurchase at the Option of Holders.

**Optional Redemption**

Except as described below, the 2020 notes are not redeemable at the Company's option.

Prior to December 15, 2016, the Company may redeem all or a part of the 2020 notes, upon not less than 30 nor more than 60 days' prior notice to the Holders, at a redemption price equal to 100% of the principal amount of 2020 notes

redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the redemption date, subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant interest payment date.

On and after December 15, 2016, the Company will be entitled at its option, at any time and from time to time, to redeem all or a portion of the 2020 notes, upon not less than 30 nor more than 60 days' prior notice to the Holders, at the redemption prices (expressed as percentages of principal amount on the redemption date), plus accrued and unpaid

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interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on December 15 of the years set forth below:

| PERIOD | REDEMPTION PRICE | |
|---|---|---|
| 2016 | 105.063 | % |
| 2017 | 103.375 | % |
| 2018 | 101.688 | % |
| 2019 and thereafter | 100.000 | % |

In addition, at any time prior to December 15, 2016, the Company may redeem, on any one or more occasions, with all or a portion of the net cash proceeds of one or more Equity Offerings (within 60 days of the consummation of any such Equity Offering), up to 35% of the aggregate principal amount of the 2020 notes (including any Additional 2020 Notes) at a redemption price (expressed as a percentage of the aggregate principal amount of the 2020 notes so redeemed) equal to 106.750% plus accrued and unpaid interest to but not including, the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided, however,* that at least 65% of the original aggregate principal amount of the 2020 notes must remain outstanding immediately after each such redemption.

The Trustee shall select the 2020 notes to be redeemed in the manner described under —Repurchase at the Option of Holders—Selection and Notice.

In addition to the Company's right to redeem 2020 notes as set forth above, the Company may at any time and from time to time purchase 2020 notes in open-market transactions, tender offers or otherwise.

**Redemption for Taxation Reasons**

The Company will be entitled, at its option, to redeem the 2020 notes in whole (but not in part) if at any time it becomes obligated to pay Additional Amounts on the 2020 notes on the next interest payment date with respect to the 2020 notes, but only if its obligation results from a change in, or an amendment to, the laws or treaties (including any regulations or official rulings promulgated thereunder) of a Relevant Tax Jurisdiction (or a political subdivision or taxing authority thereof or therein), or from a change in any official position regarding the interpretation, administration or application of those laws, treaties, regulations or official rulings (including a change resulting from a holding, judgment or order by a court of competent jurisdiction), that becomes effective and is announced after the Closing Date (or, if the applicable Relevant Tax Jurisdiction became a Relevant Tax Jurisdiction on a date after the Closing Date, such later date) and provided the Company cannot avoid the obligation after taking reasonable measures to do so. If the Company redeems the 2020 notes in these circumstances, it will do so at a redemption price equal to 100% of the principal amount of the 2020 notes redeemed, plus accrued and unpaid interest, if any, and any other amounts due to the redemption date.

If the Company becomes entitled to redeem the 2020 notes in these circumstances, it may do so at any time on a redemption date of its choice. However, the Company must give the Holders of the 2020 notes being redeemed notice of the redemption not less than 30 days or more than 60 days before the redemption date and not more than 90 days before the next date on which it would be obligated to pay Additional Amounts. In addition, the Company's obligation to pay Additional Amounts must remain in effect when it gives the notice of redemption. Notice of the Company's intent to redeem the 2020 notes shall not be effective until such time as it delivers to the Trustee both an Officers' Certificate stating that the obligation to pay Additional Amounts cannot be avoided by taking reasonable measures and an opinion of independent legal counsel or an independent auditor stating that the Company is obligated to pay

Additional Amounts because of an amendment to or change in law, treaties or position as described in the preceding paragraph.

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**Repurchase at the Option of Holders**

***Change of Control***

If a Change of Control occurs, the Company will make an offer to purchase all of the 2020 notes pursuant to the offer described below (the Change of Control Offer ) at a price in cash (the Change of Control Payment ) equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but not including, the date of purchase, subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Company will send notice of such Change of Control Offer, with a copy to the Trustee, to each Holder of 2020 notes as provided in —Notices below, with the following information:

(1) a Change of Control Offer is being made pursuant to the covenant entitled Change of Control, and that all 2020 notes properly tendered pursuant to such Change of Control Offer will be accepted for payment;

(2) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is given (the Change of Control Payment Date );

(3) any 2020 note not properly tendered will remain outstanding and continue to accrue interest;

(4) unless the Company defaults in the payment of the Change of Control Payment, all 2020 notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on, but not including, the Change of Control Payment Date;

(5) Holders electing to have any 2020 notes purchased pursuant to a Change of Control Offer will be required to surrender the 2020 notes, with the form entitled Option of Holder to Elect Purchase on the reverse of the 2020 notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third business day preceding the Change of Control Payment Date;

(6) Holders will be entitled to withdraw their tendered 2020 notes and their election to require the Company to purchase such 2020 notes; provided that the paying agent receives, not later than the close of business on the last day of the offer period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the 2020 notes, the principal amount of 2020 notes tendered for purchase, and a statement that such Holder is withdrawing its tendered 2020 notes and its election to have such 2020 notes purchased;

(7) if such notice is given prior to the occurrence of a Change of Control, stating the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(8) that Holders whose 2020 notes are being purchased only in part will be issued 2020 notes equal in principal amount to the unpurchased portion of the 2020 notes surrendered, which unpurchased portion must be equal to $200,000 or an integral multiple of $1,000 in excess thereof.

While the 2020 notes are in global form and the Company makes an offer to purchase all of the 2020 notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the 2020 notes through the facilities of DTC, subject to DTC's rules and regulations.

We will not be required to make a Change of Control Offer following a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the 2020 Indenture applicable to a Change of Control Offer made by us and purchases all 2020 notes validly tendered and not withdrawn under such Change of Control Offer or (2) notice of redemption has been given pursuant to the 2020 Indenture as described under the caption —Optional Redemption, unless and until there is a default in payment of the applicable redemption price. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control.

2020 notes repurchased by us pursuant to a Change of Control Offer will have the status of 2020 notes issued but not outstanding or will be retired and canceled at the option of the Company. 2020 notes purchased by a third party pursuant to the preceding paragraph will have the status of 2020 notes issued and outstanding.

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The Company will comply with the requirements of Section 14(e) under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the 2020 notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the 2020 Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the 2020 Indenture by virtue thereof.

On the Change of Control Payment Date, the Company will, to the extent permitted by law,

(1) accept for payment all 2020 notes or portions thereof properly tendered pursuant to the Change of Control Offer,
(2) on or prior to 10:00 a.m. New York City time, deposit with the paying agent an amount equal to the aggregate Change of Control Payment in respect of all 2020 notes or portions thereof so tendered, and
(3) at the option of the Company, deliver, or cause to be delivered, to the Trustee for cancellation the 2020 notes so accepted together with an Officers' Certificate stating that such 2020 notes or portions thereof have been tendered to and purchased by the Company.

The paying agent will promptly mail to each Holder of the 2020 notes the Change of Control Payment for such 2020 notes, and the Trustee, upon the Company's order, will promptly authenticate and mail to each Holder a new 2020 note equal in principal amount to any unpurchased portion of the 2020 notes surrendered, if any; provided that each such new 2020 note will be in a principal amount of $200,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The Change of Control purchase feature is a result of negotiations between the underwriters and us. We have no present intention to engage in a transaction that would trigger a Change of Control Offer, although it is possible that we could decide to do so in the future. Subject to the limitations discussed below, we could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control under the 2020 Indenture, but that could cause a change in effective control of the Company, increase the amount of Indebtedness outstanding at such time or otherwise affect our capital structure or credit ratings. Restrictions on our ability to incur additional Indebtedness are contained in the covenants described under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock and Certain Covenants—Liens. Such restrictions in the 2020 Indenture can be waived only with the consent of the Holders of a majority in principal amount of the 2020 notes then outstanding. Except for the limitations contained in such covenants, however, the 2020 Indenture will not contain any covenants or provisions that may afford Holders of the 2020 notes protection in a highly levered transaction.

The definition of Change of Control includes a disposition of all or substantially all of the assets of the Company to certain Persons. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of all or substantially all of the assets of the Company. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder of 2020 notes may require the Company to make an offer to repurchase the 2020 notes as described above. In a recent decision, the Chancery Court of the State of Delaware raised the possibility that a change of control occurring as a result of a failure to have continuing directors comprising a majority of a board of directors may be unenforceable on public policy grounds.

The existence of a Holder's right to require the Company to repurchase such Holder's 2020 notes upon the occurrence of a Change of Control may deter a third party from seeking to acquire the Company in a transaction that would constitute a Change of Control.

The provisions under the 2020 Indenture relative to our obligation to make an offer to repurchase the 2020 notes as a result of a Change of Control may be waived or modified with the written consent of the Holders of a majority in principal amount of the 2020 notes.

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Notice of redemption or repurchase, at the Company's option and discretion, be subject to one or more conditions precedent, including, but not limited to, completion of such Change of Control, as the case may be.

***Asset Sales***

The 2020 Indenture will provide that the Company will not, and will not permit any Restricted Subsidiary to, cause, make or suffer to exist an Asset Sale unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents.

Within 365 days after the Company's or a Restricted Subsidiary's receipt of the Net Proceeds of any Asset Sale covered by this clause (a), the Company or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale:

(1) to make one or more offers to the Holders of the 2020 notes (and, at the option of the Company, the holders of other senior Indebtedness) to purchase 2020 notes (and such senior Indebtedness) pursuant to and subject to the conditions contained in the 2020 Indenture (each, an Asset Sale Offer ); provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to this clause (1), the Company or such Restricted Subsidiary shall permanently retire such Indebtedness; provided further that if the Company or such Restricted Subsidiary shall so reduce any senior Indebtedness (other than the 2020 notes), the Company will equally and ratably reduce Indebtedness under the 2020 notes by making an offer to all Holders of 2020 notes to purchase at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest and additional interest, if any, the *pro rata* principal amount of the 2020 notes, such offer to be conducted in accordance with the procedures set forth below for an Asset Sale Offer;

(2) to make an investment in (a) any one or more businesses; provided that such investment in any business is in the form of the acquisition of Capital Stock and results in the Company or a Restricted Subsidiary, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) capital expenditures or (c) acquisitions of other long-term assets, in each of (a), (b) and (c), used or useful in a Similar Business;

(3) to reduce Indebtedness of a Restricted Subsidiary, other than Indebtedness owed to the Company or another Restricted Subsidiary; provided that the acquisition of Indebtedness of a Restricted Subsidiary by the Company shall constitute a reduction in such Indebtedness; or

(4) any combination of the foregoing.

Any Net Proceeds that are not invested or applied as provided and within the time period set forth in the first sentence of the immediately preceding paragraph will be deemed to constitute Excess Proceeds. In the case of clause (2) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment; provided that (x) such investment is consummated within 365 days after receipt by the Company or any Restricted Subsidiary of the Net Proceeds of any Asset Sale, and (y) if such investment is not consummated within the period set forth in subclause (x), the Net Proceeds not so applied will be deemed to be Excess Proceeds. When the aggregate amount of Excess Proceeds exceeds $25.0 million, the Company shall make an Asset Sale Offer to all Holders of the 2020 notes, and, if required by the terms of any senior Indebtedness, to the holders of such senior Indebtedness, to purchase the maximum principal amount of 2020 notes and such other senior Indebtedness, that are $200,000 or an integral multiple of $1,000 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in the 2020 Indenture. The Company will commence an Asset Sale Offer with respect to Excess Proceeds within 30 days after the date that Excess Proceeds exceeds $25.0 million by giving the notice required pursuant to the terms of the

2020 Indenture, with a copy to the Trustee. To the extent that the aggregate amount of 2020 notes and such senior Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds

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for general corporate purposes, subject to other covenants contained in the 2020 Indenture. If the aggregate principal amount of 2020 notes or the senior Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the 2020 notes and such senior Indebtedness will be purchased on a *pro rata* basis based on the principal amount of the 2020 notes or such senior Indebtedness tendered, subject to adjustments by the Company so that no 2020 notes or such other senior Indebtedness are left outstanding in unauthorized denominations. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. After the Company or any Restricted Subsidiary has applied the Net Proceeds from any Asset Sale as provided in, and within the time periods required by, this paragraph (a), the balance of such Net Proceeds, if any, from such Asset Sale may be used by the Company or such Restricted Subsidiary for any purpose not prohibited by the terms of the 2020 Indenture.

For purposes of this covenant, the following are deemed to be cash or Cash Equivalents:

(a) any liabilities (as shown on the Company's, or such Restricted Subsidiary's most recent internally available balance sheet or in the 2020 notes thereto) of the Company or any Restricted Subsidiary (other than liabilities that are contingent or by their terms subordinated to the 2020 notes) that are assumed by the transferee of any such assets and as a result of which the Company and its Restricted Subsidiaries are no longer obligated with respect to such liabilities or are indemnified against further liabilities;

(b) any securities, notes or other obligations received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Capital Stock, provided such receipt of Capital Stock would qualify under clause (2) of the second paragraph of this section; and

(d) any Designated Noncash Consideration received by the Company or any Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Noncash Consideration received pursuant to this clause (d) that is at that time outstanding, not to exceed the greater of (x) $100.0 million and (y) 3.0% of Total Assets at the time of the receipt of such Designated Noncash Consideration, with the Fair Market Value of each item of Designated Noncash Consideration being measured at the time received and without giving effect to subsequent changes in value.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the 2020 notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the 2020 Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the 2020 Indenture by virtue thereof.

***Selection and Notice***

If less than all of the 2020 notes are to be redeemed or repurchased at any time, selection of such 2020 notes for redemption or repurchase, will be made by the Trustee on a *pro rata* basis or by lot or otherwise in accordance with the procedures of DTC; provided that no 2020 notes of $200,000 or less shall be purchased or redeemed in part.

Notices of purchase or redemption shall be given at least 30 but not more than 60 days before the purchase or redemption date to each Holder of 2020 notes to be purchased or redeemed as provided in —Notices below. If any 2020 note is to be purchased or redeemed in part only, any notice of purchase or redemption that relates to such 2020 note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed. In the case of any book-entry notes, notices of purchase or redemption will be given to DTC in accordance with its applicable procedures.

A new 2020 note in principal amount equal to the unpurchased or unredeemed portion of any 2020 note purchased or redeemed in part will be issued in the name of the Holder thereof upon cancellation of the original 2020 note. On and

after the purchase or redemption date, unless the Company defaults in payment of the purchase or redemption price, interest shall cease to accrue on 2020 notes or portions thereof purchased or called for redemption.

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**Certain Covenants**

Set forth below are summaries of certain covenants contained in the 2020 Indenture.

***Covenant Suspension***

If on any date following the Closing Date (i) the 2020 notes have Investment Grade Ratings from two Rating Agencies, and (ii) no Default has occurred and is continuing under the 2020 Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a Covenant Suspension Event ), the Company and the Restricted Subsidiaries will not be subject to the following covenants (collectively, the Suspended Covenants ):

(1) —Repurchase at the Option of Holders—Asset Sales ;
(2) —Limitation on Restricted Payments ;
(3) —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;
(4) clause (4) of the first paragraph of —Amalgamation, Merger, Consolidation or Sale of All or Substantially All Assets ;
(5) —Transactions with Affiliates ; and
(6) —Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

In the event that the Company and the Restricted Subsidiaries are not subject to the Suspended Covenants under the 2020 Indenture for any period of time as a result of the foregoing, and on any subsequent date (the Reversion Date ) one of the Rating Agencies (a) withdraws its Investment Grade Rating or downgrades the rating assigned to the 2020 notes below an Investment Grade Rating and/or (b) the Company or any of its Affiliates enters into an agreement to effect a transaction that would result in a Change of Control and one of the Rating Agencies indicates that if consummated, such transaction (alone or together with any related recapitalization or refinancing transactions) would cause such Rating Agency to withdraw its Investment Grade Rating or downgrade the ratings assigned to the 2020 notes below an Investment Grade Rating, then the Company and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under the 2020 Indenture with respect to future events, including, without limitation, a proposed transaction described in clause (b) above.

The period of time between the date of the Covenant Suspension Event and the Reversion Date is referred to in this description as the Suspension Period. Additionally, upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds shall be reset at zero. During the Suspension Period no additional subsidiary may be designated an Unrestricted Subsidiary unless such designation would have been permitted if the covenant described under the caption —Limitation on Restricted Payments had been in effect at all times during the Suspension Period. In the event of any such reinstatement, no action taken or omitted to be taken by the Company or any of its Restricted Subsidiaries prior to such reinstatement will give rise to a Default or Event of Default under the 2020 Indenture with respect to 2020 notes; provided that (1) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though the covenant described under the caption —Limitation on Restricted Payments had been in effect prior to, but not during the Suspension Period, and (2) all Indebtedness incurred, or Disqualified Stock or preferred stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to clause (c) of the second paragraph of —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

The Company will give written notice to the Trustee and the Holders within 30 days of the date of any Covenant Suspension Event and/or any Reversion Date.

There can be no assurance that the 2020 notes will ever achieve or maintain Investment Grade Ratings.

***Limitation on Restricted Payments.***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly:

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declare or pay any dividend or make any distribution on account of the Company's or any Restricted Subsidiary's
(1) Equity Interests, including any dividend or distribution payable in connection with any amalgamation, merger or consolidation other than:
(A) dividends or distributions by the Company payable in Equity Interests (other than Disqualified Stock) of the Company or in options, warrants or other rights to purchase such Equity Interests; or
(B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Company or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities;
(2) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Company, including in connection with any amalgamation, merger or consolidation;
(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than (x) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition and (y) Indebtedness of the Company to a Restricted Subsidiary or a Restricted Subsidiary to the Company or another Restricted Subsidiary; or
(4) make any Restricted Investment;

(all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as Restricted Payments ), unless, at the time of such Restricted Payment:

(a) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;
(b) immediately after giving effect to such transaction on a *pro forma* basis, the Company could incur $1.00 of additional indebtedness under the provisions of the first paragraph of the covenant described —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; and
(c) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries after the Closing Date (including Restricted Payments permitted by clauses (1), (12) (with respect to the payment of dividends on Refunding Capital Stock pursuant to clause (b) thereof only) and (13) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum of:
(1) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from the beginning of the full fiscal quarter in which the Closing Date occurred, to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit, *plus*
(2) 100% of the aggregate net cash proceeds and the Fair Market Value of marketable securities or other property received by the Company since immediately after the Closing Date from the issue or sale of:
(x) Equity Interests of the Company; or
(y) debt securities, Designated Preferred Stock or Disqualified Stock of the Company or any Restricted Subsidiary that have been converted into or exchanged for such Equity Interests of the Company;

provided, however, that this clause (2) shall not include the proceeds from (a) Refunding Capital Stock (as defined below), (b) Equity Interests or converted or exchanged debt securities of the Company sold to a Restricted Subsidiary or the Company, as the case may be or (c) Disqualified Stock or debt securities that have been converted into or exchanged for Disqualified Stock, *plus*

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(3) 100% of the aggregate amount of cash and the Fair Market Value of marketable securities or other property contributed to the capital of the Company following the Closing Date (other than by a Restricted Subsidiary), *plus*

(4) 100% of the aggregate amount received in cash and the Fair Market Value of marketable securities or other property received by the Company or a Restricted Subsidiary by means of:

(A) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company and its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Company and its Restricted Subsidiaries and repayments of loans or advances which constitute Restricted Investments by the Company and its Restricted Subsidiaries in each case after the Closing Date; or

(B) the sale (other than to the Company or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary (other than to the extent such Investment constituted a Permitted Investment) or a dividend or distribution from an Unrestricted Subsidiary in each case after the Closing Date; *plus*

(5) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the Fair Market Value of the Investment in such Unrestricted Subsidiary at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary, other than to the extent the Investment in such Unrestricted Subsidiary was made by the Company or a Restricted Subsidiary pursuant to clause (5) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment, plus

(6) $45.0 million.

The foregoing provisions will not prohibit:

(1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of the 2020 Indenture;

(2) the redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Company made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Company, which is incurred in compliance with —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock so long as:

(A) the principal amount (or accreted value) of such new Indebtedness does not exceed the principal amount, plus any accrued and unpaid interest, of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any premium and any reasonable tender premiums, defeasance costs or other fees and expenses incurred in connection with the issuance of such new Indebtedness,

(B) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the maturity of the 2020 notes, and

(C) such Indebtedness has a Weighted Average Life to Maturity which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired that were due on or after the date one year following the maturity date of any 2020 notes then outstanding were instead due on such date one year following the maturity date of such 2020 notes (provided that, in the case of this subclause (C)(y), such Indebtedness does not provide for any scheduled principal payments prior to the maturity date of the 2020 notes in excess of, or prior to, the scheduled principal payments due prior to such maturity for the Indebtedness being refunded or refinanced or defeased);

(3) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of common Equity Interests of the Company held by any future, present or former employee, director or consultant of the

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Company or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; provided, however, that the aggregate Restricted Payments made under this clause (3) do not exceed in any calendar year $5.0 million (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of $10.0 million in any calendar year);

(4) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any other Restricted Subsidiary issued in accordance with the covenant described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock to the extent such dividends are included in the definition of Fixed Charges;

(5) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (5) that are at the time outstanding, not to exceed $50.0 million and 1.25% of Total Assets at the time of such investment; provided, that the dollar amount of Investments made pursuant to this clause (5) may be reduced by the Fair Market Value of the proceeds received by the Company and/or its Restricted Subsidiaries from the subsequent sale, disposition or other transfer of such Investments (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(6) (x) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants, and (y) payment of dividend equivalents pursuant to grants of Equity Interests to employees and directors of the Company under the Company's equity incentive plans;

(7) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (7) not to exceed $45.0 million;

(8) Restricted Payments by the Company or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock of any such Person;

(9) the purchase by the Company of fractional shares arising out of stock dividends, splits or combinations or business combinations;

(10) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets and purchases and repurchases of Securitization Assets in connection with a Qualified Securitization Financing;

(11) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness required pursuant to the provisions similar to those described under the captions —Repurchase at the Option of Holders—Change of Control and —Repurchase at the Option of Holders—Asset Sales ; provided that there is a concurrent or prior Change of Control Offer or Asset Sale Offer, as applicable, and all 2020 notes tendered by Holders of the 2020 notes in connection with such Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(12) any Restricted Payment in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Company (other than any Disqualified Stock) ( Refunding Capital Stock ); and

(13) any dividends or distributions by the Company on its common shares (directly or in the form of American Depositary Shares) and any repurchase, redemption or acquisition by the Company of its common shares, in an aggregate amount not to exceed for any fiscal year the greater of $45.0 million and 1.25% of Total Assets at the time of such dividend, distribution, repurchase, redemption or acquisition; provided that immediately after giving effect to such dividend, distribution, repurchase, redemption or acquisition, on a pro forma basis, the Company could incur $1.00 of additional indebtedness under the provisions of the first paragraph of the covenant described —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock .

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provided however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (3), (4), (5), (7), (12) and (13), no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof.

As of the time of issuance of the 2020 notes, all of the Company's Subsidiaries will be Restricted Subsidiaries. The Company will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the last sentence of the definition of Unrestricted Subsidiary. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of Investment. Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to the first paragraph of this covenant or under clause (5) or (7) of the second paragraph of this covenant, or pursuant to the definition of Permitted Investments, and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in the 2020 Indenture.

***Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, incur and collectively, an incurrence ) with respect to any Indebtedness (including Acquired Indebtedness) and the Company will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or preferred stock; provided, however, that the Company may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of preferred stock, if the Fixed Charge Coverage Ratio for the Company and the Restricted Subsidiaries for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or preferred stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four-quarter period.

The foregoing limitations will not apply to:

(a) the incurrence of Indebtedness of the Company or any of the Restricted Subsidiaries under Credit Facilities in an aggregate amount at any time outstanding not to exceed $50.0 million pursuant to this clause (a);

(b) the incurrence by the Company of Indebtedness represented by the 2020 notes (other than the additional 2020 notes offered hereby and any Additional 2020 Notes);

(c) Existing Indebtedness (other than Indebtedness described in clauses (a) and (b));

(d) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and preferred stock incurred by the Company or any Restricted Subsidiary, to finance the purchase, lease or improvement of property (real or personal) or equipment that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, in an aggregate principal amount which, when aggregated with the principal amount of all other Indebtedness, Disqualified Stock and preferred stock then outstanding and incurred pursuant to this clause (d) and including all Refinancing Indebtedness incurred to refund, refinance or replace any other Indebtedness, Disqualified Stock and preferred stock incurred pursuant to this clause (d), does not exceed the greater of (x) $25.0 million and (y) 0.75% of Total Assets;

(e) Indebtedness incurred by the Company or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to

employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type

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obligations regarding workers' compensation claims; provided, however, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;

(f) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(g) Indebtedness of the Company to a Restricted Subsidiary; provided that, other than in the case of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Company and the Restricted Subsidiaries to finance working capital needs of the Restricted Subsidiaries, any such Indebtedness is subordinated in right of payment to the 2020 notes; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed, in each case to be an incurrence of such Indebtedness not permitted by this clause (g);

(h) Indebtedness of a Restricted Subsidiary to the Company or another Restricted Subsidiary; provided that, any subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed in each case to be an incurrence of such Indebtedness not permitted by this clause (h);

(i) shares of preferred stock of a Restricted Subsidiary issued to the Company or another Restricted Subsidiary; provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of preferred stock (except to the Company or another Restricted Subsidiary) shall be deemed in each case to be an issuance of such shares of preferred stock not permitted by this clause (i);

(j) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting:

(A) interest rate risk;
(B) exchange rate risk with respect to any currency exchange;
(C) commodity risk;
(D) inflation risk; or
(E) any combination of the foregoing;

(k) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Company or any Restricted Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(l) Indebtedness, Disqualified Stock and preferred stock of the Company or any Restricted Subsidiary not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and preferred stock then outstanding and incurred pursuant to this clause (l), including all Refinancing Indebtedness in respect thereof incurred pursuant to clause (n), does not at any one time outstanding exceed the greater of (1) $50.0 million and (2) 1.25% of Total Assets;

(m) (1) any guarantee by the Company of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of the 2020 Indenture, or (2) any guarantee by a Restricted Subsidiary of Indebtedness of the Company or another Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by the Company or such other Restricted Subsidiary is permitted under the terms of the 2020 Indenture;

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(n) the incurrence by the Company or any Restricted Subsidiary of Indebtedness, Disqualified Stock or preferred stock which serves to refund or refinance any Indebtedness, Disqualified Stock or preferred stock incurred as permitted under the first paragraph of this covenant and clauses (b), (c), (l), (n), (o) and (q) of this paragraph or any Indebtedness, Disqualified Stock or preferred stock issued to so refund or refinance such Indebtedness, Disqualified Stock or preferred stock including additional Indebtedness, Disqualified Stock or preferred stock incurred to pay premiums (including tender premiums), defeasance costs and fees in connection therewith (the Refinancing Indebtedness ) prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(1) except in the case of Indebtedness incurred pursuant to clause (q) below or any Refinancing Indebtedness of such Indebtedness, has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the shorter of (x) remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or preferred stock being refunded or refinanced and (y) in the case of Subordinated Indebtedness, the Weighted Average Life to Maturity that would result if all payments of principal on the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired that were due on or after the date one year following the maturity date of any 2020 notes then outstanding were instead due on such date one year following the maturity date of such 2020 notes (provided that, in the case of this subclause (n)(1)(y), such Indebtedness does not provide for any scheduled principal payments prior to the maturity date of the 2020 notes in excess of, or prior to, the scheduled principal payments due prior to such maturity for the Indebtedness, Disqualified Stock or preferred stock being refunded or refinanced or defeased);

(2) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated in right of payment to the 2020 notes, such Refinancing Indebtedness is subordinated in right of payment to the 2020 notes at least to the same extent as the Indebtedness being refinanced or refunded or (ii) Disqualified Stock or preferred stock, such Refinancing Indebtedness must be Disqualified Stock or preferred stock, respectively; and

(3) shall not include

(x) Indebtedness, Disqualified Stock or preferred stock of a Subsidiary that refinances Indebtedness, Disqualified Stock or preferred stock of the Company; or

(y) Indebtedness, Disqualified Stock or preferred stock of the Company or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or preferred stock of an Unrestricted Subsidiary;

(o) Indebtedness, Disqualified Stock or preferred stock of Persons that are acquired by the Company or any Restricted Subsidiary or amalgamated or merged into the Company or a Restricted Subsidiary in accordance with the terms of the 2020 Indenture; provided that such Indebtedness, Disqualified Stock or preferred stock is not incurred in contemplation of such acquisition, amalgamation or merger; provided further that after giving effect to such acquisition, amalgamation or merger, either:

(1) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of this covenant; or

(2) the Fixed Charge Coverage Ratio is greater than immediately prior to such acquisition, amalgamation or merger;

(p) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its incurrence;

(q) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and preferred stock, including any predelivery payment financing, incurred by the Company or any Restricted Subsidiary, that is secured by any aircraft, engines, spare parts or similar assets, including in the form of financing from aircraft or engine manufacturers or their affiliates and whether through the direct purchase of assets or the Capital Stock or Indebtedness of any Person owning such assets, so long as the amount of such Indebtedness does not exceed the purchase price of such aircraft, engines, spare parts or similar assets and any improvements or modifications thereto and is incurred not later than two years after the date of such purchase, lease, acquisition, improvement or modification;

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(r) Indebtedness of the Company or any Restricted Subsidiary consisting of the guarantee of obligations of joint ventures in a Similar Business which are not Subsidiaries supported by a contractual obligation by (1) the joint venture to repay any amounts advanced pursuant to such guarantee or (2) the joint venture partners to repay a proportion of any amounts advanced pursuant to such guarantee equal to their ownership of such joint venture in an aggregate principal amount not to exceed 3.0% of Total Assets at any one time outstanding pursuant to this clause (r);

(s) Indebtedness of the Company or any Restricted Subsidiary consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business; and

(t) Indebtedness of the Company or any Restricted Subsidiary arising in connection with trade creditors or customers or endorsements of instruments for deposit, in each case, in the ordinary course of business.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness, Disqualified Stock or preferred stock meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or preferred stock described in clauses (a) through (t) above or is entitled to be incurred pursuant to the first paragraph of this covenant, the Company, in its sole discretion, may classify or reclassify such item of Indebtedness in any manner that complies with this covenant and the Company may divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in the first and second paragraphs above. Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness, Disqualified Stock or preferred stock will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or preferred stock for purposes of this covenant.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

The 2020 Indenture will provide that the Company will not, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinated or junior in right of payment to any Indebtedness of the Company unless such Indebtedness is expressly subordinated in right of payment to the 2020 notes to the extent and in the same manner as such Indebtedness is subordinated in right of payment to other Indebtedness of the Company.

The 2020 Indenture will not treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (2) Indebtedness as subordinated or junior to any other Indebtedness merely because it has a junior priority with respect to the same collateral.

***Liens***

The Company will not create, incur, assume or otherwise cause or suffer to exist or become effective any Lien that secures obligations under any Indebtedness of the Company or any Guarantor (the Initial Lien ) of any kind upon any of its property or assets, now owned or hereafter acquired, except any Initial Lien if (i) the 2020 notes are equally and

ratably secured with (or on a senior basis to, in the case such Initial Lien secures any Subordinated Indebtedness) the obligations secured by such Initial Lien or (ii) such Initial Lien is a Permitted Lien.

Any Lien created for the benefit of the Holders of the 2020 notes pursuant to clause (i) of the preceding paragraph shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

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***Amalgamation, Merger, Consolidation or Sale of All or Substantially All Assets***

The Company may not consolidate, amalgamate or merge with or into or wind up into (whether or not the Company is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person unless:

(1) the Company shall be the surviving corporation or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of a Permitted Jurisdiction (such Person, as the case may be, being herein called the Successor Company );

(2) the Successor Company, if other than the Company, expressly assumes all the obligations of the Company under the 2020 Indenture and the 2020 notes pursuant to a supplemental indenture;

(3) immediately after such transaction no Default or Event of Default exists;

(4) immediately after giving *pro forma* effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period,

(A) the Successor Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of the covenant described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock or

(B) the Fixed Charge Coverage Ratio for the Successor Company and the Restricted Subsidiaries would be greater than such ratio for the Company and the Restricted Subsidiaries immediately prior to such transaction; and

(5) the Company or such Successor Company, as applicable, shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indentures, if any, comply with the 2020 Indenture.

The Successor Company will succeed to, and be substituted for, the Company under the 2020 Indenture and the 2020 notes. Notwithstanding the foregoing clauses (3) and (4),

(a) any Restricted Subsidiary may consolidate with, amalgamate or merge into or transfer all or part of its properties and assets to the Company; and

(b) the Company may amalgamate or merge with an Affiliate incorporated solely for the purpose of reincorporating the Company in any Permitted Jurisdiction so long as the amount of Indebtedness of the Company and the Restricted Subsidiaries is not increased thereby.

***Transactions with Affiliates***

The Company will not, and will not permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an Affiliate Transaction ) involving aggregate payments or consideration in excess of $5.0 million, unless:

(a) such Affiliate Transaction is on terms that are not materially less favorable to the Company or the relevant Restricted Subsidiary at the time of such transaction or at the time of the execution of the agreement providing therefor than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $50.0 million, a resolution adopted by the disinterested members of the Board of Directors of the Company, if any, approving such Affiliate Transaction.

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The foregoing provisions will not apply to the following:

(1) transactions between or among the Company and/or any of the Restricted Subsidiaries;

(2) Restricted Payments permitted by the provisions of the 2020 Indenture described above under the covenant —Limitation on Restricted Payments and Permitted Investments;

(3) the payment of reasonable and customary fees paid to, reimbursement of expenses and indemnities provided on behalf of, officers, directors, employees or consultants of the Company or any Restricted Subsidiary;

(4) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (a) of the preceding paragraph;

(5) payments or loans (or cancellation of loans) to employees or consultants of the Company or any Restricted Subsidiary which are approved by a majority of the Board of Directors of the Company in good faith;

(6) any agreement as in effect as of the Closing Date, or any amendment thereto (so long as any such amendment, taken as a whole, is no less favorable to the Company and its Restricted Subsidiaries than the agreement in effect on the date of the 2020 Indenture (as determined by the Board of Directors of the Company in good faith));

(7) the existence of, or the performance by the Company or any of its Restricted Subsidiaries of its obligations under the terms of, any limited liability company, limited partnership or other Organizational Document or joint venture, investors or shareholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any similar agreements which it may enter into thereafter; provided, however, that the existence of, or the performance by the Company or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Closing Date shall only be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement, taken as a whole, is no less favorable to the Company and its Restricted Subsidiaries than the agreement in effect on the date of the 2020 Indenture (as determined by the Board of Directors of the Company in good faith);

(8) transactions with customers, clients, suppliers, trade creditors, joint venture partners or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of the 2020 Indenture;

(9) the issuance of Equity Interests (other than Disqualified Stock) of the Company to any Affiliate of the Company and other customary rights in connection therewith;

(10) transactions or payments pursuant to any employee, officer or director compensation (including bonuses) or benefit plans, employment agreements, severance agreement, indemnification agreements or any similar arrangements entered into in the ordinary course of business or approved by the Board of Directors of the Company;

(11) transactions in the ordinary course with (i) Unrestricted Subsidiaries or (ii) joint ventures in which the Company or a Subsidiary of the Company holds or acquires an ownership interest (whether by way of Capital Stock or otherwise) so long as the terms of any such transactions are no less favorable to the Company or Subsidiary participating in such joint ventures than they are to other joint venture partners;

(12) transactions with a Person (other than an Unrestricted Subsidiary of the Company) that is an Affiliate of the Company solely because the Company owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(13) transactions involving Securitization Assets, or participations therein, in connection with any Qualified Securitization Financing;

(14) any Indebtedness from time to time owing by the Company or any Restricted Subsidiary to the Company or any Restricted Subsidiary;

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(15) any servicing and/or management agreements or arrangements in effect on the Closing Date or any amendment, modification or supplement to such servicing and/or management agreements or arrangements or replacement thereof or any substantially similar servicing and/or management agreement or arrangement entered into after the Closing Date, so long as any material amendment, modification, supplement, replacement or substantially similar agreement or arrangement meets the requirements of clause (b) of the preceding paragraph; and

(16) any transaction with an Affiliate where the only consideration paid by the Company or any Restricted Subsidiary is the issuance of Equity Interests (other than Disqualified Stock).

***Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(a) (1) pay dividends or make any other distributions to the Company or any Restricted Subsidiary on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(2) pay any Indebtedness owed to the Company or any Restricted Subsidiary;

(b) make loans or advances to the Company or any Restricted Subsidiary; or

(c) sell, lease or transfer any of its properties or assets to the Company or any Restricted Subsidiary.

However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Closing Date;

(2) the 2020 Indenture and the 2020 notes;

(3) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (c) above on the property so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person acquired by the Company or any Restricted Subsidiary in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;

(6) contracts for the sale of assets, including, without limitation, customary restrictions with respect to a Subsidiary pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary that impose restrictions on the assets to be sold;

(7) secured Indebtedness otherwise permitted to be incurred pursuant to the covenants described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock and —Liens that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(9) customary provisions in joint venture agreements and other similar agreements relating solely to such joint venture;

(10) customary provisions contained in leases and other agreements entered into in the ordinary course of business;

(11) any such encumbrance or restriction with respect to a Foreign Subsidiary pursuant to an agreement governing Indebtedness, Disqualified Stock or preferred stock incurred by such Foreign Subsidiary that was permitted by the terms of the 2020 Indenture to be incurred;

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any such encumbrance or restriction pursuant to an agreement governing Indebtedness incurred pursuant to the covenant described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock, which encumbrances or restrictions are, in the good faith judgment of the Company's Board of Directors not materially more restrictive, taken as a whole, than customary provisions in comparable financings and that the management of the Company determines, at the time of such financing, will not materially impair the Company's ability to make payments as required under the 2020 notes;

(12)

any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (10) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company's Board of Directors, no more restrictive, taken as a whole, with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(13)

restrictions created in connection with any Qualified Securitization Financing that, in the good faith determination of the Company, are necessary or advisable to effect such Qualified Securitization Financing.

(14)

**Reports and Other Information**

The 2020 Indenture provides that for so long as the 2020 notes are outstanding, whether or not the Company has a class of securities registered under the Exchange Act, the Company shall furnish without cost to the Trustee and the Holders and prospective purchasers of the 2020 notes or shall post to a publicly available website (it being understood that the Trustee shall have no responsibility to determine whether any information has been posted on such website),

(a)

within 120 days (or any time period then in effect under the rules and regulations of the Exchange Act for a non-accelerated filer) plus any grace period provided by Rule 12b-25 under the Exchange Act, after the end of each fiscal year, annual reports on Form 20-F, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form; and

(b)

within 75 days (or any time period then in effect under the rules and regulations of the Exchange Act), after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 6-K, containing substantially the same information required to be contained in Form 10-Q, or any successor or comparable form.

**Events of Default and Remedies**

The following events constitute Events of Default under the 2020 Indenture:

(1)

default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the 2020 notes issued under the 2020 Indenture;

(2)

default for 30 days or more in the payment when due of interest on or with respect to the 2020 notes issued under the 2020 Indenture;

(3)

failure by the Company or any Restricted Subsidiary for 60 days after receipt of written notice given by the Trustee to the Company or by Holders of at least 25% in aggregate principal amount of the 2020 notes then issued and outstanding under the 2020 Indenture to the Company (with a copy to the Trustee) to comply with any of its other agreements in the 2020 Indenture or the 2020 notes;

(4)

default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any Restricted Subsidiary or the payment of which is guaranteed by the Company or any Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the 2020 notes, if both:

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(A) such default either:

- results from the failure to pay any such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods); or
- relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $50.0 million or more at any one time outstanding,

in each case without such acceleration having been rescinded, annulled or otherwise cured; provided that if any such acceleration is being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, then the Event of Default by reason thereof would not deemed to have occurred until the conclusion of such proceedings; and provided further that such default shall not be an Event of Default with respect to (a) Indebtedness owed to the Company or a Restricted Subsidiary, or (b) secured Indebtedness of a Restricted Subsidiary as to which the Company delivers to the Trustee an Officers' Certificate certifying a resolution adopted by the Board of Directors of the Company to the effect that the obligees of such Indebtedness have no recourse to the assets of the Company or any Guarantor and that the Board of Directors have determined in good faith that the assets of the applicable Restricted Subsidiary have a Fair Market Value less than the amount of such outstanding Indebtedness;

(5) failure by the Company or any Significant Subsidiary to pay final judgments for the payment of money aggregating in excess of $50.0 million (to the extent not adequately covered by insurance as to which a solvent insurance company has not denied coverage or an indemnity by a third party with an Investment Grade Rating from any Rating Agency), which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance or indemnity, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed; provided that such failure shall not be an Event of Default with respect to a judgment against a Significant Subsidiary as to which the Company delivers to the Trustee an Officers' Certificate certifying a resolution adopted by the Board of Directors of the Company to the effect that the creditors of such Significant Subsidiary have no recourse to the assets of the Company or any Guarantor (other than such Significant Subsidiary) and that the Board of Directors have determined in good faith that the assets of such Significant Subsidiary have a Fair Market Value less than the sum of (x) the amount of such outstanding judgment, and (y) the outstanding Indebtedness of such Significant Subsidiary; or

(6) certain events of bankruptcy or insolvency with respect to the Company or any Significant Subsidiary; provided that such events of bankruptcy or insolvency shall not be an Event of Default with respect to a Significant Subsidiary if both:

(A) Such event of bankruptcy or insolvency is commenced by creditors of such Significant Subsidiary that have no recourse to the assets of the Company or any Guarantor; and

(B) the Company delivers to the Trustee an Officers' Certificate certifying a resolution adopted by the Board of Directors of the Company to the effect that the creditors of such Significant Subsidiary have no recourse to the assets of the Company or any Guarantor (other than such Significant Subsidiary) and that the Board of Directors have determined in good faith that the assets of such Significant Subsidiary have a Fair Market Value less than the amount of its outstanding Indebtedness.

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If any Event of Default (other than of a type specified in clause (6) above) occurs and is continuing under the 2020 Indenture, the Trustee, by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the then outstanding 2020 notes issued under the 2020 Indenture, by notice to the Company (with a copy to the Trustee), may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding 2020 notes issued under the 2020 Indenture to be due and payable immediately.

Upon the effectiveness of such declaration, such principal and interest will be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising under clause (6) of the first paragraph of this section, all outstanding 2020 notes will become due and payable without further action or notice. Holders may not enforce the 2020 Indenture or the 2020 notes except as provided in the 2020 Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding 2020 notes issued under the 2020 Indenture may direct the Trustee in its exercise of any trust or power. The 2020 Indenture will provide that the Trustee may withhold from Holders notice of any continuing Default or Event of Default, except a Default or Event of Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. The Trustee shall have no obligation to accelerate the 2020 notes.

The 2020 Indenture will provide that the Holders of a majority in aggregate principal amount of the then outstanding 2020 notes issued thereunder by written notice to the Trustee may on behalf of the Holders of all of such 2020 notes waive any existing Default or Event of Default and its consequences under the 2020 Indenture except a continuing Default or Event of Default in the payment of interest on, premium, if any, or the principal of any such note held by a non-consenting Holder. In the event of any Event of Default specified in clause (4) above, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of the acceleration of the 2020 notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose:

(x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged, or

(y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default, or

(z) if the default that is the basis for such Event of Default has been cured.

The 2020 Indenture will provide that the Company is required to deliver to the Trustee annually a statement regarding compliance with the 2020 Indenture, and the Company is required, within five Business Days, upon becoming aware of any Default or Event of Default or any default under any document, instrument or agreement representing Indebtedness of the Company, to deliver to the Trustee a statement specifying such Default or Event of Default.

**No Personal Liability of Directors, Officers, Employees and Shareholders**

No director, officer, employee, incorporator or shareholder of the Company shall have any liability for any obligations of the Company under the 2020 notes or the 2020 Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting a 2020 note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the 2020 notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

**Legal Defeasance and Covenant Defeasance**

The Company may, at its option and at any time, elect to have all of its obligations discharged with respect to the 2020 notes issued under the 2020 Indenture ( Legal Defeasance ) and all obligations of any Subsidiary of the Company that is a Guarantor discharged with respect to its Guarantee and cure all then existing Events of Default except for:

(1) the rights of Holders of 2020 notes issued under the 2020 Indenture to receive payments in respect of the principal of, premium, if any, and interest on such 2020 notes when such payments are due solely out of the trust created pursuant to the 2020 Indenture,

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(2) the Company's obligations with respect to 2020 notes issued under the 2020 Indenture concerning issuing temporary 2020 notes, registration of such 2020 notes, mutilated, destroyed, lost or stolen 2020 notes and the maintenance of an office or agency for payment and money for security payments held in trust,

(3) the rights, powers, trusts, duties and immunities of the Trustee, and the Company's obligations in connection therewith, and

(4) the Legal Defeasance provisions of the 2020 Indenture.

In addition, the Company may, at its option and at any time, elect to have its obligations released with respect to certain covenants that are described in the 2020 Indenture ( Covenant Defeasance ) and thereafter any omission to comply with such obligations shall not constitute a Default or Event of Default with respect to the 2020 notes. In the event Covenant Defeasance occurs, certain events (not including bankruptcy, receivership, rehabilitation and insolvency events pertaining to the Company) described under Events of Default will no longer constitute an Event of Default with respect to the 2020 notes.

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the 2020 notes issued under the 2020 Indenture:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest due on the 2020 notes issued under the 2020 Indenture on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on the 2020 notes;

(2) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States confirming that, subject to customary assumptions and exclusions, (i) the Company has received from, or there has been published by, the United States Internal Revenue Service a ruling or (ii) since the issuance of the 2020 notes, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel in the United States shall confirm that, subject to customary assumptions and exclusions, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. 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, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States confirming that, subject to customary assumptions and exclusions, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. 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 (other than that resulting from borrowing funds to be applied to make such deposit or the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any other material agreement or instrument (other than the 2020 Indenture) to which, the Company is a party or by which the Company is bound (other than that resulting from borrowing funds to be applied to make such deposit and the granting of Liens in connection therewith);

(6) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel in the United States (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

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**Satisfaction and Discharge**

The 2020 Indenture will be discharged and will cease to be of further effect as to all 2020 notes issued thereunder, when either

(a) all such 2020 notes theretofore authenticated and delivered, except lost stolen or destroyed 2020 notes which have been replaced or paid and 2020 notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (1) all such 2020 notes not theretofore delivered to such Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise or will become due and payable within one year, and the Company has irrevocably deposited or caused to be deposited with such Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on such 2020 notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default (other than that resulting from borrowing funds to be applied to make such deposit or the granting of Liens in connection therewith) with respect to the 2020 Indenture or the 2020 notes issued thereunder shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company is a party or by which the Company is bound (other than an instrument to be terminated contemporaneously with or prior to the borrowing of funds to be applied to make such deposit and the granting of Liens in connection therewith);

(3) the Company has paid or caused to be paid all sums payable by it under the 2020 Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under the 2020 Indenture to apply the deposited money toward the payment of such 2020 notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

**Paying Agents, Registrar and Transfer Agents for the 2020 Notes**

The Company will maintain one or more paying agents for the 2020 notes. The initial paying agent for the 2020 notes will be the Trustee.

The Company will also maintain a registrar. The registrar will maintain a register reflecting ownership of the 2020 notes outstanding from time to time and will facilitate transfers of 2020 notes on behalf of the Company. The Company may also appoint one or more transfer agents, at whose designated offices any 2020 notes in certificated form may be transferred or exchanged and also surrendered before payment is made at maturity. The initial registrar and transfer agent will be the Trustee.

The Company may change the paying agents, the registrar or the transfer agents without prior notice to the Holders. The Company may act as a paying agent or registrar.

**Transfer and Exchange**

A Holder may transfer or exchange 2020 notes in accordance with the 2020 Indenture. The registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the

Company may require a Holder to pay any taxes and fees required by law or permitted by the 2020 Indenture. The Company is not required to transfer or exchange any 2020 note selected for redemption. Also, the Company is not required to transfer or exchange any 2020 note for a period of 15 days before the giving of a notice of redemption of 2020 notes to be redeemed.

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The registered Holder of a 2020 note will be treated as the owner of the 2020 note for all purposes.

**Amendment, Supplement and Waiver**

Except as provided in the next four succeeding paragraphs, the 2020 Indenture and the 2020 notes issued thereunder may be amended or supplemented with the consent of the Holders of a majority in principal amount of the 2020 notes then outstanding and issued under the 2020 Indenture, including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, 2020 notes, and any existing Default or Event of Default or compliance with any provision of the 2020 Indenture or the 2020 notes issued thereunder may be waived with the consent of the Holders of a majority in principal amount of the then outstanding 2020 notes issued under the 2020 Indenture, other than 2020 notes beneficially owned by the Company or its Affiliates (including consents obtained in connection with a purchase of or tender offer or exchange offer for 2020 notes).

The 2020 Indenture will provide that, without the consent of each Holder affected, an amendment or waiver may not, with respect to any 2020 notes issued under the 2020 Indenture and held by a non-consenting Holder:

(1) reduce the principal amount of 2020 notes whose Holders must consent to an amendment, supplement or waiver,
reduce the principal of or change the fixed maturity of any such 2020 note or alter or waive the provisions with
(2) respect to the redemption of the 2020 notes (other than provisions relating to the covenants described above under the caption —Repurchase at the Option of Holders ),
(3) reduce the rate of or change the time for payment of interest on any 2020 note,
waive a Default or Event of Default in the payment of principal of or premium, if any, or interest on the 2020 notes issued under the 2020 Indenture, except a rescission of acceleration of the 2020 notes by the Holders of at
(4) least a majority in aggregate principal amount of the 2020 notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in the 2020 Indenture which cannot be amended or modified without the consent of all Holders,
(5) make any 2020 note payable in money other than that stated in the 2020 notes,
(6) make any change in the provisions of the 2020 Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the 2020 notes,
(7) make any change in these amendment and waiver provisions,
impair the right of any Holder to receive payment of principal of, or interest on such Holder's 2020 notes on or
(8) after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's 2020 notes, or
(9) make any change to or modify the ranking of the 2020 notes that would adversely affect the Holders.

Notwithstanding the foregoing, without the consent of any Holder, the Company and the Trustee may amend or supplement the 2020 Indenture, or the 2020 notes:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency, as evidenced in an Officers' Certificate;
(2) to comply with the covenant relating to amalgamations, mergers, consolidations and sales of assets;
(3) to provide for the assumption of the obligations of the Company or any Guarantor to Holders;
(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the rights under the 2020 Indenture of any such Holder;
(5) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Company;

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(6) to comply with requirements of the Commission in order to effect or maintain the qualification of the 2020 Indenture under the Trust Indenture Act;

(7) to evidence and provide for the acceptance and appointment under the 2020 Indenture of a successor Trustee pursuant to the requirements thereof;

(8) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;

(9) to add guarantees of the 2020 notes under the 2020 Indenture in accordance with the terms of the 2020 Indenture; or

(10) to conform the text of the 2020 Indenture or the 2020 notes to any provision of the Description of the Notes section of the Company's Prospectus Supplement dated December 6, 2013, relating to the initial offering of the existing 2020 notes, to the extent that such provision in that Description of the Notes was intended by the Company to be a verbatim recitation of a provision of the 2020 Indenture or the 2020 notes, such intention to be evidenced by an Officers' Certificate of the Company delivered to the Trustee.

The consent of the holders of the 2020 notes is not necessary under the 2020 Indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

**Notices**

As long as the Company issues 2020 notes in global form, notices to be given to Holders will be given to DTC, in accordance with its applicable policies as in effect from time to time. If the Company issues 2020 notes in certificated form, notices to be given to Holders will be sent by first-class mail, postage prepaid, to the respective addresses of the Holders as they appear in the register maintained by the registrar.

Notices given by publication will be deemed given on the first date on which publication is made and notices given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing.

**Concerning the Trustee**

The 2020 Indenture will contain certain limitations on the rights of the Trustee, should it become a creditor of the Company, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue or resign.

The 2020 Indenture will provide that the Holders of a majority in principal amount of the outstanding 2020 notes issued thereunder will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee, subject to certain exceptions. The 2020 Indenture will provide that in case an Event of Default shall occur (which shall not be cured), the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent person under the circumstances in the conduct of such person's own affairs. The Trustee will be under no obligation to exercise any of its rights or powers under the 2020 Indenture at the request of any Holder of the 2020 notes, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense.

**Governing Law**

The 2020 Indenture and the 2020 notes will be governed by and construed in accordance with the laws of the State of New York.

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**Certain Definitions**

Set forth below are certain defined terms used in the 2020 Indenture. Reference is made to the 2020 Indenture for a full disclosure of all such terms, as well as any other capitalized terms used herein for which no definition is provided. For purposes of the 2020 Indenture, unless otherwise specifically indicated, the term consolidated with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

Acquired Indebtedness means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is amalgamated or merged with or into or became a Restricted Subsidiary of such specified Person, including, without limitation, Indebtedness incurred in connection with, or in contemplation of, such other Person merging with or into or becoming a Restricted Subsidiary of such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

Affiliate of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, control (including, with correlative meanings, the terms controlling, controlled by and under common control with ), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

Applicable Premium means, as determined by the Company with respect to any 2020 note on any Redemption Date, the excess of:

(1) the sum of the present value at such redemption date of all remaining scheduled payments of principal and interest on such 2020 note through the stated maturity date of the 2020 notes (excluding accrued but unpaid interest to the redemption date), discounted to the date of redemption using a discount rate equal to the Treasury Rate *plus* 50 basis points; *over*

(2) the principal amount of the 2020 notes to be redeemed.

Asset Sale means

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related or substantially concurrent transactions, of property or assets (including by way of a sale and leaseback) of the Company or any Restricted Subsidiary (each referred to in this definition as a disposition ), or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary, whether in a single transaction or a series of related or substantially concurrent transactions (other than preferred stock of Restricted Subsidiaries issued in compliance with the covenant described under —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock )

in each case, other than:

(a) a disposition of Cash Equivalents or dispositions of any surplus, obsolete, damaged or worn out assets in the ordinary course of business, or any disposition of inventory or goods held for sale in the ordinary course of business;

(b) the disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to the provisions described above under —Certain Covenants—Amalgamation, Merger, Consolidation or Sale of All or Substantially All Assets or any disposition that constitutes a Change of Control pursuant to the 2020 Indenture;

(c)

the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under the covenant described above under —Certain Covenants—Limitation on Restricted Payments ;

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(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate Fair Market Value of less than $10.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;

(f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, as amended, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) the lease, assignment, sub-lease or license of any real or personal property, including any aircraft, in each case in the ordinary course of business;

(h) the sale of aircraft, engines, spare parts or similar assets, or Capital Stock of any entity owning any of the foregoing, in the ordinary course of business;

(i) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary (with the exception of Investments in Unrestricted Subsidiaries acquired pursuant to clause (j) of the definition of Permitted Investments);

(j) foreclosures on assets;

(k) (i) sales of accounts receivable, or participations therein, in connection with the Credit Facilities, (ii) any disposition of Securitization Assets in connection with any Qualified Securitization Financing and (iii) the sale or discount of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof or in bankruptcy or similar proceeding;

(l) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claim of any kind, in each case, in the ordinary course of business;

(m) the creation of a Lien permitted under the 2020 Indenture;

(n) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(o) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after the Closing Date, including, without limitation, sale leasebacks and asset securitizations permitted by the 2020 Indenture.

BBAM LP means BBAM Limited Partnership.

Capital Markets Debt means any unsecured debt securities (other than (i) a Qualified Securitization Financing or (ii) a debt issuance guaranteed by an export credit agency (including the Export-Import Bank of the United States)) issued in the capital markets by the Company or any Subsidiary, whether issued in a public offering or private placement, including pursuant to Section 4(a)(2) of the Securities Act or Rule 144A, Regulation S or Regulation D under the Securities Act.

Capital Stock means

(1) in the case of a corporation, corporate stock,

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock,

(3) in the case of a partnership or limited liability company, partnership, membership interests (whether general or limited) or shares in the capital of a company, and

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(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

Capitalized Lease Obligation means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

Cash Equivalents means

(1) United States dollars,

(2) pounds sterling,

(3) (a) euro, or any national currency of any participating member state in the European Union,

(b) Canadian dollars,

(c) Australian dollars, or

(d) in the case of any Foreign Subsidiary that is a Restricted Subsidiary, such local currencies held by them from time to time in the ordinary course of business,

(4) securities issued or directly and fully and unconditionally guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition,

(5) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $500.0 million,

(6) repurchase obligations for underlying securities of the types described in clauses (4) and (5) above entered into with any financial institution meeting the qualifications specified in clause (5) above,

(7) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P and in each case maturing within 12 months after the date of creation thereof,

(8) investment funds investing 95% of their assets in securities of the types described in clauses (1) through (7) above,

(9) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof or any Province of Canada having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of 24 months or less from the date of acquisition and

(10) Indebtedness or preferred stock issued by Persons with a rating of A or higher from S&P or A2 or higher from Moody's with maturities of 12 months or less from the date of acquisition.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) through (3) above; provided that such amounts are converted into any currency listed in clauses (1) through (3) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

Change of Control means:

(1) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of shares representing more than 50% of the voting power of the Company's Voting Stock;

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during any period of two consecutive years, individuals who at the beginning of such period were elected by the shareholders of the Company to the Board of Directors of the Company, as the case may be (together with any new directors whose election by the shareholders of the Company to such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of the majority of the directors of the Company then still in office who were either directors at the beginning of such period or whose

(2) election or nomination for election was previously so approved (who cannot include persons not elected by or recommended for election by the then-incumbent Board of Directors unless such Board of Directors determines reasonably and in good faith that failure to approve any such persons as members of the Board of Directors could reasonably be expected to violate a fiduciary duty under applicable law)), cease for any reason to constitute a majority of the members of the Board of Directors of the Company who were elected by the shareholders of the Company;

(3) (a) all or substantially all of the assets of the Company and the Restricted Subsidiaries, taken as a whole, are sold or otherwise transferred to any Person other than a Wholly-Owned Restricted Subsidiary or one or more Permitted Holders or (b) the Company amalgamates, consolidates or merges with or into another Person or any Person consolidates, amalgamates or merges with or into the Company, in either case under this clause (3), in one transaction or a series of related transactions in which immediately after the consummation thereof Persons beneficially owning (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) Voting Stock representing in the aggregate a majority of the total voting power of the Voting Stock of the Company, immediately prior to such consummation do not beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) Voting Stock representing a majority of the total voting power of the Voting Stock of the Company, or the applicable surviving or transferee Person; provided that this clause shall not apply (i) in the case where immediately after the consummation of the transactions Permitted Holders beneficially own Voting Stock representing in the aggregate a majority of the total voting power of the Company, or the applicable surviving or transferee Person or (ii) to an amalgamation or a merger of the Company with or into (x) a corporation, limited liability company or partnership or (y) a wholly-owned subsidiary of a corporation, limited liability company or partnership that, in either case, immediately following the transaction or series of transactions, has no Person or group (other than Permitted Holders), which beneficially owns Voting Stock representing 50% or more of the voting power of the total outstanding Voting Stock of such entity and, in the case of clause (y), the parent of such wholly-owned subsidiary guarantees the Company's obligations under the 2020 notes and the 2020 Indenture; or

(4) the Company shall adopt a plan of liquidation or dissolution or any such plan shall be approved by the shareholders of the Company.

Closing Date means December 11, 2013.

Consolidated Depreciation and Amortization Expense means with respect to any Person for any period, the total amount of depreciation and amortization expense, including any amortization of deferred financing fees, amortization in relation to terminated Hedging Obligations and amortization of lease discounts and premiums and lease incentives, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

Consolidated Interest Expense means, with respect to any Person for any period, the sum, without duplication, of:

(a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including (i) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (ii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of or hedge ineffectiveness expenses of Hedging Obligations or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133 — Accounting for Derivative Instruments and Hedging Activities ), and (iii) all commissions, discounts and other fees and charges owed with respect to letters of credit or relating to any Qualified Securitization Financing; and *excluding* (i) non-cash interest expense attributable to the amortization of

gains or losses resulting from the termination prior to the Closing Date of Hedging Obligations, (ii) the interest component of Capitalized Lease Obligations and net payments, if any, pursuant to interest rate Hedging Obligations, (iii) amortization of deferred financing fees and any expensing of other financing fees), and (iv) amortization of fair value debt discounts, and

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(b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, less

(c) interest income for such period.

Consolidated Net Income means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; provided, however, that

(1) any net after-tax extraordinary, non-recurring or unusual gains or losses, including sales or other dispositions of assets under a Securitization Financing other than in the ordinary course of business (less all fees and expenses relating thereto) or expenses (including, without limitation, relating to severance, relocation and new product introductions) shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any net after-tax income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed or discontinued operations shall be excluded,

(4) any net after-tax gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions other than in the ordinary course of business, as determined in good faith by the Board of Directors of the Company, shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Company shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period,

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (c) (1) of the first paragraph of —Certain Covenants—Limitation on Restricted Payments, the Net Income for such period of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination wholly permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its shareholders, unless such restriction with respect to the payment of dividends or in similar distributions has been legally waived; provided that Consolidated Net Income of the Company will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to the Company or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) the effects of adjustments resulting from the application of purchase accounting in relation to any acquisition that is consummated after the Closing Date, net of taxes, shall be excluded,

(8) any net after-tax loss from the early extinguishment of Indebtedness arising from the application of purchase accounting or Hedging Obligations or other derivative instruments shall be excluded,

(9) any net after-tax impairment charge or asset write-off pursuant to Financial Accounting Standards Board Statement No. 142 and No. 144 and the amortization of intangibles arising pursuant to No. 141 shall be excluded,

(10) any net after-tax gain (loss) arising from changes in the fair value of derivatives shall be excluded,

(11) any net after-tax valuation allowance against a deferred tax asset shall be excluded,

(12) amortization of (i) fair value lease premiums and discounts, (ii) lease incentives, (iii) fair value debt discounts, and (iv) debt discounts in respect of Indebtedness issued prior to the Closing Date shall be excluded, and

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(13) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options or other rights to officers, directors or employees shall be excluded.

Notwithstanding the foregoing, for the purpose of the covenant described under —Certain Covenants—Limitation on Restricted Payments only (other than clause (c)(4) thereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Company and the Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Company and the Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Company or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under such covenant pursuant to clause (c)(4) thereof.

Contingent Obligations means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ( primary obligations ) of any other Person (the primary obligor ) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds

(A) for the purchase or payment of any such primary obligation or

(B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

Credit Facilities means one or more debt facilities, or commercial paper facilities with banks or other institutional lenders or investors or indentures providing for revolving credit loans, term loans, receivables financing, including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against receivables, letters of credit or other long-term indebtedness, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof.

Default means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

Designated Noncash Consideration means the Fair Market Value of noncash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Noncash Consideration pursuant to an Officers' Certificate, setting forth the basis of such valuation, executed by a senior vice president or the principal financial officer of the Company, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Noncash Consideration.

Disqualified Stock means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable, other than as a result of a change of control or asset sale, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, other than as a result of a change of control or asset sale, in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the 2020 notes or the date the 2020 notes are no longer outstanding; provided, however, that if such

Capital Stock is issued to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such

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employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

EBITDA means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period, *plus* (without duplication)

(a) provision for taxes based on income or profits, plus franchise or similar taxes, of such Person for such period deducted in computing Consolidated Net Income, *plus*

(b) Consolidated Interest Expense (and other components of Fixed Charges to the extent changes in GAAP after the Closing Date result in such components reducing Consolidated Net Income) of such Person for such period to the extent the same was deducted in calculating such Consolidated Net Income, *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent such depreciation and amortization were deducted in computing Consolidated Net Income, *plus*

(d) any expenses or charges related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or Indebtedness permitted to be incurred by the 2020 Indenture (whether or not successful), including such fees, expenses or charges related to the offering of the 2020 notes and the Credit Facilities, and deducted in computing Consolidated Net Income, *plus*

(e) the amount of any restructuring charge deducted in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions after the Closing Date, *plus*

(f) any other non-cash charges reducing Consolidated Net Income for such period, excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period, *plus*

(g) the amount of any non-controlling interest expense deducted in calculating Consolidated Net Income (less the amount of any cash dividends paid to the holders of such minority interests), *plus*

(h) any net loss (or minus any gain) resulting from currency exchange risk Hedging Obligations, *plus*

(i) foreign exchange loss (or minus any gain) on debt, *plus*

(j) Securitization Fees and the amount of loss on sale of Securitization Assets and related assets to a Securitization Subsidiary in connection with a Qualified Securitization Financing, to the extent deducted in determining Consolidated Net Income, *less*

(l) non-cash items increasing Consolidated Net Income of such Person for such period, excluding any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period.

employees of the Company and its Subsidiaries shall include officers of the Company and its Subsidiaries and employees of BBAM LP or its Subsidiaries that are involved in the management of the Company and its Subsidiaries.

EMU means economic and monetary union as contemplated in the Treaty on European Union.

Equity Interests means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

Equity Offering means any public or private sale of common shares or preferred shares of the Company (excluding Disqualified Stock), other than

(a) public offerings with respect to the Company's common shares registered on Form S-8; and

(b) any sales to the Company or any of its Subsidiaries.

euro means the single currency of participating member states of the EMU.

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Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

Existing Indebtedness means Indebtedness of the Company or the Restricted Subsidiaries in existence on the Closing Date, plus interest accruing thereon.

Fair Market Value means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the chief executive officer, chief financial officer, chief accounting officer or controller of the Company or the Restricted Subsidiary, which determination will be conclusive (unless otherwise provided in the 2020 Indenture).

Fitch means Fitch, Inc.

Fixed Charge Coverage Ratio means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness (other than reductions in amounts outstanding under revolving facilities unless accompanied by a corresponding termination of commitment) or issues or redeems Disqualified Stock or preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to the event for which the calculation of the Fixed Charge Coverage Ratio is made (the Calculation Date ), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee or redemption, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or preferred stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, amalgamations, mergers, consolidations and disposed operations (as determined in accordance with GAAP) that have been made by the Company or any Restricted Subsidiary during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, amalgamations, mergers, consolidations and disposed operations (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was amalgamated or merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have made any Investment, acquisition, disposition, amalgamation, merger, consolidation or disposed operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, amalgamation, merger, consolidation or disposed operation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company (including *pro forma* expense and cost reductions, regardless of whether these cost savings could then be reflected in *pro forma* financial statements in accordance with Regulation S-X promulgated under the Securities Act or any other regulation or policy of the SEC related thereto). If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the

average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

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Fixed Charges means, with respect to any Person for any period, the sum of

(a) Consolidated Interest Expense,

(b) all cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or any Refunding Capital Stock of such Person, and

(c) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock.

Foreign Subsidiary means any subsidiary of the Company that is not incorporated in or organized under the laws of the United States or Bermuda.

GAAP means generally accepted accounting principles in the United States which are in effect on the Closing Date. At any time after the Closing Date, the Company may elect to apply IFRS accounting principles in lieu of GAAP for purposes of calculations hereunder and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in the 2020 Indenture); provided that calculation or determination in the 2020 Indenture that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Company shall give notice of any such election made in accordance with this definition to the Trustee and the Holders of 2020 notes.

Government Securities means securities that are

(a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged, or

(b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

guarantee means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

Guarantor means any Person that executes a 2020 Note Guarantee in accordance with the provisions of the 2020 Indenture and its respective successors and assigns.

Hedging Obligations means, with respect to any Person, the obligations of such Person under

(a) currency exchange, interest rate, inflation or commodity swap agreements, currency exchange, interest rate, inflation or commodity cap agreements and currency exchange, interest rate, inflation or commodity collar agreements; and

(b) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates, inflation or commodity prices.

Holder means a Person in whose name a 2020 note is registered in the register.

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Indebtedness means, with respect to any Person,

(a) any indebtedness (including principal and premium) of such Person, whether or not contingent
(1) in respect of borrowed money,
(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without double counting, reimbursement agreements in respect thereof),
(3) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP, or
(4) representing any Hedging Obligations,

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP,

(b) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the Indebtedness of another Person, other than by endorsement of negotiable instruments for collection in the ordinary course of business, and
(c) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person, whether or not such Indebtedness is assumed by such Person;

provided, however, that Contingent Obligations shall be deemed not to constitute Indebtedness; and obligations under or in respect of a Qualified Securitization Financing shall not be deemed to constitute Indebtedness.

Independent Financial Advisor means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Company, qualified to perform the task for which it has been engaged.

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

Investments means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel, moving and similar advances to officers, directors and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Company in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of Unrestricted Subsidiary and the covenant described under —Certain Covenants—Limitation on Restricted Payments,

(1) Investments shall include the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to
(x) the Company's Investment in such Subsidiary at the time of such redesignation *less*
(y) the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation; and

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(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value at the time of such transfer, in each case as determined in good faith by the Company.

Lien means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease be deemed to constitute a Lien.

Management Group means at any time, the Chairman of the Board, any President, any Executive Vice President or Vice President, any Managing Director, any Treasurer and any Secretary or other executive officer of the Company or any Subsidiary of the Company or BBAM LP or any Subsidiary of BBAM LP at such time.

Moody's means Moody's Investors Service, Inc.

Net Income means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

Net Proceeds means the aggregate cash proceeds received by the Company or any Restricted Subsidiary in respect of any Asset Sale, including, without limitation, any cash received upon the sale or other disposition of any Designated Noncash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Noncash Consideration, including, without limitation, legal, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness secured by a Lien permitted under the 2020 Indenture required (other than required by clause (1) of the second paragraph of clause (a) —Repurchase at the Option of Holders—Asset Sales ) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Company as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

Obligations means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

Officer means the Chairman of the board of directors, the Chief Executive Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Chief Financial Officer, the Treasurer, the Secretary or any Assistant Secretary of the Company.

Officers' Certificate means a certificate signed on behalf of the Company by two Officers of the Company, one of whom must be the principal executive officer, the principal financial officer, the treasurer, the principal accounting officer or the secretary of the Company, that meets the requirements set forth in the 2020 Indenture.

Opinion of Counsel means an opinion from legal counsel who is reasonably acceptable to the Trustee (who may be counsel to the Company) that meets the requirements of the 2020 Indenture.

Organizational Documents mean, with respect to (a) the Company, the memorandum and articles of association, and (b) any other person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or

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similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person, (v) in the case of any trust, the declaration of trust and trust agreement (or similar document) of such person and (vi) in any other case, the functional equivalent of the foregoing.

Permitted Asset Swap means the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Company or any of its Restricted Subsidiaries and another Person; provided that any cash or Cash Equivalents received must be applied in accordance with the Asset Sales covenant.

Permitted Holders means the collective reference to Summit Aviation Partners LLC, Onex Corporation, their Affiliates, the executive officers of Summit Aviation Partners LLC and the Management Group. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of the 2020 Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

Permitted Investments means

(a) any Investment in the Company or any Restricted Subsidiary;

(b) any Investment in cash and Cash Equivalents;

(c) any Investment by the Company or any Restricted Subsidiary of the Company in a Person if as a result of such Investment:

(1) such Person becomes a Restricted Subsidiary; or

(2) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary;

(d) any Investment in securities or other assets not constituting cash or Cash Equivalents and received in connection with an Asset Sale made pursuant to the provisions of —Repurchase at the Option of Holders—Asset Sales or any other disposition of assets not constituting an Asset Sale;

(e) any Investment existing on the Closing Date;

(f) advances to employees not in excess of $5.0 million outstanding at any one time, in the aggregate;

(g) any Investment acquired by the Company or any Restricted Subsidiary:

(1) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the Company of such other Investment or accounts receivable; or

(2) as a result of a foreclosure by the Company or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(h) any Investments in Hedging Obligations entered into in the ordinary course of business;

(i) loans to officers, directors and employees for business-related travel expenses, moving expenses and other similar expenses, in each case incurred in the ordinary course of business;

(j) any Investment having an aggregate Fair Market Value, taken together with all other Investments made pursuant to this clause (j) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash and/or marketable securities), not to exceed the greater of (x) $50.0 million and (y) 1.25% of Total Assets at the time of such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

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(k) Investments the payment for which consists of Equity Interests of the Company (exclusive of Disqualified Stock); provided, however, that such Equity Interests will not increase the amount available for Restricted Payments under clause (c) of the first paragraph under the covenant described in —Certain Covenants—Limitation on Restricted Payments ;

(l) guarantees of Indebtedness permitted under the covenant described in —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(m) any transaction to the extent it constitutes an investment that is permitted and made in accordance with the provisions of the second paragraph of the covenant described under —Certain Covenants—Transactions with Affiliates ;

(n) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(o) repurchases of the 2020 notes;

(p) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;

(q) any Investment in a Person (other than the Company or a Restricted Subsidiary) pursuant to the terms of any agreements in effect on the Closing Date and any Investment that replaces, refinances or refunds an existing Investment; provided that the new Investment is in an amount that does not exceed the amount replaced, refinanced or refunded (after giving effect to write-downs or writeoffs with respect to such Investment), and is made in the same Person as the Investment replaced, refinanced or refunded;

(r) endorsements for collection or deposit in the ordinary course of business;

(s) Investments relating to any Securitization Subsidiary that, in the good faith determination of the Board of Directors of the Company, are necessary or advisable to effect any Qualified Securitization Financing;

(t) Investments in property and other assets which after such Investments are owned by the Company or any Restricted Subsidiary; and

(u) Investments in Permitted Joint Ventures in an aggregate amount that taken together with all other Investments made pursuant to this clause (u) that are at that time outstanding, does not exceed the greater of $50.0 million and 1.25% of Total Assets, and as of the date of making such Investment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing.

Permitted Joint Venture means any agreement, contract or other arrangement between the Company or any Restricted Subsidiary and any person that permits one party to share risks or costs, comply with regulatory requirements or satisfy other business objectives customarily achieved through the conduct of a Similar Business jointly with third parties.

Permitted Jurisdiction means any of the United States, any state thereof, the District of Columbia, or any territory thereof, any member state of the Pre-Expansion European Union, Canada, Australia, Ireland, Bermuda, the Cayman Islands, Switzerland or Singapore.

Permitted Liens means, with respect to any Person:

(1) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety, customs or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, or premiums to insurance carriers, in each case incurred in the ordinary course of business;

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(2) Liens imposed by law, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review;

(3) Liens for taxes, assessments or other governmental charges or levies not yet overdue for a period of more than 30 days or payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) minor survey exceptions, minor encumbrances, minor title deficiencies, easements or reservations of, or rights of others for, licenses, rights-of-way, covenants, encroachments, protrusions, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens existing on the Closing Date;

(7) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a subsidiary; provided, further, however, that such Liens may not extend to any other property owned by the issuer or any Restricted Subsidiary;

(8) Liens on property at the time the Company or a Restricted Subsidiary acquired the property, including any acquisition by means of an amalgamation or a merger or consolidation with or into the Company or any Restricted Subsidiary; provided, however, that the Liens may not extend to any other property owned by the Company or any Restricted Subsidiary;

(9) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be incurred in accordance with the covenant described under —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(10) Liens securing Hedging Obligations so long as the related Indebtedness is, and is permitted to be under the 2020 Indenture, secured by a Lien;

(11) Liens on specific items of inventory of other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(12) leases and subleases of real property granted to others in the ordinary course of business and which do not materially interfere with the ordinary conduct of the business of the Company or any of the Restricted Subsidiaries;

(13) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(14) Liens in favor of the Company;

(15) Liens on equipment of the Company or any Restricted Subsidiary granted in the ordinary course of business to the Company's client at which such equipment is located;

(16) Liens on Securitization Assets and related assets incurred in connection with a Qualified Securitization Financing;

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(17) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (6), (7), (8), (9), (10), (14), (26) and (28); provided, however, that (x) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6), (7), (8), (9), (10), (14), (26) and (28) at the time the original Lien became a Permitted Lien under the 2020 Indenture, and (B) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement and (z) the new Lien has no greater priority and the holders of the Indebtedness secured by such Lien have no greater intercreditor rights relative to the 2020 notes and Holders thereof than the original Liens and the related Indebtedness;

(18) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed $25.0 million;

(19) Licenses or sublicenses in the ordinary course of business;

(20) Liens securing judgments, attachments or awards for the payment of money not constituting an Event of Default under clause (5) under the caption Events of Default and Remedies so long as (a) such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired or (b) such Liens are supported by an indemnity by a third party with an Investment Grade Rating;

(21) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(22) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(23) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(24) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(25) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(26) Liens securing Indebtedness permitted to be incurred pursuant to clause (d) of the second paragraph under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; provided that Liens extend only to the assets so financed, purchased, constructed or improved;

(27) Liens placed on the Capital Stock of any non-Wholly-Owned Subsidiary or joint venture in the form of a transfer restriction, purchase option, call or similar right of a third party joint venture partner;

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(28) Liens securing Indebtedness permitted to be incurred pursuant to clause (q) of the second paragraph under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; provided that Liens extend only to the assets so financed and any assets or Capital Stock of any Restricted Subsidiary incurring such Indebtedness;

(29) (i) Leases of aircraft, engines, spare parts or similar assets of the Company or its Restricted Subsidiaries granted by such person, in each case entered into in the ordinary course of the Company or its Restricted Subsidiaries' operating leasing business, (ii) Permitted Liens or similar terms under any lease or (iii) any Lien which the lessee under any lease is required to remove; and

(30) Bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Company or its Restricted Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness.

For purposes of determining compliance with this definition, (A) Permitted Liens need not be incurred solely by reference to one category of Permitted Liens described above but are permitted to be incurred in part under any combination thereof and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens described above, the Company may, in its sole discretion, classify or reclassify such item of Permitted Liens (or any portion thereof) in any manner that complies with this definition and the Company may divide and classify a Lien in more than one of the types of Permitted Liens in one of the above clauses.

Person means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

Pre-Expansion European Union means the European Union as of January 1, 2004, including the countries of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, but not including any country which became or becomes a member of the European Union after January 1, 2004; provided that Pre-Expansion European Union shall not include any country whose long-term debt does not have a long-term rating of at least A by S&P or at least A2 by Moody's or the equivalent rating category of another Rating Agency.

preferred stock means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

Qualified Proceeds means assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business; provided that the fair market value of any such assets or Capital Stock shall be determined by the Board of Directors of the Company in good faith.

Qualified Securitization Financing means any Securitization Financing of a Securitization Subsidiary, the financing terms, covenants, termination events and other provisions of which, including any Standard Securitization Undertakings, shall be market terms.

Rating Agencies means Fitch, Moody's and S&P or if any of Fitch, Moody's or S&P or all three shall not make a rating on the 2020 notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company which shall be substituted for any of Fitch, Moody's or S&P or all three, as the case may be.

Related Business Assets means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any assets received by the Company or a Restricted Subsidiary in exchange for assets transferred by the Company or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

Restricted Investment means an Investment other than a Permitted Investment.

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Restricted Subsidiary means, at any time, any direct or indirect Subsidiary of the Company (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; provided, however, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of Restricted Subsidiary.

S&P means Standard and Poor's Ratings Group.

Securities Act means the Securities Act of 1933 and the rules and regulations of the Commission promulgated thereunder.

Securitization Assets means the accounts receivable, lease, royalty or other revenue streams and other rights to payment and all related assets (including contract rights, books and records, all collateral securing any and all of the foregoing, all contracts and all guarantees or other obligations in respect of any and all of the foregoing and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving any and all of the foregoing) and the proceeds thereof in each case pursuant to a Securitization Financing.

Securitization Fees means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Qualified Securitization Financing.

Securitization Financing means one or more transactions or series of transactions that may be entered into by the Company and/or any Restricted Subsidiary pursuant to which the Company or any Restricted Subsidiary may sell, convey or otherwise transfer Securitization Assets to (a) a Securitization Subsidiary (in the case of a transfer by the Company or any of the Restricted Subsidiaries that are not Securitization Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest in, any Securitization Assets of the Company or any Restricted Subsidiary.

Securitization Subsidiary means a Restricted Subsidiary (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Company or any Restricted Subsidiary makes an Investment and to which the Company or any Restricted Subsidiary transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Company or a Restricted Subsidiary, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Company or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Company or any Restricted Subsidiary, other than another Securitization Subsidiary (excluding guarantees of obligations pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Company or any Restricted Subsidiary, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset of the Company or any Restricted Subsidiary, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings and (b) to which none of the Company or any other Restricted Subsidiary, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Company or such other Person shall be evidenced by a resolution of the Board of Directors of the Company or such other Person giving effect to such designation.

Significant Subsidiary means any Restricted Subsidiary that would be a significant subsidiary as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Closing

Date.

Similar Business means any business conducted or proposed to be conducted by the Company and its Restricted Subsidiaries on the date of the 2020 Indenture or any business that is similar, reasonably related, incidental or ancillary thereto.

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Standard Securitization Undertakings means representations, warranties, covenants and indemnities entered into by the Company or any Restricted Subsidiary that are customary for a seller or servicer of assets in a Securitization Financing.

Subordinated Indebtedness means (a) with respect to the Company, any Indebtedness of the Company which is by its terms subordinated in right of payment to the 2020 notes, and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to the 2020 Note Guarantee of such Guarantor.

Subsidiary means, with respect to any Person,

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which 50% or more of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) 50% or more of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Total Assets means the total assets of the Company and the Restricted Subsidiaries, as shown on the most recent balance sheet of the Company for which internal financial statements are available immediately preceding the date on which any calculation of Total Assets is being made, with such *pro forma* adjustments for transactions consummated on or prior to or simultaneously with the date of the calculation as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

Treasury Rate means, as of any redemption date, the rate per annum equal to the yield to maturity as of such redemption date 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 redemption date (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 redemption date to the stated maturity date of the 2020 notes; provided, however, that if the period from the redemption date to the stated maturity date of the 2020 notes is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

Unrestricted Subsidiary means

(1) any Subsidiary of the Company which at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Company, as provided below) and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary of the Company (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Company or any Subsidiary of the Company (other than any Subsidiary of the Subsidiary to be so designated); provided that

(a)

any Unrestricted Subsidiary must be an entity of which shares of the Capital Stock or other Equity Interests (including partnership interests) entitled to cast at least a majority of the votes that may be cast by all shares or Equity Interests having ordinary voting power for the election of directors or other governing body are owned, directly or indirectly, by the Company,

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(b) such designation complies with the covenants described under —Certain Covenants—Limitation on Restricted Payments and

(c) each of

(1) the Subsidiary to be so designated and

(2) its Subsidiaries

has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any Restricted Subsidiary.

The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that, immediately after giving effect to such designation no Default or Event of Default shall have occurred and be continuing and either

(1) the Company could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test described in the first sentence under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock or

(2) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would be greater than such ratio for the Company and its Restricted Subsidiaries immediately prior to such designation, in each case on a *pro forma* basis taking into account such designation.

Any such designation by the Board of Directors of the Company shall be notified by the Company to the Trustee by promptly filing with the Trustee a copy of the board resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

Voting Stock of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Weighted Average Life to Maturity means, when applied to any Indebtedness, Disqualified Stock or preferred stock, as the case may be, at any date, the quotient obtained by dividing

(1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or preferred stock multiplied by the amount of such payment, by

(2) the sum of all such payments.

Wholly-Owned Restricted Subsidiary means any Wholly-Owned Subsidiary that is a Restricted Subsidiary.

Wholly-Owned Subsidiary of any Person means a Subsidiary of such Person, 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

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## DESCRIPTION OF THE 2021 NOTES

### General

We will issue the 2021 notes as a series of our senior debt securities described in the accompanying prospectus under an indenture, dated December 11, 2013 (the Base Indenture ), between us and Wells Fargo Bank, National Association, as Indenture Trustee (the Trustee ). We refer to the Base Indenture, as supplemented and modified by a supplemental indenture, to be dated as of the date of the initial issuance of the 2021 notes (the Second Supplemental Indenture ) between us and the Trustee, as the 2021 Indenture.

For purposes of this summary, the terms Company , we , us and our refer only to Fly Leasing Limited and not to any its Subsidiaries.

The 2021 Indenture is subject to and governed by the Trust Indenture Act of 1939, as amended (the Trust Indenture Act, or TIA ). The terms of the 2021 notes include those stated in the 2021 Indenture and those made part of the 2021 Indenture by reference to the Trust Indenture Act. The following is a summary of the material terms and provisions of the 2021 notes and the 2021 Indenture. The following summary does not purport to be a complete description of the 2021 notes or such agreements and is subject to the detailed provisions of, and qualified in its entirety by reference to, the 2021 Indenture. We urge you to read the 2021 Indenture because it, and not this description, defines your rights as a holder of the 2021 notes. You may request a copy of the 2021 Indenture from us. The Base Indenture is incorporated by reference as an exhibit to the registration statement of which the accompanying prospectus is a part. We will file the Second Supplemental Indenture by means of a report on Form 6-K. See Where You Can Find More Information in this prospectus supplement.

You can find definitions of certain terms used in this description under the heading —Certain Definitions.

### Brief Description of the 2021 Notes

The 2021 notes will be:

- general senior obligations of the Company;
- *pari passu* in right of payment with any existing and future senior Indebtedness of the Company;
- senior in right of payment to any Subordinated Indebtedness of the Company; and
- structurally subordinated to all liabilities and preferred stock of subsidiaries of the Company that do not guarantee the 2021 notes.

Without limitation on the generality of the foregoing, the 2021 notes will be effectively subordinated to secured Indebtedness and other obligations of the Company to the extent of the value of the assets securing such Indebtedness and other obligations. In the event of the Company's bankruptcy, liquidation, reorganization or other winding up, the Company's assets that secure such secured Indebtedness and other obligations will be available to pay obligations on the 2021 notes only after all Indebtedness under such secured Indebtedness and other obligations have been repaid in full from such assets.

On the Closing Date, the 2021 notes will not be guaranteed by any subsidiary of the Company. The 2021 notes will be structurally subordinated to all liabilities and obligations of the Company's subsidiaries. Claims of creditors of the Company's subsidiaries, including trade creditors, secured creditors and creditors holding debt and guarantees issued by those subsidiaries, and claims of preferred shareholders (if any) of those subsidiaries generally will have priority with respect to the assets and earnings of those subsidiaries over the claims of creditors of the Company, including Holders of the 2021 notes.

On the Closing Date, all of the Company's subsidiaries will be Restricted Subsidiaries. Under the circumstances described below under the subheading —Certain Covenants—Limitation on Restricted Payments, the Company will be permitted to designate other of the Company's Subsidiaries as Unrestricted Subsidiaries. The Company's Unrestricted Subsidiaries will not be subject to many of the restrictive covenants in the 2021 Indenture.

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**Listing**

Application has been made to the Irish Stock Exchange for the 2021 notes to be admitted to the Official List and traded on the Global Exchange Market. There can be no assurance that any such approval will be granted or, if granted, that such listing will be maintained. Application has been made to the Irish Stock Exchange to approve this prospectus supplement. We do not intend to apply for the 2021 notes to be listed on any securities exchange or to arrange for the 2021 notes to be quoted on any quotation system other than the Official List of the Irish Stock Exchange (Global Exchange Market).

***Irish Listing Agent***

The Bank of New York Mellon SA/NV, Dublin Branch is the Irish listing agent in respect of the 2021 notes. The Company will maintain such appointment so long as the 2021 notes are listed on the Global Exchange Market of the Irish Stock Exchange and the rules of the exchange so require. The address of the Irish Listing Agent is Hanover Building, Windmill Lane, Dublin 2, Ireland.

**2021 Note Guarantees**

The obligations of the Company pursuant to the 2021 notes will be fully and unconditionally guaranteed (a 2021 Note Guarantee ), jointly and severally, by each Restricted Subsidiary of the Company, but only under the conditions set out below. The 2021 notes will not be guaranteed initially by any of the Company's subsidiaries or any third party.

The 2021 Note Guarantees will be:

- n senior unsecured obligations of each Guarantor;
- n rank *pari passu* in right of payment with any existing and future senior indebtedness of each Guarantor;
- n effectively subordinated to all existing and future secured indebtedness of each Guarantor to the extent of the value of the assets securing such indebtedness; and
- n structurally subordinated to any indebtedness of the Guarantor's subsidiaries that are not Guarantors.

From and after the Closing Date, the Company will not cause or permit any of its Restricted Subsidiaries (other than a Securitization Subsidiary or a Guarantor), directly or indirectly, to guarantee any Capital Markets Debt or unsecured Credit Facility (other than Standard Securitization Undertakings in connection with a Qualified Securitization Financing) of the Company or any Guarantor unless, such Restricted Subsidiary:

(a) within five Business Days of the date on which it guarantees Capital Markets Debt or an unsecured Credit Facility of the Company or any Guarantor executes and delivers to the Trustee a supplemental indenture pursuant to which such Restricted Subsidiary shall guarantee in a 2021 Note Guarantee all of the Company's obligations under the 2021 notes and the 2021 Indenture and other terms contained in the applicable supplemental indenture and subject to the conditions contained in such supplemental indenture; and

(b) delivers to the Trustee an Officers' Certificate and an Opinion of Counsel (which may contain customary exceptions) that such supplemental indenture and 2021 Note Guarantee have been duly authorized, executed and delivered by such Restricted Subsidiary and constitute legal, valid, binding and enforceable obligations of such Restricted Subsidiary.

Thereafter, such Subsidiary of the Company shall be a Guarantor for all purposes of the 2021 Indenture until such 2021 Note Guarantee is released in accordance with the provisions of the 2021 Indenture. In the event of a sale or other transfer or disposition of all of the Capital Stock in any subsidiary of the Company that is a Guarantor to any Person that is not an Affiliate of the Company in compliance with the terms of the 2021 Indenture, or in the event all or substantially all the assets or Capital Stock of a subsidiary of the Company that is a Guarantor are sold or otherwise transferred, by way of merger, consolidation or otherwise, to a Person that is not an Affiliate of the Company in

compliance with the terms of the 2021 Indenture, then, without any further action on the part of the Trustee or any Holder, such Guarantor (or the Person concurrently acquiring such assets of such Guarantor) shall be deemed automatically and unconditionally cancelled, released and discharged of any obligations under its 2021 Note Guarantee, as evidenced by a written instrument or confirmation executed by the Trustee, upon request; provided, however that the Company delivers an

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Officers' Certificate to the Trustee certifying that the net cash proceeds of such sale or other disposition will be applied in accordance with the Asset Sales covenant and, if evidence of such cancellation, discharge or release is requested to be executed by the Trustee, an Officers' Certificate and an Opinion of Counsel. In addition, the 2021 Note Guarantee of a Subsidiary of the Company that is a Guarantor will be released:

(a) if the Company designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of the 2021 Indenture;

(b) if the Guarantor ceases to be a guarantor under any Capital Markets Debt or unsecured Credit Facilities, including the guarantee that resulted in the obligation of such Guarantor to guarantee the 2021 notes, and is released or discharged from all obligations thereunder; provided that if such Person has incurred any Indebtedness in reliance on its status as a Guarantor under the covenant —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock such Guarantor's obligations under such Indebtedness, as the case may be, so incurred are satisfied in full and discharged or are otherwise permitted to be Incurred by a Restricted Subsidiary (other than a Guarantor) under —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; or

(c) upon legal defeasance, covenant defeasance or satisfaction and discharge of the 2021 Indenture as provided below under the captions —Legal Defeasance and Covenant Defeasance and —Satisfaction and Discharge.

The Company may cause any other Subsidiary of the Company to issue a 2021 Note Guarantee and become a Guarantor.

Each 2021 Note Guarantee by a Restricted Subsidiary will be limited to an amount not to exceed the maximum amount that can be guaranteed by that Restricted Subsidiary without rendering the 2021 Note Guarantee, as it relates to such Restricted Subsidiary, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

**Principal, Maturity and Interest**

The 2021 notes will mature on , 2021. The Company may issue additional 2021 notes from time to time after this offering under the 2021 Indenture ( Additional 2021 Notes ). Any offering of Additional 2021 Notes is subject to the covenants described below under the caption —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock. The 2021 notes offered hereby and any Additional 2021 Notes subsequently issued under the 2021 Indenture will be treated as a single class for all purposes under the 2021 Indenture. Unless the context requires otherwise, references to 2021 notes for all purposes of the 2021 Indenture and this Description of the 2021 Notes include any Additional 2021 Notes that are actually issued. The 2021 notes will be issued in minimum denominations of $200,000 and any integral multiple of $1,000 in excess thereof.

Interest on the 2021 notes will accrue at the rate of % per annum and will be payable semi-annually in arrears on and , commencing on , 2015, to Holders of record on the immediately preceding and . Interest on the 2021 notes will accrue from the last interest payment date on which interest was paid or, if no interest has been paid, from , 2014. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. The statute of limitations for enforcement of claims under the 2021 notes and the 2021 Indenture is six years.

**Payment of Additional Amounts**

All payments made under or with respect to the 2021 notes or any 2021 Note Guarantee by the Company, any Guarantor or any successor to any of them (each such person, a Payor ) will be made free and clear of and without withholding or deduction for or on account of any present or future taxes, duties, levies, imposts, assessments or other government charges and any interest, penalties or other liabilities with respect thereto ( Taxes ), unless the withholding

or deduction of such Taxes is required by law. If any withholding or deduction for or on account of Taxes is required by applicable law of a Relevant Tax Jurisdiction (as defined below), the applicable Payor will pay to Holders of the 2021 notes such additional amounts ( Additional Amounts ) as may be necessary so that every net payment of interest (including any premium paid upon redemption of the 2021 notes and any discount deemed interest under applicable law of a Relevant

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Tax Jurisdiction), principal or other amount on that note or the 2021 Note Guarantee will not be less than the amount such Holders would have received if such Taxes had not been withheld or deducted.

Net payment shall mean the amount that any Holder receives from any Payor or our Paying Agent after deduction or withholding of any amount for or on account of any Taxes imposed with respect to that payment (including any withholding or deduction attributable to Additional Amounts) by Bermuda, Ireland or any jurisdiction where any Payor is incorporated, resident or engaged in business for tax purposes or from or through which any payment in respect of the 2021 notes or any 2021 Note Guarantee is made, or any political subdivision or taxing authority thereof or therein (each, a Relevant Tax Jurisdiction ).

The Company (and Guarantors) will also indemnify and reimburse Holders for:

- taxes (including any interest, penalties and related expenses) imposed on the Holders (or if a Holder is not the beneficial owner, the beneficial owner) by a Relevant Tax Jurisdiction if and to the same extent that a Holder would have been entitled to receive Additional Amounts if the Company (or a Guarantor) or other applicable withholding agent had been required to deduct or withhold those taxes from payments on the 2021 notes or the 2021 Note Guarantees; and
- stamp, court, documentary or similar taxes or charges (including any interest, penalties and related expenses) imposed by a Relevant Tax Jurisdiction in connection with the execution, delivery, enforcement or registration of the 2021 notes or the 2021 Note Guarantees or other related documents and obligations.

This obligation to pay Additional Amounts is subject to several important exceptions, however. The Company (or a Guarantor) will not pay Additional Amounts to any Holder for or on account of any of the following:

- any Tax imposed solely because at any time there is or was a connection between the Holder (or between a fiduciary, settlor, beneficiary, member or shareholder of or possessor of power over the relevant Holder if the Holder is an estate, nominee, trust, partnership, limited liability company, or corporation) and the Relevant Tax Jurisdiction imposing the tax (including having a permanent establishment in, being a citizen, resident or national of or incorporated in or carrying on a business in such Relevant Tax Jurisdiction), other than the mere receipt of a payment or the acquisition, ownership, disposition or holding of, or enforcement of rights under, a 2021 note or the 2021 Note Guarantees;
- any estate, inheritance, gift, excise, transfer, property, transfer or any similar tax, assessment or other governmental charge;
- any Taxes imposed solely because the Holder (or if the Holder is not the beneficial owner, the beneficial owner) fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with the taxing jurisdiction of the Holder or any beneficial owner of the 2021 note or the 2021 Note Guarantees, if compliance is required by law or by an applicable income tax treaty to which the jurisdiction imposing the tax is a party, as a precondition to an exemption from the tax, assessment or other governmental charge for which such Holder is eligible and the Company (or a Guarantor) has given the Holders written notice within a reasonable period of time prior to the first payment date with respect to which such information or identification is required under applicable law that Holders will be required to provide such information and identification;
- any Taxes with respect to a 2021 note or a 2021 Note Guarantee presented for payment more than 30 days after the date on which payment became due and payable or the date on which payment thereof is duly provided for and notice thereof given to Holders, whichever occurs later, except to the extent that the Holder of the 2021 note would have been entitled to Additional Amounts had the 2021 notes been presented on the last day of such 30-day period;
- any withholding or deduction imposed on a payment to an individual that is required to be made pursuant to the European Union Directive on the taxation of savings income, which was adopted by the ECOFIN Council on June 3, 2003, or any law implementing or complying with, or introduced in order to conform to, such

Directive;

- any Tax imposed on or with respect to a payment made to a Holder or beneficial owner of 2021 notes who would have been able to avoid such withholding or deduction by presenting the relevant 2021 notes to another paying agent in a member state of the European Union;

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- any Tax payable other than by deduction or withholding from payments to a Holder or beneficial owner under, or with respect to, the 2021 notes or with respect to any 2021 Note Guarantee; or
- any combination of above items.

The Payor will (i) make any such withholding or deduction required by applicable law and (ii) remit the full amount deducted or withheld to the relevant authority in accordance with applicable law. The Payor will make reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Relevant Tax Jurisdiction imposing such Taxes. The Payor will provide to the Trustee, within a reasonable time after the date the payment of any Taxes so deducted or withheld are due pursuant to applicable law, either a certified copy of tax receipts evidencing such payment, or, if such tax receipts are not reasonably available to the Payor, such other documentation that provides reasonable evidence of such payment by the Payor.

The tax gross-up and indemnity obligations described above will survive any termination, defeasance or discharge of the 2021 Indenture and will apply mutatis mutandis to any successor Person to any Payor and to any jurisdiction in which such successor is organized or is otherwise resident or doing business for tax purposes or any jurisdiction from or through which payment is made by such successor or its respective agents. Whenever the 2021 Indenture or this Description of the 2021 Notes refers to, in any context, the payment of principal, premium, if any, interest or any other amount payable under or with respect to any 2021 note or any guarantee, such reference includes the payment of Additional Amounts or indemnification payments as described hereunder, if applicable.

**Payments**

Principal, premium, if any, and interest on the 2021 notes will be payable at the office or agency of the Company maintained for such purpose or, at the option of the Company, payment of interest may be made by check mailed to the Holders of the 2021 notes at their respective addresses set forth in the register of Holders; provided that all payments of principal, premium, if any, and interest with respect to 2021 notes represented by one or more global notes registered in the name of or held by DTC or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof. Until otherwise designated by the Company, the Company's office or agency will be the office of the Trustee maintained for such purpose.

**Ranking**

The Indebtedness evidenced by the 2021 notes will be senior Indebtedness of the Company, and will rank *pari passu* in right of payment with all existing and future senior Indebtedness of the Company. The Indebtedness evidenced by the 2021 notes will be senior in right of payment to all existing and future Subordinated Indebtedness of the Company.

As of June 30, 2014, on an as adjusted basis after giving effect to this offering and the use of proceeds therefrom, the Company and its Subsidiaries would have had $2.8 billion aggregate principal amount of Indebtedness outstanding, $2.1 billion of which was secured Indebtedness and none of which was Subordinated Indebtedness. All of the operations of the Company are conducted through its Subsidiaries. Claims of creditors on such Subsidiaries, including trade creditors, and claims of preferred shareholders (if any) of such Subsidiaries generally will have priority with respect to the assets and earnings of such Subsidiaries over the claims of creditors of the Company, including the Holders of the 2021 notes. The 2021 notes, therefore, will be structurally subordinated to holders of Indebtedness and other creditors (including trade creditors) and preferred shareholders (if any) of the Subsidiaries of the Company.

Although the 2021 Indenture will limit the incurrence of Indebtedness by certain of the Company's Subsidiaries, such limitation is subject to a number of significant qualifications. See —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

**Mandatory Redemption**

The Company is not required to make mandatory redemption or sinking fund payments with respect to the 2021 notes, but the Company may be required to offer to purchase the 2021 notes as set forth below under —Repurchase at the Option of Holders.

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**Optional Redemption**

Except as described below, the 2021 notes are not redeemable at the Company's option.

Prior to , 2017, the Company may redeem all or a part of the 2021 notes, upon not less than 30 nor more than 60 days' prior notice to the Holders, at a redemption price equal to 100% of the principal amount of 2021 notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the redemption date, subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant interest payment date.

On and after , 2017, the Company will be entitled at its option, at any time and from time to time, to redeem all or a portion of the 2021 notes, upon not less than 30 nor more than 60 days' prior notice to the Holders, at the redemption prices (expressed as percentages of principal amount on the redemption date), plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on of the years set forth below:

| Period | REDEMPTION PRICE | |
|---|---|---|
| 2017 | | % |
| 2018 | | % |
| 2019 | | % |
| 2020 and thereafter | 100.000 | % |

In addition, at any time prior to , 2017, the Company may redeem, on any one or more occasions, with all or a portion of the net cash proceeds of one or more Equity Offerings (within 60 days of the consummation of any such Equity Offering), up to 35% of the aggregate principal amount of the 2021 notes (including any Additional 2021 Notes) at a redemption price (expressed as a percentage of the aggregate principal amount of the 2021 notes so redeemed) equal to % plus accrued and unpaid interest to but not including, the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided, however,* that at least 65% of the original aggregate principal amount of the 2021 notes must remain outstanding immediately after each such redemption.

The Trustee shall select the 2021 notes to be redeemed in the manner described under —Repurchase at the Option of Holders—Selection and Notice.

In addition to the Company's right to redeem 2021 notes as set forth above, the Company may at any time and from time to time purchase 2021 notes in open-market transactions, tender offers or otherwise.

**Redemption for Taxation Reasons**

The Company will be entitled, at its option, to redeem the 2021 notes in whole (but not in part) if at any time it becomes obligated to pay Additional Amounts on the 2021 notes on the next interest payment date with respect to the 2021 notes, but only if its obligation results from a change in, or an amendment to, the laws or treaties (including any regulations or official rulings promulgated thereunder) of a Relevant Tax Jurisdiction (or a political subdivision or taxing authority thereof or therein), or from a change in any official position regarding the interpretation, administration or application of those laws, treaties, regulations or official rulings (including a change resulting from a holding, judgment or order by a court of competent jurisdiction), that becomes effective and is announced after the Closing Date (or, if the applicable Relevant Tax Jurisdiction became a Relevant Tax Jurisdiction on a date after the

Closing Date, such later date) and provided the Company cannot avoid the obligation after taking reasonable measures to do so. If the Company redeems the 2021 notes in these circumstances, it will do so at a redemption price equal to 100% of the principal amount of the 2021 notes redeemed, plus accrued and unpaid interest, if any, and any other amounts due to the redemption date.

If the Company becomes entitled to redeem the 2021 notes in these circumstances, it may do so at any time on a redemption date of its choice. However, the Company must give the Holders of the 2021 notes being redeemed notice of

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the redemption not less than 30 days or more than 60 days before the redemption date and not more than 90 days before the next date on which it would be obligated to pay Additional Amounts. In addition, the Company's obligation to pay Additional Amounts must remain in effect when it gives the notice of redemption. Notice of the Company's intent to redeem the 2021 notes shall not be effective until such time as it delivers to the Trustee both an Officers' Certificate stating that the obligation to pay Additional Amounts cannot be avoided by taking reasonable measures and an opinion of independent legal counsel or an independent auditor stating that the Company is obligated to pay Additional Amounts because of an amendment to or change in law, treaties or position as described in the preceding paragraph.

**Repurchase at the Option of Holders**

***Change of Control***

If a Change of Control occurs, the Company will make an offer to purchase all of the 2021 notes pursuant to the offer described below (the Change of Control Offer ) at a price in cash (the Change of Control Payment ) equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but not including, the date of purchase, subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Company will send notice of such Change of Control Offer, with a copy to the Trustee, to each Holder of 2021 notes as provided in —Notices below, with the following information:

(1) a Change of Control Offer is being made pursuant to the covenant entitled Change of Control, and that all 2021 notes properly tendered pursuant to such Change of Control Offer will be accepted for payment;

(2) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is given (the Change of Control Payment Date );

(3) any 2021 note not properly tendered will remain outstanding and continue to accrue interest;

(4) unless the Company defaults in the payment of the Change of Control Payment, all 2021 notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on, but not including, the Change of Control Payment Date;

(5) Holders electing to have any 2021 notes purchased pursuant to a Change of Control Offer will be required to surrender the 2021 notes, with the form entitled Option of Holder to Elect Purchase on the reverse of the 2021 notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third business day preceding the Change of Control Payment Date;

(6) Holders will be entitled to withdraw their tendered 2021 notes and their election to require the Company to purchase such 2021 notes; provided that the paying agent receives, not later than the close of business on the last day of the offer period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the 2021 notes, the principal amount of 2021 notes tendered for purchase, and a statement that such Holder is withdrawing its tendered 2021 notes and its election to have such 2021 notes purchased;

(7) if such notice is given prior to the occurrence of a Change of Control, stating the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(8) that Holders whose 2021 notes are being purchased only in part will be issued 2021 notes equal in principal amount to the unpurchased portion of the 2021 notes surrendered, which unpurchased portion must be equal to $200,000 or an integral multiple of $1,000 in excess thereof.

While the 2021 notes are in global form and the Company makes an offer to purchase all of the 2021 notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the 2021 notes through the facilities of DTC, subject to DTC's rules and regulations.

We will not be required to make a Change of Control Offer following a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in

the 2021 Indenture applicable to a Change of Control Offer made by us and purchases all 2021 notes validly tendered and not withdrawn under such Change of Control Offer or (2) notice of redemption has been given pursuant to the 2021

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Indenture as described under the caption —Optional Redemption, unless and until there is a default in payment of the applicable redemption price. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control.

2021 notes repurchased by us pursuant to a Change of Control Offer will have the status of 2021 notes issued but not outstanding or will be retired and canceled at the option of the Company. 2021 notes purchased by a third party pursuant to the preceding paragraph will have the status of 2021 notes issued and outstanding.

The Company will comply with the requirements of Section 14(e) under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the 2021 notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the 2021 Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the 2021 Indenture by virtue thereof.

On the Change of Control Payment Date, the Company will, to the extent permitted by law,

(1) accept for payment all 2021 notes or portions thereof properly tendered pursuant to the Change of Control Offer,
(2) on or prior to 10:00 a.m. New York City time, deposit with the paying agent an amount equal to the aggregate Change of Control Payment in respect of all 2021 notes or portions thereof so tendered, and
(3) at the option of the Company, deliver, or cause to be delivered, to the Trustee for cancellation the 2021 notes so accepted together with an Officers' Certificate stating that such 2021 notes or portions thereof have been tendered to and purchased by the Company.

The paying agent will promptly mail to each Holder of the 2021 notes the Change of Control Payment for such 2021 notes, and the Trustee, upon the Company's order, will promptly authenticate and mail to each Holder a new 2021 note equal in principal amount to any unpurchased portion of the 2021 notes surrendered, if any; provided that each such new 2021 note will be in a principal amount of $200,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The Change of Control purchase feature is a result of negotiations between the underwriters and us. We have no present intention to engage in a transaction that would trigger a Change of Control Offer, although it is possible that we could decide to do so in the future. Subject to the limitations discussed below, we could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control under the 2021 Indenture, but that could cause a change in effective control of the Company, increase the amount of Indebtedness outstanding at such time or otherwise affect our capital structure or credit ratings. Restrictions on our ability to incur additional Indebtedness are contained in the covenants described under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock and Certain Covenants—Liens. Such restrictions in the 2021 Indenture can be waived only with the consent of the Holders of a majority in principal amount of the 2021 notes then outstanding. Except for the limitations contained in such covenants, however, the 2021 Indenture will not contain any covenants or provisions that may afford Holders of the 2021 notes protection in a highly levered transaction.

The definition of Change of Control includes a disposition of all or substantially all of the assets of the Company to certain Persons. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of all or substantially all of the assets of the Company. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder of 2021 notes may require the Company to make an offer to repurchase the 2021 notes as described above. In a

recent decision, the Chancery Court of the State of Delaware raised the possibility that a change of control occurring as a result of a failure to have continuing directors comprising a majority of a board of directors may be unenforceable on public policy grounds.

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The existence of a Holder's right to require the Company to repurchase such Holder's 2021 notes upon the occurrence of a Change of Control may deter a third party from seeking to acquire the Company in a transaction that would constitute a Change of Control.

The provisions under the 2021 Indenture relative to our obligation to make an offer to repurchase the 2021 notes as a result of a Change of Control may be waived or modified with the written consent of the Holders of a majority in principal amount of the 2021 notes.

Notice of redemption or repurchase, at the Company's option and discretion, be subject to one or more conditions precedent, including, but not limited to, completion of such Change of Control, as the case may be.

***Asset Sales***

The 2021 Indenture will provide that the Company will not, and will not permit any Restricted Subsidiary to, cause, make or suffer to exist an Asset Sale unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents.

Within 365 days after the Company's or a Restricted Subsidiary's receipt of the Net Proceeds of any Asset Sale covered by this clause (a), the Company or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale:

(1) to make one or more offers to the Holders of the 2021 notes (and, at the option of the Company, the holders of other senior Indebtedness) to purchase 2021 notes (and such senior Indebtedness) pursuant to and subject to the conditions contained in the 2021 Indenture (each, an Asset Sale Offer ); provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to this clause (1), the Company or such Restricted Subsidiary shall permanently retire such Indebtedness; provided further that if the Company or such Restricted Subsidiary shall so reduce any senior Indebtedness (other than the 2021 notes), the Company will equally and ratably reduce Indebtedness under the 2021 notes by making an offer to all Holders of 2021 notes to purchase at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest and additional interest, if any, the *pro rata* principal amount of the 2021 notes, such offer to be conducted in accordance with the procedures set forth below for an Asset Sale Offer;

(2) to make an investment in (a) any one or more businesses; provided that such investment in any business is in the form of the acquisition of Capital Stock and results in the Company or a Restricted Subsidiary, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) capital expenditures or (c) acquisitions of other long-term assets, in each of (a), (b) and (c), used or useful in a Similar Business;

(3) to reduce Indebtedness of a Restricted Subsidiary, other than Indebtedness owed to the Company or another Restricted Subsidiary; provided that the acquisition of Indebtedness of a Restricted Subsidiary by the Company shall constitute a reduction in such Indebtedness; or

(4) any combination of the foregoing.

Any Net Proceeds that are not invested or applied as provided and within the time period set forth in the first sentence of the immediately preceding paragraph will be deemed to constitute Excess Proceeds. In the case of clause (2) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment; provided that (x) such investment is consummated within 365 days after receipt by the Company or any Restricted Subsidiary of the Net Proceeds of any Asset Sale, and (y) if such investment is not consummated within the period set forth in subclause (x), the Net Proceeds not so applied will be deemed to be Excess Proceeds. When the

aggregate amount of Excess Proceeds exceeds $25.0 million, the Company shall make an Asset Sale Offer to all Holders of the 2021 notes, and, if required by the terms of any senior Indebtedness, to the holders of such senior Indebtedness, to purchase the maximum principal amount of 2021 notes and such other senior Indebtedness, that are $200,000 or an

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integral multiple of $1,000 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in the 2021 Indenture. The Company will commence an Asset Sale Offer with respect to Excess Proceeds within 30 days after the date that Excess Proceeds exceeds $25.0 million by giving the notice required pursuant to the terms of the 2021 Indenture, with a copy to the Trustee. To the extent that the aggregate amount of 2021 notes and such senior Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the 2021 Indenture. If the aggregate principal amount of 2021 notes or the senior Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the 2021 notes and such senior Indebtedness will be purchased on a *pro rata* basis based on the principal amount of the 2021 notes or such senior Indebtedness tendered, subject to adjustments by the Company so that no 2021 notes or such other senior Indebtedness are left outstanding in unauthorized denominations. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. After the Company or any Restricted Subsidiary has applied the Net Proceeds from any Asset Sale as provided in, and within the time periods required by, this paragraph (a), the balance of such Net Proceeds, if any, from such Asset Sale may be used by the Company or such Restricted Subsidiary for any purpose not prohibited by the terms of the 2021 Indenture.

For purposes of this covenant, the following are deemed to be cash or Cash Equivalents:

(a) any liabilities (as shown on the Company's, or such Restricted Subsidiary's most recent internally available balance sheet or in the 2021 notes thereto) of the Company or any Restricted Subsidiary (other than liabilities that are contingent or by their terms subordinated to the 2021 notes) that are assumed by the transferee of any such assets and as a result of which the Company and its Restricted Subsidiaries are no longer obligated with respect to such liabilities or are indemnified against further liabilities;

(b) any securities, notes or other obligations received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Capital Stock, provided such receipt of Capital Stock would qualify under clause (2) of the second paragraph of this section; and

(d) any Designated Noncash Consideration received by the Company or any Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Noncash Consideration received pursuant to this clause (d) that is at that time outstanding, not to exceed the greater of (x) $100.0 million and (y) 3.0% of Total Assets at the time of the receipt of such Designated Noncash Consideration, with the Fair Market Value of each item of Designated Noncash Consideration being measured at the time received and without giving effect to subsequent changes in value.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the 2021 notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the 2021 Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the 2021 Indenture by virtue thereof.

***Selection and Notice***

If less than all of the 2021 notes are to be redeemed or repurchased at any time, selection of such 2021 notes for redemption or repurchase, will be made by the Trustee on a *pro rata* basis or by lot or otherwise in accordance with the procedures of DTC; provided that no 2021 notes of $200,000 or less shall be purchased or redeemed in part.

Notices of purchase or redemption shall be given at least 30 but not more than 60 days before the purchase or redemption date to each Holder of 2021 notes to be purchased or redeemed as provided in —Notices below. If any 2021 note is to be purchased or redeemed in part only, any notice of purchase or redemption that relates to such 2021 note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed. In the case of any book-entry notes, notices of purchase or redemption will be given to DTC in accordance with its applicable procedures.

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A new 2021 note in principal amount equal to the unpurchased or unredeemed portion of any 2021 note purchased or redeemed in part will be issued in the name of the Holder thereof upon cancellation of the original 2021 note. On and after the purchase or redemption date, unless the Company defaults in payment of the purchase or redemption price, interest shall cease to accrue on 2021 notes or portions thereof purchased or called for redemption.

**Certain Covenants**

Set forth below are summaries of certain covenants contained in the 2021 Indenture.

***Covenant Suspension***

If on any date following the Closing Date (i) the 2021 notes have Investment Grade Ratings from two Rating Agencies, and (ii) no Default has occurred and is continuing under the 2021 Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a Covenant Suspension Event ), the Company and the Restricted Subsidiaries will not be subject to the following covenants (collectively, the Suspended Covenants ):

(1) —Repurchase at the Option of Holders—Asset Sales ;
(2) —Limitation on Restricted Payments ;
(3) —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;
(4) clause (4) of the first paragraph of —Amalgamation, Merger, Consolidation or Sale of All or Substantially All Assets ;
(5) —Transactions with Affiliates ; and
(6) —Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

In the event that the Company and the Restricted Subsidiaries are not subject to the Suspended Covenants under the 2021 Indenture for any period of time as a result of the foregoing, and on any subsequent date (the Reversion Date ) one of the Rating Agencies (a) withdraws its Investment Grade Rating or downgrades the rating assigned to the 2021 notes below an Investment Grade Rating and/or (b) the Company or any of its Affiliates enters into an agreement to effect a transaction that would result in a Change of Control and one of the Rating Agencies indicates that if consummated, such transaction (alone or together with any related recapitalization or refinancing transactions) would cause such Rating Agency to withdraw its Investment Grade Rating or downgrade the ratings assigned to the 2021 notes below an Investment Grade Rating, then the Company and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under the 2021 Indenture with respect to future events, including, without limitation, a proposed transaction described in clause (b) above.

The period of time between the date of the Covenant Suspension Event and the Reversion Date is referred to in this description as the Suspension Period. Additionally, upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds shall be reset at zero. During the Suspension Period no additional subsidiary may be designated an Unrestricted Subsidiary unless such designation would have been permitted if the covenant described under the caption —Limitation on Restricted Payments had been in effect at all times during the Suspension Period. In the event of any such reinstatement, no action taken or omitted to be taken by the Company or any of its Restricted Subsidiaries prior to such reinstatement will give rise to a Default or Event of Default under the 2021 Indenture with respect to 2021 notes; provided that (1) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though the covenant described under the caption —Limitation on Restricted Payments had been in effect prior to, but not during the Suspension Period, and (2) all Indebtedness incurred, or Disqualified Stock or preferred stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to clause (c) of the second paragraph of —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

The Company will give written notice to the Trustee and the Holders within 30 days of the date of any Covenant Suspension Event and/or any Reversion Date.

There can be no assurance that the 2021 notes will ever achieve or maintain Investment Grade Ratings.

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***Limitation on Restricted Payments.***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly:

(1) declare or pay any dividend or make any distribution on account of the Company's or any Restricted Subsidiary's Equity Interests, including any dividend or distribution payable in connection with any amalgamation, merger or consolidation other than:
  (A) dividends or distributions by the Company payable in Equity Interests (other than Disqualified Stock) of the Company or in options, warrants or other rights to purchase such Equity Interests; or
  (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Company or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities;

(2) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Company, including in connection with any amalgamation, merger or consolidation;

(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than (x) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition and (y) Indebtedness of the Company to a Restricted Subsidiary or a Restricted Subsidiary to the Company or another Restricted Subsidiary; or

(4) make any Restricted Investment;

(all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as Restricted Payments ), unless, at the time of such Restricted Payment:

(a) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(b) immediately after giving effect to such transaction on a *pro forma* basis, the Company could incur $1.00 of additional indebtedness under the provisions of the first paragraph of the covenant described —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; and

(c) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries after December 11, 2013 (including Restricted Payments permitted by clauses (1), (12) (with respect to the payment of dividends on Refunding Capital Stock pursuant to clause (b) thereof only) and (13) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum of:
  (1) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from October 1, 2013, to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit, *plus*
  (2) 100% of the aggregate net cash proceeds and the Fair Market Value of marketable securities or other property received by the Company since immediately after December 11, 2013 from the issue or sale of:
    (x) Equity Interests of the Company; or
    (y) debt securities, Designated Preferred Stock or Disqualified Stock of the Company or any Restricted Subsidiary that have been converted into or exchanged for such Equity Interests of the Company;

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provided, however, that this clause (2) shall not include the proceeds from (a) Refunding Capital Stock (as defined below), (b) Equity Interests or converted or exchanged debt securities of the Company sold to a Restricted Subsidiary or the Company, as the case may be or (c) Disqualified Stock or debt securities that have been converted into or exchanged for Disqualified Stock, *plus*

(3) 100% of the aggregate amount of cash and the Fair Market Value of marketable securities or other property contributed to the capital of the Company following December 11, 2013 (other than by a Restricted Subsidiary), *plus*

(4) 100% of the aggregate amount received in cash and the Fair Market Value of marketable securities or other property received by the Company or a Restricted Subsidiary by means of:

(A) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company and its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Company and its Restricted Subsidiaries and repayments of loans or advances which constitute Restricted Investments by the Company and its Restricted Subsidiaries in each case after December 11, 2013; or

(B) the sale (other than to the Company or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary (other than to the extent such Investment constituted a Permitted Investment) or a dividend or distribution from an Unrestricted Subsidiary in each case after December 11, 2013; *plus*

(5) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the Fair Market Value of the Investment in such Unrestricted Subsidiary at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary, other than to the extent the Investment in such Unrestricted Subsidiary was made by the Company or a Restricted Subsidiary pursuant to clause (5) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment, plus

(6) $45.0 million.

The foregoing provisions will not prohibit:

(1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of the 2021 Indenture;

(2) the redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Company made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Company, which is incurred in compliance with —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock so long as:

(A) the principal amount (or accreted value) of such new Indebtedness does not exceed the principal amount, plus any accrued and unpaid interest, of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any premium and any reasonable tender premiums, defeasance costs or other fees and expenses incurred in connection with the issuance of such new Indebtedness,

(B) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the maturity of the 2021 notes, and

(C) such Indebtedness has a Weighted Average Life to Maturity which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired that were due on or after the date one year following the maturity date of any 2021 notes then outstanding were instead due on such date one year following the maturity date of such 2021 notes (provided that, in the case of this subclause (C)(y), such Indebtedness does not provide for any scheduled principal payments prior to the

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maturity date of the 2021 notes in excess of, or prior to, the scheduled principal payments due prior to such maturity for the Indebtedness being refunded or refinanced or defeased);

(3) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of common Equity Interests of the Company held by any future, present or former employee, director or consultant of the Company or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; provided, however, that the aggregate Restricted Payments made under this clause (3) do not exceed in any calendar year $5.0 million (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of $10.0 million in any calendar year);

(4) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any other Restricted Subsidiary issued in accordance with the covenant described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock to the extent such dividends are included in the definition of Fixed Charges;

(5) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (5) that are at the time outstanding, not to exceed $50.0 million and 1.25% of Total Assets at the time of such investment; provided, that the dollar amount of Investments made pursuant to this clause (5) may be reduced by the Fair Market Value of the proceeds received by the Company and/or its Restricted Subsidiaries from the subsequent sale, disposition or other transfer of such Investments (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(6) (x) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants, and (y) payment of dividend equivalents pursuant to grants of Equity Interests to employees and directors of the Company under the Company's equity incentive plans;

(7) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (7) not to exceed $45.0 million;

(8) Restricted Payments by the Company or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock of any such Person;

(9) the purchase by the Company of fractional shares arising out of stock dividends, splits or combinations or business combinations;

(10) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets and purchases and repurchases of Securitization Assets in connection with a Qualified Securitization Financing;

(11) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness required pursuant to the provisions similar to those described under the captions —Repurchase at the Option of Holders—Change of Control and —Repurchase at the Option of Holders—Asset Sales ; provided that there is a concurrent or prior Change of Control Offer or Asset Sale Offer, as applicable, and all 2021 notes tendered by Holders of the 2021 notes in connection with such Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(12) any Restricted Payment in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Company (other than any Disqualified Stock) ( Refunding Capital Stock ); and

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(13) any dividends or distributions by the Company on its common shares (directly or in the form of American Depositary Shares) and any repurchase, redemption or acquisition by the Company of its common shares, in an aggregate amount not to exceed for any fiscal year the greater of $45.0 million and 1.25% of Total Assets at the time of such dividend, distribution, repurchase, redemption or acquisition; provided that immediately after giving effect to such dividend, distribution, repurchase, redemption or acquisition, on a pro forma basis, the Company could incur $1.00 of additional indebtedness under the provisions of the first paragraph of the covenant described —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock .

provided however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (3), (4), (5), (7), (12) and (13), no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof.

As of the time of issuance of the 2021 notes, all of the Company's Subsidiaries will be Restricted Subsidiaries. The Company will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the last sentence of the definition of Unrestricted Subsidiary. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of Investment. Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to the first paragraph of this covenant or under clause (5) or (7) of the second paragraph of this covenant, or pursuant to the definition of Permitted Investments, and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in the 2021 Indenture.

***Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, incur and collectively, an incurrence ) with respect to any Indebtedness (including Acquired Indebtedness) and the Company will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or preferred stock; provided, however, that the Company may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of preferred stock, if the Fixed Charge Coverage Ratio for the Company and the Restricted Subsidiaries for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or preferred stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four-quarter period.

The foregoing limitations will not apply to:

(a) the incurrence of Indebtedness of the Company or any of the Restricted Subsidiaries under Credit Facilities in an aggregate amount at any time outstanding not to exceed $50.0 million pursuant to this clause (a);

(b) the incurrence by the Company of Indebtedness represented by the 2021 notes (other than any Additional 2021 Notes);

(c) Existing Indebtedness (other than Indebtedness described in clauses (a) and (b));

(d) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and preferred stock incurred by the Company or any Restricted Subsidiary, to finance the purchase, lease or improvement of property (real or personal) or equipment that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, in an aggregate principal amount which, when aggregated

with the principal amount of all other Indebtedness, Disqualified Stock and preferred stock then outstanding and incurred pursuant to this clause (d) and including all Refinancing Indebtedness incurred to refund, refinance or replace any other Indebtedness, Disqualified Stock and preferred stock incurred pursuant to this clause (d), does not exceed the greater of (x) $25.0 million and (y) 0.75% of Total Assets;

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(e) Indebtedness incurred by the Company or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; provided, however, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;

(f) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(g) Indebtedness of the Company to a Restricted Subsidiary; provided that, other than in the case of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Company and the Restricted Subsidiaries to finance working capital needs of the Restricted Subsidiaries, any such Indebtedness is subordinated in right of payment to the 2021 notes; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed, in each case to be an incurrence of such Indebtedness not permitted by this clause (g);

(h) Indebtedness of a Restricted Subsidiary to the Company or another Restricted Subsidiary; provided that, any subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed in each case to be an incurrence of such Indebtedness not permitted by this clause (h);

(i) shares of preferred stock of a Restricted Subsidiary issued to the Company or another Restricted Subsidiary; provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of preferred stock (except to the Company or another Restricted Subsidiary) shall be deemed in each case to be an issuance of such shares of preferred stock not permitted by this clause (i);

(j) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting:

(A) interest rate risk;
(B) exchange rate risk with respect to any currency exchange;
(C) commodity risk;
(D) inflation risk; or
(E) any combination of the foregoing;

(k) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Company or any Restricted Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(l) Indebtedness, Disqualified Stock and preferred stock of the Company or any Restricted Subsidiary not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and preferred stock then

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outstanding and incurred pursuant to this clause (l), including all Refinancing Indebtedness in respect thereof incurred pursuant to clause (n), does not at any one time outstanding exceed the greater of (1) $50.0 million and (2) 1.25% of Total Assets;

(m) (1) any guarantee by the Company of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of the 2021 Indenture, or (2) any guarantee by a Restricted Subsidiary of Indebtedness of the Company or another Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by the Company or such other Restricted Subsidiary is permitted under the terms of the 2021 Indenture;

(n) the incurrence by the Company or any Restricted Subsidiary of Indebtedness, Disqualified Stock or preferred stock which serves to refund or refinance any Indebtedness, Disqualified Stock or preferred stock incurred as permitted under the first paragraph of this covenant and clauses (b), (c), (l), (n), (o) and (q) of this paragraph or any Indebtedness, Disqualified Stock or preferred stock issued to so refund or refinance such Indebtedness, Disqualified Stock or preferred stock including additional Indebtedness, Disqualified Stock or preferred stock incurred to pay premiums (including tender premiums), defeasance costs and fees in connection therewith (the Refinancing Indebtedness ) prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(1) except in the case of Indebtedness incurred pursuant to clause (q) below or any Refinancing Indebtedness of such Indebtedness, has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the shorter of (x) remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or preferred stock being refunded or refinanced and (y) in the case of Subordinated Indebtedness, the Weighted Average Life to Maturity that would result if all payments of principal on the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired that were due on or after the date one year following the maturity date of any 2021 notes then outstanding were instead due on such date one year following the maturity date of such 2021 notes (provided that, in the case of this subclause (n)(1)(y), such Indebtedness does not provide for any scheduled principal payments prior to the maturity date of the 2021 notes in excess of, or prior to, the scheduled principal payments due prior to such maturity for the Indebtedness, Disqualified Stock or preferred stock being refunded or refinanced or defeased);

(2) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated in right of payment to the 2021 notes, such Refinancing Indebtedness is subordinated in right of payment to the 2021 notes at least to the same extent as the Indebtedness being refinanced or refunded or (ii) Disqualified Stock or preferred stock, such Refinancing Indebtedness must be Disqualified Stock or preferred stock, respectively; and

(3) shall not include

(x) Indebtedness, Disqualified Stock or preferred stock of a Subsidiary that refinances Indebtedness, Disqualified Stock or preferred stock of the Company; or

(y) Indebtedness, Disqualified Stock or preferred stock of the Company or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or preferred stock of an Unrestricted Subsidiary;

(o) Indebtedness, Disqualified Stock or preferred stock of Persons that are acquired by the Company or any Restricted Subsidiary or amalgamated or merged into the Company or a Restricted Subsidiary in accordance with the terms of the 2021 Indenture; provided that such Indebtedness, Disqualified Stock or preferred stock is not incurred in contemplation of such acquisition, amalgamation or merger; provided further that after giving effect to such acquisition, amalgamation or merger, either:

(1) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of this covenant; or

(2) the Fixed Charge Coverage Ratio is greater than immediately prior to such acquisition, amalgamation or merger;

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(p) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its incurrence;

(q) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and preferred stock, including any predelivery payment financing, incurred by the Company or any Restricted Subsidiary, that is secured by any aircraft, engines, spare parts or similar assets, including in the form of financing from aircraft or engine manufacturers or their affiliates and whether through the direct purchase of assets or the Capital Stock or Indebtedness of any Person owning such assets, so long as the amount of such Indebtedness does not exceed the purchase price of such aircraft, engines, spare parts or similar assets and any improvements or modifications thereto and is incurred not later than two years after the date of such purchase, lease, acquisition, improvement or modification;

(r) Indebtedness of the Company or any Restricted Subsidiary consisting of the guarantee of obligations of joint ventures in a Similar Business which are not Subsidiaries supported by a contractual obligation by (1) the joint venture to repay any amounts advanced pursuant to such guarantee or (2) the joint venture partners to repay a proportion of any amounts advanced pursuant to such guarantee equal to their ownership of such joint venture in an aggregate principal amount not to exceed 3.0% of Total Assets at any one time outstanding pursuant to this clause (r);

(s) Indebtedness of the Company or any Restricted Subsidiary consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business; and

(t) Indebtedness of the Company or any Restricted Subsidiary arising in connection with trade creditors or customers or endorsements of instruments for deposit, in each case, in the ordinary course of business.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness, Disqualified Stock or preferred stock meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or preferred stock described in clauses (a) through (t) above or is entitled to be incurred pursuant to the first paragraph of this covenant, the Company, in its sole discretion, may classify or reclassify such item of Indebtedness in any manner that complies with this covenant and the Company may divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in the first and second paragraphs above. Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness, Disqualified Stock or preferred stock will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or preferred stock for purposes of this covenant.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

The 2021 Indenture will provide that the Company will not, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinated or junior in right of payment to any Indebtedness of the Company unless such Indebtedness is expressly subordinated in right of payment to the 2021 notes to the extent and in the same

manner as such Indebtedness is subordinated in right of payment to other Indebtedness of the Company.

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The 2021 Indenture will not treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (2) Indebtedness as subordinated or junior to any other Indebtedness merely because it has a junior priority with respect to the same collateral.

***Liens***

The Company will not create, incur, assume or otherwise cause or suffer to exist or become effective any Lien that secures obligations under any Indebtedness of the Company or any Guarantor (the Initial Lien ) of any kind upon any of its property or assets, now owned or hereafter acquired, except any Initial Lien if (i) the 2021 notes are equally and ratably secured with (or on a senior basis to, in the case such Initial Lien secures any Subordinated Indebtedness) the obligations secured by such Initial Lien or (ii) such Initial Lien is a Permitted Lien.

Any Lien created for the benefit of the Holders of the 2021 notes pursuant to clause (i) of the preceding paragraph shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

***Amalgamation, Merger, Consolidation or Sale of All or Substantially All Assets***

The Company may not consolidate, amalgamate or merge with or into or wind up into (whether or not the Company is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person unless:

(1) the Company shall be the surviving corporation or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of a Permitted Jurisdiction (such Person, as the case may be, being herein called the Successor Company );

(2) the Successor Company, if other than the Company, expressly assumes all the obligations of the Company under the 2021 Indenture and the 2021 notes pursuant to a supplemental indenture;

(3) immediately after such transaction no Default or Event of Default exists;

(4) immediately after giving *pro forma* effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period,

(A) the Successor Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of the covenant described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock or

(B) the Fixed Charge Coverage Ratio for the Successor Company and the Restricted Subsidiaries would be greater than such ratio for the Company and the Restricted Subsidiaries immediately prior to such transaction; and

(5) the Company or such Successor Company, as applicable, shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indentures, if any, comply with the 2021 Indenture.

The Successor Company will succeed to, and be substituted for, the Company under the 2021 Indenture and the 2021 notes. Notwithstanding the foregoing clauses (3) and (4),

(a) any Restricted Subsidiary may consolidate with, amalgamate or merge into or transfer all or part of its properties and assets to the Company; and

(b) the Company may amalgamate or merge with an Affiliate incorporated solely for the purpose of reincorporating the Company in any Permitted Jurisdiction so long as the amount of Indebtedness of the Company and the Restricted Subsidiaries is not increased thereby.

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***Transactions with Affiliates***

The Company will not, and will not permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an Affiliate Transaction ) involving aggregate payments or consideration in excess of $5.0 million, unless:

(a) such Affiliate Transaction is on terms that are not materially less favorable to the Company or the relevant Restricted Subsidiary at the time of such transaction or at the time of the execution of the agreement providing therefor than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $50.0 million, a resolution adopted by the disinterested members of the Board of Directors of the Company, if any, approving such Affiliate Transaction.

The foregoing provisions will not apply to the following:

(1) transactions between or among the Company and/or any of the Restricted Subsidiaries;

(2) Restricted Payments permitted by the provisions of the 2021 Indenture described above under the covenant —Limitation on Restricted Payments and Permitted Investments;

(3) the payment of reasonable and customary fees paid to, reimbursement of expenses and indemnities provided on behalf of, officers, directors, employees or consultants of the Company or any Restricted Subsidiary;

(4) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (a) of the preceding paragraph;

(5) payments or loans (or cancellation of loans) to employees or consultants of the Company or any Restricted Subsidiary which are approved by a majority of the Board of Directors of the Company in good faith;

(6) any agreement as in effect as of the Closing Date, or any amendment thereto (so long as any such amendment, taken as a whole, is no less favorable to the Company and its Restricted Subsidiaries than the agreement in effect on the date of the 2021 Indenture (as determined by the Board of Directors of the Company in good faith));

(7) the existence of, or the performance by the Company or any of its Restricted Subsidiaries of its obligations under the terms of, any limited liability company, limited partnership or other Organizational Document or joint venture, investors or shareholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any similar agreements which it may enter into thereafter; provided, however, that the existence of, or the performance by the Company or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Closing Date shall only be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement, taken as a whole, is no less favorable to the Company and its Restricted Subsidiaries than the agreement in effect on the date of the 2021 Indenture (as determined by the Board of Directors of the Company in good faith);

(8) transactions with customers, clients, suppliers, trade creditors, joint venture partners or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of the 2021 Indenture;

(9) the issuance of Equity Interests (other than Disqualified Stock) of the Company to any Affiliate of the Company and other customary rights in connection therewith;

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(10) transactions or payments pursuant to any employee, officer or director compensation (including bonuses) or benefit plans, employment agreements, severance agreement, indemnification agreements or any similar arrangements entered into in the ordinary course of business or approved by the Board of Directors of the Company;

(11) transactions in the ordinary course with (i) Unrestricted Subsidiaries or (ii) joint ventures in which the Company or a Subsidiary of the Company holds or acquires an ownership interest (whether by way of Capital Stock or otherwise) so long as the terms of any such transactions are no less favorable to the Company or Subsidiary participating in such joint ventures than they are to other joint venture partners;

(12) transactions with a Person (other than an Unrestricted Subsidiary of the Company) that is an Affiliate of the Company solely because the Company owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(13) transactions involving Securitization Assets, or participations therein, in connection with any Qualified Securitization Financing;

(14) any Indebtedness from time to time owing by the Company or any Restricted Subsidiary to the Company or any Restricted Subsidiary;

(15) any servicing and/or management agreements or arrangements in effect on the Closing Date or any amendment, modification or supplement to such servicing and/or management agreements or arrangements or replacement thereof or any substantially similar servicing and/or management agreement or arrangement entered into after the Closing Date, so long as any material amendment, modification, supplement, replacement or substantially similar agreement or arrangement meets the requirements of clause (b) of the preceding paragraph; and

(16) any transaction with an Affiliate where the only consideration paid by the Company or any Restricted Subsidiary is the issuance of Equity Interests (other than Disqualified Stock).

***Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(a) (1) pay dividends or make any other distributions to the Company or any Restricted Subsidiary on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(2) pay any Indebtedness owed to the Company or any Restricted Subsidiary;

(b) make loans or advances to the Company or any Restricted Subsidiary; or

(c) sell, lease or transfer any of its properties or assets to the Company or any Restricted Subsidiary.

However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Closing Date;

(2) the 2021 Indenture and the 2021 notes;

(3) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (c) above on the property so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person acquired by the Company or any Restricted Subsidiary in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;

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(6) contracts for the sale of assets, including, without limitation, customary restrictions with respect to a Subsidiary pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary that impose restrictions on the assets to be sold;

(7) secured Indebtedness otherwise permitted to be incurred pursuant to the covenants described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock and —Liens that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(9) customary provisions in joint venture agreements and other similar agreements relating solely to such joint venture;

(10) customary provisions contained in leases and other agreements entered into in the ordinary course of business;

(11) any such encumbrance or restriction with respect to a Foreign Subsidiary pursuant to an agreement governing Indebtedness, Disqualified Stock or preferred stock incurred by such Foreign Subsidiary that was permitted by the terms of the 2021 Indenture to be incurred;

(12) any such encumbrance or restriction pursuant to an agreement governing Indebtedness incurred pursuant to the covenant described under —Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock, which encumbrances or restrictions are, in the good faith judgment of the Company's Board of Directors not materially more restrictive, taken as a whole, than customary provisions in comparable financings and that the management of the Company determines, at the time of such financing, will not materially impair the Company's ability to make payments as required under the 2021 notes;

(13) any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (10) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company's Board of Directors, no more restrictive, taken as a whole, with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(14) restrictions created in connection with any Qualified Securitization Financing that, in the good faith determination of the Company, are necessary or advisable to effect such Qualified Securitization Financing.

**Reports and Other Information**

The 2021 Indenture provides that for so long as the 2021 notes are outstanding, whether or not the Company has a class of securities registered under the Exchange Act, the Company shall furnish without cost to the Trustee and the Holders and prospective purchasers of the 2021 notes or shall post to a publicly available website (it being understood that the Trustee shall have no responsibility to determine whether any information has been posted on such website),

(a) within 120 days (or any time period then in effect under the rules and regulations of the Exchange Act for a non-accelerated filer) plus any grace period provided by Rule 12b-25 under the Exchange Act, after the end of each fiscal year, annual reports on Form 20-F, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form; and

(b) within 75 days (or any time period then in effect under the rules and regulations of the Exchange Act), after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 6-K, containing substantially the same information required to be contained in Form 10-Q, or any successor or comparable form.

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**Events of Default and Remedies**

The following events constitute Events of Default under the 2021 Indenture:

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the 2021 notes issued under the 2021 Indenture;

(2) default for 30 days or more in the payment when due of interest on or with respect to the 2021 notes issued under the 2021 Indenture;

(3) failure by the Company or any Restricted Subsidiary for 60 days after receipt of written notice given by the Trustee to the Company or by Holders of at least 25% in aggregate principal amount of the 2021 notes then issued and outstanding under the 2021 Indenture to the Company (with a copy to the Trustee) to comply with any of its other agreements in the 2021 Indenture or the 2021 notes;

(4) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any Restricted Subsidiary or the payment of which is guaranteed by the Company or any Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the 2021 notes, if both:

(A) such default either:

- results from the failure to pay any such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods); or
- relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $50.0 million or more at any one time outstanding,

in each case without such acceleration having been rescinded, annulled or otherwise cured; provided that if any such acceleration is being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, then the Event of Default by reason thereof would not deemed to have occurred until the conclusion of such proceedings; and provided further that such default shall not be an Event of Default with respect to (a) Indebtedness owed to the Company or a Restricted Subsidiary, or (b) secured Indebtedness of a Restricted Subsidiary as to which the Company delivers to the Trustee an Officers' Certificate certifying a resolution adopted by the Board of Directors of the Company to the effect that the obligees of such Indebtedness have no recourse to the assets of the Company or any Guarantor and that the Board of Directors have determined in good faith that the assets of the applicable Restricted Subsidiary have a Fair Market Value less than the amount of such outstanding Indebtedness;

(5) failure by the Company or any Significant Subsidiary to pay final judgments for the payment of money aggregating in excess of $50.0 million (to the extent not adequately covered by insurance as to which a solvent insurance company has not denied coverage or an indemnity by a third party with an Investment Grade Rating from any Rating Agency), which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance or indemnity, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed; provided that such failure shall not be an Event of Default with respect to a judgment against a Significant Subsidiary as to which the Company delivers to the Trustee an Officers' Certificate certifying a resolution adopted by the Board of Directors of the Company to the effect that the creditors of such Significant Subsidiary have no recourse to the assets of the Company or any Guarantor (other than such Significant Subsidiary) and that the Board of Directors have determined in good faith that the assets of such Significant Subsidiary have a Fair Market Value less than the sum of (x) the amount of such outstanding judgment, and (y) the outstanding Indebtedness of such Significant Subsidiary; or

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(6) certain events of bankruptcy or insolvency with respect to the Company or any Significant Subsidiary; provided that such events of bankruptcy or insolvency shall not be an Event of Default with respect to a Significant Subsidiary if both:

(A) Such event of bankruptcy or insolvency is commenced by creditors of such Significant Subsidiary that have no recourse to the assets of the Company or any Guarantor; and

(B) the Company delivers to the Trustee an Officers' Certificate certifying a resolution adopted by the Board of Directors of the Company to the effect that the creditors of such Significant Subsidiary have no recourse to the assets of the Company or any Guarantor (other than such Significant Subsidiary) and that the Board of Directors have determined in good faith that the assets of such Significant Subsidiary have a Fair Market Value less than the amount of its outstanding Indebtedness.

If any Event of Default (other than of a type specified in clause (6) above) occurs and is continuing under the 2021 Indenture, the Trustee, by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the then outstanding 2021 notes issued under the 2021 Indenture, by notice to the Company (with a copy to the Trustee), may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding 2021 notes issued under the 2021 Indenture to be due and payable immediately.

Upon the effectiveness of such declaration, such principal and interest will be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising under clause (6) of the first paragraph of this section, all outstanding 2021 notes will become due and payable without further action or notice. Holders may not enforce the 2021 Indenture or the 2021 notes except as provided in the 2021 Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding 2021 notes issued under the 2021 Indenture may direct the Trustee in its exercise of any trust or power. The 2021 Indenture will provide that the Trustee may withhold from Holders notice of any continuing Default or Event of Default, except a Default or Event of Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. The Trustee shall have no obligation to accelerate the 2021 notes.

The 2021 Indenture will provide that the Holders of a majority in aggregate principal amount of the then outstanding 2021 notes issued thereunder by written notice to the Trustee may on behalf of the Holders of all of such 2021 notes waive any existing Default or Event of Default and its consequences under the 2021 Indenture except a continuing Default or Event of Default in the payment of interest on, premium, if any, or the principal of any such note held by a non-consenting Holder. In the event of any Event of Default specified in clause (4) above, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of the acceleration of the 2021 notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose:

(x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged, or

(y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default, or

(z) if the default that is the basis for such Event of Default has been cured.

The 2021 Indenture will provide that the Company is required to deliver to the Trustee annually a statement regarding compliance with the 2021 Indenture, and the Company is required, within five Business Days, upon becoming aware of any Default or Event of Default or any default under any document, instrument or agreement representing Indebtedness of the Company, to deliver to the Trustee a statement specifying such Default or Event of Default.

**No Personal Liability of Directors, Officers, Employees and Shareholders**

No director, officer, employee, incorporator or shareholder of the Company shall have any liability for any obligations of the Company under the 2021 notes or the 2021 Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting a 2021 note waives and releases all such liability. The

waiver and

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release are part of the consideration for issuance of the 2021 notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

**Legal Defeasance and Covenant Defeasance**

The Company may, at its option and at any time, elect to have all of its obligations discharged with respect to the 2021 notes issued under the 2021 Indenture ( Legal Defeasance ) and all obligations of any Subsidiary of the Company that is a Guarantor discharged with respect to its Guarantee and cure all then existing Events of Default except for:

(1) the rights of Holders of 2021 notes issued under the 2021 Indenture to receive payments in respect of the principal of, premium, if any, and interest on such 2021 notes when such payments are due solely out of the trust created pursuant to the 2021 Indenture,

(2) the Company's obligations with respect to 2021 notes issued under the 2021 Indenture concerning issuing temporary 2021 notes, registration of such 2021 notes, mutilated, destroyed, lost or stolen 2021 notes and the maintenance of an office or agency for payment and money for security payments held in trust,

(3) the rights, powers, trusts, duties and immunities of the Trustee, and the Company's obligations in connection therewith, and

(4) the Legal Defeasance provisions of the 2021 Indenture.

In addition, the Company may, at its option and at any time, elect to have its obligations released with respect to certain covenants that are described in the 2021 Indenture ( Covenant Defeasance ) and thereafter any omission to comply with such obligations shall not constitute a Default or Event of Default with respect to the 2021 notes. In the event Covenant Defeasance occurs, certain events (not including bankruptcy, receivership, rehabilitation and insolvency events pertaining to the Company) described under Events of Default will no longer constitute an Event of Default with respect to the 2021 notes.

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the 2021 notes issued under the 2021 Indenture:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest due on the 2021 notes issued under the 2021 Indenture on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on the 2021 notes;

(2) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States confirming that, subject to customary assumptions and exclusions, (i) the Company has received from, or there has been published by, the United States Internal Revenue Service a ruling or (ii) since the issuance of the 2021 notes, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel in the United States shall confirm that, subject to customary assumptions and exclusions, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. 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, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States confirming that, subject to customary assumptions and exclusions, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. 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 (other than that resulting from borrowing funds to be applied to make such deposit or the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such

deposit;

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(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any other material agreement or instrument (other than the 2021 Indenture) to which, the Company is a party or by which the Company is bound (other than that resulting from borrowing funds to be applied to make such deposit and the granting of Liens in connection therewith);

(6) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel in the United States (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

**Satisfaction and Discharge**

The 2021 Indenture will be discharged and will cease to be of further effect as to all 2021 notes issued thereunder, when either

(a) all such 2021 notes theretofore authenticated and delivered, except lost stolen or destroyed 2021 notes which have been replaced or paid and 2021 notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (1) all such 2021 notes not theretofore delivered to such Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise or will become due and payable within one year, and the Company has irrevocably deposited or caused to be deposited with such Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on such 2021 notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default (other than that resulting from borrowing funds to be applied to make such deposit or the granting of Liens in connection therewith) with respect to the 2021 Indenture or the 2021 notes issued thereunder shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company is a party or by which the Company is bound (other than an instrument to be terminated contemporaneously with or prior to the borrowing of funds to be applied to make such deposit and the granting of Liens in connection therewith);

(3) the Company has paid or caused to be paid all sums payable by it under the 2021 Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under the 2021 Indenture to apply the deposited money toward the payment of such 2021 notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

**Paying Agents, Registrar and Transfer Agents for the 2021 Notes**

The Company will maintain one or more paying agents for the 2021 notes. The initial paying agent for the 2021 notes will be the Trustee.

The Company will also maintain a registrar. The registrar will maintain a register reflecting ownership of the 2021 notes outstanding from time to time and will facilitate transfers of 2021 notes on behalf of the Company. The

Company may also appoint one or more transfer agents, at whose designated offices any 2021 notes in certificated form may be transferred or exchanged and also surrendered before payment is made at maturity. The initial registrar and transfer agent will be the Trustee.

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The Company may change the paying agents, the registrar or the transfer agents without prior notice to the Holders. The Company may act as a paying agent or registrar.

**Transfer and Exchange**

A Holder may transfer or exchange 2021 notes in accordance with the 2021 Indenture. The registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the 2021 Indenture. The Company is not required to transfer or exchange any 2021 note selected for redemption. Also, the Company is not required to transfer or exchange any 2021 note for a period of 15 days before the giving of a notice of redemption of 2021 notes to be redeemed.

The registered Holder of a 2021 note will be treated as the owner of the 2021 note for all purposes.

**Amendment, Supplement and Waiver**

Except as provided in the next four succeeding paragraphs, the 2021 Indenture and the 2021 notes issued thereunder may be amended or supplemented with the consent of the Holders of a majority in principal amount of the 2021 notes then outstanding and issued under the 2021 Indenture, including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, 2021 notes, and any existing Default or Event of Default or compliance with any provision of the 2021 Indenture or the 2021 notes issued thereunder may be waived with the consent of the Holders of a majority in principal amount of the then outstanding 2021 notes issued under the 2021 Indenture, other than 2021 notes beneficially owned by the Company or its Affiliates (including consents obtained in connection with a purchase of or tender offer or exchange offer for 2021 notes).

The 2021 Indenture will provide that, without the consent of each Holder affected, an amendment or waiver may not, with respect to any 2021 notes issued under the 2021 Indenture and held by a non-consenting Holder:

(1) reduce the principal amount of 2021 notes whose Holders must consent to an amendment, supplement or waiver,
(2) reduce the principal of or change the fixed maturity of any such 2021 note or alter or waive the provisions with respect to the redemption of the 2021 notes (other than provisions relating to the covenants described above under the caption —Repurchase at the Option of Holders ),
(3) reduce the rate of or change the time for payment of interest on any 2021 note,
(4) waive a Default or Event of Default in the payment of principal of or premium, if any, or interest on the 2021 notes issued under the 2021 Indenture, except a rescission of acceleration of the 2021 notes by the Holders of at least a majority in aggregate principal amount of the 2021 notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in the 2021 Indenture which cannot be amended or modified without the consent of all Holders,
(5) make any 2021 note payable in money other than that stated in the 2021 notes,
(6) make any change in the provisions of the 2021 Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the 2021 notes,
(7) make any change in these amendment and waiver provisions,
(8) impair the right of any Holder to receive payment of principal of, or interest on such Holder's 2021 notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's 2021 notes, or
(9) make any change to or modify the ranking of the 2021 notes that would adversely affect the Holders.

Notwithstanding the foregoing, without the consent of any Holder, the Company and the Trustee may amend or supplement the 2021 Indenture, or the 2021 notes:

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(1) to cure any ambiguity, omission, mistake, defect or inconsistency, as evidenced in an Officers' Certificate;
(2) to comply with the covenant relating to amalgamations, mergers, consolidations and sales of assets;
(3) to provide for the assumption of the obligations of the Company or any Guarantor to Holders;
(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the rights under the 2021 Indenture of any such Holder;
(5) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Company;
(6) to comply with requirements of the Commission in order to effect or maintain the qualification of the 2021 Indenture under the Trust Indenture Act;
(7) to evidence and provide for the acceptance and appointment under the 2021 Indenture of a successor Trustee pursuant to the requirements thereof;
(8) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;
(9) to add guarantees of the 2021 notes under the 2021 Indenture in accordance with the terms of the 2021 Indenture; or
(10) to conform the text of the 2021 Indenture or the 2021 notes to any provision of the Description of the 2021 Notes to the extent that such provision in the Description of the 2021 Notes was intended by the Company to be a verbatim recitation of a provision of the 2021 Indenture or the 2021 notes, such intention to be evidenced by an Officers' Certificate of the Company delivered to the Trustee.

The consent of the holders of the 2021 notes is not necessary under the 2021 Indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

**Notices**

As long as the Company issues 2021 notes in global form, notices to be given to Holders will be given to DTC, in accordance with its applicable policies as in effect from time to time. If the Company issues 2021 notes in certificated form, notices to be given to Holders will be sent by first-class mail, postage prepaid, to the respective addresses of the Holders as they appear in the register maintained by the registrar.

Notices given by publication will be deemed given on the first date on which publication is made and notices given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing.

**Concerning the Trustee**

The 2021 Indenture will contain certain limitations on the rights of the Trustee, should it become a creditor of the Company, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue or resign.

The 2021 Indenture will provide that the Holders of a majority in principal amount of the outstanding 2021 notes issued thereunder will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee, subject to certain exceptions. The 2021 Indenture will provide that in case an Event of Default shall occur (which shall not be cured), the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent person under the circumstances in the conduct of such person's own affairs. The Trustee will be under no obligation to exercise any of its rights or powers under the 2021 Indenture at the request of any Holder of the 2021 notes, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense.

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**Governing Law**

The 2021 Indenture and the 2021 notes will be governed by and construed in accordance with the laws of the State of New York.

**Certain Definitions**

Set forth below are certain defined terms used in the 2021 Indenture. Reference is made to the 2021 Indenture for a full disclosure of all such terms, as well as any other capitalized terms used herein for which no definition is provided. For purposes of the 2021 Indenture, unless otherwise specifically indicated, the term consolidated with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

Acquired Indebtedness means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is amalgamated or merged with or into or became a Restricted Subsidiary of such specified Person, including, without limitation, Indebtedness incurred in connection with, or in contemplation of, such other Person merging with or into or becoming a Restricted Subsidiary of such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

Affiliate of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, control (including, with correlative meanings, the terms controlling, controlled by and under common control with ), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

Applicable Premium means, as determined by the Company with respect to any 2021 note on any Redemption Date, the excess of:

(1) the sum of the present value at such redemption date of all remaining scheduled payments of principal and interest on such 2021 note through the stated maturity date of the 2021 notes (excluding accrued but unpaid interest to the redemption date), discounted to the date of redemption using a discount rate equal to the Treasury Rate *plus* 50 basis points; *over*

(2) the principal amount of the 2021 notes to be redeemed.

Asset Sale means

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related or substantially concurrent transactions, of property or assets (including by way of a sale and leaseback) of the Company or any Restricted Subsidiary (each referred to in this definition as a disposition ), or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary, whether in a single transaction or a series of related or substantially concurrent transactions (other than preferred stock of Restricted Subsidiaries issued in compliance with the covenant described under —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock )

in each case, other than:

(a) a disposition of Cash Equivalents or dispositions of any surplus, obsolete, damaged or worn out assets in the ordinary course of business, or any disposition of inventory or goods held for sale in the ordinary course of business;

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(b) the disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to the provisions described above under —Certain Covenants—Amalgamation, Merger, Consolidation or Sale of All or Substantially All Assets or any disposition that constitutes a Change of Control pursuant to the 2021 Indenture;

(c) the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under the covenant described above under —Certain Covenants—Limitation on Restricted Payments ;

(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate Fair Market Value of less than $10.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;

(f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, as amended, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) the lease, assignment, sub-lease or license of any real or personal property, including any aircraft, in each case in the ordinary course of business;

(h) the sale of aircraft, engines, spare parts or similar assets, or Capital Stock of any entity owning any of the foregoing, in the ordinary course of business;

(i) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary (with the exception of Investments in Unrestricted Subsidiaries acquired pursuant to clause (j) of the definition of Permitted Investments);

(j) foreclosures on assets;

(k) (i) sales of accounts receivable, or participations therein, in connection with the Credit Facilities, (ii) any disposition of Securitization Assets in connection with any Qualified Securitization Financing and (iii) the sale or discount of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof or in bankruptcy or similar proceeding;

(l) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claim of any kind, in each case, in the ordinary course of business;

(m) the creation of a Lien permitted under the 2021 Indenture;

(n) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(o) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after the Closing Date, including, without limitation, sale leasebacks and asset securitizations permitted by the 2021 Indenture.

BBAM LP means BBAM Limited Partnership.

Capital Markets Debt means any unsecured debt securities (other than (i) a Qualified Securitization Financing or (ii) a debt issuance guaranteed by an export credit agency (including the Export-Import Bank of the United States)) issued in the capital markets by the Company or any Subsidiary, whether issued in a public offering or private placement, including pursuant to Section 4(a)(2) of the Securities Act or Rule 144A, Regulation S or Regulation D under the Securities Act.

Capital Stock means

(1) in the case of a corporation, corporate stock,

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(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock,

(3) in the case of a partnership or limited liability company, partnership, membership interests (whether general or limited) or shares in the capital of a company, and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

Capitalized Lease Obligation means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

Cash Equivalents means

(1) United States dollars,

(2) pounds sterling,

(3) (a) euro, or any national currency of any participating member state in the European Union,

(b) Canadian dollars,

(c) Australian dollars, or

(d) in the case of any Foreign Subsidiary that is a Restricted Subsidiary, such local currencies held by them from time to time in the ordinary course of business,

(4) securities issued or directly and fully and unconditionally guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition,

(5) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $500.0 million,

(6) repurchase obligations for underlying securities of the types described in clauses (4)and (5) above entered into with any financial institution meeting the qualifications specified in clause (5) above,

(7) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P and in each case maturing within 12 months after the date of creation thereof,

(8) investment funds investing 95% of their assets in securities of the types described in clauses (1) through (7) above,

(9) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof or any Province of Canada having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of 24 months or less from the date of acquisition and

(10) Indebtedness or preferred stock issued by Persons with a rating of A or higher from S&P or A2 or higher from Moody's with maturities of 12 months or less from the date of acquisition.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) through (3) above; provided that such amounts are converted into any currency listed in clauses (1) through (3) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

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Change of Control means:

(1) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of shares representing more than 50% of the voting power of the Company's Voting Stock;

(2) during any period of two consecutive years, individuals who at the beginning of such period were elected by the shareholders of the Company to the Board of Directors of the Company, as the case may be (together with any new directors whose election by the shareholders of the Company to such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of the majority of the directors of the Company 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 (who cannot include persons not elected by or recommended for election by the then-incumbent Board of Directors unless such Board of Directors determines reasonably and in good faith that failure to approve any such persons as members of the Board of Directors could reasonably be expected to violate a fiduciary duty under applicable law)), cease for any reason to constitute a majority of the members of the Board of Directors of the Company who were elected by the shareholders of the Company;

(3) (a) all or substantially all of the assets of the Company and the Restricted Subsidiaries, taken as a whole, are sold or otherwise transferred to any Person other than a Wholly-Owned Restricted Subsidiary or one or more Permitted Holders or (b) the Company amalgamates, consolidates or merges with or into another Person or any Person consolidates, amalgamates or merges with or into the Company, in either case under this clause (3), in one transaction or a series of related transactions in which immediately after the consummation thereof Persons beneficially owning (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) Voting Stock representing in the aggregate a majority of the total voting power of the Voting Stock of the Company, immediately prior to such consummation do not beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) Voting Stock representing a majority of the total voting power of the Voting Stock of the Company, or the applicable surviving or transferee Person; provided that this clause shall not apply (i) in the case where immediately after the consummation of the transactions Permitted Holders beneficially own Voting Stock representing in the aggregate a majority of the total voting power of the Company, or the applicable surviving or transferee Person or (ii) to an amalgamation or a merger of the Company with or into (x) a corporation, limited liability company or partnership or (y) a wholly-owned subsidiary of a corporation, limited liability company or partnership that, in either case, immediately following the transaction or series of transactions, has no Person or group (other than Permitted Holders), which beneficially owns Voting Stock representing 50% or more of the voting power of the total outstanding Voting Stock of such entity and, in the case of clause (y), the parent of such wholly-owned subsidiary guarantees the Company's obligations under the 2021 notes and the 2021 Indenture; or

(4) the Company shall adopt a plan of liquidation or dissolution or any such plan shall be approved by the shareholders of the Company.

Closing Date means , 2014.

Consolidated Depreciation and Amortization Expense means with respect to any Person for any period, the total amount of depreciation and amortization expense, including any amortization of deferred financing fees, amortization in relation to terminated Hedging Obligations and amortization of lease discounts and premiums and lease incentives, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

Consolidated Interest Expense means, with respect to any Person for any period, the sum, without duplication, of:

(a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including (i) amortization of original issue

discount resulting from the issuance of Indebtedness at less than par, (ii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of or hedge ineffectiveness expenses of Hedging Obligations or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133 — Accounting for Derivative Instruments and Hedging Activities ), and (iii) all commissions,

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discounts and other fees and charges owed with respect to letters of credit or relating to any Qualified Securitization Financing; and *excluding* (i) non-cash interest expense attributable to the amortization of gains or losses resulting from the termination prior to December 11, 2013 of Hedging Obligations, (ii) the interest component of Capitalized Lease Obligations and net payments, if any, pursuant to interest rate Hedging Obligations, (iii) amortization of deferred financing fees and any expensing of other financing fees), and (iv) amortization of fair value debt discounts, and

(b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, less

(c) interest income for such period.

Consolidated Net Income means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; provided, however, that

(1) any net after-tax extraordinary, non-recurring or unusual gains or losses, including sales or other dispositions of assets under a Securitization Financing other than in the ordinary course of business (less all fees and expenses relating thereto) or expenses (including, without limitation, relating to severance, relocation and new product introductions) shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any net after-tax income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed or discontinued operations shall be excluded,

(4) any net after-tax gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions other than in the ordinary course of business, as determined in good faith by the Board of Directors of the Company, shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Company shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period,

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (c) (1) of the first paragraph of —Certain Covenants—Limitation on Restricted Payments, the Net Income for such period of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination wholly permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its shareholders, unless such restriction with respect to the payment of dividends or in similar distributions has been legally waived; provided that Consolidated Net Income of the Company will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to the Company or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) the effects of adjustments resulting from the application of purchase accounting in relation to any acquisition that is consummated after December 11, 2013, net of taxes, shall be excluded,

(8) any net after-tax loss from the early extinguishment of Indebtedness arising from the application of purchase accounting or Hedging Obligations or other derivative instruments shall be excluded,

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(9) any net after-tax impairment charge or asset write-off pursuant to Financial Accounting Standards Board Statement No. 142 and No. 144 and the amortization of intangibles arising pursuant to No. 141 shall be excluded,

(10) any net after-tax gain (loss) arising from changes in the fair value of derivatives shall be excluded,

(11) any net after-tax valuation allowance against a deferred tax asset shall be excluded,

(12) amortization of (i) fair value lease premiums and discounts, (ii) lease incentives, (iii) fair value debt discounts, and (iv) debt discounts in respect of Indebtedness issued prior to December 11, 2013 shall be excluded, and

(13) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options or other rights to officers, directors or employees shall be excluded.

Notwithstanding the foregoing, for the purpose of the covenant described under —Certain Covenants—Limitation on Restricted Payments only (other than clause (c)(4) thereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Company and the Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Company and the Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Company or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under such covenant pursuant to clause (c)(4) thereof.

Contingent Obligations means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ( primary obligations ) of any other Person (the primary obligor ) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds

(A) for the purchase or payment of any such primary obligation or

(B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

Credit Facilities means one or more debt facilities, or commercial paper facilities with banks or other institutional lenders or investors or indentures providing for revolving credit loans, term loans, receivables financing, including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against receivables, letters of credit or other long-term indebtedness, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof.

Default means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

Designated Noncash Consideration means the Fair Market Value of noncash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Noncash Consideration

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pursuant to an Officers' Certificate, setting forth the basis of such valuation, executed by a senior vice president or the principal financial officer of the Company, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Noncash Consideration.

Disqualified Stock means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable, other than as a result of a change of control or asset sale, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, other than as a result of a change of control or asset sale, in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the 2021 notes or the date the 2021 notes are no longer outstanding; provided, however, that if such Capital Stock is issued to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

EBITDA means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period, *plus* (without duplication)

(a) provision for taxes based on income or profits, plus franchise or similar taxes, of such Person for such period deducted in computing Consolidated Net Income, *plus*

(b) Consolidated Interest Expense (and other components of Fixed Charges to the extent changes in GAAP after December 11, 2013 result in such components reducing Consolidated Net Income) of such Person for such period to the extent the same was deducted in calculating such Consolidated Net Income, *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent such depreciation and amortization were deducted in computing Consolidated Net Income, *plus*

(d) any expenses or charges related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or Indebtedness permitted to be incurred by the 2021 Indenture (whether or not successful), including such fees, expenses or charges related to the offering of the 2021 notes and the Credit Facilities, and deducted in computing Consolidated Net Income, *plus*

(e) the amount of any restructuring charge deducted in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions after December 11, 2013, *plus*

(f) any other non-cash charges reducing Consolidated Net Income for such period, excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period, *plus*

(g) the amount of any non-controlling interest expense deducted in calculating Consolidated Net Income (less the amount of any cash dividends paid to the holders of such minority interests), *plus*

(h) any net loss (or minus any gain) resulting from currency exchange risk Hedging Obligations, *plus*

(i) foreign exchange loss (or minus any gain) on debt, *plus*

(j) Securitization Fees and the amount of loss on sale of Securitization Assets and related assets to a Securitization Subsidiary in connection with a Qualified Securitization Financing, to the extent deducted in determining Consolidated Net Income, *less*

(l) non-cash items increasing Consolidated Net Income of such Person for such period, excluding any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period.

employees of the Company and its Subsidiaries shall include officers of the Company and its Subsidiaries and employees of BBAM LP or its Subsidiaries that are involved in the management of the Company and its Subsidiaries.

EMU means economic and monetary union as contemplated in the Treaty on European Union.

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Equity Interests means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

Equity Offering means any public or private sale of common shares or preferred shares of the Company (excluding Disqualified Stock), other than

(a) public offerings with respect to the Company's common shares registered on Form S-8; and

(b) any sales to the Company or any of its Subsidiaries.

euro means the single currency of participating member states of the EMU.

Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

Existing Indebtedness means Indebtedness of the Company or the Restricted Subsidiaries in existence on the Closing Date, plus interest accruing thereon.

Fair Market Value means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the chief executive officer, chief financial officer, chief accounting officer or controller of the Company or the Restricted Subsidiary, which determination will be conclusive (unless otherwise provided in the 2021 Indenture).

Fitch means Fitch, Inc.

Fixed Charge Coverage Ratio means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness (other than reductions in amounts outstanding under revolving facilities unless accompanied by a corresponding termination of commitment) or issues or redeems Disqualified Stock or preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to the event for which the calculation of the Fixed Charge Coverage Ratio is made (the Calculation Date ), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee or redemption, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or preferred stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, amalgamations, mergers, consolidations and disposed operations (as determined in accordance with GAAP) that have been made by the Company or any Restricted Subsidiary during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, amalgamations, mergers, consolidations and disposed operations (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was amalgamated or merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have made any Investment, acquisition, disposition, amalgamation, merger, consolidation or disposed operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, amalgamation, merger, consolidation or disposed operation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company (including *pro forma* expense and cost reductions, regardless of whether these cost savings could then be reflected in *pro forma* financial statements in accordance with Regulation S-X promulgated under the Securities Act or any other regulation or policy of the SEC related thereto). If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the

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entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

Fixed Charges means, with respect to any Person for any period, the sum of

(a) Consolidated Interest Expense,

(b) all cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or any Refunding Capital Stock of such Person, and

(c) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock.

Foreign Subsidiary means any subsidiary of the Company that is not incorporated in or organized under the laws of the United States or Bermuda.

GAAP means generally accepted accounting principles in the United States which are in effect on the Closing Date. At any time after the Closing Date, the Company may elect to apply IFRS accounting principles in lieu of GAAP for purposes of calculations hereunder and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in the 2021 Indenture); provided that calculation or determination in the 2021 Indenture that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Company shall give notice of any such election made in accordance with this definition to the Trustee and the Holders of 2021 notes.

Government Securities means securities that are

(a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged, or

(b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

guarantee means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

Guarantor means any Person that executes a 2021 Note Guarantee in accordance with the provisions of the 2021 Indenture and its respective successors and assigns.

Hedging Obligations means, with respect to any Person, the obligations of such Person under

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(a) currency exchange, interest rate, inflation or commodity swap agreements, currency exchange, interest rate, inflation or commodity cap agreements and currency exchange, interest rate, inflation or commodity collar agreements; and

(b) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates, inflation or commodity prices.

Holder means a Person in whose name a 2021 note is registered in the register.

Indebtedness means, with respect to any Person,

(a) any indebtedness (including principal and premium) of such Person, whether or not contingent

(1) in respect of borrowed money,

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without double counting, reimbursement agreements in respect thereof),

(3) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP, or

(4) representing any Hedging Obligations,

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP,

(b) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the Indebtedness of another Person, other than by endorsement of negotiable instruments for collection in the ordinary course of business, and

(c) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person, whether or not such Indebtedness is assumed by such Person;

provided, however, that Contingent Obligations shall be deemed not to constitute Indebtedness; and obligations under or in respect of a Qualified Securitization Financing shall not be deemed to constitute Indebtedness.

Independent Financial Advisor means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Company, qualified to perform the task for which it has been engaged.

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

Investments means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel, moving and similar advances to officers, directors and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Company in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of Unrestricted Subsidiary and the covenant described under —Certain Covenants—Limitation on Restricted Payments,

(1) Investments shall include the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated

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Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to

(x) the Company's Investment in such Subsidiary at the time of such redesignation *less*

(y) the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value at the time of such transfer, in each case as determined in good faith by the Company.

Lien means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease be deemed to constitute a Lien.

Management Group means at any time, the Chairman of the Board, any President, any Executive Vice President or Vice President, any Managing Director, any Treasurer and any Secretary or other executive officer of the Company or any Subsidiary of the Company or BBAM LP or any Subsidiary of BBAM LP at such time.

Moody's means Moody's Investors Service, Inc.

Net Income means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

Net Proceeds means the aggregate cash proceeds received by the Company or any Restricted Subsidiary in respect of any Asset Sale, including, without limitation, any cash received upon the sale or other disposition of any Designated Noncash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Noncash Consideration, including, without limitation, legal, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness secured by a Lien permitted under the 2021 Indenture required (other than required by clause (1) of the second paragraph of clause (a) —Repurchase at the Option of Holders—Asset Sales ) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Company as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

Obligations means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

Officer means the Chairman of the board of directors, the Chief Executive Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Chief Financial Officer, the Treasurer, the Secretary or any Assistant Secretary of the Company.

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Officers' Certificate means a certificate signed on behalf of the Company by two Officers of the Company, one of whom must be the principal executive officer, the principal financial officer, the treasurer, the principal accounting officer or the secretary of the Company, that meets the requirements set forth in the 2021 Indenture.

Opinion of Counsel means an opinion from legal counsel who is reasonably acceptable to the Trustee (who may be counsel to the Company) that meets the requirements of the 2021 Indenture.

Organizational Documents mean, with respect to (a) the Company, the memorandum and articles of association, and (b) any other person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person, (v) in the case of any trust, the declaration of trust and trust agreement (or similar document) of such person and (vi) in any other case, the functional equivalent of the foregoing.

Permitted Asset Swap means the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Company or any of its Restricted Subsidiaries and another Person; provided that any cash or Cash Equivalents received must be applied in accordance with the Asset Sales covenant.

Permitted Holders means the collective reference to Summit Aviation Partners LLC, Onex Corporation, their Affiliates, the executive officers of Summit Aviation Partners LLC and the Management Group. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of the 2021 Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

Permitted Investments means

(a) any Investment in the Company or any Restricted Subsidiary;

(b) any Investment in cash and Cash Equivalents;

(c) any Investment by the Company or any Restricted Subsidiary of the Company in a Person if as a result of such Investment:

(1) such Person becomes a Restricted Subsidiary; or

(2) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary;

(d) any Investment in securities or other assets not constituting cash or Cash Equivalents and received in connection with an Asset Sale made pursuant to the provisions of —Repurchase at the Option of Holders—Asset Sales or any other disposition of assets not constituting an Asset Sale;

(e) any Investment existing on the Closing Date;

(f) advances to employees not in excess of $5.0 million outstanding at any one time, in the aggregate;

(g) any Investment acquired by the Company or any Restricted Subsidiary:

(1) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the Company of such other Investment or accounts receivable; or

(2) as a result of a foreclosure by the Company or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

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(h) any Investments in Hedging Obligations entered into in the ordinary course of business;

(i) loans to officers, directors and employees for business-related travel expenses, moving expenses and other similar expenses, in each case incurred in the ordinary course of business;

(j) any Investment having an aggregate Fair Market Value, taken together with all other Investments made pursuant to this clause (j) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash and/or marketable securities), not to exceed the greater of (x) $50.0 million and (y) 1.25% of Total Assets at the time of such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(k) Investments the payment for which consists of Equity Interests of the Company (exclusive of Disqualified Stock); provided, however, that such Equity Interests will not increase the amount available for Restricted Payments under clause (c) of the first paragraph under the covenant described in —Certain Covenants—Limitation on Restricted Payments ;

(l) guarantees of Indebtedness permitted under the covenant described in —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(m) any transaction to the extent it constitutes an investment that is permitted and made in accordance with the provisions of the second paragraph of the covenant described under —Certain Covenants—Transactions with Affiliates ;

(n) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(o) repurchases of the 2021 notes;

(p) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;

(q) any Investment in a Person (other than the Company or a Restricted Subsidiary) pursuant to the terms of any agreements in effect on the Closing Date and any Investment that replaces, refinances or refunds an existing Investment; provided that the new Investment is in an amount that does not exceed the amount replaced, refinanced or refunded (after giving effect to write-downs or writeoffs with respect to such Investment), and is made in the same Person as the Investment replaced, refinanced or refunded;

(r) endorsements for collection or deposit in the ordinary course of business;

(s) Investments relating to any Securitization Subsidiary that, in the good faith determination of the Board of Directors of the Company, are necessary or advisable to effect any Qualified Securitization Financing;

(t) Investments in property and other assets which after such Investments are owned by the Company or any Restricted Subsidiary; and

(u) Investments in Permitted Joint Ventures in an aggregate amount that taken together with all other Investments made pursuant to this clause (u) that are at that time outstanding, does not exceed the greater of $50.0 million and 1.25% of Total Assets, and as of the date of making such Investment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing.

Permitted Joint Venture means any agreement, contract or other arrangement between the Company or any Restricted Subsidiary and any person that permits one party to share risks or costs, comply with regulatory requirements or satisfy other business objectives customarily achieved through the conduct of a Similar Business jointly with third parties.

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Permitted Jurisdiction means any of the United States, any state thereof, the District of Columbia, or any territory thereof, any member state of the Pre-Expansion European Union, Canada, Australia, Ireland, Bermuda, the Cayman Islands, Switzerland or Singapore.

Permitted Liens means, with respect to any Person:

(1) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety, customs or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, or premiums to insurance carriers, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review;

(3) Liens for taxes, assessments or other governmental charges or levies not yet overdue for a period of more than 30 days or payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) minor survey exceptions, minor encumbrances, minor title deficiencies, easements or reservations of, or rights of others for, licenses, rights-of-way, covenants, encroachments, protrusions, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens existing on the Closing Date;

(7) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a subsidiary; provided, further, however, that such Liens may not extend to any other property owned by the issuer or any Restricted Subsidiary;

(8) Liens on property at the time the Company or a Restricted Subsidiary acquired the property, including any acquisition by means of an amalgamation or a merger or consolidation with or into the Company or any Restricted Subsidiary; provided, however, that the Liens may not extend to any other property owned by the Company or any Restricted Subsidiary;

(9) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be incurred in accordance with the covenant described under —Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(10) Liens securing Hedging Obligations so long as the related Indebtedness is, and is permitted to be under the 2021 Indenture, secured by a Lien;

(11) Liens on specific items of inventory of other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

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(12) leases and subleases of real property granted to others in the ordinary course of business and which do not materially interfere with the ordinary conduct of the business of the Company or any of the Restricted Subsidiaries;

(13) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(14) Liens in favor of the Company;

(15) Liens on equipment of the Company or any Restricted Subsidiary granted in the ordinary course of business to the Company's client at which such equipment is located;

(16) Liens on Securitization Assets and related assets incurred in connection with a Qualified Securitization Financing;

(17) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (6), (7), (8), (9), (10), (14), (26) and (28); provided, however, that (x) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6), (7), (8), (9), (10), (14), (26) and (28) at the time the original Lien became a Permitted Lien under the 2021 Indenture, and (B) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement and (z) the new Lien has no greater priority and the holders of the Indebtedness secured by such Lien have no greater intercreditor rights relative to the 2021 notes and Holders thereof than the original Liens and the related Indebtedness;

(18) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed $25.0 million;

(19) Licenses or sublicenses in the ordinary course of business;

(20) Liens securing judgments, attachments or awards for the payment of money not constituting an Event of Default under clause (5) under the caption Events of Default and Remedies so long as (a) such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired or (b) such Liens are supported by an indemnity by a third party with an Investment Grade Rating;

(21) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(22) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(23) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(24) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business;

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(25) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(26) Liens securing Indebtedness permitted to be incurred pursuant to clause (d) of the second paragraph under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; provided that Liens extend only to the assets so financed, purchased, constructed or improved;

(27) Liens placed on the Capital Stock of any non-Wholly-Owned Subsidiary or joint venture in the form of a transfer restriction, purchase option, call or similar right of a third party joint venture partner;

(28) Liens securing Indebtedness permitted to be incurred pursuant to clause (q) of the second paragraph under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; provided that Liens extend only to the assets so financed and any assets or Capital Stock of any Restricted Subsidiary incurring such Indebtedness;

(29) (i) Leases of aircraft, engines, spare parts or similar assets of the Company or its Restricted Subsidiaries granted by such person, in each case entered into in the ordinary course of the Company or its Restricted Subsidiaries' operating leasing business, (ii) Permitted Liens or similar terms under any lease or (iii) any Lien which the lessee under any lease is required to remove; and

(30) Bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Company or its Restricted Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness.

For purposes of determining compliance with this definition, (A) Permitted Liens need not be incurred solely by reference to one category of Permitted Liens described above but are permitted to be incurred in part under any combination thereof and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens described above, the Company may, in its sole discretion, classify or reclassify such item of Permitted Liens (or any portion thereof) in any manner that complies with this definition and the Company may divide and classify a Lien in more than one of the types of Permitted Liens in one of the above clauses.

Person means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

Pre-Expansion European Union means the European Union as of January 1, 2004, including the countries of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, but not including any country which became or becomes a member of the European Union after January 1, 2004; provided that Pre-Expansion European Union shall not include any country whose long-term debt does not have a long-term rating of at least A by S&P or at least A2 by Moody's or the equivalent rating category of another Rating Agency.

preferred stock means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

Qualified Proceeds means assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business; provided that the fair market value of any such assets or Capital Stock shall be determined by the Board of Directors of the Company in good faith.

Qualified Securitization Financing means any Securitization Financing of a Securitization Subsidiary, the financing terms, covenants, termination events and other provisions of which, including any Standard Securitization

Undertakings, shall be market terms.

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Rating Agencies means Fitch, Moody's and S&P or if any of Fitch, Moody's or S&P or all three shall not make a rating on the 2021 notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company which shall be substituted for any of Fitch, Moody's or S&P or all three, as the case may be.

Related Business Assets means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any assets received by the Company or a Restricted Subsidiary in exchange for assets transferred by the Company or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

Restricted Investment means an Investment other than a Permitted Investment.

Restricted Subsidiary means, at any time, any direct or indirect Subsidiary of the Company (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; provided, however, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of Restricted Subsidiary.

S&P means Standard and Poor's Ratings Group.

Securities Act means the Securities Act of 1933 and the rules and regulations of the Commission promulgated thereunder.

Securitization Assets means the accounts receivable, lease, royalty or other revenue streams and other rights to payment and all related assets (including contract rights, books and records, all collateral securing any and all of the foregoing, all contracts and all guarantees or other obligations in respect of any and all of the foregoing and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving any and all of the foregoing) and the proceeds thereof in each case pursuant to a Securitization Financing.

Securitization Fees means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Qualified Securitization Financing.

Securitization Financing means one or more transactions or series of transactions that may be entered into by the Company and/or any Restricted Subsidiary pursuant to which the Company or any Restricted Subsidiary may sell, convey or otherwise transfer Securitization Assets to (a) a Securitization Subsidiary (in the case of a transfer by the Company or any of the Restricted Subsidiaries that are not Securitization Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest in, any Securitization Assets of the Company or any Restricted Subsidiary.

Securitization Subsidiary means a Restricted Subsidiary (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Company or any Restricted Subsidiary makes an Investment and to which the Company or any Restricted Subsidiary transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Company or a Restricted Subsidiary, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Company or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Company or any Restricted Subsidiary, other than another Securitization Subsidiary (excluding guarantees of obligations pursuant to

Standard Securitization Undertakings), (ii) is recourse to or obligates the Company or any Restricted Subsidiary, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset of the Company or any Restricted Subsidiary, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings and (b) to which none of the Company or any other Restricted Subsidiary, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Company or such other Person shall be evidenced by a resolution of the Board of Directors of the Company or such other Person giving effect to such designation.

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Significant Subsidiary means any Restricted Subsidiary that would be a significant subsidiary as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Closing Date.

Similar Business means any business conducted or proposed to be conducted by the Company and its Restricted Subsidiaries on the date of the 2021 Indenture or any business that is similar, reasonably related, incidental or ancillary thereto.

Standard Securitization Undertakings means representations, warranties, covenants and indemnities entered into by the Company or any Restricted Subsidiary that are customary for a seller or servicer of assets in a Securitization Financing.

Subordinated Indebtedness means (a) with respect to the Company, any Indebtedness of the Company which is by its terms subordinated in right of payment to the 2021 notes, and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to the 2021 Note Guarantee of such Guarantor.

Subsidiary means, with respect to any Person,

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which 50% or more of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) 50% or more of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Total Assets means the total assets of the Company and the Restricted Subsidiaries, as shown on the most recent balance sheet of the Company for which internal financial statements are available immediately preceding the date on which any calculation of Total Assets is being made, with such *pro forma* adjustments for transactions consummated on or prior to or simultaneously with the date of the calculation as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

Treasury Rate means, as of any redemption date, the rate per annum equal to the yield to maturity as of such redemption date 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 redemption date (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 redemption date to the stated maturity date of the 2021 notes; provided, however, that if the period from the redemption date to the stated maturity date of the 2021 notes is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

Unrestricted Subsidiary means

(1) any Subsidiary of the Company which at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Company, as provided below) and

(2) any Subsidiary of an Unrestricted Subsidiary.

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The Board of Directors of the Company may designate any Subsidiary of the Company (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Company or any Subsidiary of the Company (other than any Subsidiary of the Subsidiary to be so designated); provided that

(a) any Unrestricted Subsidiary must be an entity of which shares of the Capital Stock or other Equity Interests (including partnership interests) entitled to cast at least a majority of the votes that may be cast by all shares or Equity Interests having ordinary voting power for the election of directors or other governing body are owned, directly or indirectly, by the Company,

(b) such designation complies with the covenants described under —Certain Covenants—Limitation on Restricted Payments and

(c) each of

(1) the Subsidiary to be so designated and

(2) its Subsidiaries

has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any Restricted Subsidiary.

The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that, immediately after giving effect to such designation no Default or Event of Default shall have occurred and be continuing and either

(1) the Company could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test described in the first sentence under Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock or

(2) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would be greater than such ratio for the Company and its Restricted Subsidiaries immediately prior to such designation, in each case on a *pro forma* basis taking into account such designation.

Any such designation by the Board of Directors of the Company shall be notified by the Company to the Trustee by promptly filing with the Trustee a copy of the board resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

Voting Stock of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Weighted Average Life to Maturity means, when applied to any Indebtedness, Disqualified Stock or preferred stock, as the case may be, at any date, the quotient obtained by dividing

(1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or preferred stock multiplied by the amount of such payment, by

(2) the sum of all such payments.

Wholly-Owned Restricted Subsidiary means any Wholly-Owned Subsidiary that is a Restricted Subsidiary.

Wholly-Owned Subsidiary of any Person means a Subsidiary of such Person, 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

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## MATERIAL INCOME TAX CONSIDERATIONS

### Irish Taxation

The following is a summary of certain Irish tax consequences of the purchase, ownership and disposal of the notes. It applies to you if you are the absolute beneficial owner of notes. The summary does not apply to certain other classes of persons, such as dealers in securities. The summary is based upon Irish tax laws and the practice of the Irish Revenue Commissioners in effect on the date of this prospectus supplement (and these laws and practice are subject to prospective or retroactive change). The summary does not constitute tax or legal advice and is of a general nature only.

*Please consult your own tax advisor concerning the tax consequences of owning these notes in your particular circumstances.*

#### *Irish Withholding Taxes*

No Irish interest withholding tax will be deducted from interest payments made by the Issuer to you in respect of the notes, provided (i) the notes remain quoted on a recognized stock exchange and (ii) the notes are held in a recognized clearing system or the person by or through whom the payment is made is not in Ireland. Application has been made to the Irish Stock Exchange for the notes to be admitted to the Official List and traded on the Global Exchange Market.

The Irish Stock Exchange will be regarded as a recognized stock exchange for these purposes.

If you appoint a person in Ireland to collect interest payments on the notes on your behalf, Irish encashment tax (currently 20%) may be deducted by the Irish collection agent from the interest payments. You may claim an exemption from this encashment tax if you are the beneficial owner of the interest, are not tax resident in Ireland and make a written declaration to this effect to the collecting agent.

#### *Irish Income Tax, PRSI and Universal Social Charge*

If you are a person who is tax resident in Ireland, you will be subject to Irish income tax on the interest earned on the notes. If you are an individual who is tax resident or ordinarily resident in Ireland, you will also be subject to social insurance (PRSI) contributions and the universal social charge on the interest earned on the notes. You will be obliged to account for any Irish tax on a self-assessment basis; there is no requirement for the Irish Revenue Commissioners to issue or raise an assessment.

If you are a person who is not tax resident in Ireland, you will generally only be subject to Irish tax on your Irish source income (again, on a self-assessment basis). If you are a non-resident individual you may also be liable to pay the universal social charge in respect of the interest earned on the notes.

Interest payable on the notes may be regarded as Irish source income on the basis that the notes may be treated as located in Ireland because the Issuer resides in Ireland. However, provided (i) the notes remain quoted on a recognized stock exchange and (ii) the notes are held in a recognized clearing system or the person by or through whom the payment is made is not in Ireland, you will be exempt from Irish income tax on interest paid in respect of the notes if you are regarded, for the purposes of section 198 of the Taxes Consolidation Act 1997 of Ireland, as being a resident of a relevant territory (and you are not tax resident in Ireland).

A relevant territory means a member state of the European Communities (other than Ireland) or a territory with which Ireland has a double tax treaty that either (a) has the force of law or (b) will have, on completion of the necessary procedures, the force of law. A list of the territories with which Ireland has entered into a double tax treaties is available on www.revenue.ie.

Provided the notes are quoted Eurobond notes and either the person by or through whom the payment is made is not in Ireland or the notes are held in a recognized clearing system, you will also be exempt from Irish income tax on interest paid in respect of the notes where you are not a company which is resident in a relevant territory, but are controlled, either directly or indirectly, by residents of a relevant territory, and are not controlled, either directly or indirectly, by residents of a non relevant territory; or where you are ultimately controlled by a company which is listed on a recognized stock exchange. For these purposes, residence is determined under the terms of the relevant double taxation agreement or in any other case, the law of the country in which you claim to be resident. Interest falling within the above exemptions is also exempt from the universal social charge.

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A quoted Eurobond means a security which is issued by a company, is quoted on a recognized stock exchange and carries a right to interest.

Notwithstanding these exemptions from income tax, a corporate recipient that carries on a trade in Ireland through a branch or agency in respect of which the Notes are held or attributed, may have a liability to Irish corporation tax on the interest.

Relief from Irish income tax may also be available under the specific provisions of a double tax treaty between Ireland and the country of residence of the recipient.

Interest on the Notes that does not fall within the above exemptions is within the charge to income tax, and, in the case of Holders who are individuals, the charge to the universal social charge and to PRSI, if applicable.

***Irish Capital Gains Tax***

If you are not tax resident (or ordinarily resident) in Ireland, you will not be subject to Irish tax on capital gains arising on a disposal of the notes, provided you do not hold the notes for the use of or for the purposes of an Irish branch or agency.

If you are tax resident (or ordinarily resident) in Ireland, you may be subject to Irish tax on capital gains arising on a disposal of the notes if the notes constitute a debt on a security. Broadly, a debt on a security includes a debt security whose value can vary in accordance with market conditions so that a Holder could make a profit on its disposal.

***Irish Gift and Inheritance Tax***

If the notes are comprised in a gift or inheritance, Irish capital acquisitions tax (currently 33%) may apply to the donee (or successor) if:

(a) the disponer of the gift or inheritance is Irish domiciled, resident or ordinarily resident;
(b) the recipient of the gift or inheritance is resident or ordinarily resident in Ireland; or
(c) the notes are regarded as property located in Ireland.

Because the notes could be regarded as property located in Ireland, a recipient of a gift or inheritance of the notes may be liable to Irish capital acquisitions tax (even though neither the disponer nor the recipient may be domiciled, resident or ordinarily resident in Ireland at the relevant time).

***VAT***

There should be no Irish value added tax payable in respect of the payments in consideration for the issue(s) of the Notes or in respect of the payment of interest or principal under the Notes or the transfer of the Notes.

***Irish Stamp Duty***

No Irish stamp duty is payable on the issue of the notes. No Irish stamp duty is payable on the transfer of the notes. In addition to this, there is a specific exemption from Irish stamp duty on the issue, transfer or redemption of an enhanced equipment trust certificate. For the purposes of the exemption, an enhanced equipment trust certificate means loan capital issued by a company to raise finance to acquire, develop or lease aircraft.

**Material U.S. Federal Income Tax Consequences**

The following is a summary of certain material U.S. federal income tax consequences that may be relevant to the purchase, ownership and disposition of notes by Holders who purchase notes in this offering at their issue price (generally, the first price at which a substantial amount of the notes are sold to investors for cash (excluding sales to bondhouses, brokers, or similar organizations acting in the capacity of underwriters, placement agents or wholesalers)) and who hold the notes as capital assets for U.S. federal income tax purposes (generally, property held for investment). This summary does not purport to deal with all aspects of U.S. federal income taxation that may be relevant to Holders in light of their particular circumstances nor does it deal with persons that are subject to special tax rules, such as dealers or traders in securities, currencies or commodities, banks or other financial institutions, insurance companies, tax-exempt organizations, partnerships or other pass-through entities (and investors therein), controlled foreign corporations, passive foreign investment companies, persons holding the notes as a part of a straddle, hedge, or conversion transaction or a synthetic security or other integrated transaction, U.S. Holders (as defined below) whose

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functional currency is not the U.S. dollar, regulated investment companies, real estate investment trusts, U.S. expatriates, and persons subject to the alternative minimum tax. In addition, this summary does not address any aspect of gift, estate or inheritance or state, local or non-U.S. tax law. Furthermore, the discussion below is based upon the provisions of the Internal Revenue Code of 1986, as amended (the Code ) and U.S. Treasury regulations, rulings and judicial decisions under the Code all as in effect as of the date of this prospectus supplement, and those authorities may be repealed, revoked or modified (possibly with retroactive effect) so as to result in U.S. federal income tax consequences that may be materially different from those discussed below. We have not requested, and will not request, a ruling from the U.S. Internal Revenue Service ( IRS ) with respect to any of the U.S. federal income tax consequences described below, and as a result there can be no assurance that the IRS will not disagree with or challenge any of the conclusions we have reached and describe herein.

**Persons considering the purchase, ownership or disposition of notes are encouraged to consult their own tax advisors concerning the U.S. federal income tax consequences in light of their particular situations as well as any consequences arising under the laws of any state or of any local or non-U.S. taxing jurisdiction.**

As used in this section, the term U.S. Holder means a beneficial owner of a note that is for U.S. federal income tax purposes: (i) an individual citizen or resident of the United States; (ii) a corporation created or organized in or under the laws of the United States, any state thereof or the District of Colombia; (iii) an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or (iv) a trust, if (A) a court within the United States is able to exercise primary jurisdiction over the administration of such trust and one or more United States persons has the authority to control all substantial decisions of the trust, or (B) the trust has validly made an election to be treated as a United States person under applicable U.S. Treasury regulations.

For purposes of this summary, a Non-U.S. Holder is a beneficial owner of notes that is neither a partnership (including an entity or arrangement treated as a partnership for U.S. federal income tax purposes) nor a U.S. Holder.

If a partnership (including an entity or arrangement treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of notes, the U.S. federal income tax treatment of a partner of the partnership generally will depend on the status of the partner and the activities of the partnership. Partners or partnerships that hold notes should consult their own tax advisors regarding the U.S. federal income tax consequences of the purchase, ownership and disposition of notes.

**Effect of Certain Contingencies**

Under the terms of the notes, we may be obligated in certain circumstances to pay amounts in excess of stated interest or principal on the notes (see, for example, Description of the Additional 2020 Notes—Payment of Additional Amounts, Description of the 2021 Notes—Payment of Additional Amounts , Description of the Additional 2020 Notes—Repurchase at the Option of Holders—Change of Control and Description of the 2021 Notes—Repurchase at the Option of Holders—Change of Control ). Under the applicable U.S. Treasury Regulations, such excess amounts should not cause the notes to be subject to special rules applicable to contingent payment debt instruments if, based on all the facts and circumstances as of the date on which the notes are issued, there is only a remote likelihood that any contingencies causing the payment of such excess amounts will occur, or if such excess amounts, in the aggregate, are considered incidental. We believe that the possibility of paying excess amounts is remote and/or that such amounts are incidental. Accordingly, we do not intend to treat the notes as contingent payment debt instruments. Our position will be binding on a Holder unless such Holder timely and explicitly discloses its contrary position in the manner required by applicable U.S. Treasury Regulations. Our position, however, is not binding on the IRS. If the IRS successfully challenges this position, the timing and amount of income included and the character of the income recognized with respect to the notes may be materially and adversely different from the consequences discussed herein. Holders are encouraged to consult their own tax advisors regarding this issue. The remainder of this discussion assumes that the

notes will not be treated as contingent payment debt instruments.

**Qualified Reopening of the 2020 Notes**

Applying the Treasury regulations related to qualified reopenings, we intend to treat the additional 2020 notes offered hereby as issued pursuant to a qualified reopening of the outstanding 2020 notes. For U.S. federal income tax

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purposes, debt instruments issued in a qualified reopening are deemed to be part of the same issue as the original debt instruments. Accordingly, the additional 2020 notes have the same issue date, December 11, 2013, and issue price, 100%, as the existing notes for U.S. federal income tax purposes. The remainder of this discussion assumes that the additional 2020 notes offered hereby will be treated as a part of the same issue as the existing 2020 notes.

**Tax Treatment of U.S. Holders**

***Payments of Interest on the Notes***

Interest on a note (including any Additional Amounts and any amounts withheld as non-U.S. withholding tax, and excluding any amounts received that are allocated to the return of pre-issuance accrued interest on the additional 2020 notes, as described below under —Pre-Issuance Accrued Interest ) generally will be includible by a U.S. Holder as ordinary interest income at the time the interest is accrued or received, depending on the U.S. Holder's method of accounting for U.S. federal income tax purposes. If any non-U.S. taxes are required to be withheld, a U.S. Holder will be required to include more interest in gross income than the amount of cash actually received.

It is expected, and this discussion assumes, that the notes will not be issued with more than a de minimis amount of original issue discount, if any, for U.S. federal income tax purposes.

***Pre-Issuance Accrued Interest***

A portion of the price paid for an additional 2020 note will be allocable to interest that accrued prior to the date the additional 2020 note is purchased ( pre-issuance accrued interest ). To the extent a portion of a U.S. Holder's purchase price for an additional 2020 note is allocable to pre-issuance accrued interest, a portion of the first stated interest payment equal to the amount of such pre-issuance accrued interest may be treated as a nontaxable return of such pre-issuance accrued interest to the U.S. Holder. If so, the amount treated as a return of pre-issuance accrued interest will reduce a U.S. Holder's adjusted tax basis in the additional 2020 note by a corresponding amount. The remainder of this discussion assumes that the additional 2020 notes will be so treated, and all references to stated interest in the remainder of this discussion exclude references to pre-issuance accrued interest.

***Amortizable Bond Premium***

A U.S. Holder will acquire additional 2020 notes with amortizable bond premium if the U.S. Holder purchases additional 2020 notes for a price (excluding any amount attributable to pre-issuance accrued interest) in excess of the stated principal amount of the notes. A U.S. Holder may elect under Section 171 of the Code to amortize bond premium under the constant yield method over the remaining term of the additional 2020 notes. If a U.S. Holder makes this election, it will apply to all taxable debt instruments having amortizable bond premium that the holder owns or subsequently acquires and may not be revoked without the consent of the IRS. Amortizable bond premium will be treated as an offset to interest income on the additional 2020 notes rather than as a separate item of deduction. If a U.S. Holder does not elect to amortize bond premium then that premium will decrease the gain or increase the loss otherwise recognized on a disposition of the additional 2020 notes.

***Foreign Tax Credits***

Interest income earned with respect to a note will constitute foreign source income for U.S. federal income tax purposes, which may be relevant to U.S. Holders in calculating their foreign tax credit limitations. A U.S. Holder may be entitled to deduct or credit foreign withheld tax, subject to applicable limitations in the Code. The limitation on foreign taxes eligible for credit is calculated separately with respect to specific classes of income. For U.S. foreign tax credit purposes, interest income on a note generally will be considered passive category income or, in the hands of

certain Holders, general category income. The rules governing the U.S. foreign tax credit are complex and U.S. Holders are encouraged to consult their tax advisors regarding the availability of the credit under their particular circumstances.

***Sale, Exchange, Redemption, Retirement or Other Taxable Disposition of the Notes***

Upon the sale, exchange, redemption, retirement or other taxable disposition of a note, a U.S. Holder generally will recognize a taxable gain or loss equal to the difference between the amount realized upon the sale, exchange, redemption, retirement, or other taxable disposition of a note (reduced by any amounts attributable to accrued but unpaid interest, which will be taxable as ordinary interest income to the extent not previously included in income) and the U.S. Holder's adjusted tax basis in the note. A U.S. Holder's adjusted tax basis in a note will generally be equal to the purchase price of such note, decreased by any payments received on the note (excluding payments of interest – other than, in the case of an additional 2020 note, payments attributable to pre-issuance accrued interest treated as a return of purchase price) and by any amortizable bond premium previously amortized in the case of an additional 2020 note.

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Any capital gain or loss will constitute long-term capital gain or loss if at the time of the sale, exchange, redemption, retirement or other taxable disposition of the note, the note was held by such U.S. Holder for more than one year and otherwise will be short-term capital gain or loss. Net long-term capital gains of certain non-corporate taxpayers (including individuals) may be eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations. Any such gain or loss generally will be treated as U.S. source for U.S. foreign tax credit purposes.

***Surtax on Net Investment Income***

Certain U.S. Holders who are individuals, estates or trusts are subject to a 3.8% surtax on the lesser of (1) the U.S. Holder's net investment income for the relevant taxable year and (2) the excess of the U.S. Holder's modified adjusted gross income for the taxable year over a certain threshold. A U.S. Holder's net investment income generally will include its interest income and its net gains from the disposition of the notes, unless such interest payments or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). U.S. Holders should consult their own tax advisors regarding the effect, if any, of this surtax on their investments in the notes.

***Disclosure Obligation with Respect to Foreign Financial Assets***

Certain U.S. owners of specified foreign financial assets with an aggregate value in excess of certain threshold amounts may be required to file an information report with respect to such assets. If required, this disclosure is made by filing Form 8938 with the IRS. Significant penalties can apply if U.S. Holders are required to make this disclosure and fail to do so. Specified foreign financial assets include any financial accounts maintained by foreign financial institutions, as well as any of the following, but only if they are not held in accounts maintained by financial institutions: (i) stocks and securities issued by non-U.S. persons; (ii) financial instruments and contracts held for investment that have non-U.S. issuers or counterparties; and (iii) interests in foreign entities. Under these rules, the notes (or accounts in which the notes are held) may be treated as specified foreign financial assets. U.S. Holders are urged to consult their own tax advisors regarding the application of this and other reporting requirements that may apply to their investment in the notes.

***Information Reporting and Backup Withholding***

In general, information reporting requirements may apply to certain payments to U.S. Holders of principal of, and interest on, a note, and the receipt by a U.S. Holder of the proceeds of a sale, exchange, redemption or retirement of a note, unless a U.S. Holder establishes an exemption. In general, backup withholding, at the then applicable rate, will be applicable to a U.S. Holder that is not an exempt recipient if such U.S. Holder:

- fails to furnish its correct taxpayer identification number (which, for an individual, would generally be his or her Social Security Number), certified under penalties of perjury;
- fails to properly report interest or dividend income on its U.S. tax returns in full;
- fails to certify that he or she is exempt from backup withholding; or
- otherwise fails to comply with applicable requirements of the backup withholding rules.

Backup withholding is not an additional tax. Any amounts withheld from payments to a U.S. Holder under the backup withholding rules will be allowed as a credit against such U.S. Holder's U.S. federal income tax liability and may entitle such U.S. Holder to a refund, provided the required information is furnished to the IRS in a timely manner. A U.S. Holder that does not provide a correct taxpayer identification number may be subject to penalties imposed by the IRS. U.S. Holders of notes are encouraged to consult their tax advisors regarding the application of backup withholding in their particular situation, the availability of an exemption from backup withholding and the procedure for obtaining such an exemption, if available.

***Tax Treatment of Non-U.S. Holders***

A Non-U.S. Holder of notes generally will be exempt from any U.S. federal income or withholding taxes with respect to gain derived from the sale, exchange, redemption, retirement or other taxable disposition of, or any interest received in respect of, the notes, unless such gain or interest is effectively connected with a U.S. trade or business of such Non-U.S Holder, or, in the case of gain, such Non-U.S Holder is a nonresident alien individual who is present in the United States for 183 days or more in the taxable year of the sale or other disposition and certain other conditions are met. Non-effectively connected gain or interest received by a Non-U.S. Holder generally will not be subject to U.S.

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information reporting requirements or U.S. backup withholding, although such Non-U.S Holder may be required to furnish a certificate (e.g., an IRS Form W-8BEN or W-8BEN-E, as applicable) to the withholding agent attesting to its status as a Non-U.S. Holder.

If a Non-U.S. Holder has interest or gain that is effectively connected with its conduct of a U.S. trade or business (or, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment or fixed base), such Non-U.S. Holder generally will be subject to U.S. federal income tax on that interest on a net income basis in the same manner as a U.S. Holder (other than with respect to the surtax on net investment income described above). A foreign corporation that is a Non-U.S. Holder also may be subject to a branch profits tax equal to 30 percent of its effectively connected earnings and profits for the taxable year, subject to certain adjustments, unless it qualifies for a lower rate under an applicable income tax treaty. An individual Non-U.S. Holder present in the U.S. for 183 days or more in any taxable year generally will be subject to a 30% tax on the gain derived from the sale, exchange, retirement, redemption, or other taxable disposition of notes, which may be offset by certain United States source capital losses. Non-U.S. Holders having gain or receiving interest on a note that is effectively connected with their conduct of a U.S. trade or business and individual Non-U.S. Holders who are present in the United States for 183 days or more in any taxable year are encouraged to consult their own tax advisors regarding the U.S. tax consequences of the acquisition, ownership and disposition of notes.

**The discussion of U.S. federal income tax consequences set forth above is for general information only. Prospective purchasers are encouraged to consult their tax advisors as to the particular tax consequences to them of the purchase, ownership and disposition of the notes, including the tax consequences under U.S federal, state and local, and any applicable non-U.S. tax laws, as well as the possible effects of the changes in U.S. federal or other tax laws.**

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## UNDERWRITING

Subject to the terms and conditions set forth in the underwriting agreement, dated , 2014, between us and Jefferies LLC, as the representative of the underwriters named below, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the principal amount of notes shown opposite its name below:

| UNDERWRITERS | PRINCIPAL AMOUNT OF ADDITIONAL 2020 NOTES | PRINCIPAL AMOUNT OF 2021 NOTES |
|---|---|---|
| Jefferies LLC | $ | $ |
| Citigroup Global Markets Inc. | | |
| Deutsche Bank Securities Inc. | | |
| RBC Capital Markets, LLC | | |
| BNP Paribas Securities Corp. | | |
| Nomura Securities International, Inc. | | |
| Cowen and Company, LLC | | |
| Total | $ | $ |

The underwriting agreement provides that the obligations of the several underwriters are subject to certain conditions precedent such as the receipt by the underwriters of officers' certificates and legal opinions and approval of certain legal matters by their counsel. The underwriting agreement provides that the underwriters will purchase all of the notes if any of them are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated. We have agreed to indemnify the underwriters and certain of their controlling persons against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that the underwriters may be required to make in respect of those liabilities.

The 2021 notes will constitute a new issue of securities with no established trading market. The underwriters have advised us that, following the completion of this offering, they currently intend to make a market in the 2021 notes as permitted by applicable laws and regulations. However, the underwriters are not obligated to do so, and the underwriters may discontinue any market-making activities at any time without notice in their sole discretion. Accordingly, no assurance can be given as to the liquidity of the trading market for the 2021 notes, that you will be able to sell any of the notes held by you at a particular time or that the prices that you receive when you sell will be favorable.

The underwriters are offering the notes subject to their acceptance of the notes from us and subject to prior sale. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

### Commission and Expenses

The underwriters have advised us that they propose to offer the notes to the public at the initial public offering prices set forth on the cover page of this prospectus and to certain dealers, which may include the underwriters, at that price less a concession not in excess of $ per additional 2020 note and $ per 2021 note. The underwriters may allow, and certain dealers may reallow, a discount from the concession not in excess of $ per additional 2020 note and $ per 2021 note to certain brokers and dealers. After the offering, the initial public offering prices, concession and reallowance to

dealers may be reduced by the representative. No such reduction will change the amount of proceeds to be received by us as set forth on the cover page of this prospectus.

The following table shows the public offering prices, the underwriting discounts and commissions that we are to pay the underwriters and the proceeds, before expenses, to us in connection with this offering (expressed as a percentage of the principal amount of the notes).

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| | PER ADDITIONAL 2020 NOTE | PER 2021 NOTE | TOTAL |
|---|---|---|---|
| Public offering price[1] | % | % | $ |
| Underwriting discounts and commissions paid by us | % | % | $ |
| Proceeds to us, before expenses | % | % | $ |

(1) In the case of the additional 2020 notes, plus accrued interest from June 15, 2014 and, in the case of the 2021 notes, plus accrued interest from , 2014.

We estimate expenses payable by us in connection with this offering, other than the underwriting discounts and commissions referred to above, will be approximately $1 million.

**Listing**

Application has been made to the Irish Stock Exchange for the additional 2020 notes and the 2021 notes to be admitted to the Official List and traded on the Global Exchange Market of the Irish Stock Exchange. Although the existing 2020 notes are admitted to the Official List and traded on the Global Exchange Market of the Irish Stock Exchange, there can be no assurance that any such approval in respect of the additional 2020 notes or the 2021 notes will be granted or, if granted, that such listing will be maintained.

**Stabilization**

The underwriters have advised us that they, pursuant to Regulation M under the Securities Exchange Act of 1934, as amended, certain persons participating in the offering may engage in short sale transactions, stabilizing transactions, syndicate covering transactions or the imposition of penalty bids in connection with this offering. These activities may have the effect of stabilizing or maintaining the market price of the notes at a level above that which might otherwise prevail in the open market. Establishing short sales positions may involve either covered short sales or naked short sales.

A stabilizing bid is a bid for the purchase of notes on behalf of the underwriters for the purpose of fixing or maintaining the price of the notes. A syndicate covering transaction is the bid for or the purchase of notes on behalf of the underwriters to reduce a short position incurred by the underwriters in connection with the offering. A penalty bid is an arrangement permitting the underwriters to reclaim the selling concession otherwise accruing to a syndicate member in connection with the offering if the notes originally sold by such syndicate member are purchased in a syndicate covering transaction and therefore have not been effectively placed by such syndicate member.

Neither we, nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the notes. The underwriters are not obligated to engage in these activities and, if commenced, any of the activities may be discontinued at any time.

**Electronic Distribution**

A prospectus in electronic format may be made available by e-mail or through online services maintained by one or more of the underwriters or their affiliates. In those cases, prospective investors may view offering terms online and may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of notes for sale to online brokerage account holders. Any such allocation for online distributions will be made by the underwriters on the same basis as other allocations. Other than the prospectus in electronic format, the information on the underwriters' web sites and any information contained in any other web site maintained by any of the underwriters is not part of this prospectus, has not been approved and/or endorsed by us or the underwriters and should not be relied upon by investors.

**Other Activities and Relationships**

The underwriters and certain of their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriters

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and certain of their respective affiliates have, from time to time, performed, and may in the future perform, various commercial and investment banking and financial advisory services for us and our affiliates, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the underwriters and certain of their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments issued by us and our affiliates. If the underwriters or their respective affiliates have a lending relationship with us, they routinely hedge their credit exposure to us consistent with their customary risk management policies. The underwriters and certain of their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

An affiliate of BBAM LP performs aircraft acquisition, disposition and management services pursuant to a joint marketing agreement with Nomura Babcock & Brown Co., Ltd., an affiliate of Nomura Securities International, Inc. In accordance with Rule 5121(c) of the Financial Industry Regulatory Authority, Inc., Nomura Securities International, Inc. may not make sales in this offering to any discretionary account without the prior approval of the customer.

**Settlement**

We expect to deliver the notes against payment for the notes on or about the date specified on the cover page of this prospectus supplement, which will be the seventh business day following the date of the pricing of the notes. Since trades in the secondary market generally settle in three business days, purchasers who wish to trade notes on the date of pricing or the next succeeding four business days will be required, by virtue of the fact that the notes initially will settle T+7, to specify alternative settlement arrangements to prevent a failed settlement.

**Disclaimers About Non-U.S. Jurisdictions**

**European Economic Area**

In relation to each member state of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State ), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date ), no offer of any securities which are the subject of the offering contemplated by this prospectus supplement has been or will be made to the public in that Relevant Member State other than any offer where a prospectus has been or will be published in relation to such securities that has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the relevant competent authority in that Relevant Member State in accordance with the Prospectus Directive, except that with effect from and including the Relevant Implementation Date, an offer of such securities may be made to the public in that Relevant Member State:

(a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
(b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives of the underwriters for any such offer; or
(c) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of securities shall require the Company or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an offer to the public' in relation to any securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the

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offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression Prospectus Directive means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State and the expression 2010 PD Amending Directive means Directive 2010/73/EU.

**United Kingdom**

This prospectus supplement is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the Order ) and/or (ii) high net worth entities falling within Article 49(2)(a) to (d) of the Order and other persons to whom it may lawfully be communicated (each such person being referred to as a relevant person ).

This prospectus supplement and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

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**EXPERTS**

The consolidated financial statements appearing in Fly Leasing Limited's Annual Report on Form 20-F for the fiscal year ended December 31, 2013 (including schedules appearing therein) and the effectiveness of internal control over financial reporting as of December 31, 2013 have been audited by Ernst & Young LLP, an independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Such consolidated financial statements as of December 31, 2013 are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts accounting and auditing.

**LEGAL MATTERS**

The validity of the notes offered hereby will be passed upon for us by Jones Day, New York, New York; certain legal matters governed by Bermuda law will be passed upon for us by Conyers Dill & Pearman Limited, Hamilton, Bermuda. Certain legal matters in connection with this offering will be passed upon for the underwriters by Clifford Chance US LLP, New York, New York.

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**WHERE YOU CAN FIND MORE INFORMATION**

The documents incorporated by reference into this prospectus supplement are available from us upon request. We will provide a copy of any and all of the information that is incorporated by reference in this prospectus supplement, without charge, upon written or oral request. If you would like to obtain this information from us, please direct your request, either in writing or by telephone, to:

Investor Relations
Fly Leasing Limited
West Pier
Dun Laoghaire, County Ireland
Ireland
+353-1-231-1900

We are subject to the information and periodic reporting requirements of the Exchange Act applicable to foreign private issuers and will fulfill the obligations with respect to those requirements by filing reports with the SEC. These periodic reports and other information may be inspected and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Copies of these materials can also be obtained by mail at prescribed rates from the Public Reference Room of the SEC, 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an internet site that contains reports, proxy and information statements and other information regarding our company and other issuers that file electronically with the SEC. The address of the SEC internet site is www.sec.gov. This information is also available on our website at www.flyleasing.com. The information on our website is not incorporated by reference into this prospectus supplement.

We have filed a registration statement on Form F-3 under the Securities Act with the SEC with respect to the notes offered hereby. This prospectus supplement is part of that registration statement and does not contain all of the information set forth in the registration statement because certain parts of the registration statement are omitted in accordance with the rules and regulations of the SEC. The registration statement is available for inspection and copying as set forth above.

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**INCORPORATION OF INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference information we have filed with the SEC into this prospectus supplement and the accompanying prospectus. This means that we can disclose important information by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus supplement.

This prospectus supplement incorporates by reference the following documents filed with the SEC but which we have not included or delivered with this prospectus supplement and the accompanying prospectus:

- our Annual Report on Form 20-F for the fiscal year ended December 31, 2013; and
- our Current Reports on Form 6-K, filed with the SEC on May 14, 2014, June 25, 2014 and August 6, 2014.

Copies of these filings are available free of charge by writing to Fly Leasing Limited, West Pier, Dun Laoghaire, County Dublin, Ireland, Attention: Investor Relations, or by telephoning us at +353-1-231-1900.

We are also incorporating by reference additional documents we may file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement until this offering has been completed, other than any portion of the respective filings furnished, rather than filed, under applicable SEC rules. This additional information is a part of this prospectus supplement from the date of filing of those documents.

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**LISTING AND GENERAL INFORMATION**

1. The information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus is solely the responsibility of Fly Leasing Limited. Fly Leasing Limited, having made all reasonable inquiries, confirms that the information contained in this prospectus supplement and the accompanying prospectus is true and accurate in all material respects and, to the best of its knowledge, is in accordance with the facts and contains no omission likely to affect its import.
2. Fly Leasing Limited, a Bermuda exempted limited liability company, was incorporated on May 3, 2007 pursuant to the Companies Act 1981 of Bermuda. Fly Leasing Limited's registration number with the Registrar of Companies in Bermuda is 39999, and its telephone number is +353-1-231-1900.
3. Since June 30, 2014, there has been no significant change in the financial or trading position of Fly Leasing Limited or Fly Leasing Limited and its consolidated subsidiaries ( Fly's Group ) and since December 31, 2013 there has been no material adverse change in the financial position or prospects of Fly Leasing Limited or Fly's Group which is not otherwise disclosed in this prospectus supplement or the accompanying prospectus.
4. Except as disclosed herein, there are no potential conflicts of interest between any duties of any of the members of the Board of Directors or management of Fly Leasing Limited towards Fly Leasing Limited and their private interests and/or other duties.
5. The existing 2020 notes have been, and the additional 2020 notes and the 2021 notes will be, accepted for clearance through the facilities of DTC and its direct and indirect participants (including Euroclear and Clearstream, Luxembourg). The ISIN number and CUSIP number for the 2020 notes, including the additional 2020 notes offered, are US34407DAA72 and 34407D AA7, respectively, and the ISIN number and CUSIP number for the 2021 notes offered are and , respectively. The address of DTC is 55 Water Street, 1SL, New York, NY 10041. The address of Euroclear is Euroclear Bank S. A./N.V., 1 Boulevard du Roi Albert II, B–1210 Brussels, and the address of Clearstream, Luxembourg is Clearstream Banking, 42 Avenue JF Kennedy, L–1855 Luxembourg.
6. Application has been made to the Irish Stock Exchange for the additional 2020 notes and the 2021 notes issued to be admitted to the Official List of the Irish Stock Exchange and trading on the Global Exchange Market.
7. Fly Leasing Limited estimates that it will incur approximately €20,000 in costs related to the admission to trading of the additional 2020 notes and the 2021 notes on the Irish Stock Exchange.
8. Except as disclosed in this prospectus supplement and the accompanying prospectus, on the date of this prospectus supplement, neither Fly Leasing Limited nor its subsidiaries is or has been involved in any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which Fly Leasing Limited is aware) in the 12 months preceding the date of this prospectus supplement which may have or have in such period had a significant effect on the financial position or profitability of Fly Leasing Limited or its subsidiaries.
9. The issuance of the notes has been authorized by the resolutions of the Board of Directors of Fly Leasing Limited dated July 30, 2014.
10. For so long as the 2020 notes and the 2021 notes are listed on the Global Exchange Market of the Irish Stock Exchange, copies of the following documents will be available for inspection during normal business hours on any business day at our executive offices, at the offices of the trustee:
    - our memorandum of association and bye-laws;
    - the annual audited historical consolidated financial statements and interim unaudited historical consolidated financial statements incorporated in this prospectus supplement and the accompanying prospectus;
    - this prospectus supplement and the accompanying prospectus, as well as the materials incorporated by reference herein; and
    - the indentures governing the notes.
11. The trustee and paying agent is Wells Fargo Bank, National Association and its registered office and telephone number is Corporate Trust Services, 45 Broadway, 14th floor, New York, NY 10006, (212) 515-1567.

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**$1,000,000,000**

**Fly Leasing Limited**

**COMMON SHARES**
**PREFERENCE SHARES**
**DEBT SECURITIES**
**WARRANTS**
**SUBSCRIPTION RIGHTS**
**UNITS**

We may from time to time offer to sell our common shares, preference shares, debt securities, warrants or subscription rights, as well as units that include any of these securities. The debt securities may consist of debentures, notes or other types of debt. Our common shares, in the form of American Depositary Shares, are listed on the New York Stock Exchange and under the ticker symbol FLY. The debt securities, preference shares, warrants, rights and units may be convertible or exercisable for common shares or preference shares.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. These securities also may be resold by security holders.

This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement. We will provide specific terms of any securities to be offered in supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest.

**Investing in our securities involves risks. See Risk Factors beginning on page 2 of our annual report on Form 20-F for the year ended December 31, 2013, which is incorporated by reference herein.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is September 10, 2014.

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Consent under the Exchange Control Act 1972 (and its related regulations) has been obtained from the Bermuda Monetary Authority for the issue and transfer of our ADSs and other securities to and between persons resident and non-resident of Bermuda for exchange control purposes provided our ADSs remain listed on an appointed stock exchange, which includes the NYSE. In granting such consent the Bermuda Monetary Authority does not accept any responsibility for our financial soundness or the correctness of any of the statements made or opinions expressed in this prospectus.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the SEC ) using a shelf registration process. Under the shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings, up to a maximum aggregate offering price of $1,000,000,000.

This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities described in the prospectus we will provide a supplement to this prospectus that will contain specific information about the terms of that offering, including the specific amounts, prices and terms of the securities offered. The prospectus supplement may also add, update or change information contained in this prospectus. You should carefully read both this prospectus and any accompanying prospectus supplement or other offering materials, together with the additional information described under the heading Where You Can Find More Information.

We have not authorized anyone to provide you with any information other than that contained or incorporated by reference in this prospectus, any applicable prospectus supplement and any related free writing prospectus that we may authorize be provided to you. We take no responsibility for, and cannot provide assurance as to the reliability of, any other information that others may give to you. We are not making offers to sell or solicitations to buy the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making that offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

This prospectus and any accompanying prospectus supplement or other offering materials do not contain all of the information included in the registration statement as permitted by the rules and regulations of the SEC. We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act ) and, therefore, file reports and other information with the SEC. Statements contained in this prospectus and any accompanying prospectus supplement or other offering materials about the provisions or contents of any agreement or other document are only summaries. If SEC rules require that any agreement or document be filed as an exhibit to the registration statement, you should refer to that agreement or document for its complete contents.

You should assume that the information in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate only as of the date on the front of the document and that any information that we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any related free writing prospectus, or any sale of a security.

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**SUMMARY**

*You should carefully read this entire prospectus and any applicable prospectus supplement, including each of the documents incorporated herein and therein by reference, before making an investment decision. Unless the context requires otherwise, when used in this prospectus, (1) the terms Fly, Company, we, us and our refer to Fly Leasing Limited and its subsidiaries and (2) all references to our shares refer to our common shares held in the form of American Depositary Shares ( ADSs ).*

Fly Leasing Limited is a global lessor of modern, in-demand, fuel-efficient commercial jet aircraft. We are principally engaged in purchasing commercial aircraft, which we lease under multi-year contracts to a diverse group of airlines around the world. As of June 30, 2014, we owned a portfolio of 117 aircraft.

Our principal executive offices are located at West Pier, Dun Laoghaire, County Dublin, Ireland. Our telephone number at that address is +353-1-231-1900, and our web address is www.flyleasing.com. Information contained on, or that can be accessed through, our website is not incorporated by reference in this prospectus or any prospectus supplement and does not constitute part of this prospectus or any prospectus supplement.

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## RISK FACTORS

An investment in our securities involves a high degree of risk. You should carefully consider the risk factors incorporated by reference from our most recent Annual Report on Form 20-F and the other information contained in this prospectus or any applicable prospectus supplement, as updated by our subsequent filings with the SEC, pursuant to Sections 13(a), 14 or 15(d) of the Exchange Act, which are incorporated herein by reference, before buying our securities. For more information see Where You Can Find More Information and Incorporation of Certain Documents By Reference.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, the registration statement of which it forms a part, each prospectus supplement and the documents incorporated by reference into these documents contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We use words such as anticipates, believes, plans, expects, future, in will, foresee and similar expressions to identify these forward-looking statements. In addition, from time to time we or our representatives have made or may make forward-looking statements orally or in writing. Furthermore, such forward-looking statements may be included in various filings that we make with the SEC or press releases or oral statements made by or with the approval of one of our authorized executive officers. These forward-looking statements are subject to certain known and unknown risks and uncertainties, as well as assumptions that could cause actual results to differ materially from those reflected in these forward-looking statements. Factors that might cause actual results to differ include, but are not limited to, those discussed in our most recent Annual Report on Form 20-F, which is incorporated by reference herein. Readers are cautioned not to place undue reliance on any forward-looking statements contained herein, which reflect management's opinions only as of the date hereof. Except as required by law, we undertake no obligation to revise or publicly release the results of any revision to any forward-looking statements. You are advised, however, to consult any additional disclosures we have made or will make in our reports to the SEC on Forms 20-F and 6-K. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained in this prospectus.

## USE OF PROCEEDS

Unless otherwise set forth in a prospectus supplement, we intend to use the net proceeds of any offering of securities for working capital and other general corporate purposes, which may include the repayment or refinancing of outstanding indebtedness and the financing of future acquisitions. We may have significant discretion in the use of any net proceeds. The net proceeds may be invested temporarily in interest-bearing accounts and short-term interest-bearing securities until they are used for their stated purpose. We may provide additional information on the use of the net proceeds from the sale of the offered securities in an applicable prospectus supplement relating to the offered securities.

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**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our historical ratio of earnings to fixed charges for the periods indicated:

| For the year ended December 31, | | | | | For the six months ended June 30, 2014 |
|---|---|---|---|---|---|
| **2009** | **2010** | **2011** | **2012** | **2013** | |
| 2.40:1 | 1.80:1 | 1.05:1 | 1.34:1 | 1.47:1 | 1.47:1 |

Fixed charges consist of interest expense, including amortization of debt discounts and loan issuance costs related to indebtedness. Earnings available to cover fixed charges consist of net income before provision for income taxes, less equity earnings from unconsolidated subsidiaries, plus distributions of income from unconsolidated subsidiaries and fixed charges.

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## DESCRIPTION OF SHARE CAPITAL

*The following description of our share capital reflects our memorandum of association and our bye-laws. Holders of ADSs will be able to exercise their rights with respect to the common shares underlying the ADSs only in accordance with the terms of the deposit agreement. See Description of American Depositary Shares for more information.*

### Share Capital

Our authorized share capital consists of US$500,000 divided into 499,999,900 common shares and 100 manager shares par value US$0.001 each. Pursuant to our bye-laws, subject to any resolution of the shareholders to the contrary, our board of directors is authorized to issue any of our authorized but unissued shares. As of June 30, 2014, 41,432,998 common shares were outstanding, issued and fully paid.

### Common Shares

Holders of common shares have no pre-emptive, redemption, conversion or sinking fund rights. Holders of common shares are entitled to one vote per share on all matters submitted to a vote of holders of common shares. Unless a different majority is required by law or by our bye-laws, resolutions to be approved by holders of common shares require approval by a simple majority of votes cast at a meeting at which a quorum is present. There are no limitations on the right of non-Bermudians or non-residents of Bermuda to hold or vote our shares except as described herein.

In the event of our liquidation, dissolution or winding up, the holders of common shares are entitled to share equally and ratably in our assets, if any, remaining after the payment of all of our debts and liabilities, subject to any liquidation preference on any issued and outstanding preference shares.

### Preference Shares

Pursuant to Bermuda law and our bye-laws, our board of directors by resolution may establish one or more series of preference shares having such number of shares, designations, dividend rates, relative voting rights, conversion or exchange rights, redemption rights, liquidation rights and other relative participation, optional or other special rights, qualifications, limitations or restrictions as may be fixed by the board without any further shareholder approval. The rights with respect to a series of preference shares may be greater than the rights attached to our common shares. It is not possible to state the actual effect of the issuance of any preference shares on the rights of holders of our common shares until our board of directors determines the specific rights attached to those preference shares. The effect of issuing preference shares could include one or more of the following:

- restricting dividends in respect of our common shares;
- diluting the voting power of our common shares or providing that holders of preference shares have the right to vote on matters as a class;
- impairing the liquidation rights of our common shares; or
- delaying or preventing a change of control of our company.

As of the date of this prospectus, there are no preference shares outstanding.

### Manager Shares

Our manager, Fly Leasing Management Co. Limited, or the Manager, owns 100 manager shares that are entitled to director appointment rights and the right to vote on amendments to the provision of our bye-laws relating to termination of our management agreement with the Manager. Manager shares do not convert into common shares. Upon a termination of our management agreement, the manager shares will cease to have any appointment and voting

rights and, to the extent permitted under Section 42 of the Companies Act 1981 (Bermuda), or the Companies Act, will be automatically redeemed for their par value. Manager shares are not entitled to receive any dividends and, other than with respect to director appointment rights, holders of manager shares have no voting rights.

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**Dividend Rights**

Pursuant to Bermuda law, we are restricted from declaring or paying a dividend if there are reasonable grounds for believing that (1) we are, or would after the payment be, unable to pay our liabilities as they become due, or (2) the realizable value of our assets would thereby be less than our liabilities.

There are no restrictions on our ability to transfer funds (other than funds denominated in Bermuda dollars) in and out of Bermuda or to pay dividends to U.S. residents who are holders of our common shares.

**Variation of Rights**

If at any time we have more than one class of shares, the rights attaching to any class, unless otherwise provided for by the terms of issue of the relevant class, may be varied either: (1) with the consent in writing of the holders of 50% of the issued shares of that class; or (2) with the sanction of a resolution passed by a majority of the votes cast at a general meeting of the relevant class of shareholders at which a quorum consisting of at least two persons holding or representing two-thirds of the issued shares of the relevant class is present. Our bye-laws specify that the creation or issue of shares ranking equally with existing shares will not, unless expressly provided by the terms of issue of existing shares, vary the rights attached to existing shares. In addition, the creation or issue of preference shares ranking prior to common shares will not be deemed to vary the rights attached to common shares or, subject to the terms of any other series of preference shares, to vary the rights attached to any other series of preference shares.

**Election and Removal of Directors**

Our bye-laws provide that our board shall consist of not less than two and not more than 15 directors as the board may from time to time determine. Our board of directors currently consists of seven directors, each of whom serves a term commencing on their election or appointment and continuing until the next annual general meeting or until their successors are elected or appointed or their office is otherwise vacated. Our bye-laws provide that persons standing for election as directors at a duly constituted and quorate annual general meeting are appointed by shareholders holding shares carrying a plurality of the votes cast on the resolution. Notwithstanding the foregoing, pursuant to our management agreement and our bye-laws, so long as the Manager holds any of our manager shares, our Manager has the right to appoint the whole number of directors on our board of directors that is nearest to but not more than 3/7th of the number of directors on our board of directors at the time. These directors are not required to stand for election by shareholders other than our Manager.

Any shareholder holding at least five percent of the Company’s common shares may propose for election as a director someone who is not an existing director or is not proposed by our board by giving notice of the intention to propose the person for election. Where a person is to be proposed for election as a director at an annual general meeting by a shareholder, that notice must be given not less than 90 days nor more than 120 days before the anniversary of the last annual general meeting prior to the giving of the notice or, in the event the annual general meeting is called for a date that is not 25 days before or after such anniversary the notice must be given not later than ten days following the earlier of the date on which notice of the annual general meeting was posted to shareholders or the date on which public disclosure of the date of the annual general meeting was made.

A director (other than a director appointed by the Manager pursuant to its appointment right described above) may be removed with or without cause by a resolution including the affirmative vote of shareholders holding shares carrying at least 80% of the votes of all shares then issued and entitled to vote on the resolution, provided that notice of the shareholders meeting convened to remove the director is given to the director. The notice must contain a statement of the intention to remove the director and must be served on the director not less than 14 days before the meeting. The director is entitled to attend the meeting and be heard on the motion for his removal. A director appointed by the

Manager pursuant to its appointment right described above may be removed with or without cause by the Manager upon notice from the Manager.

**Anti-Takeover Provisions**

The following is a summary of certain provisions of our bye-laws that may be deemed to have an anti-takeover effect and may delay, deter or prevent a tender offer or takeover attempt that a shareholder might consider to be in its best interest, including those attempts that might result in a premium over the market price for the shares held by shareholders.

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Pursuant to our bye-laws, our preference shares may be issued from time to time, and the board of directors is authorized to determine the rights, preferences, privileges, qualifications, limitations and restrictions. See — Preference Shares.

The authorized but unissued common shares and our preference shares will be available for future issuance by the board of directors, subject to any resolutions of the shareholders. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued common shares and preference shares could render more difficult or discourage an attempt to obtain control over us by means of a proxy contest, tender offer, amalgamation or otherwise.

Our bye-laws provide that if a competitor of BBAM LP acquires beneficial ownership of 15% or more of our common shares, then we have the option, but not the obligation, within 90 days of the acquisition of such threshold beneficial ownership, to require that shareholder to tender for all of our remaining common shares, or to sell such number of common shares to us or to third parties at fair market value as would reduce its beneficial ownership to less than 15%. In addition, our bye-laws provide that the vote of each common share held by a competitor of BBAM LP that beneficially owns 15% or more, but less than 50%, of our common shares will be reduced to three-tenths of a vote per share on all matters upon which shareholders may vote.

**Certain Provisions of Bermuda Law**

We have been designated by the Bermuda Monetary Authority as a non-resident for Bermuda exchange control purposes. This designation allows us to engage in transactions in currencies other than the Bermuda dollar, and there are no restrictions on our ability to transfer funds (other than funds denominated in Bermuda dollars) in and out of Bermuda or to pay dividends to United States residents who are holders of our common shares.

The Bermuda Monetary Authority has given its consent for the issue and free transferability of all of the common shares that underlie the ADSs that are the subject of this offering to and between non-residents of Bermuda for exchange control purposes, provided our ADSs remain listed on an appointed stock exchange, which includes the NYSE. Approvals or permissions given by the Bermuda Monetary Authority do not constitute a guarantee by the Bermuda Monetary Authority as to our performance or our creditworthiness. Accordingly, in giving such consent or permissions, the Bermuda Monetary Authority shall not be liable for the financial soundness, performance or default of our business or for the correctness of any opinions or statements expressed in this prospectus. Certain issues and transfers of common shares involving persons deemed resident in Bermuda for exchange control purposes may require the specific consent of the Bermuda Monetary Authority.

In accordance with Bermuda law, share certificates are only issued in the names of companies, partnerships or individuals. In the case of a shareholder acting in a special capacity (for example as a trustee), certificates may, at the request of the shareholder, record the capacity in which the shareholder is acting. Notwithstanding such recording of any special capacity, we are not bound to investigate or see to the execution of any such trust. We will take no notice of any trust applicable to any of our shares, whether or not we have been notified of such trust.

**Differences in Corporate Law**

You should be aware that the Companies Act, which applies to us, differs in certain material respects from laws generally applicable to Delaware corporations and their shareholders. In order to highlight these differences, set forth below is a summary of certain significant provisions of the Companies Act (including modifications adopted pursuant to our bye-laws) and Bermuda common law applicable to us which differ in certain respects from provisions of the General Corporation Law of the State of Delaware. Because the following statements are summaries, they do not

address all aspects of Bermuda law that may be relevant to us and our shareholders or all aspects of Delaware law which may differ from Bermuda law.

***Duties of Directors***

Our bye-laws provide that our business is to be managed and conducted by our board of directors. At common law, members of the board of directors of a Bermuda company owe a fiduciary duty to the company to act in good faith in their dealings with or on behalf of the company and exercise their powers and fulfill the duties of their office honestly. This duty includes the following essential elements:

- a duty to act in good faith in the best interests of the company;

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- a duty not to make a personal profit from opportunities that arise from the office of director;
- a duty to avoid conflicts of interest; and
- a duty to exercise powers for the purpose for which such powers were intended.

The Companies Act imposes a duty on directors and officers of a Bermuda company:

- to act honestly and in good faith with a view to the best interests of the company; and
- to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In addition, the Companies Act imposes various duties on directors and officers of a company with respect to certain matters of management and administration of the company.

Directors and officers generally owe fiduciary duties to the company, and not to the company's individual shareholders. Our shareholders may not have a direct cause of action against our directors.

Under Delaware law, the business and affairs of a corporation are managed by or under the direction of its board of directors. In exercising their powers, directors are charged with a fiduciary duty of care to protect the interests of the corporation and a fiduciary duty of loyalty to act in the best interests of its shareholders. The duty of care requires that directors act in an informed and deliberative manner and inform themselves, prior to making a business decision, of all material information reasonably available to them. The duty of care also requires that directors exercise care in overseeing and investigating the conduct of corporate employees. The duty of loyalty may be summarized as the duty to act in good faith, not out of self-interest, and in a manner which the director reasonably believes to be in the best interests of the shareholders.

Delaware law provides that a party challenging the propriety of a decision of a board of directors bears the burden of rebutting the applicability of the presumptions afforded to directors by the business judgment rule. The business judgment rule is a presumption that in making a business decision, directors acted on an informed basis and that the action taken was in the best interests of the company and its shareholders, and accordingly, unless the presumption is rebutted, a board's decision will be upheld unless there can be no rational business purpose for the action or the action constitutes corporate waste. If the presumption is not rebutted, the business judgment rule attaches to protect the directors and their decisions, and their business judgments will not be second guessed. Where, however, the presumption is rebutted, the directors bear the burden of demonstrating the entire fairness of the relevant transaction. Notwithstanding the foregoing, Delaware courts may subject directors' conduct to enhanced scrutiny in respect of defensive actions taken in response to a threat to corporate control or the approval of a transaction resulting in a sale of control of the corporation.

***Interested Directors***

Bermuda law and our bye-laws provide that if a director has an interest in a material transaction or proposed material transaction with us or any of our subsidiaries or has a material interest in any person that is a party to such a transaction, the director must disclose the nature of that interest at the first opportunity either at a meeting of directors or in writing to the directors. Our bye-laws provide that, after a director has made such a declaration of interest, he is allowed to be counted for purposes of determining whether a quorum is present and to vote on a transaction in which he has an interest, unless disqualified from doing so by the chairman of the relevant board meeting.

Under Delaware law, such transaction would not be voidable if (1) the material facts as to such interested director's relationship or interests are disclosed or are known to the board of directors and the board in good faith authorizes the transaction by the affirmative vote of a majority of the disinterested directors, (2) such material facts are disclosed or are known to the shareholders entitled to vote on such transaction and the transaction is specifically approved in good faith by vote of the majority of shares entitled to vote thereon or (3) the transaction is fair as to the company as of the

time it is authorized, approved or ratified. Under Delaware law, such interested director could be held liable for a transaction in which such director derived an improper personal benefit.

***Voting Rights and Quorum Requirements***

Under Bermuda law, the voting rights of our shareholders are regulated by our bye-laws and, in certain circumstances, the Companies Act. Under our bye-laws, at any general meeting, two or more persons present in

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person at the start of the meeting and representing in person or by proxy shareholders holding shares carrying more than 25% of the votes of all shares entitled to vote on the resolution shall constitute a quorum for the transaction of business. Generally, except as otherwise provided in the bye-laws, or the Companies Act, any action or resolution requiring approval of the shareholders may be passed by a simple majority of votes cast except for the election of directors which requires only a plurality of the votes cast.

Any individual who is a shareholder of our company and who is present at a meeting may vote in person, as may any corporate shareholder that is represented by a duly authorized representative at a meeting of shareholders. Our bye-laws also permit attendance at general meetings by proxy, provided the instrument appointing the proxy is in the form specified in the bye-laws or such other form as the board may determine. Under our bye-laws, each holder of common shares is entitled to one vote per common share held.

Under Delaware law, unless otherwise provided in a company's certificate of incorporation, each stockholder is entitled to one vote for each share of stock held by the stockholder. Delaware law provides that unless otherwise provided in a company's certificate of incorporation or bye-laws, a majority of the shares entitled to vote, present in person or represented by proxy, constitutes a quorum at a meeting of stockholders. In matters other than the election of directors, with the exception of special voting requirements related to extraordinary transactions, and unless otherwise provided in a company's certificate of incorporation or bye-laws, the affirmative vote of a majority of shares present in person or represented by proxy at the meeting entitled to vote is required for stockholder action, and the affirmative vote of a plurality of shares is required for the election of directors.

***Dividends***

Pursuant to Bermuda law, a company is restricted from declaring or paying a dividend if there are reasonable grounds for believing that: (1) the company is, or would after the payment be, unable to pay its liabilities as they become due or (2) that the realizable value of its assets would thereby be less than its liabilities. Under our bye-laws, each common share is entitled to dividends if, as and when dividends are declared by our board of directors, subject to any preferred dividend right of the holders of any preference shares.

Under Delaware law, subject to any restrictions contained in the company's certificate of incorporation, a company may pay dividends out of surplus or, if there is no surplus, out of net profits for the fiscal year in which the dividend is declared and for the preceding fiscal year. Delaware law also provides that dividends may not be paid out of net profits if, after the payment of the dividend, capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

***Amalgamations, Mergers and Similar Arrangements***

The amalgamation or merger of a Bermuda company with another company or corporation (other than certain affiliated companies) requires the amalgamation agreement to be approved by the company's board of directors and by its shareholders. Unless the company's bye-laws provide otherwise, the approval of 75% of the shareholders voting at such meeting is required to approve the amalgamation agreement, and the quorum for such meeting must be two persons holding or representing more than one-third of the issued shares of the company. Our bye-laws provide that a merger or an amalgamation (other than with a wholly owned subsidiary) that has been approved by the board must only be approved by a majority of the votes cast at a general meeting of the shareholders at which the quorum shall be two or more persons present in person and representing in person or by proxy shareholders holding shares carrying more than 25% of the votes of all shares entitled to vote on the resolution. Any merger or amalgamation not approved by our board must be approved by shareholders holding shares carrying not less than 66% of the votes of all shares entitled to vote on the resolution.

Under Bermuda law, in the event of an amalgamation or merger of a Bermuda company with another company or corporation, a shareholder of the Bermuda company who did not vote in favor of the amalgamation or merger and is not satisfied that fair value has been offered for such shareholder's shares may, within one month of notice of the shareholders meeting, apply to the Supreme Court of Bermuda to appraise the fair value of those shares.

Under Delaware law, with certain exceptions, a merger, consolidation or sale of all or substantially all the assets of a corporation must be approved by the board of directors and a majority of the issued and outstanding shares entitled to vote thereon. Under Delaware law, a shareholder of a corporation participating in certain major corporate transactions may, under certain circumstances, be entitled to appraisal rights pursuant to which such shareholder may receive cash in the amount of the fair value of the shares held by such shareholder (as determined by a court) in lieu of the consideration such shareholder would otherwise receive in the transaction.

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***Takeovers***

An acquiring party is generally able to acquire compulsorily the common shares of minority holders of a company in the following ways:

- By a procedure under the Companies Act known as a scheme of arrangement. A scheme of arrangement could be effected by obtaining the agreement of the company and of holders of common shares, representing in the aggregate a majority in number and at least 75% in value of the common shareholders present and voting at a court ordered meeting held to consider the scheme of arrangement. The scheme of arrangement must then be sanctioned by the Bermuda Supreme Court. If a scheme of arrangement receives all necessary agreements and sanctions, upon the filing of the court order with the Registrar of Companies in Bermuda, all holders of common shares could be compelled to sell their shares under the terms of the scheme or arrangement.
- If the acquiring party is a company by acquiring pursuant to a tender offer 90% of the shares or class of shares not already owned by, or by a nominee for, the acquiring party (the offeror), or any of its subsidiaries. If an offeror has, within four months after the making of an offer for all the shares or class of shares not owned by, or by a nominee for, the offeror, or any of its subsidiaries, obtained the approval of the holders of 90% or more of all the shares to which the offer relates, the offeror may, at any time within two months beginning with the date on which the approval was obtained, require by notice any nontendering shareholder to transfer its shares on the same terms as the original offer. In those circumstances, nontendering shareholders will be compelled to sell their shares unless the Supreme Court of Bermuda (on application made within a one-month period from the date of the offeror's notice of its intention to acquire such shares) orders otherwise.
- Where the acquiring party or parties hold not less than 95% of the shares or a class of shares of the company, by acquiring, pursuant to a notice given to the remaining shareholders or class of shareholders, the shares of such remaining shareholders or class of shareholders. When this notice is given, the acquiring party is entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice, unless a remaining shareholder, within one month of receiving such notice, applies to the Supreme Court of Bermuda for an appraisal of the value of their shares. This provision only applies where the acquiring party offers the same terms to all holders of shares whose shares are being acquired.

Delaware law provides that a parent corporation, by resolution of its board of directors and without any shareholder vote, may merge with any subsidiary of which it owns at least 90% of each class of its capital stock. Upon any such merger, dissenting shareholders of the subsidiary would have appraisal rights.

***Shareholders' Suits***

Class actions and derivative actions are generally not available to shareholders under Bermuda law. The Bermuda courts, however, would ordinarily be expected to permit a shareholder to commence an action in the name of a company to remedy a wrong to the company where the act complained of is alleged to be beyond the corporate power of the company or illegal, or would result in the violation of the company's memorandum of association or bye-laws. Furthermore, consideration would be given by a Bermuda court to acts that are alleged to constitute a fraud against the minority shareholders or, for instance, where an act requires the approval of a greater percentage of the company's shareholders than that which actually approved it.

Our bye-laws contain a provision by virtue of which our shareholders waive any claim or right of action that they have, both individually and on our behalf, against any director or officer in relation to any action or failure to take action by such director or officer, except in respect of any fraud or dishonesty of such director or officer. The operation of this provision as a waiver of the right to sue for violations of federal securities laws may be unenforceable in U.S. courts.

Class actions and derivative actions generally are available to shareholders under Delaware law for, among other things, breach of fiduciary duty, corporate waste and actions not taken in accordance with applicable law. In such actions, the court generally has discretion to permit the winning party to recover attorneys' fees incurred in connection with such action.

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***Indemnification of Directors and Officers***

Section 98 of the Companies Act provides generally that a Bermuda company may indemnify its directors, officers and auditors against any liability which by virtue of any rule of law would otherwise be imposed on them in respect of any negligence, default, breach of duty or breach of trust, except in cases where such liability arises from fraud or dishonesty of which such director, officer or auditor may be guilty in relation to the company. Section 98 further provides that a Bermuda company may indemnify its directors, officers and auditors against any liability incurred by them in defending any proceedings, whether civil or criminal, in which judgment is awarded in their favor or in which they are acquitted or granted relief by the Supreme Court of Bermuda pursuant to section 281 of the Companies Act.

We have adopted provisions in our bye-laws that provide that we shall indemnify our officers and directors in respect of their actions and omissions, except in respect of their fraud or dishonesty. We also have entered into directors' service agreements with our directors, pursuant to which we have agreed to indemnify them against any liability brought against them by reason of their service as directors, except in cases where such liability arises from fraud, dishonesty, bad faith, gross negligence, willful default or willful misfeasance. Our bye-laws provide that the shareholders waive all claims or rights of action that they might have, individually or in right of the company, against any of the company's directors or officers for any act or failure to act in the performance of such director's or officer's duties, except in respect of any fraud or dishonesty of such director or officer. Section 98A of the Companies Act permits us to purchase and maintain insurance for the benefit of any officer or director in respect of any loss or liability attaching to him in respect of any negligence, default, breach of duty or breach of trust, whether or not we may otherwise indemnify such officer or director. We have purchased and maintain a directors' and officers' liability policy for such a purpose.

Under Delaware law, a corporation may indemnify a director or officer of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in defense of an action, suit or proceeding by reason of such position if (1) such director or officer acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and (2) with respect to any criminal action or proceeding, such director or officer had no reasonable cause to believe his conduct was unlawful.

***Inspection of Corporate Records***

Members of the general public have the right to inspect our public documents available at the office of the Registrar of Companies in Bermuda and our registered office in Bermuda, which will include our memorandum of association (including its objects and powers) and certain alterations to our memorandum of association. Our shareholders have the additional right to inspect our bye-laws, minutes of general meetings and audited financial statements, which must be presented to the annual general meeting of shareholders.

The register of members of a company is also open to inspection by shareholders, and by members of the general public without charge. The register of members is required to be open for inspection for not less than two hours in any business day (subject to the ability of a company to close the register of members for not more than 30 days in a year). A company is required to maintain its share register in Bermuda but may, subject to the provisions of the Companies Act, establish a branch register outside of Bermuda. A company is required to keep at its registered office a register of directors and officers that is open for inspection for not less than two hours in any business day by members of the public without charge. Bermuda law does not, however, provide a general right for shareholders to inspect or obtain copies of any other corporate records.

Delaware law permits any shareholder to inspect or obtain copies of a corporation's shareholder list and its other books and records for any purpose reasonably related to such person's interest as a shareholder.

***Shareholder Proposals***

Under Bermuda law, shareholders may, as set forth below and at their own expense (unless the company otherwise resolves), require the company to: (1) give notice to all shareholders entitled to receive notice of the annual general meeting of any resolution that the shareholders may properly move at the next annual general meeting; and/or (2) circulate to all shareholders entitled to receive notice of any general meeting a statement in respect of any matter referred to in the proposed resolution or any business to be conducted at such general meeting. The number of shareholders necessary for such a requisition is either: (1) any number of shareholders

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representing not less than 5% of the total voting rights of all shareholders entitled to vote at the meeting to which the requisition relates; or (2) not less than 100 shareholders.

Delaware law does not include a provision restricting the manner in which nominations for directors may be made by shareholders or the manner in which business may be brought before a meeting although restrictions may be included in a Delaware company's certificate of incorporation or bye-laws.

***Calling of Special Shareholders' Meetings***

Under our bye-laws, a special general meeting may be called by the chairman of the board or the board of directors. Bermuda law also provides that a special general meeting must be called upon the request of shareholders holding not less than 10% of the paid-up capital of the company carrying the right to vote at general meetings.

Delaware law permits the board of directors or any person who is authorized under a corporation's certificate of incorporation or bye-laws to call a special meeting of shareholders.

***Amendment of Organizational Documents***

Bermuda law provides that the memorandum of association of a company may be amended by a resolution passed at a general meeting of shareholders of which due notice has been given. Certain amendments to the memorandum of association may require approval of the Bermuda Minister of Finance, who may grant or withhold approval at his or her discretion.

Under Bermuda law, the holders of an aggregate of not less than 20% in par value of a company's issued share capital have the right to apply to the Bermuda courts for an annulment of any amendment of the memorandum of association adopted by shareholders at any general meeting, other than an amendment which alters or reduces a company's share capital as provided in the Companies Act. Where such an application is made, the amendment becomes effective only to the extent that it is confirmed by the Bermuda court. An application for an annulment of an amendment of the memorandum of association must be made within 21 days after the date on which the resolution altering the company's memorandum of association is passed and may be made on behalf of persons entitled to make the application by one or more of their designees as such holders may appoint in writing for such purpose. No application may be made by the shareholders voting in favor of the amendment.

Under Delaware law, amendment of the certificate of incorporation, which is the equivalent of a memorandum of association, of a company must be made by a resolution of the board of directors setting forth the amendment, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote or directing that the proposed amendment be considered at the next annual meeting of the shareholders. Delaware law requires that, unless a different percentage is provided for in the certificate of incorporation, a majority of the voting power of the corporation is required to approve the amendment of the certificate of incorporation at the shareholders meeting. If the amendment would alter the number of authorized shares or par value or otherwise adversely affect the rights or preference of any class of a company's stock, the holders of the issued and outstanding shares of such affected class, regardless of whether such holders are entitled to vote by the certificate of incorporation, are entitled to vote as a class upon the proposed amendment. However, the number of authorized shares of any class may be increased or decreased, to the extent not falling below the number of shares then issued and outstanding, by the affirmative vote of the holders of a majority of the stock entitled to vote, if so provided in the company's certificate of incorporation that was authorized by the affirmative vote of the holders of a majority of such class or classes of stock.

***Amendment of Bye-laws***

Our bye-laws provide that the bye-laws may only be rescinded, altered or amended upon approval by a resolution of our board of directors and by a resolution of our shareholders, adopted by the affirmative votes of at least a majority of all shares entitled to vote on the resolution. Our bye-laws provide that, notwithstanding the foregoing, at any time that the Manager holds any of our manager shares, rescission, alteration or amendment of the bye-law relating to our ability to terminate the Manager's appointment under our management agreement also requires the approval of the holder of our manager shares.

Under Delaware law, unless the certificate of incorporation or bye-laws provide for a different vote, holders of a majority of the voting power of a corporation and, if so provided in the certificate of incorporation, the directors

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of the corporation have the power to adopt, amend and repeal the bye-laws of a corporation. Those bye-laws dealing with the election of directors, classes of directors and the term of office of directors may only be rescinded, altered or amended upon approval by a resolution of the directors and by a resolution of shareholders carrying not less than 66% of all shares entitled to vote on the resolution.

**Transfer Agent**

Codan Services Limited, Hamilton, Bermuda, acts as the registrar and transfer agent for our common shares.

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## DESCRIPTION OF AMERICAN DEPOSITARY SHARES

### American Depositary Receipts

All of our issued and outstanding common shares are held by the depositary, Deutsche Bank Trust Company Americas (the Depositary ) in the form of ADSs. The Depositary is a state chartered New York banking corporation and a member of the United States Federal Reserve System, subject to regulation and supervision principally by the United States Federal Reserve Board and the New York State Banking Department. The Depositary was incorporated as a limited liability bank on March 5, 1903 in the State of New York. The registered office of the Depositary is located at 60 Wall Street, New York, NY 10005 and the registered number is BR1026. The principal executive office of the Depositary is located at 60 Wall Street, New York NY 10005.

Each ADS represents an ownership interest in one common share which we deposit with the custodian under the deposit agreement among ourselves, the Depositary, and ADS holders. Your ADSs are evidenced by what are known as American Depositary Receipts, or ADRs, in the same way a share is evidenced by a share certificate. Your rights as a holder of ADSs is governed by the deposit agreement and our bye-laws.

The following is a summary of the material terms of the deposit agreement. Because it is a summary, it does not contain all the information that may be important to you. For more complete information, you should read the entire deposit agreement and the form of ADR which contains the terms of your ADSs. You can read a copy of the deposit agreement which is filed with the SEC as an exhibit to our registration statement on Form F-6, as filed with the SEC on September 21, 2007, as amended. You may also obtain a copy of the deposit agreement at the SEC's Public Reference Room, which is located at 100 F Street, N.E., Washington, D.C. 20549, United States of America. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-732-0330. Copies of the deposit agreement and the form of ADR are also available for inspection at the corporate trust office of the Depositary. The Depositary keeps books at its corporate trust office for the registration of ADRs and transfer of ADRs which, at all reasonable times, shall be open for inspection by ADS holders, provided that inspection shall not be for the purposes of communicating with ADS holders in the interest of a business or object other than our business or a matter related to the deposit agreement or the ADSs.

For a description of our bye-laws, see Description of Share Capital.

### Holding the ADSs

Unless otherwise agreed among us and the Depositary in accordance with the terms of the deposit agreement, the ADSs are held electronically in book-entry form either directly (by having an ADR registered in your name) or indirectly through your broker or other financial institution. If you hold ADSs directly, you are an ADR holder. This description assumes you hold your ADSs directly. If you hold the ADSs indirectly, you must rely on the procedures of your broker or other financial institution to assert the rights of ADR holders described in this section. You should consult with your broker or financial institution to find out what those procedures are.

As an ADR holder, you are not treated as one of our shareholders and you do not have shareholder rights. Bermuda law governs shareholder rights. The Depositary is the holder of the common shares underlying your ADSs, which are registered in its name with Codan Services Limited, the registrar and transfer agent for our common shares. As a holder of ADRs, you have ADR holder rights. A deposit agreement among us, the Depositary and you, as an ADR holder, and the beneficial owners of ADRs sets out ADR holder rights, representations and warranties as well as the rights and obligations of the Depositary. New York law governs the deposit agreement and the ADRs.

### Fees and Expenses

Except as described below, we pay all fees, charges and expenses of the Depositary and any agent of the Depositary pursuant to agreements from time to time between us and the Depositary, except that if you elect to withdraw the common shares underlying your ADRs from the Depositary you will be required to pay the Depositary a fee of up to US$5.00 per 100 ADSs surrendered or any portion thereof, together with expenses incurred by the Depositary and any taxes or charges, such as stamp taxes or stock transfer taxes or fees, in connection with the withdrawal. We will not receive any portion of the fee payable to the Depositary upon a withdrawal of shares from the Depositary. The Depositary will not make any payments to us, and we will not receive any portion of any fees collected by the Depositary.

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Except as specified above in connection with a cancellation of ADSs and withdrawal of common shares from the Depositary, we are required to pay any taxes and other governmental charges incurred by the Depositary or the custodian on any ADR or common share underlying an ADR, including any applicable interest and penalties thereon, any stock transfer or other taxes and other governmental charges in any applicable jurisdiction.

**Dividends and Other Distributions**

The Depositary has agreed to pay to you the cash dividends or other distributions it or the custodian receives on common shares or other deposited securities, less any fees described below under — Withholding Taxes, Duties and Other Governmental Charges. You will receive these distributions in proportion to the number of common shares your ADSs represent as of the record date set by the Depositary with respect to the ADSs.

- ***Withholding Taxes, Duties and Other Governmental Charges.*** Before making a distribution, the Depositary will deduct any withholding taxes, duties or other governmental charges that must be paid. Dividends on our shares are subject to deduction of Irish withholding taxes, unless an exemption to withholding is available. U.S. holders of ADSs (including U.S. citizens or residents) are entitled to claim a refund of Irish withholding taxes on dividends. Unless a U.S. holder of ADSs otherwise specifies, a fee of $0.005 per ADS will be deducted from each dividend paid to such holder so that such dividend may be paid gross of Irish withholding taxes.
- ***Shares.*** The Depositary may distribute additional ADSs representing any common shares we distribute as a dividend or free distribution to the extent permissible by law. If the Depositary does not distribute additional ADRs, the outstanding ADSs will also represent the new common shares.
- ***Elective Distributions in Cash or Shares.*** If we offer holders of our common shares the option to receive dividends in either cash or common shares, the Depositary will, after consultation with us and to the extent permissible by law and reasonably practicable, offer holders of ADSs the option to receive dividends in either cash or ADSs to the extent permissible under applicable law and in accordance with the deposit agreement.
- ***Rights to Receive Additional Shares.*** If we offer holders of our common shares any rights to subscribe for additional common shares or any other rights, the Depositary, after consultation with us and to the extent permissible by law and reasonably practicable, will make these rights available to you as a holder of ADSs. If the Depositary makes rights available to you, it will exercise the rights and purchase the common shares on your behalf subject to your payment of applicable fees, taxes, charges and expenses. The Depositary will then deposit the common shares and issue ADSs to you. It will only exercise rights if you pay it the exercise price and any taxes and other governmental charges the rights require you to pay. U.S. securities laws or Bermuda law may restrict the sale, deposit, cancellation, and transfer of the ADSs issued after exercise of rights. Our intent is not to offer holders any rights to subscribe for additional common shares unless the holders of our ADSs would thereby be offered rights to receive ADSs in an offering registered under U.S. securities laws.
- ***Other Distributions.*** Subject to receipt of timely notice from us with the request to make any such distribution available to you, and provided the Depositary has determined that such distribution is lawful, practicable and feasible and in accordance with the terms of the deposit agreement, the Depositary will send to you anything else we distribute on deposited securities by any means it deems practical in proportion to the number of ADSs held by you, net of any taxes and other governmental charges withheld.

The Depositary is not responsible if it decides that it is unlawful or impractical to make a distribution available to any ADR holders. We have no obligation to register ADSs, common shares, rights or other securities under the Securities Act. We also have no obligation to take any other action to permit the distribution of ADRs, common shares, rights or anything else to ADR holders. This means that you may not receive the distributions we make on our shares or any value for them if it is illegal or impractical for us to make them available to you.

**Deposit and Withdrawal**

The Depositary delivers ADSs upon deposit of common shares with the custodian. The custodian holds all deposited common shares, including those being deposited by us in connection with the offering to which this prospectus relates, for the account of the Depositary. You thus have no direct ownership interest in the common

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shares and only have the rights as are set out in the deposit agreement. The custodian also holds any additional securities, property and cash received on, or in substitution for, the deposited common shares. The deposited common shares and any such additional items are all referred to collectively as deposited securities.

Upon each deposit of common shares, receipt of related delivery documentation and compliance with the other provisions of the deposit agreement, the Depositary issues an ADR or ADRs in the name of the person entitled thereto evidencing the number of ADSs to which that person is entitled. Alternatively, at your request, risk and expense, the Depositary in its discretion will deliver certificated ADRs at the Depositary's principal New York office or any other location that it may designate as its transfer office.

You may surrender your ADRs at the Depositary's office or through instruction provided to your broker. Upon payment of its fees and charges of, and expenses incurred by, it and of any taxes or charges, such as stamp taxes or stock transfer taxes or fees, the Depositary will deliver the common shares and any other deposited securities underlying the ADR to you or a person you designate at the office of the custodian. Or, at your request, risk and expense, the Depositary will deliver the deposited securities at its principal New York office or any other location that it may designate as its transfer office, if feasible.

You have the right to cancel your ADSs and withdraw the underlying common shares at any time subject only to:

- temporary delays caused by closing of our or the Depositary's transfer books, or the deposit of common shares in connection with voting at a shareholders' meeting, or the payment of dividends;
- the surrender of ADRs evidencing a number of ADSs representing other than a whole number of common shares;
- the payment of fees, charges, taxes and other governmental charges; or
- where deemed necessary or advisable by the Depositary or us in good faith due to any requirement of any U.S. or foreign laws, government, governmental body or commission, any securities exchange on which the ADSs or common shares are listed or governmental regulations relating to the ADSs or the withdrawal of the underlying common shares.

U.S. securities laws provide that this right of withdrawal may not be limited by any other provision of the deposit agreement. However, we do not intend to list our common shares for trading on any exchange. Therefore, it may be more difficult to dispose of our common shares than it will be to dispose of our ADSs.

**Transmission of Notices to Shareholders**

We will promptly transmit to the Depositary those communications that we make generally available to our shareholders together with annual and other reports prepared in accordance with applicable requirements of U.S. securities laws. Upon our request and at our expense, subject to the distribution of any such communications being lawful and not in contravention of any regulatory restrictions or requirements if so distributed and made available to holders, the Depositary will arrange for the timely mailing of copies of such communications to all ADS holders and will make a copy of such communications available for inspection at the Depositary's Corporate Trust Office, the office of the custodian or any other designated transfer office of the Depositary.

**Voting Rights**

As soon as practicable upon receipt of timely notice of any meeting at which the holders of our shares are entitled to vote, or of solicitation of consents or proxies from holders of our shares, the Depositary will fix a record date in respect of such meeting or solicitation of consent or proxy. The Depositary will, if requested by us in writing in a timely manner, mail by regular, ordinary mail delivery (or by electronic mail or as otherwise may be agreed between us and the Depositary from time to time) or otherwise distribute to holders of ADSs as of the record date: (a) such

information as is contained in such notice of meeting (or solicitation of consent or proxy) received by the Depositary from us, (b) a statement that holders as of the record date will be entitled, insofar as practicable and permitted under applicable law, the terms of the deposit agreement, the terms and conditions of our common shares and of our bye-laws (and subject to such other requirements as we shall notify the Depositary), to instruct the Depositary as to the exercise of the voting rights (or deemed exercise of voting rights), if any, pertaining to the amount of our common shares represented by their respective ADSs, and (c) a statement as to the manner in which such instructions may be given or may be deemed to have been given as

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described below if no validly-completed instructions are received by the Depositary from a holder of ADSs by the ADS voting cut off date set by the Depositary for such purpose. Upon the written request of a holder as of such record date, received on or before the ADS voting cut off date, the Depositary will endeavor, insofar as practicable, to vote or cause to be voted the amount of our common shares represented by the ADSs in accordance with the instructions set forth in such request.

To the extent no such instructions are received by the Depositary on or before the ADS voting cut off date from holders of a sufficient number of shares so as to enable the Company to meet its quorum requirements with respect to any such meeting of shareholders, the Depositary will, upon our written request and at all times subject to applicable law, the terms of the deposit agreement, the terms and conditions of our common shares and our bye-laws, deem such holder to: (A) have instructed the Depositary to take such action as is necessary to cause the number of underlying shares for which no voting instructions have been received from holders of ADSs so as to meet applicable quorum requirements (currently 25% of our common shares) to be counted for the purposes of satisfying applicable quorum requirements; and (B) have given a power of attorney to the Depositary or the custodian, as its nominee, to cause such equal number of common shares so counted under (A) above being counted for the purposes of establishing a quorum, with respect to any resolution proposed by the Board of Directors of the Company within the agenda set for such meeting, to be voted at any such meeting in proportion to the voting instructions duly-received by the Depositary from holders of ADSs as of the record date by the ADS voting cut off date; provided, however that, except to the extent we have provided the Depositary with at least 30 days' written notice of any such meeting, the common shares shall not be so counted and shall not be so voted (proportionately to the voting instructions received by the Depositary from holders of ADSs as of the record date by the ADS voting cut off date) with respect to any matter as to which the Depositary informs us that the Depositary reasonably believes that with respect to any such resolution: (i) substantial opposition exists or (ii) it materially affects the rights of holders of common shares. For the purposes of this provision of the deposit agreement, by way of example and not limitation, it is agreed that routine matters, such as appointing auditors and directors (except where a competing director or slate of directors is proposed), and resolutions to approve the public offering or private placement of securities, would not materially affect the rights of holders of common shares.

There can be no assurance that holders generally or any holder in particular will receive the notice described above with sufficient time to enable such holder to return voting instructions to the Depositary by the ADS voting cut off date. In the deposit agreement, we have agreed that we will endeavor to provide at least 30 days' prior written notice to the Depositary which will enable the timely notification of holders as to limitations on the ability of the Depositary to vote a particular ADS according to the voting instructions received in regard to such ADS. Common shares which have been withdrawn from the Depositary facility and transferred on our register of members to a person other than the Depositary or its nominee may be voted by the holders thereof in accordance with applicable law and our bye-laws. However, holders or beneficial owners of ADSs may not receive sufficient advance notice of shareholder meetings to enable them to withdraw the common shares and vote at such meetings.

**Payment of Taxes**

You will be responsible for any taxes or other governmental charges payable on your ADSs or on the deposited securities underlying your ADRs. The Depositary may refuse to issue ADSs, deliver ADRs, register the transfer, split-up or combination of ADRs, or allow you to withdraw the deposited securities underlying your ADSs until such payment is made including any applicable interest and penalty thereon. We, the custodian or the Depositary may withhold or deduct the amounts of taxes owed from any distributions to you or may sell deposited securities, by public or private sale, to pay any taxes and any applicable interest and penalties owed. You will remain liable if the proceeds of the sale are not enough to pay the taxes. If the Depositary sells deposited securities, it will, if appropriate, reduce the number of ADSs to reflect the sale and pay to you any proceeds, or send to you any property remaining after it has paid the taxes.

Unless a U.S. holder of ADSs otherwise specifies, a fee of $0.005 per ADS will be deducted from each dividend paid to such holder so that such dividend may be paid gross of Irish withholding taxes.

**Reclassifications, Recapitalizations and Mergers**

If we take actions that affect the deposited securities, including (1) any change in par value, split-up, cancellation, consolidation or other reclassification of deposited securities to the extent permitted by any

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applicable law, (2) any distribution on the common shares that is not distributed to you and (3) any recapitalization, reorganization, merger, consolidation, liquidation or sale of our assets affecting us or to which we are a party resulting in a distribution of cash or securities to our shareholders, then the cash, common shares or other securities received by the Depositary in connection therewith will become deposited securities and be subject to the deposit agreement and any applicable law, evidence the right to receive such additional deposited securities, and the Depositary may choose to:

- distribute additional ADSs;
- call for surrender of outstanding ADSs to be exchanged for new ADSs;
- distribute cash, securities or other property it has received in connection with such actions;
- sell any securities or property received at public or private sale on an averaged or other practicable basis without regard to any distinctions among holders and distribute the net proceeds as cash; or
- treat the cash, securities or other property it receives as part of the deposited securities, and each ADS will then represent a proportionate interest in that property.

**Amendment and Termination**

We may agree with the Depositary to amend the deposit agreement and the ADSs without your consent for any reason deemed necessary or desirable. You will be given at least 30 days' notice of any amendment that imposes or increases any fees or charges, except for taxes, governmental charges, delivery expenses or other charges specifically payable by ADS holders under the deposit agreement, or which otherwise materially prejudices any substantial existing right of holders or beneficial owners of ADSs. If an ADS holder continues to hold ADSs after being so notified of these changes, that ADS holder is deemed to agree to that amendment and be bound by the ADRs and the agreement as amended. An amendment can become effective before notice is given if necessary to ensure compliance with a new law, rule or regulation.

At any time we may instruct the Depositary to terminate the deposit agreement, in which case the Depositary will give notice to you at least 30 days prior to termination. The Depositary may also terminate the deposit agreement if it has told us that it would like to resign or we have removed the Depositary and we have not appointed a new Depositary bank within 90 days, in such instances, the Depositary will give notice to you at least 30 days prior to termination. After termination, the Depositary's only responsibility will be to deliver deposited securities to ADS holders who surrender their ADSs upon payment of any fees, charges, taxes or other governmental charges, and to hold or sell distributions received on deposited securities. After the expiration of six months from the termination date, the Depositary may sell the deposited securities which remain and hold the net proceeds of such sales, uninvested and without liability for interest, for the pro rata benefit of ADS holders who have not yet surrendered their ADSs. After selling the deposited securities, the Depositary has no obligations except to account for those net proceeds and other cash. Upon termination of the deposit agreement, we will be discharged from all obligations except for our obligations to the Depositary.

We intend to maintain a Depositary arrangement for so long as it facilitates U.S. holders in benefiting from an exemption to Irish withholding taxes on dividends on our common shares.

**Limitations on Obligations and Liability**

The deposit agreement expressly limits our and the Depositary's obligations and liability.

We and the Depositary:

- are only obligated to take the actions specifically set forth in the deposit agreement without gross negligence or bad faith;

- are not liable if either of us by law or circumstances beyond our control is prevented from, or delayed in, performing any obligation under the agreement, including, without limitation, requirements of any present or future law, regulation, governmental or regulatory authority or stock exchange of any applicable jurisdiction, any present or future provision of our memorandum of association and bye-laws, on account of possible civil or criminal penalties or restraint, any provisions of or governing the deposited securities, any act of God, war or other circumstances beyond each of our control as set forth in the deposit agreement;

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- are not liable if either of us exercises or fails to exercise the discretion permitted under the deposit agreement, the provisions of or governing the deposited securities or our memorandum of association and bye-laws;
- are not liable for any action/inaction on the advice or information of legal counsel, accountants, any person presenting common shares for deposit, holders and beneficial owners (or authorized representatives) of ADRs, or any person believed in good faith to be competent to give such advice or information;
- are not liable for the inability of any holder to benefit from any distribution, offering, right or other benefit if made in accordance with the provisions of the deposit agreement;
- have no obligation to become involved in a lawsuit or other proceeding related to any deposited securities or the ADSs or the deposit agreement on your behalf or on behalf of any other party;
- may rely upon any documents we believe in good faith to be genuine and to have been signed or presented by the proper party; and
- shall not incur any liability for any indirect, special, punitive or consequential damages for any breach of the terms of the deposit agreement.

The Depositary and its agents shall not incur any liability under the deposit agreement for the failure to carry out any instructions to vote, the manner in which any vote is cast or the effect of any vote or failure to determine that any distribution or action may be lawful or reasonably practicable or allowing any rights to lapse in accordance with the provisions of the deposit agreement, the failure or timeliness of any notice from us, the content of any information submitted to it by us for distribution to you, any investment risk associated with the acquisition of an interest in the deposited securities, the validity or worth of the deposited securities or for any tax consequences that may result from ownership of ADSs, common shares or deposited securities for the creditworthiness of any third party and for any indirect, special, punitive or consequential damage.

We have agreed to indemnify the Depositary under certain circumstances. However, the deposit agreement does not limit our liability under federal securities laws. The Depositary may own and deal in any class of our securities and in the ADSs.

**Requirements for Depositary Actions**

Before the Depositary issues, delivers or registers a transfer of an ADS, makes a distribution on an ADS, or permits withdrawal of common shares or other property, the Depositary may require:

- payment of stock transfer or other taxes or other governmental charges and transfer or registration fees charged by third parties for the transfer of any common shares or other deposited securities;
- production of satisfactory proof of the identity and genuineness of any signature or other information it deems necessary; and
- compliance with regulations it may establish, from time to time, consistent with the deposit agreement, including presentation of transfer documents.

The Depositary also may suspend the issuance of ADSs, the deposit of common shares, the registration, transfer, split-up or combination of ADSs or the withdrawal of deposited securities, unless the deposit agreement provides otherwise, if the register for ADSs is closed or if we or the Depositary decide any such action is necessary or advisable.

Deutsche Bank Trust Company Americas keeps books for the registration and transfer of ADRs at its offices. You may reasonably inspect such books, except if you have a purpose other than our business or a matter related to the deposit agreement or the ADRs.

**Disclosure of Interests**

By purchasing ADSs, you agree to comply with our memorandum of association and bye-laws and the laws of Bermuda, the United States of America and any other relevant jurisdiction regarding any disclosure requirements regarding ownership of common shares, all as if the ADSs were, for this purpose, the common shares they represent.

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**DESCRIPTION OF DEBT SECURITIES**

The debt securities will have the terms described in this prospectus unless the prospectus supplement describes different terms.

Each series of debt securities will be issued under an indenture dated as of December 11, 2013 between us and Wells Fargo Bank, National Association, as trustee. The trustee serves two principal roles:

- the trustee can enforce your rights against us if an Event of Default described below occurs; and
- the trustee performs various administrative duties.

The following description is a summary of selected provisions relating to the debt securities and the indenture. We have incorporated the indenture by reference as an exhibit to the registration statement of which this prospectus is a part. When debt securities are offered in the future, the prospectus supplement will explain the particular terms of those securities and the extent to which these general provisions may apply. Capitalized terms used in the summary have the meanings specified in the indenture.

**General**

The debt securities will be either senior debt securities or subordinated debt securities. The indenture does not limit the total principal amount of debt securities that we can issue. We may issue the debt securities in one or more series as we may authorize from time to time. In addition, we may reopen a previous issue of debt securities by issuing additional debt securities of that series.

A prospectus supplement and a supplemental indenture (or resolutions of our board of directors in lieu of a supplemental indenture) relating to any series of debt securities being offered will include specific terms relating to the offering. These terms will include some or all of the following:

- the title of the debt securities;
- any limit on the total principal amount of the debt securities;
- whether the debt securities are senior debt securities or subordinated debt securities or a combination thereof;
- the dates on which the principal and premium, if any, of the debt securities will be payable;
- the interest rate (or method of determining the rate) that the debt securities will bear, the interest payment dates for the debt securities and the record dates for determination of the holders to whom interest is payable;
- the place where we will pay principal, premium and interest on the debt securities;
- any optional redemption periods and prices and any specific terms or conditions related to optional redemptions;
- whether the debt securities are convertible or exchangeable into other securities;
- any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem the debt securities;
- the denominations in which we will issue the debt securities, if other than $1,000 and any integral multiple thereof;
- the manner in which we will determine the amounts of principal, premium or interest payments on the debt securities if these amounts may be determined by reference to an index;
- the currency in which we will pay principal, premium and interest on the debt securities if other than the United States dollar;
- if other than the entire principal amount, the portion of the principal amount of the debt securities (a) payable if the maturity of the debt securities is accelerated or (b) provable in bankruptcy;
- any provisions relating to any security provided for the debt securities;
- any changes in or additions to the Events of Default (as defined below);

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- whether we will issue the debt securities in the form of global securities and the terms and conditions of the global securities;
- any changes or additions to the covenants; and
- any other terms of the debt securities.

We may issue debt securities at a discount below their stated principal amount. Even if we do not issue the debt securities below their stated principal amount, for United States federal income tax purposes the debt securities may be deemed to have been issued with a discount because of certain interest payment characteristics. We will describe in a prospectus supplement the United States federal income tax considerations applicable to debt securities issued at a discount or deemed to be issued at a discount. We will also describe in a prospectus supplement any special United States federal income tax considerations or other restrictions or terms applicable to the debt securities being issued, including, as applicable, securities issuable in bearer form, offered exclusively to foreigners or denominated in a foreign currency.

We may issue debt securities in fully registered form without coupons or in a form registered as to principal only with coupons or in bearer form with coupons. Unless specified in the prospectus supplement, the debt securities will be in fully registered form without coupons. In addition, we may issue debt securities in the form of one or more global securities as described below.

**Registration, Transfer and Payment**

Principal of, premium, if any, and interest, if any, on fully registered securities will be payable at the place or places we designate for such purpose, or we may pay interest by check mailed to the persons in whose names the securities are registered at the close of business on the day or days specified in the prospectus supplement accompanying this prospectus. The principal of, premium, if any, and interest, if any, on debt securities in other forms will be payable in the manner and at the place we designate as specified in the applicable prospectus supplement.

You may present fully registered securities for transfer or exchange at the corporate trust office of the trustee or any other office or agency we maintain for that purpose, without the payment of any service charge except for any tax or governmental charge incidental to the transfer or exchange. Provisions for the transfer or exchange of securities in other forms will be set forth in the applicable prospectus supplement.

**Global Securities**

We may issue the debt securities in whole or in part in the form of one or more global securities. A global security is a security, typically held by a depositary, that represents the beneficial interests of a number of purchasers of such security. We will deposit global securities with the depositary identified in the prospectus supplement. Unless it is exchanged in whole or in part for debt securities in definitive form, a global certificate may generally be transferred only as a whole to certain nominees of the depositary or to a successor depositary or nominee of a successor depositary.

We will describe the specific terms of the depositary arrangement with respect to a series of debt securities in a prospectus supplement. We expect that the following provisions will generally apply to our depositary arrangements.

Ownership of beneficial interests in a global security will be limited to participants or persons that may hold interests through participants. The term participants means institutions that have established accounts with the depositary or its nominee. Upon the issuance of a global security, and the deposit of the global security with or on behalf of the depositary, the depositary will credit, on its book-entry registration and transfer system, the respective principal amounts of the debt securities represented by the global security to the accounts of participants. The underwriters or agents participating in the distribution of the debt securities will designate the accounts to be credited. If we offer and

sell the debt securities directly or through agents, either we or our agents will designate the accounts. Ownership of beneficial interests in the global security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the depositary and its participants. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of the securities. Such laws may impair the ability to transfer beneficial interests in a global security.

Principal of, any premium on and any interest payments on debt securities represented by a global security registered in the name of a depositary or its nominee will be made to the depositary or its nominee as the

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registered owner of the global security. We and the trustee will treat the depositary or its nominee as the sole owner or holder of the debt securities represented by a global security for all purposes, including for paying principal, premium and interest. Except as set forth below, owners of beneficial interests in a global security will not:

- be entitled to have the debt securities represented by the global security registered in their names;
- receive or be entitled to receive physical delivery of the debt securities in definitive form; or
- be considered the owners or holders of the debt securities.

Therefore, we and the trustee do not have any direct responsibility or liability for the payment of principal of, premium, if any, on or interest, if any, on any debt securities represented by a global security to owners of beneficial interests in the global security.

We expect that the depositary or its nominee, upon receipt of any payments, will on the same date credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the global security as shown on the depositary's or its nominee's records. We also expect that payments by participants to owners of beneficial interests in the global security will be governed by standing instructions and customary practices, as is the case with the securities held for the accounts of customers registered in street names and will be the responsibility of these participants and will not be the responsibility of the depositary or its nominee, the trustee or us. We or the trustee are responsible only for paying principal, premium, if any, and interest, if any, to the depositary or its nominee. The depositary or its nominee and the direct and indirect participants are responsible for disbursing these payments to the owners of beneficial interests in the global securities.

If the depositary is at any time unwilling or unable to continue as depositary and a successor depositary is not appointed by us within ninety days, we will issue individual debt securities in exchange for the global security. In addition, we may at any time in our sole discretion determine not to have any of the debt securities of a series represented by global securities and, in such event, will issue debt securities of such series in exchange for the global security.

Neither we, nor the trustee or any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the global security or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests. No such person will be liable for any delay by the depositary or any of its participants in identifying the owners of beneficial interests in a global security, and we, the trustee and any paying agent may conclusively rely on instructions from the depositary or its nominee for all purposes.

**Subordination**

Senior debt securities will rank on an equal basis with all our other unsecured debt obligations except subordinated debt.

Subordinated debt securities will rank subordinated and junior in right of payment, to the extent set forth in the prospectus supplement relating to the subordinated debt securities, to all our senior debt (which will be defined in the applicable prospectus supplement).

If we default in the payment of any principal of, or premium, if any, or interest on any senior debt when it becomes due and payable after any applicable grace period, then, unless and until the default is cured or waived or ceases to exist, we cannot make a payment on account of or redeem or otherwise acquire the subordinated debt securities.

If there is any insolvency, bankruptcy, liquidation or other similar proceeding relating to us, our creditors or our property, then all senior debt must be paid in full before any payment may be made to any holders of subordinated

debt securities.

Furthermore, if we default in the payment of the principal of and accrued interest on any subordinated debt securities that is declared due and payable upon an event of default under the indenture, holders of all senior debt will first be entitled to receive payment in full in cash before holders of the subordinated debt can receive any payments.

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**Conversion or Exchange Rights**

The terms, if any, on which a series of debt securities may be convertible into or exchangeable for common shares or other of our securities will be detailed in the applicable prospectus supplement. The terms will include provisions as to whether conversion or exchange is mandatory, at the option of the holder, or at our option, and may include provisions pursuant to which the number of shares of our common stock or other of our securities to be received by the holders of the series of debt securities would be subject to adjustment.

**Consolidation, Merger or Sale**

The indenture provides that, except as otherwise provided in any prospectus supplement, we may consolidate with or merge into any other person or convey, transfer or lease our properties and assets substantially as an entirety to another person, if among other things:

- the resulting, surviving or transferee person (if other than us) assumes all our obligations under the debt securities and the indenture; and
- we or such successor person is not immediately thereafter in default under the indenture.

Upon the assumption our obligations by such a person upon the sale of all or substantially all the assets in compliance with the indenture, we shall be discharged from all obligations under the debt securities and the indenture. Although such transactions are permitted under the indenture, certain of the foregoing transactions could constitute a change in control, as described in any prospectus supplement, permitting each holder to require us to purchase the debt securities of such holder as described in any prospectus supplement.

**Modification and Waiver**

The indenture (including the terms and conditions of the debt securities) may be modified or amended by us and the trustee, with respect to any series of debt securities, without the consent of the holder of such series of debt securities, for the purposes of, among other things:

- adding to our covenants for the benefit of the holders of the debt securities of such series;
- surrendering any right or power conferred upon us in respect of such series;
- providing for the assumption of our obligations to the holders of the debt securities of such series in the case of a permitted merger, consolidation, conveyance, transfer or lease;
- complying with the requirements of the SEC in connection with the registration of the debt securities of such series under the Securities Act and the qualification of the indenture under the Trust Indenture Act, provided that such modification or amendment does not, in the good faith opinion of our board of directors and the trustee, adversely affect the interests of the holders of the debt securities of such series in any material respect; and
- curing any ambiguity or correcting or supplementing any defective provision contained in the indenture; provided that such modification or amendment does not materially adversely affect the interests of the holders of the debt securities of such series.
- Modifications and amendments to the indenture or to the terms and conditions of the debt securities of such series may also be made, and past defaults by us may be waived, either:
  - with the written consent of the holders of at least a majority in aggregate principal amount at maturity of the debt securities of such series at the time outstanding; or
  - by the adoption of a resolution at a meeting of holders by at least a majority in aggregate principal amount at maturity of the debt securities of such series represented at such meeting.

However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of the holder of each debt security so affected:

- change the stated maturity of such debt security;
- reduce the principal amount at maturity, redemption price or purchase price on such debt security;
- change the currency of payment of such debt security or interest thereon;

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- reduce the percentage in aggregate principal amount at maturity of any debt security outstanding necessary to modify or amend the indenture or to waive any past default; or
- impair the right to institute suit for the enforcement of any payment with respect to such debt security.

**Events of Default**

Unless we provide otherwise in the applicable prospectus supplement, the indenture provides that the following are Events of Default with respect to any series of the debt securities issued thereunder:

- default in the payment of the principal of (or premium, if any, on) any debt security of such series when and as the same shall become due and payable;
- default for 30 days in the payment of any installment of interest on any debt security of such series when and as the same shall become due and payable;
- default in the making or satisfaction of any sinking fund payment when the same shall become due and payable on the terms of any debt securities of such series;
- default for 60 days after notice in the performance of any other covenant in respect of the debt securities of such series contained in the indenture;
- certain events of bankruptcy, insolvency or reorganization; or
- any other event of default described in the prospectus supplement for such series.

An Event of Default with respect to any particular series of debt securities issued under an indenture does not necessarily constitute an Event of Default with respect to any other series of debt securities issued under such indenture. The trustee may withhold notice to the holders of any debt securities of any default (except in the payment of principal or interest) if it considers such withholding is in the interests of such holders.

Unless we provide otherwise in the applicable prospectus supplement, if an Event of Default with respect to any series of debt securities shall have occurred and be continuing, the trustee or the holders of not less than 25% in aggregate principal amount of such series of debt securities may declare the principal of all the debt securities of such series to be due and payable immediately; provided, however, that subject to certain conditions, any such declaration and its consequences may be rescinded and annulled by the holders of not less than a majority in aggregate principal amount of the debt securities of such series.

The indenture requires us to file annually with the trustee a certificate, signed by a specified officer, stating whether or not such officer has obtained knowledge of any default by us in the performance, observance or fulfillment of any condition or covenant of such indenture, and, if so, specifying each such default and the nature thereof.

Subject to provisions relating to its duties in case of a default, the trustee shall be under no obligation to exercise any of its rights or powers under the indenture at the request, order or direction of any holders, unless the holders shall have offered to such trustee reasonable indemnity.

Subject to such provisions for indemnification, the holders of a majority in principal amount of the debt securities of any series may direct the time, method and place of conducting any proceeding or any remedy available to the appropriate trustee, or exercising any trust or power conferred upon such trustee, with respect to the debt securities of such series.

**Satisfaction and Discharge of the Indenture; Defeasance**

With certain exceptions, we may satisfy and discharge our obligations under the indenture with respect to any series of debt securities:

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by delivering to the trustee for cancellation all outstanding debt securities of such series or by depositing with the trustee cash or securities (as applicable under the terms of the indenture) sufficient to pay and discharge the entire indebtedness evidenced by the outstanding debt securities of such series that have not then been delivered to the trustee for cancellation when or after such securities have become due and payable; and

- by paying all other sums payable by the us under the indenture with respect to the debt securities of such series.

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Under federal income tax law as of the date of this prospectus, such deposit and discharge may be treated as a disposition of the related debt securities. Each holder might be required to recognize gain or loss equal to the difference between the holder's cost or other tax basis in the debt securities and the amount of cash plus the fair market value of any property received upon such disposition. Holders might be required to include as income a different amount than would be includable without the discharge. Prospective investors are urged to consult their own tax advisors as to the tax consequences of a discharge, including the applicability and effect of tax laws other than the federal income tax law.

A series of debt securities may have no conditions for defeasance or may have additional or different conditions for defeasance as described in the applicable prospectus supplement.

**Governing Law**

The indenture is, and the debt securities will be, governed by and construed in accordance with the laws of the State of New York.

**DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of common shares, preference shares or debt securities. We may issue warrants independently or together with any offered securities. The warrants may be attached to or separate from those offered securities. We will issue the warrants under one or more warrant agreements to be entered into between us and a warrant agent to be named in the applicable prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

The prospectus supplement relating to any warrants that we may offer will contain the specific terms of the warrants. These terms may include the following:

- the title of the warrants;
- the price or prices at which the warrants will be issued;
- the designation, amount and terms of the securities for which the warrants are exercisable;
- the designation and terms of the other securities, if any, with which the warrants are to be issued and the number of warrants issued with each other security;
- the aggregate number of warrants;
- any provisions for adjustment of the number or amount of securities receivable upon exercise of the warrants or the exercise price of the warrants;
- the price or prices at which the securities purchasable upon exercise of the warrants may be purchased;
- if applicable, the date on and after which the warrants and the securities purchasable upon exercise of the warrants will be separately transferable;
- a discussion of any material U.S. federal income tax considerations applicable to the exercise of the warrants;
- the date on which the right to exercise the warrants will commence, and the date on which the right will expire;
- the maximum or minimum number of warrants that may be exercised at any time;
- information with respect to book-entry procedures, if any; and
- any other terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

**Exercise of Warrants**

Each warrant will entitle the holder of the warrant to purchase for cash the amount of common shares, preference shares or debt securities at the exercise price stated or determinable in the applicable prospectus supplement for the warrants. Warrants may be exercised at any time up to the close of business on the expiration date shown in

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the applicable prospectus supplement, unless otherwise specified in such prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void. Warrants may be exercised as described in the applicable prospectus supplement. When the warrant holder makes the payment and properly completes and signs the warrant certificate at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement, we will, as soon as possible, forward the common shares, preference shares or debt securities that the warrant holder has purchased. If the warrant holder exercises the warrant for less than all of the warrants represented by the warrant certificate, we will issue a new warrant certificate for the remaining warrants.

The description in the applicable prospectus supplement of any warrants we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable warrant agreement and warrant certificate, which will be filed with the SEC if we offer warrants. For more information on how you can obtain copies of any warrant certificate or warrant agreement if we offer warrants, see Where You Can Find More Information . We urge you to read the applicable warrant certificate, the applicable warrant agreement and any applicable prospectus supplement in their entirety.

**DESCRIPTION OF SUBSCRIPTION RIGHTS**

We may issue subscription rights to purchase common shares, preference shares, debt securities or other securities. We may issue subscription rights independently or together with any other offered security, which may or may not be transferable by the securityholder. In connection with any offering of subscription rights, we may enter into a standby arrangement with one or more underwriters or other purchasers pursuant to which the underwriters or other purchasers may be required to purchase any securities remaining unsubscribed for after such offering.

The prospectus supplement relating to any subscription rights we may offer will contain the specific terms of the subscription rights. These terms may include the following:

- the price, if any, for the subscription rights;
- the exercise price payable for each common share, preference share, debt securities or other securities upon the exercise of the subscription rights;
- the number of subscription rights issued to each securityholder;
- the number and terms of each common share, preference share, debt securities or other securities which may be purchased per each subscription right;
- the extent to which the subscription rights are transferable;
- any provisions for adjustment of the number or amount of securities receivable upon exercise of the subscription rights or the exercise price of the subscription rights;
- any other terms of the subscription rights, including the terms, procedures and limitations relating to the exchange and exercise of the subscription rights;
- the date on which the right to exercise the subscription rights shall commence, and the date on which the subscription rights shall expire;
- the extent to which the subscription rights may include an over-subscription privilege with respect to unsubscribed securities; and
- if applicable, the material terms of any standby underwriting or purchase arrangement entered into by us in connection with the offering of subscription rights.

The description in the applicable prospectus supplement of any subscription rights we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable subscription rights certificate or subscription rights agreement, which will be filed with the SEC if we offer subscription rights. For more information on how you can obtain copies of any subscription rights certificate or subscription rights agreement if we offer subscription rights, see Where You Can Find More Information . We urge you to read the applicable subscription rights certificate, the applicable subscription rights agreement and any applicable prospectus supplement in their

entirety.

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**DESCRIPTION OF UNITS**

As specified in the applicable prospectus supplement, we may issue units consisting of one or more debt securities, common shares, preference shares, warrants, subscription rights or any combination of such securities. In addition, the prospectus supplement relating to units will describe the terms of any units we issue, including as applicable:

- the designation and terms of the units and the securities included in the units;
- any provision for the issuance, payment, settlement, transfer or exchange of the units;
- the date, if any, on and after which the units may be transferred separately;
- whether we will apply to have the units traded on a securities exchange or securities quotation system;
- any material United States federal income tax consequences; and
- how, for United States federal income tax purposes, the purchase price paid for the units is to be allocated among the component securities.

The description in the applicable prospectus supplement of any units we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable unit certificate or unit agreement, which will be filed with the SEC if we offer units. For more information on how you can obtain copies of any unit certificate or unit agreement if we offer units, see Where You Can Find More Information . We urge you to read the applicable unit certificate, the applicable unit agreement and any applicable prospectus supplement in their entirety.

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## LEGAL MATTERS

Unless otherwise indicated in the applicable prospectus supplement, certain legal matters with respect to the laws of Bermuda will be passed upon for us by Conyers Dill & Pearman Limited, Hamilton, Bermuda. Certain matters of U.S. federal and New York law will be passed upon for us by Jones Day, New York, New York

## EXPERTS

The consolidated financial statements of Fly Leasing Limited incorporated herein by reference to Fly Leasing Limited's Annual Report on Form 20-F for the fiscal year ended December 31, 2013 (including schedules appearing therein) and the effectiveness of Fly Leasing Limited's internal control over financial reporting as of December 31, 2013 have been audited by Ernst & Young LLP, an independent registered public accounting firm, as set forth in their reports thereon, incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of said firm as experts in auditing and accounting.

## ENFORCEABILITY OF CIVIL LIABILITIES

We are incorporated under the laws of Bermuda and are managed and controlled in Ireland. Our business is based outside the United States, a majority of our directors and officers reside outside the United States, and a majority of our assets and some or all of the assets of such persons may be located in jurisdictions outside the United States. Although we have appointed Puglisi & Associates, 850 Library Ave., Suite 204, Newark, Delaware 19711 as our agent to receive service of process with respect to any actions against us arising out of violations of the U.S. federal securities laws in any federal or state court in the United States relating to the transactions covered by this prospectus, it may be difficult for investors to effect service of process within the United States on our directors and officers who reside outside the United States or to enforce against us or our directors and officers judgments of U.S. courts predicated upon civil liability provisions of the U.S. federal securities laws.

There is no treaty in-force between the United States and Bermuda or Ireland providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters. As a result, whether a U.S. judgment would be enforceable in Bermuda or Ireland against us or our directors and officers depends on whether the U.S. court that entered the judgment is recognized by a Bermuda or Irish court as having jurisdiction over us or our directors and officers, as determined by reference to Bermuda or Irish conflict of law rules. The courts of Bermuda or Ireland would recognize as a valid judgment, a final and conclusive judgment in personam obtained in a U.S. court pursuant to which a sum of money is payable (other than a sum of money payable in respect of multiple damages, taxes or other charges of a like nature or in respect of a fine or other penalty). The courts of Bermuda or Ireland would give a judgment based on such a U.S. judgment as long as (1) the U.S. court had proper jurisdiction over the parties subject to the judgment; (2) the U.S. court did not contravene the rules of natural justice of Bermuda or Ireland; (3) the U.S. judgment was not obtained by fraud; (4) the enforcement of the U.S. judgment would not be contrary to the public policy of Bermuda or Ireland; (5) no new admissible evidence relevant to the action is submitted prior to the rendering of the judgment by the courts of Bermuda or Ireland; (6) there is due compliance with the correct procedures under the laws of Bermuda or Ireland; and (7) the U.S. judgment is not inconsistent with any judgment of the courts of Bermuda or Ireland in respect of the same matter.

In addition to and irrespective of jurisdictional issues, neither Bermuda nor Irish courts will enforce a provision of the U.S. federal securities law that is either penal in nature or contrary to public policy. It is the advice of our counsel that an action brought pursuant to a public or penal law, the purpose of which is the enforcement of a sanction, power or right at the instance of the state in its sovereign capacity, is unlikely to be entertained by Bermuda or Irish courts. Specified remedies available under the laws of U.S. jurisdictions, including specified remedies under U.S. federal securities laws, may not be available under Bermuda or Irish law or enforceable in a Bermuda or Irish court, as they

are likely to be contrary to Bermuda or Irish public policy. Further, no claim may be brought in Bermuda or Ireland against us or our directors and officers in the first instance for a violation of U.S. federal securities laws because these laws have no extraterritorial application under Bermuda or Irish law and do not have force of law in Bermuda or Ireland.

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## WHERE YOU CAN FIND MORE INFORMATION

The documents incorporated by reference into this prospectus are available from us upon request. We will provide a copy of any and all of the information that is incorporated by reference in this prospectus, without charge, upon written or oral request. If you would like to obtain this information from us, please direct your request, either in writing or by telephone, to:

Investor Relations
Fly Leasing Limited
West Pier
Dun Laoghaire, County Dublin
Ireland
+353-1-231-1900

We are subject to the information and periodic reporting requirements of the Exchange Act applicable to foreign private issuers and will fulfill the obligations with respect to those requirements by filing reports with the SEC. These periodic reports and other information may be inspected and copied at the SEC's Public Reference Room at 100 F. Street, N.E., Washington, D.C. 20549. Copies of these materials can also be obtained by mail at prescribed rates from the Public Reference Room of the SEC, 100 F. Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an internet site that contains reports, proxy and information statements and other information regarding the Company and other issuers that file electronically with the SEC. The address of the SEC internet site is www.sec.gov. This information is also available through the investor relations page on our website, www.flyleasing.com.

As a foreign private issuer, we will be exempt from the rules under the Exchange Act related to the furnishing and content of proxy statements, and our officers, directors and principal shareholders will be exempt from the reporting and short-swing profit recovery provisions contained in Section 16 of the Exchange Act relating to their purchases and sales of common shares. In addition, we will not be required under the Exchange Act to file annual, quarterly and current reports and financial statements with the SEC as frequently or as promptly as United States companies whose securities are registered under the Exchange Act. However, we intend to file with the SEC, within 90 days after the end of each fiscal year, an annual report on Form 20-F containing financial statements audited by an independent public accounting firm. We also intend to furnish quarterly reports on Form 6-K containing unaudited interim financial information for each of the first three quarters of each fiscal year.

## INCORPORATION OF INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference into this prospectus, and any accompanying prospectus supplement, the information we have filed with the SEC. This means that we can disclose important information by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC prior to the termination of this offering will also be deemed to be incorporated by reference into this prospectus and to be a part hereof from the date of filing of such documents and will automatically update and supersede previously filed information, including information contained in this document.

We incorporate by reference into this prospectus and any accompanying prospectus supplement the following documents that we have filed with the SEC:

- Annual Report on Form 20-F for the fiscal year ended December 31, 2013, filed with the SEC on March 14, 2014;

- Current Reports on Form 6-K, filed with the SEC on May 14, 2014, June 25, 2014 and August 6, 2014; and
- Registration Statement on Form 8-A, filed with the SEC on September 25, 2007.

Copies of these filings are available free of charge by writing to Fly Leasing Limited, West Pier, Dun Laoghaire, County Dublin, Ireland, Attention: Investor Relations, or by telephoning us at +353-1-231-1900.

We are also incorporating by reference all subsequent annual reports on Form 20-F that we file with the SEC and certain reports on Form 6-K that we furnish to the SEC between the date that we initially file the registration

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statement to which this prospectus relates and the termination of the offering of the securities (if they state that they are incorporated by reference into this prospectus). In all cases, you should rely on the later information over different information included in this prospectus.

Any statement made in this prospectus concerning the contents of any contract, agreement or other document is only a summary of the actual document. You may obtain a copy of any document summarized in this prospectus at no cost by writing to or telephoning us at the address and telephone number given above. Each statement regarding a contract, agreement or other document is qualified in its entirety by reference to the actual document.

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**ISSUER**
**Fly Leasing Limited**
**West Pier**
**Dun Laoghaire**
**County Dublin, Ireland**

**LEGAL ADVISORS**

***To the Issuer***

***As to U.S. Federal and New York law:***
**Jones Day**
**222 East 41st Street**
**New York, New York 10017**
**U.S.A.**

***As to Bermuda law:***
**Conyers Dill & Pearman Limited**
**Clarendon House**
**2 Church Street**
**PO Box HM 666**
**Hamilton, Bermuda**

***To the Underwriters***

***As to U.S. Federal and New York law:***
**Clifford Chance US LLP**
**31 West 52nd Street**
**New York, New York 10019**
**U.S.A.**

**INDEPENDENT AUDITOR OF THE ISSUER**
**Ernst & Young LLP**
**560 Mission St., Suite 1600**
**San Francisco, California 94105**
**U.S.A.**

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**$400,000,000**

**Fly Leasing Limited**

**6.750% Senior Notes due 2020**

**% Senior Notes due 2021**

**PROSPECTUS SUPPLEMENT**

*Joint Book-Running Managers*

| | | | |
|---|---|---|---|
| **Jefferies** | **Citigroup** | **Deutsche Bank Securities** | **RBC Capital Markets** |

*Co-Managers*

| | | |
|---|---|---|
| **BNP PARIBAS** | **Nomura** | **Cowen and Company** |

, 2014