

SunGard VPM Inc.  
Form S-1  
April 26, 2010

**Table of Contents**

**As filed with the Securities and Exchange Commission on April 26, 2010**

**Registration No. 333-158657**

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

**Form S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**SunGard Data Systems Inc.**

*(Exact name of registrant issuer as specified in its charter)*

**SEE TABLE OF ADDITIONAL REGISTRANTS**

**Delaware**  
*(State or other jurisdiction  
of incorporation)*

**7374**  
*(Primary Standard Industrial  
Classification Code Number)*

**51-0267091**  
*(I.R.S. Employer  
Identification Number)*

**680 East Swedesford Road Wayne, Pennsylvania 19087  
(484)-582-2000**

*(Address, including zip code, and telephone number, including area code, of registrants principal executive offices)*

**Victoria E. Silbey, Esq.  
General Counsel  
680 East Swedesford Road Wayne, Pennsylvania 19087  
(484)-582-2000**

*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

***With a copy to:***

**Richard A. Fenyas, Esq.  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017-3954  
Tel: (212) 455-2000**

**Approximate date of commencement of proposed offer:** As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this Form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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       Accelerated filer       Non-accelerated filer       Smaller reporting company

(Do not check if a smaller reporting company).

---

**Table of Contents****CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
91/8% Senior Notes due 2013	(1)	(1 )	(1 )
105/8% Senior Notes due 2015	(1)	(1 )	(1 )
101/4% Senior Subordinated Notes due 2015	(1)	(1 )	(1 )
Guarantees of 91/8% Senior Notes due 2013(2)	(1)(3)	(1 )(3)	(1 )(3)
Guarantees of 105/8% Senior Notes due 2015	(1)(3)	(1 )(3)	(1 )(3)
Guarantees of 101/4% Senior Subordinated Notes due 2015(2)	(1)(3)	(1 )(3)	(1 )(3)

- (1) An indeterminate amount of securities are being registered hereby to be offered solely for market-making purposes by an affiliate of the registrant. Pursuant to Rule 457(q) under the Securities Act of 1933, as amended, no filing fee is required.
- (2) See inside facing page for additional registrant guarantors.
- (3) Pursuant to Rule 457(n) under the Securities Act, no separate filing fee is required for the guarantees.

**The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

---

**Table of Contents****Table of Additional Registrant Guarantors**

<b>Exact Name of Registrant Guarantor as Specified in Its Charter</b>	<b>State or Other Jurisdiction of Incorporation or Organization</b>	<b>I.R.S. Employer Identification Number</b>	<b>Address, Including Zip Code and Telephone Number, Including Area Code, of Registrant Guarantor's Principal Executive Offices</b>
Advanced Portfolio Technologies, Inc.	Delaware	22-3245876	340 Madison Avenue 8th Floor New York, NY 10173
Automated Securities Clearance LLC	Delaware	22-3701255	545 Washington Blvd. 7th Floor Jersey City, NJ 07310
Exeter Educational Management Systems, Inc.	Massachusetts	04-3123926	141 Portland St. Cambridge, MA 02139
GL Trade Overseas, Inc.	Delaware	06-1414402	340 Madison Avenue 8th Floor New York, NY 10173
Inflow LLC	Delaware	84-1439489	680 E. Swedesford Rd. Wayne, PA 19087
Online Securities Processing Inc.	Delaware	77-0589377	680 E. Swedesford Rd. Wayne, PA 19087
SIS Europe Holdings LLC	Delaware	41-1511643	1105 North Market Street Suite 1412 Wilmington, DE 19801
SRS Development Inc.	Delaware	23-2746281	1105 North Market Street Suite 1412 Wilmington, DE 19801
SunGard Ambit LLC	Delaware	04-2766162	3 Post Office Square 11th Floor Boston, MA 02109
SunGard Asia Pacific Inc.	Delaware	51-0370861	601 Walnut St. Suite 1010 Philadelphia, PA 19106
SunGard Availability Services LP	Pennsylvania	23-2106195	680 E. Swedesford Rd. Wayne, PA 19087
SunGard Availability Services Ltd.	Delaware	23-3024711	680 E. Swedesford Rd. Wayne, PA 19087
SunGard AvantGard LLC	California	95-3440473	23975 Park Sorrento 4th Floor Calabasas, CA 91302
SunGard Business Systems LLC	Delaware	23-2139612	5510 77 Center Drive Charlotte, NC 28217
SunGard Computer Services LLC	Delaware	68-0499469	600 Laurel Road Voorhees, NJ 08043

Edgar Filing: SunGard VPM Inc. - Form S-1

SunGard Consulting Services LLC	Delaware	87-0727844	10375 Richmond Suite 700 Houston, TX 77042
SunGard CSA LLC	Delaware	20-4280640	680 E. Swedesford Rd. Wayne, PA 19087
SunGard Development Corporation	Delaware	23-2589002	1105 North Market Street Suite 1412 Wilmington, DE 19801
SunGard DIS Inc.	Delaware	23-2829670	1105 North Market Street Suite 1412 Wilmington, DE 19801

---

**Table of Contents**

<b>Exact Name of Registrant Guarantor as Specified in Its Charter</b>	<b>State or Other Jurisdiction of Incorporation or Organization</b>	<b>I.R.S. Employer Identification Number</b>	<b>Address, Including Zip Code and Telephone Number, Including Area Code, of Registrant Guarantor's Principal Executive Offices</b>
SunGard Energy Systems Inc.	Delaware	13-4081739	601 Walnut St. Suite 1010 Philadelphia, PA 19106
SunGard eProcess Intelligence LLC	Delaware	13-3217303	70 South Orange Avenue Livingston, NJ 07039
SunGard Financial Systems LLC	Delaware	23-2585361	601 2nd Avenue South Hopkins, MN 55343
Sungard Higher Education Inc.	Delaware	23-2303679	4 Country View Road Malvern, PA 19355
SunGard Higher Education Managed Services Inc.	Delaware	23-2414968	2300 Maitland Center Pkwy Suite 340 Maitland, FL 32751
SunGard Investment Systems LLC	Delaware	23-2115509	11 Salt Creek Lane Hinsdale, IL 60521
SunGard Investment Ventures LLC	Delaware	51-0297001	1105 North Market Street Suite 1412 Wilmington, DE 19801
SunGard iWORKS LLC	Delaware	23-2814630	11560 Great Oaks Way Suite 200 Alpharetta, GA 30022
SunGard iWORKS P&C (US) Inc.	Delaware	13-3248040	200 Business Park Dr. Armonk, NY 10504
SunGard Kiodex LLC	Delaware	13-4100480	340 Madison Avenue 8th Floor New York, NY 10173
SunGard NetWork Solutions Inc.	Delaware	23-2981034	680 E. Swedesford Rd. Wayne, PA 19087
SunGard Public Sector Inc.	Florida	59-2133858	1000 Business Center Drive Lake Mary, FL 32746
SunGard Reference Data Solutions LLC	Delaware	72-1571745	340 Madison Avenue 8th Floor New York, NY 10173
SunGard SAS Holdings Inc.	Delaware	26-0052190	680 E. Swedesford Rd. Wayne, PA 19087
SunGard Securities Finance LLC	Delaware	13-3799258	12B Manor Parkway Salem, NH 03079
SunGard Securities Finance International LLC	Delaware	13-3809371	12B Manor Parkway Salem, NH 03079
SunGard Shareholder Systems LLC	Delaware	23-2025519	951 Mariners Island Blvd. 5 <sup>th</sup> Floor San Mateo, CA 94404
SunGard Software, Inc.	Delaware	51-0287708	1105 North Market St. Suite 1412

Edgar Filing: SunGard VPM Inc. - Form S-1

SunGard Systems International Inc.	Pennsylvania	23-2490902	Wilmington, DE 19801 340 Madison Avenue 8th Floor
SunGard Technology Services LLC	Delaware	23-2579118	New York, NY 10173 680 E. Swedesford Rd. Wayne, PA 19087
SunGard VeriCenter, Inc	Delaware	76-0624039	680 East Swedesford Rd Wayne, PA 19087

---



**Table of Contents**

<b>Exact Name of Registrant Guarantor as Specified in Its Charter</b>	<b>State or Other Jurisdiction of Incorporation or Organization</b>	<b>I.R.S. Employer Identification Number</b>	<b>Address, Including Zip Code and Telephone Number, Including Area Code, of Registrant Guarantor's Principal Executive Offices</b>
SunGard VPM Inc.	New York	11-3159462	1660 Walt Whitman Rd, Suite 130 Melville, NY, 11747
SunGard Workflow Solutions LLC	Delaware	63-1019430	104 Inverness Place Birmingham, AL 35242

---

**Table of Contents**

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED April 26, 2010**

**PRELIMINARY PROSPECTUS**

**SunGard Data Systems Inc.  
\$1,600,000,000 91/8% Senior Notes due 2013  
\$500,000,000 105/8% Senior Notes due 2015  
\$1,000,000,000 101/4% Senior Subordinated Notes due 2015**

The 91/8% Senior Notes due 2013 (the senior notes due 2013 ) were issued in exchange for the 91/8% Senior Notes due 2013 originally issued on August 11, 2005. The 101/4% Senior Subordinated Notes due 2015 (the senior subordinated notes ) were issued in exchange for the 101/4% Senior Subordinated Notes due 2015 originally issued on August 11, 2005. The 105/8% Senior Notes due 2015 (the senior notes due 2015 ) were issued in exchange for the 105/8% Senior Notes due 2015 originally issued on September 29, 2008. The senior notes due 2013, the senior notes due 2015 (collectively, the senior notes ) and the senior subordinated notes are collectively referred to herein as the notes, unless the context otherwise requires.

The senior notes due 2013 bear interest at a rate of 91/8% per annum and mature on August 15, 2013. The senior subordinated notes bear interest at a rate of 101/4% per annum and mature on August 15, 2015. Interest on the senior notes due 2013 and the senior subordinated notes due 2015 is payable on February 15 and August 15 of each year, beginning on February 15, 2006. The senior notes due 2015 bear interest at a rate of 105/8% per annum and mature on May 15, 2015. Interest on the senior notes due 2015 is payable on April 1 and October 1 of each year, beginning April 1, 2009.

We may redeem some or all of the senior notes due 2013 at any time prior to August 15, 2009, some or all of the senior subordinated notes at any time prior to August 15, 2010 and some or all of the senior notes due 2015 at any time prior to April 1, 2012, in each case, at a price equal to 100% of the principal amount of the notes redeemed plus accrued and unpaid interest to the redemption date and a make-whole premium, as described in this prospectus. We may redeem the senior notes due 2013 at any time on or after August 15, 2009, the senior subordinated notes at any time on or after August 15, 2010 and the senior notes due 2015 at any time on or after April 1, 2012, in each case, at the redemption prices set forth in this prospectus. In addition, we may redeem up to 35% of the senior notes due 2015 until October 1, 2011 with the proceeds of certain equity offerings at the redemption prices set forth in this prospectus. There is no sinking fund for any of the notes.

The senior notes are our senior unsecured obligations and rank equal in right of payment to all of our existing and future senior indebtedness. The senior subordinated notes are our unsecured senior subordinated obligations and are subordinated in right of payment to all of our existing and future senior indebtedness, including the senior secured credit facilities, the existing senior notes and the senior notes offered hereby. Each of our domestic subsidiaries that guarantees our senior secured credit facilities are initially unconditionally guaranteeing the senior notes with guarantees that rank equal in right of payment to all of the senior indebtedness of such subsidiary, and are initially unconditionally guaranteeing the senior subordinated notes with guarantees that are subordinated in right of payment to all existing and future senior indebtedness of such subsidiary. The notes and the guarantees are effectively subordinated to our existing and future secured indebtedness and that of the guarantors to the extent of the assets securing such indebtedness.

This prospectus includes additional information on the terms of the notes, including redemption and repurchase prices, covenants and transfer restrictions.

See **Risk Factors** beginning on page 16 for a discussion of certain risks that you should consider before investing in the notes.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the notes or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

This prospectus has been prepared for and may be used by Goldman, Sachs & Co. and other affiliates of The Goldman Sachs Group, Inc. in connection with offers and sales of the notes related to market-making transactions in the notes effected from time to time. Such affiliates of The Goldman Sachs Group, Inc. may act as principal or agent in such transactions, including as agent for the counterparty when acting as principal or as agent for both counterparties, and may receive compensation in the form of discounts and commissions, including from both counterparties, when it acts as agents for both. Such sales will be made at prevailing market prices at the time of sale, at prices related thereto or at negotiated prices. We will not receive any proceeds from such sales.

The date of this prospectus is \_\_\_\_\_, 2010.

---

**You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with different information. The prospectus may be used only for the purposes for which it has been published and no person has been authorized to give any information not contained herein. If you receive any other information, you should not rely on it. We are not making an offer of these securities in any state where the offer is not permitted.**

## TABLE OF CONTENTS

	<b>Page</b>
<u>Prospectus Summary</u>	1
<u>Summary Historical Consolidated Financial Data</u>	14
<u>Risk Factors</u>	16
<u>Forward-Looking Statements</u>	28
<u>Use of Proceeds</u>	29
<u>Cash and Capitalization</u>	29
<u>Selected Historical Consolidated Financial Information</u>	31
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	34
<u>Business</u>	54
<u>Management</u>	64
<u>Security Ownership of Certain Beneficial Owners</u>	88
<u>Certain Relationships and Related Party Transactions</u>	91
<u>Description of Other Indebtedness</u>	93
<u>Description of Senior Notes Due 2013</u>	97
<u>Description of Senior Notes Due 2015</u>	148
<u>Description of Senior Subordinated Notes</u>	199
<u>Certain United States Federal Income and Estate Tax Consequences</u>	254
<u>Certain ERISA Considerations</u>	258
<u>Plan of Distribution</u>	259
<u>Legal Matters</u>	260
<u>Experts</u>	260
<u>Where You Can Find More Information</u>	260
<u>Index to Consolidated Financial Statements</u>	F-1
<u>Certificate of Incorporation of GL Trade Overseas, Inc.</u>	
<u>By-Laws of GL Trade Overseas, Inc.</u>	
<u>Certificate of Merger of SunGard Ambit LLC</u>	
<u>Limited Liability Company Agreement of SunGard Ambit LLC</u>	
<u>Certificate of Formation-Conversion of SunGard Kiodes LLC</u>	
<u>Limited Liability Company Agreement of SunGard Kiodes LLC</u>	
<u>Opinion of Simpson Thacher &amp; Bartlett LLP</u>	
<u>Opinion of Sheppard, Mullin, Richter &amp; Hampton LLP</u>	
<u>Opinion of Blank Rome LLP</u>	
<u>Opinion of Ropes &amp; Gray LLP</u>	
<u>Consent of PricewaterhouseCoopers LLP</u>	
<u>Powers of Attorney</u>	

**Table of Contents**

**PROSPECTUS SUMMARY**

*This summary highlights information contained elsewhere in this prospectus. This summary may not contain all of the information that may be important to you in making your investment decision. You should read this entire prospectus, including the financial data and related notes and section entitled Risk Factors, before making an investment decision. Unless the context otherwise indicates, as used in this prospectus, the terms SunGard, we, our, us and the company and similar terms refer to SunGard Data Systems Inc. and its subsidiaries on a consolidated basis.*

**Our Company**

We are one of the world's leading software and technology services companies. We provide software and processing solutions to institutions throughout the financial services industry, higher education and the public sector. We also provide disaster recovery services, managed services, information availability consulting services and business continuity management software.

We serve more than 25,000 customers in more than 70 countries. We seek to establish long-term customer relationships by negotiating multi-year contracts and by emphasizing customer support and product quality and integration. We believe that we are one of the most efficient operators of mission-critical IT solutions as a result of the economies of scale we derive from serving multiple customers on shared platforms. Our revenue is highly diversified by customer and product, with no single customer accounting for more than 9% of our total revenue during any of the past three fiscal years. We estimate that approximately 90% of our revenue for the past three fiscal years was recurring in nature.

**Table of Contents**

We operate our business in four segments:

**Our Segments**

	<b>Financial Systems</b>	<b>Software &amp; Processing Higher Education</b>	<b>Public Sector</b>	<b>Availability Services</b>
Revenue for the Year Ended December 31, 2009	\$3.1 billion	\$526 million	\$397 million	\$1.5 billion
Product and Service Offerings	Specialized software and processing solutions that automate the mission-critical business processes associated with trading securities, managing portfolios and accounting for investment assets, and consulting and IT management services	Specialized software and enterprise resource planning solutions, professional services, and consulting and IT management services to address the administrative, academic and community needs of higher education institutions	Specialized software and enterprise resource planning and administrative solutions, public safety and justice solutions, K-12 student information solutions, and consulting and IT management services	Recovery services and managed services, consulting, and business continuity management software that help companies maintain uninterrupted access to their mission-critical IT systems
Number of Customers	14,000	1,600	2,000	10,000
Primary Customers	Financial services companies  Corporate and government treasury departments  Energy companies	Higher education organizations around the world, including colleges, universities, campuses, foundations and state systems	School districts  Central, federal, state and local governments  Public safety and justice agencies  Not-for-profit organizations	IT departments of large, medium and small companies across virtually all industries, primarily in North America and Europe

We were acquired on August 11, 2005 in a leveraged buy-out by a consortium of private equity investment funds associated with Bain Capital Partners, The Blackstone Group, Goldman Sachs & Co., Kohlberg Kravis Roberts & Co., Providence Equity Partners, Silver Lake and TPG (the Transaction). As a result of the Transaction, we are highly leveraged and our equity is no longer publicly traded.

**Financial Systems**

FS provides mission-critical software and IT services to institutions in virtually every segment of the financial services industry. These systems automate the many complex processes associated primarily with managing investment portfolios and trading of and accounting for investment assets. These solutions address the processing

requirements of a broad range of users within financial services. In addition, we also provide professional services that focus on application implementation and integration of these solutions and on custom software development. Since our inception, we have consistently enhanced our FS solutions to add

**Table of Contents**

new features, process new types of financial instruments, meet new regulatory requirements, incorporate new technologies and meet evolving customer demands.

We deliver many of our FS solutions as an application service provider, primarily from our data centers located in North America and Europe that customers access through the Internet or virtual private networks. We also deliver some of our FS solutions by licensing the software to customers for use on their own computers.

Our FS businesses are grouped internally into two divisions. The main distinction between the two divisions is that one division serves customers whose businesses are primarily in North America while the other division serves customers whose businesses are primarily international. The grouping of FS businesses in two divisions also takes into account the balance of management workload.

*Americas Division:* The Americas division includes our Brokerage & Clearance, Corporations, Global Services, Insurance, Trading and Wealth Management businesses. It offers software solutions and strategic IT consulting to a broad range of users, including chief financial officers, compliance officers, custodians, insurers and reinsurers, plan administrators, registered investment advisors, treasurers, traders and wealth managers. These solutions help automate and manage the trading and processing requirements of banks, broker/dealers, insurance companies, pension companies, fiduciary trusts and other financial services firms primarily in North America.

*International Division:* The International division includes our Alternative Investments, Banks, Capital Markets & Investment Banking, Global Trading and Institutional Asset Management businesses. It also includes our FS international distribution organization which on behalf of many of our FS businesses conducts business with customers in China, India, Japan, and the rest of Asia-Pacific, Central and Eastern Europe, the Middle East, Africa and Latin America. The International division offers software solutions and strategic IT consulting to a broad range of users including asset managers, compliance officers, fund administrators, market makers and traders.

Our FS businesses in the Americas and International divisions are organized in the following customer-facing business areas:

*Alternative Investments:* We offer solutions specifically designed for firms specializing in alternative investments. These solutions support multiple asset classes and their derivatives, including equities, foreign exchange, interest rates, credit, commodities and convertibles. Solutions include strategy-specific applications for convertible and capital structure arbitrage, global repurchase agreements, stock finance, and listed options trading. Our enterprise-wide, straight-through processing solutions meet the trading, risk management, and investor and portfolio accounting requirements of single- and multi-strategy institutions.

*Banks:* We provide an integrated solution suite for asset/liability management, budgeting and planning, regulatory compliance, and profitability. Our products also manage all aspects of universal banking including back-office transaction processing, front-office multi-channel delivery, card management and payments.

*Corporations:* Our solutions provide chief financial officers and treasurers with the ability to monitor cash flow in real time and with increased operational controls on treasury, receivables and payments functions. An end-to-end collaborative financial management framework gives chief financial officers and treasurers tools to help drive maximum value from working capital and reduce risk.

*Brokerage & Clearance:* We are a leading provider of solutions for the global processing of securities and derivatives. These solutions support trade processing, clearing and accounting, helping brokerage and clearing firms streamline operations and control risk and cost. Our solutions provide centralized transactional databases, support cross-asset business functions, and offer consolidated views of accounts and risk management. These solutions help



firms gain front-to-back operational efficiencies, realize advantages of scale and support business growth.

*Capital Markets & Investment Banking:* Our solutions support cross-asset trading and straight-through processing of derivative instruments, helping investment banks to manage global trading books in multiple asset classes. These solutions also support securities lending and borrowing, repurchase agreements, and

## **Table of Contents**

related transactions. We also offer solutions for the enterprise-wide management of market, credit, interest rate and liquidity risk. In addition, we provide a framework for helping banks to manage operational risk and compliance requirements.

*Global Services:* We deliver consulting, technology and professional services for financial services, energy organizations and corporations. Leveraging SunGard's global delivery model, approximately 4,500 consultants and developers help customers achieve value from advanced technology, application management, business process management, business process outsourcing, information management, infrastructure management and testing services.

*Global Trading:* We provide multi-asset, front- to back-office trading solutions for equities, fixed income, derivatives, FX and commodities on exchanges worldwide. These solutions support full lifecycle trading and trade processing activities including information services, market connectivity and order management that help improve trade efficiency and risk monitoring.

*Institutional Asset Management:* We provide asset managers with comprehensive, integrated solutions to support their global investment operations. These solutions help connect every stage of the investment lifecycle, from portfolio analysis and electronic trading connectivity to regulatory compliance and investment accounting and reporting. We also provide systems for trading, pre- and post-trade compliance measurement, risk management, performance measurement and attribution, and data management.

*Insurance:* We provide IT solutions for the insurance industry in each of the following major business lines: life/health/annuities/pensions, property and casualty, reinsurance and asset management. Our software and services support functions from the front-office through the back-office from customer service and policy administration to actuarial calculations, financial and investment accounting, and reporting.

*Trading:* We provide traders of U.S. equities, commodities and listed options with Web-based, electronic trading platforms for trade order management, direct market access and risk and compliance management. Our cross-asset solutions automate the transaction lifecycle, providing network connectivity and straight-through processing from pre- to post-trade. Our data analysis tools help improve the speed and ease of optimizing portfolios, assessing risk exposure and identifying market opportunities. Our energy solutions help financial services institutions, industrial and energy companies to efficiently compete in global energy markets by streamlining and integrating the trading, risk management and operations of physical commodities and their associated financial instruments.

*Wealth Management:* Our wealth management solutions help investment advisors, trust bank managers and wealth managers grow their businesses by helping support the needs of their mass affluent and high-net worth clients. We provide solutions for financial planning, asset allocation, surveillance and suitability, new account opening, portfolio management, unified managed account programs, trade execution, asset management, custody and trust accounting. Our compliance and data management solutions help compliance officers mitigate risk and improve efficiencies through centralized data infrastructures, automated trade supervision and code-of-ethics monitoring. We also serve organizations that administer defined-contribution and defined-benefit retirement plans. Our retirement plan recordkeeping systems support many plan types and fulfill functions ranging from processing of contributions and payments to tax reporting and trade management.

## ***Higher Education***

In HE, we provide software solutions, strategic and systems integration consulting, and technology management services to colleges and universities, including community colleges, liberal arts colleges, public universities, foundations, state systems, central and district offices, and international institutions, to help them support communities of learners. Higher education institutions rely on our broad portfolio of solutions and expert guidance to find better

ways to teach, learn, manage and connect with their constituents. Our Open Digital Campus strategy combines our deep expertise in higher education with alternative delivery models, modular software components, and modern technologies that help universities and colleges design and build their next-generation digital campuses. Our solutions include administration and enterprise resource planning,

## **Table of Contents**

advancement, IT management and outsourcing, portal and communication tools, performance management, enrollment management, academic performance and strategic planning.

### ***Public Sector***

In PS, we provide software and processing solutions designed to meet the specialized needs of central, federal, state and local governments, public safety and justice agencies, public schools, utilities, nonprofits, and other public sector institutions. Our systems and services help institutions improve the efficiency of their operations and utilize the Web and wireless technologies in serving their constituents. Our PS products support a range of specialized enterprise resource planning and administrative solutions for functions such as accounting, human resources, payroll, utility billing, land management, public safety and criminal justice, and IT managed services.

### ***Availability Services***

In AS, we help our customers improve the resilience of mission critical systems. We do this by designing, implementing and managing cost-effective solutions using people, process and technology to address enterprise IT availability needs. Since we pioneered commercial disaster recovery in the 1970s, we believe that our specialization in information availability solutions, together with our experience, technology expertise, resource management capabilities, vendor neutrality and diverse service offerings, have uniquely positioned us to meet customers' varied needs in an environment in which businesses are critically dependent on availability of IT. We have a comprehensive portfolio of services that extend from always ready standby services to high availability advanced recovery services and always on production and managed services, including planning and provisioning of private and public cloud computing and software-as-a-service (SaaS) platforms. We also provide business continuity management software and consulting services to help our customers design, implement and maintain plans to protect their central business systems. To serve our 10,000 AS customers, we have 5,000,000 square feet of operations space at over 80 facilities in nine countries and a global network of approximately 25,000 miles. Since our inception, we have had a 100% success rate helping our customers recover from unplanned interruptions resulting from major disasters including the Gulf Coast hurricanes in 2008, widespread flooding in the U.K. in 2007, hurricane Katrina and Gulf Coast hurricanes in 2005, Florida hurricanes in 2004, the Northeast U.S. blackout in 2003 and the terrorist attacks of September 11, 2001.

We provide the following four categories of services: recovery services, managed services, consulting services and business continuity management software. They can be purchased independently or collectively, depending on the customer's requirements. Although recovery services remain our principal revenue generating services, managed services, consulting and business continuity management software increasingly account for a greater percentage of our new sales. Because advanced recovery and managed services are often unique to individual customers and utilize a greater proportion of dedicated (versus shared) resources, they typically require modestly more capital expenditures and command a somewhat lower operating margin rate than traditional systems recovery services. The combination of all of these services provides our customers with a total, end-to-end IT operations and information availability management solution.

*Recovery Services:* AS helps customers maintain access to the information and computer systems they need to run their businesses by providing cost-effective solutions to keep IT systems operational and secure in the event of an unplanned business disruption. These business disruptions can range from man-made events (e.g. power outages, telecommunications disruptions and acts of terrorism) to natural disasters (e.g. floods, hurricanes and earthquakes). AS offers a complete range of recovery services, depending on the length of time deemed acceptable by customers for IT systems outage—ranging from minutes (for mission-critical applications) to several hours or several days (for non-mission-critical applications). We deliver these services using processors, servers, storage devices, networks and other resources and infrastructure that are subscribed to by multiple customers, which results in economies of scale for us and cost-effectiveness for our customers. These shared services range from basic standby systems recovery

services, workforce continuity services, and mobile recovery options to blended advanced recovery or high availability solutions that typically combine systems recovery services with dedicated data storage resources that allow customers to replicate data to one of our sites, helping them minimize data loss and reduce recovery times.

## **Table of Contents**

*Managed Services:* AS provides IT infrastructure and production services that customers use to run their businesses on a day-to-day basis. These services range from co-located IT infrastructure (e.g., where AS provides data center space, power, cooling and network connectivity) to fully managed infrastructure services (e.g., where AS fully manages the daily operation of a customer's IT infrastructure). AS can also provide managed services at the customer's data center. Some managed services require dedicated processors, servers, storage devices, networks and other resources, which are either obtained by the customer or provided by us for the customer's exclusive use. Other managed services are provided on shared infrastructure. Managed services are designed in a flexible manner that allow customers to choose the services they need from a menu of options delivered on pre-agreed schedules or on an on-demand basis. Therefore, the combination of selected managed services is unique to each customer, with solutions crafted to meet that customer's specific needs. Managed services help customers augment their IT resources and skills without having to hire full-time internal IT staff and invest in infrastructure that is not fully used all the time. In 2010, we expect to launch enterprise-grade cloud computing services in North America building on our expertise in information availability and managed services.

*Consulting Services:* AS offers consulting services to help customers solve critical business continuity and IT infrastructure problems including business continuity, data storage and management, information security, and numerous categories of IT infrastructure operations.

*Business Continuity Management Software:* AS offers software solutions that help customers operate a comprehensive and professional business continuity plan across their enterprise and enable ongoing business operations in a crisis. AS software has flexible modular solutions that allow customers to add functionality as required. Modules are available to support business impact analysis, business continuity planning, incident response and emergency notification. The software solution leverages a common platform for data consistency, as well as standardized reporting for seamless automation of the business continuity process.

## **Our Strengths**

*Leading franchise in attractive industries.* Built over many years, our business has leading positions and strong customer relationships in industries with attractive growth dynamics.

*Leading industry positions.* We believe that, within the highly fragmented global market for financial services IT software and services, the majority of businesses within our FS segment are leaders in the sectors in which they participate. We believe that HE and PS are both leading providers of software and services to higher education institutions and the public sector, respectively, and that AS is the pioneer and a leading provider in the information availability services industry.

*Attractive industry dynamics.* While the economic crisis and resulting recession has had a negative impact on the sectors in which we operate, we believe that, over the long term, our primary market segments continue to have strong growth potential. We believe that our FS business will benefit from several key industry dynamics: the shift from internal to outsourced IT spending, the shift from infrastructure to application software spending, and the general increase in IT spending associated with increasing compliance and regulatory requirements and customers' increasing need for real-time information. We anticipate that our HE and PS businesses will benefit from favorable growth dynamics in higher education and public safety and justice IT spending. We believe that our AS business will continue to benefit from favorable growth in the small and medium business sector as well as in the managed services industry. We believe that our strong relationships with our customers in the relatively fragmented software and processing sectors that we serve and our extensive experience and the significant total capital that we have invested in AS help us to maintain leading positions. We believe that these factors should provide us with competitive advantages and enhance our growth potential.

*Highly attractive business model.* We have substantial recurring revenue and a diversified customer base and generate significant operating cash flow.

*Extensive portfolio of businesses with substantial recurring revenue.* With a large portfolio of proprietary services and products in each of our four business segments, we have a diversified and

## **Table of Contents**

stable business. We estimate that approximately 90% of our revenue for the past three fiscal years was recurring in nature. With the exception of our broker/dealer business, we believe that our FS revenue is more insulated from changes in trading and transaction volumes than the financial services industry at large because our FS customers generally pay us monthly fees that are based on metrics such as number of accounts, trades or transactions, users or number of hours of service. Our portfolio of solutions and the largely recurring nature of our revenue across all four of our segments have reduced volatility in our revenue and income from operations.

*Diversified and stable customer base.* Our customer base is highly diversified with no single customer accounting for more than 9% of total revenue during any of the last three fiscal years. Our base of more than 25,000 customers includes most of the world's largest financial services firms, a variety of other financial services firms, corporate and government treasury departments, energy companies, higher education institutions, school districts, local governments and not-for-profit organizations. Our AS business serves customers across virtually all industries. In addition, our track record of helping our customers improve their operational efficiency, achieve high levels of availability and address regulatory requirements results in stable, long-term customer relationships.

*Significant operating cash flow generation.* With strong operating margins and relatively moderate capital-expenditure and working-capital investment needs, we generate significant operating cash flow. Our strong cash flow allows us to meet our significant debt-service requirements and make discretionary investments to grow the business, both by investing in new products and services and through acquisitions.

*Experienced management team with track record of success with proper incentives.* Our management team fosters an entrepreneurial culture, has a long track record of operational excellence, has a proven ability to acquire and integrate complementary businesses, and is highly committed to our Company's long-term success.

*Long track record of operational excellence.* We have a solid track record of performance consistent with internal financial targets. Our experienced senior executive officers have proven capabilities in both running a global business and managing numerous applications that are important to our customers. Our FS solutions account for and manage over \$25 trillion in investment assets and process over 5 million transactions per day. In our HE business, 1,600 organizations including colleges, universities, campuses, foundations and state systems rely on our solutions. Our PS products are used by agencies that serve more than 140 million citizens in North America and 40 million citizens in the UK. Our AS business has had a 100% success rate in supporting customer recoveries since our inception.

*Successful, disciplined acquisition program.* To complement our organic growth, we have a highly disciplined program to identify, evaluate, execute and integrate acquisitions. We have completed over 170 acquisitions and overall have improved the operating performance of acquired businesses. Our ongoing acquisition program has contributed significantly to our long-term growth and success.

*Experienced and committed management team.* Our executive officers have on average more than 15 years of industry experience. Our senior managers have committed significant personal capital to our Company in connection with the Transaction.

## **Business Strategy**

We are focused on expanding our position not only as a leading provider of software and processing solutions, but also as the provider of choice for a wide range of information availability services and managed services for IT-departments in companies across virtually all industries. Our operating and financial strategy emphasizes fiscal



discipline, profitable revenue growth and significant operating cash flow generation. In pursuit of these objectives, we have implemented the following strategies:

*Expand our industry-leading franchise.* We are constantly enhancing our product and service offerings across our portfolio of businesses, further building and leveraging our customer relationships, and looking to acquire complementary businesses at attractive valuations.

**Table of Contents**

*Enhance our product and service offerings.* We continually support, upgrade and enhance our systems to incorporate new technology and meet the needs of our customers for increased operational efficiency and resilience. Our strong base of recurring revenue drives high operating margins that allow us to consistently reinvest in our products and services. In 2009 and 2008, software development expenses were 7% and 8%, respectively, of revenue from software and processing solutions. We continue to introduce innovative products and services in all four of our business segments. We believe that our focus on product enhancement and innovation will help us to increase our penetration of existing and new customers.

*Extend our strong customer relationships.* We focus on developing trusted, mutually beneficial, long-term relationships with our customers. We look to maximize cross-selling opportunities, increase our share of our customers' total IT spending and maintain a high level of customer satisfaction. Our global account management program allows us to present a single face to our larger FS customers as well as better target potential cross-selling opportunities.

*Acquire and integrate complementary businesses.* We seek opportunistically to acquire businesses that broaden our existing product and service offerings, expand our customer base and strengthen our leadership positions, especially within the fragmented FS, HE and PS markets, and that will provide us with a suitable return on investment. Before committing to an acquisition, we devote significant resources to due diligence and to developing a post-acquisition integration plan, including the identification and quantification of potential cost savings and synergies.

*Continue to enhance our attractive business model.* We continue to focus on maintaining our attractive business model and, in particular, increasing our recurring revenue base and implementing incremental operational improvements.

*Increase our recurring revenue base.* We strive to generate a high level of recurring revenue and stable cash flow from operations. We charge customers monthly subscription fees under multi-year contracts, and we continue to prefer such contracts because they offer high levels of revenue stability and visibility. Moreover, we believe that our high quality services and customized solutions help increase the level of integration and efficiency for our customers and reduce customer defections to other vendors or to in-house solutions.

*Implement incremental operational improvements.* We have identified opportunities to further increase revenue, reduce costs and improve cash flow from operations. These include the global account management program within FS, which stimulates cross-selling opportunities and enhances relationship management at our largest customers; the combination of our consulting services and technology services business units to form a global services organization which offers a broader range of services to our customers leveraging a global delivery model; the introduction of a customer relationship management system to enhance sales force automation in our AS business; the implementation of a software-as-a-service (SaaS) application development framework to help accelerate time-to-market and achieve flexible delivery of software solutions; and the consolidation of data centers within FS.

*Enhance our performance-based culture.* We are focused on enhancing our performance-based culture. Our compensation programs are designed to be based primarily on achieving high performance goals. We continue to evaluate the competitiveness of our compensation plans in order to promote retention of key individuals in both our existing and acquired businesses.

SunGard Data Systems Inc. was incorporated under Delaware law in 1982. Our principal executive offices are located at 680 East Swedesford Road, Wayne, Pennsylvania 19087. Our telephone number is (484) 582-2000.

**Table of Contents**

**The Notes**

The summary below describes the principal terms of the notes. Certain of the terms and conditions described below are subject to important limitations and exceptions. The Description of the Senior Notes and Description of the Senior Subordinated Notes sections of this prospectus contain a more detailed description of the terms and conditions of the notes.

Issuer	SunGard Data Systems Inc.
Securities Offered	91/8% Senior Notes due 2013.  105/8% Senior Notes due 2015.  101/4% Senior Subordinated Notes due 2015.
Maturity	The senior notes due 2013 mature on August 15, 2013.  The senior notes due 2015 mature on May 15, 2015.  The senior subordinated notes mature on August 15, 2015.
Interest Rate	The senior notes due 2013 bear interest at a rate of 91/8% per annum.  The senior notes due 2015 bear interest at a rate of 105/8% per annum.  The senior subordinated notes bear interest at a rate of 101/4% per annum.
Interest Payment Dates	We pay interest on the senior notes due 2013 and the senior subordinated notes on February 15 and August 15 and on the senior notes due 2015 on April 1 and October 1. Interest accrues from the most recent date to which interest has been paid or, if no interest has been paid, the issue date of the notes.
Guarantees	Each of our domestic subsidiaries that guarantees the obligations under our senior secured credit facilities are initially jointly and severally and unconditionally guaranteeing the senior notes on a senior unsecured basis and the senior subordinated notes on an unsecured senior subordinated basis.
Ranking	The senior notes are our senior unsecured obligations and:  rank senior in right of payment to our future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior notes, including the senior subordinated notes;  rank equally in right of payment to all of our existing and future senior debt and other obligations that are not, by their terms, expressly subordinated in right of payment to the senior notes; and

are effectively subordinated in right of payment to all of our existing and future secured debt including obligations under our senior secured credit facilities and the 4.875% senior notes due 2014 (referred to in this prospectus as the senior secured notes ), to the extent of the value of the assets securing such debt, and are structurally subordinated to all obligations of each of our subsidiaries that is not a guarantor of the senior notes.

Similarly, the guarantees of the senior notes are senior unsecured obligations of the guarantors and:

**Table of Contents**

rank senior in right of payment to all of the applicable guarantor's future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior notes, including such guarantor's guarantee under the senior subordinated notes;

rank equally in right of payment to all of the applicable guarantor's existing and future senior debt and other obligations that are not, by their terms, expressly subordinated in right of payment to the senior notes; and

are effectively subordinated in right of payment to all of the applicable guarantor's existing and future secured debt (including such guarantor's guarantee under our senior secured credit facilities and the senior secured notes), to the extent of the value of the assets securing such debt, and are structurally subordinated to all obligations of any subsidiary of a guarantor if that subsidiary is not also a guarantor of the senior notes.

The senior subordinated notes are our unsecured senior subordinated obligations and:

are subordinated in right of payment to our existing and future senior debt, including our senior secured credit facilities, the senior secured notes and the senior notes;

rank equally in right of payment to all of our future senior subordinated debt;

are effectively subordinated in right of payment to all of our existing and future secured debt (including our senior secured credit facilities and the senior secured notes), to the extent of the value of the assets securing such debt, and are structurally subordinated to all obligations of each of our subsidiaries that is not a guarantor of the senior subordinated notes; and

rank senior in right of payment to all of our future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior subordinated notes.

Similarly, the guarantees of the senior subordinated notes are unsecured senior subordinated obligations of the guarantors and:

are subordinated in right of payment to all of the applicable guarantor's existing and future senior debt, including such guarantor's guarantee under our senior secured credit facilities, the senior secured notes and the senior notes;

rank equally in right of payment to all of the applicable guarantor's future senior subordinated debt;

are effectively subordinated in right of payment to all of the applicable guarantors existing and future secured debt (including such guarantors guarantee under our senior secured credit facilities and the senior secured notes), to the extent of the value of the assets securing such debt, and are structurally subordinated to all obligations of any subsidiary of a guarantor if that subsidiary is not also a guarantor of the senior subordinated notes; and

**Table of Contents**

rank senior in right of payment to all of the applicable guarantor's future subordinated debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior subordinated notes.

As of December 31, 2009, (1) the notes and related guarantees ranked effectively junior to approximately \$4,967 million of senior secured indebtedness (which includes \$250 million face amount of our senior secured notes that are recorded at \$234 million), (2) the senior notes and related guarantees ranked senior to the \$1,000 million of senior subordinated notes, (3) the senior subordinated notes and related guarantees ranked junior to approximately \$7,067 million of senior indebtedness under the senior secured credit facilities, the senior secured notes, the senior notes and \$19 million of payment obligations relating to historical acquisitions and capital lease obligations (4) we had an additional \$804 million of unutilized capacity under our revolving credit facility, after giving effect to certain outstanding letters of credit and (5) our non-guarantor subsidiaries had approximately \$8 million (of the \$19 million described above) of payment obligations relating to historical acquisitions and capital lease obligations. In addition, \$250 million was outstanding under our receivables facility which is secured by accounts receivable of our subsidiaries that participate in the facility.

**Optional Redemption**

Beginning on August 15, 2009, we may redeem some or all of the senior notes due 2013 at the redemption prices listed under Description of Senior Notes Due 2013 Optional Redemption plus accrued interest on the senior notes to the date of redemption.

Prior to April 1, 2012, we have the option to redeem some or all of the senior notes due 2015 for cash at a redemption price equal to 100% of their principal amount plus an applicable make-whole premium (as described in Description of Senior Notes Due 2015 Optional Redemption ) plus accrued and unpaid interest to the redemption date. Beginning on April 1, 2012, we may redeem some or all of the senior notes due 2015 at the redemption prices listed under Description of Senior Notes Due 2015 Optional Redemption plus accrued interest on the senior notes to the date of redemption.

Prior to August 15, 2010, we have the option to redeem some or all of the senior subordinated notes for cash at a redemption price equal to 100% of their principal amount plus an applicable make-whole premium (as described in Description of Senior Subordinated Notes Optional Redemption ) plus accrued and unpaid interest to the redemption date. Beginning on August 15, 2010, we may redeem some or all of the senior subordinated notes at the redemption prices listed under Description of Senior Subordinated Notes Optional Redemption plus accrued interest on the senior subordinated notes to the date of redemption.



Optional Redemption After Certain Equity Offerings At any time (which may be more than once) before October 1, 2011, we may choose to redeem up to 35% of the senior notes due 2015 at a redemption price equal to 110.625% of the face thereof

**Table of Contents**

with proceeds that we or one of our parent companies (as defined below) raise in one or more equity offerings, as long as at least 50% of the aggregate principal amount of the notes issued of the applicable series remains outstanding afterwards.

See Description of Senior Notes Due 2015 Optional Redemption.

Change of Control Offer

Upon the occurrence of a change of control, you will have the right, as holders of the notes, to require us to repurchase some or all of your notes at 101% of their face amount, plus accrued and unpaid interest to the repurchase date. See Description of Senior Notes Due 2013, Repurchase at the Option of Holders Change of Control, Description of Senior Notes Due 2015 Repurchase at the Option of Holders Change of Control and Description of Senior Subordinated Notes Repurchase at the Option of Holders Change of Control.

We may not be able to pay you the required price for notes you present to us at the time of a change of control, because:

we may not have enough funds at that time; or

terms of our senior debt, including, in the case of the senior subordinated notes, the indenture governing the senior notes, may prevent us from making such payment

Your right to require us to repurchase a series of notes upon the occurrence of a change of control will be suspended during any time that the applicable series of notes have investment grade ratings from both Moody's Investors Service, Inc. and Standard & Poor's.

Certain Indenture Provisions

The indentures governing the notes contain covenants limiting our ability and the ability of our restricted subsidiaries to:

incur additional debt or issue certain preferred shares;

pay dividends on or make distributions in respect of our capital stock or make other restricted payments;

make certain investments;

sell certain investments;

create liens on certain assets to secure debt;

consolidate, merge, sell or otherwise dispose of all or substantially all of our assets;

enter into certain transactions with our affiliates; and

designate our subsidiaries as unrestricted subsidiaries.

These covenants are subject to a number of important limitations and exceptions. See Description of Senior Notes Due 2013, Description of Senior Notes Due 2015 and Description of Senior Subordinated Notes. Certain covenants will cease to apply to a series of notes at all times after the applicable series of notes have investment grade ratings from both Moody's Investors Service, Inc. and Standard & Poor's.

**Table of Contents**

No Public Market

The notes are freely transferable, but there may not be an active trading market for the notes. We cannot assure you as to the future liquidity of any market. The initial purchasers in the private offering of the notes have advised us that they currently intend to make a market in the notes. The initial purchasers are not obligated, however, to make a market in the notes, and any such market-making may be discontinued by the initial purchasers in their discretion at any time without notice.

**Risk Factors**

You should carefully consider all the information in the prospectus prior to investing in the notes. In particular, we urge you to carefully consider the factors set forth under the heading Risk Factors.

**Table of Contents****SUMMARY HISTORICAL CONSOLIDATED FINANCIAL DATA**

Set forth below is summary historical consolidated financial data, at the dates and for the periods indicated. The historical data for the fiscal years ended December 31, 2007, 2008 and 2009 have been derived from SunGard's historical consolidated financial statements included elsewhere in this prospectus.

The summary historical consolidated financial data should be read in conjunction with Selected Historical Consolidated Financial Data, Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and related notes appearing elsewhere in this prospectus.

	<b>Year Ended December 31, 2007</b>	<b>Year Ended December 31, 2008</b>	<b>Year Ended December 31, 2009</b>
	<b>(Dollars in millions)</b>		
<b>Statement of Operations Data:</b>			
Revenue	\$ 4,901	\$ 5,596	\$ 5,508
Operating costs and expenses:			
Cost of sales and direct operating	\$ 2,268	\$ 2,744	\$ 2,709
Sales, marketing and administration	1,042	1,151	1,112
Product development	271	308	302
Depreciation and amortization	251	278	291
Amortization of acquisition-related intangible assets	438	515	540
Goodwill impairment charge and merger costs		130	1,130
Total operating costs and expenses	4,270	5,126	6,084
Income from operations	631	470	(576)
Interest income	19	18	7
Interest expense	(645)	(599)	(637)
Other (expense) income <sup>(1)</sup>	(68)	(93)	15
Loss before income taxes	(63)	(204)	(1,191)
Income tax (expense) benefit	3	(38)	73
Net loss	\$ (60)	\$ (242)	\$ (1,118)
<b>Statement of Cash Flows Data:</b>			
Net cash provided by (used in):			
Operating activities	\$ 701	\$ 385	\$ 639
Investing activities	(564)	(1,109)	(333)
Financing activities	(32)	1,303	(628)
<b>Other Financial Data:</b>			
EBITDA <sup>(2)</sup>	\$ 1,252	\$ 1,298	\$ 1,396
Capital expenditures, net <sup>(3)</sup>	307	392	327

- (1) During 2007, we recorded \$29 million related to the loss on sale of the receivables and discount on retained interests in connection with the accounts receivable securitization program and \$28 million associated with the early retirement of the \$400 million of senior floating rate notes due 2013, of which \$19 million represented the retirement premium paid to the noteholders. During 2008, we recorded \$25 million related to the loss on sale of the receivables and discount on retained interests in connection with the accounts receivable securitization program; \$46 million in foreign exchange losses related to our Euro denominated term loan; \$10 million related to hedge settlements associated with the GL TRADE acquisition; and \$7 million related to unused alternative financing commitments for the acquisition of GL

**Table of Contents**

TRADE. During 2009, we recorded \$14 million in foreign currency translation gains related to our Euro denominated term loan.

- (2) EBITDA, a measure used by management to measure operating performance, is defined as net income plus interest, taxes, depreciation and amortization and goodwill impairment. EBITDA is not a recognized term under generally accepted accounting principles (GAAP) and does not purport to be an alternative to net income as a measure of operating performance or to cash flows from operating activities as a measure of liquidity. Additionally, EBITDA is not intended to be a measure of free cash flow available for management's discretionary use, as it does not consider certain cash requirements such as interest payments, tax payments and debt service requirements. Management believes EBITDA is helpful in highlighting trends because EBITDA can differ significantly from company to company depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which companies operate and capital investments. In addition, EBITDA provides more comparability between the historical results of SunGard and results that reflect purchase accounting and the new capital structure. Management compensates for the limitations of using non-GAAP financial measures by using them to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Because not all companies use identical calculations, these presentations of EBITDA may not be comparable to other similarly titled measures of other companies.

Historical EBITDA is calculated as follows:

	<b>Year Ended December 31, 2007</b>	<b>Year Ended December 31, 2008</b>	<b>Year Ended December 31, 2009</b>
	<b>(Dollars in millions)</b>		
Net loss	\$ (60)	\$ (242)	\$ (1,118)
Interest expense, net	626	581	630
Taxes	(3)	38	(73)
Depreciation and amortization	689	793	831
Goodwill impairment charge		128	1,126
<b>EBITDA</b>	<b>\$ 1,252</b>	<b>\$ 1,298</b>	<b>\$ 1,396</b>

- (3) Capital expenditures represent net cash paid for property and equipment as well as software and other assets.

**Table of Contents**

**RISK FACTORS**

*You should carefully consider the following risk factors and all other information contained in this prospectus before deciding whether to invest in the notes. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently deem immaterial, also may become important factors that affect us.*

If any of the following risks occur, our business, financial condition or results of operations could be materially and adversely affected. In that case, the trading price of the notes could decline or we may not be able to make payments of interest and principal on the notes, and you may lose some or all of your investment.

**Risks Related to Our Indebtedness**

*Our substantial leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry, expose us to interest rate risk to the extent of our variable rate debt and prevent us from meeting our debt obligations.*

As a result of being acquired on August 11, 2005 by a consortium of private equity investment funds, we are highly leveraged and our debt service requirements are significant.

Our high degree of debt-related leverage could have important consequences, including:

making it more difficult for us to make payments on our debt obligations;

increasing our vulnerability to general economic and industry conditions;

requiring a substantial portion of cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing our ability to use our cash flow to fund our operations, capital expenditures and future business opportunities;

exposing us to the risk of increased interest rates as certain of our borrowings, including borrowings under our senior secured credit facilities, are at variable rates of interest;

restricting us from making acquisitions or causing us to make non-strategic divestitures;

limiting our ability to obtain additional financing for working capital, capital expenditures, product development, debt service requirements, acquisitions and general corporate or other purposes; and

limiting our ability to adjust to changing market conditions and placing us at a competitive disadvantage compared to our competitors who are less highly leveraged.

We and our subsidiaries may be able to incur substantial additional indebtedness in the future, subject to the restrictions contained in our senior secured credit facilities and the indentures relating to our senior notes due 2013 and 2015 and senior subordinated notes due 2015. If new indebtedness is added to our current debt levels, the related risks that we now face could intensify. If we incur any additional indebtedness that ranks equally with the senior notes or the senior subordinated notes, the holders of that additional debt will be entitled to share ratably with the holders of the senior notes and the subordinated notes, respectively, in any proceeds distributed in connection with any



insolvency, liquidation, reorganization, dissolution or other winding-up of us. This may have the effect of reducing the amount of proceeds paid to you.

***Our debt agreements contain restrictions that limit our flexibility in operating our business.***

Our senior secured credit agreement and the indentures governing our senior notes due 2013 and 2015 and senior subordinated notes due 2015 contain various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability to, among other things:

incur additional indebtedness or issue certain preferred shares;

pay dividends on, repurchase or make distributions in respect of our capital stock or make other restricted payments;

## **Table of Contents**

make certain investments;

sell certain assets;

create liens;

consolidate, merge, sell or otherwise dispose of all or substantially all of our assets; and

enter into certain transactions with our affiliates.

In addition, under the senior secured credit agreement, we are required to satisfy and maintain specified financial ratios and other financial condition tests. Our ability to meet those financial ratios and tests can be affected by events beyond our control, and we may not be able to meet those ratios and tests. A breach of any of these covenants could result in a default under the senior secured credit agreement. Upon an event of default under the senior secured credit agreement, the lenders could elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit.

If we were unable to repay those amounts, the lenders under the senior secured credit agreement could proceed against the collateral granted to them to secure that indebtedness. We have pledged a significant portion of our assets as collateral under the senior secured credit agreement and the senior secured notes, to the extent required by the indenture governing these notes. If the lenders under the senior secured credit agreement accelerate the repayment of borrowings, we may not have sufficient assets to repay the senior secured credit facilities and the senior secured notes, as well as our unsecured indebtedness.

### **Risks Related to Our Business**

***Our business depends largely on the economy and financial markets, and a slowdown or downturn in the economy or financial markets could adversely affect our business and results of operations.***

When there is a slowdown or downturn in the economy, a drop in stock market levels or trading volumes, or an event that disrupts the financial markets, our business and financial results may suffer for a number of reasons. Customers may react to worsening conditions by reducing their capital expenditures in general or by specifically reducing their IT spending. In addition, customers may curtail or discontinue trading operations, delay or cancel IT projects, or seek to lower their costs by renegotiating vendor contracts. Also, customers with excess IT resources may choose to take their information availability solutions in-house rather than obtain those solutions from us. Moreover, competitors may respond to market conditions by lowering prices and attempting to lure away our customers to lower cost solutions. If any of these circumstances remain in effect for an extended period of time, there could be a material adverse effect on our financial results. Because our financial performance tends to lag behind fluctuations in the economy, our recovery from any particular downturn in the economy may not occur until after economic conditions have generally improved.

***Our business depends to a significant degree on the financial services industry, and a weakening of, or further consolidation in, the financial services industry could adversely affect our business and results of operations.***

Because our customer base is concentrated in the financial services industry, our business is largely dependent on the health of that industry. When there is a general downturn in the financial services industry, or if our customers in that industry experience financial or business problems, our business and financial results may suffer. If financial services firms continue to consolidate, there could be a material adverse effect on our business and financial results. When a

customer merges with a firm using its own solution or another vendor's solution, they could decide to consolidate on a non-SunGard system, which could have an adverse effect on our financial results.

***Our acquisition program is an important element of our strategy but, because of the uncertainties involved, this program may not be successful and we may not be able to successfully integrate and manage acquired businesses.***

Part of our growth strategy is to pursue additional acquisitions in the future. There can be no assurance that our acquisition program will continue to be successful. In addition, we may finance any future acquisition

**Table of Contents**

with debt, which would increase our overall levels of indebtedness and related interest costs. If we are unable to successfully integrate and manage acquired businesses, then our business and financial results may suffer. It is possible that the businesses we have acquired and businesses that we acquire in the future may perform worse than expected, be subject to an adverse litigation outcome or prove to be more difficult to integrate and manage than expected. If that happens, there may be a material adverse effect on our business and financial results for a number of reasons, including:

we may have to devote unanticipated financial and management resources to acquired businesses;

we may not be able to realize expected operating efficiencies or product integration benefits from our acquisitions;

we may have to write off goodwill or other intangible assets; and

we may incur unforeseen obligations or liabilities (including assumed liabilities not fully indemnified by the seller) in connection with acquisitions.

***If we are unable to identify suitable acquisition candidates and successfully complete acquisitions, our growth may be adversely affected.***

Our growth has depended in part on our ability to acquire similar or complementary businesses on favorable terms. This growth strategy is subject to a number of risks that could adversely affect our business and financial results, including:

we may not be able to find suitable businesses to acquire at affordable valuations or on other acceptable terms;

we may face competition for acquisitions from other potential acquirers, some of whom may have greater resources than us or may be less highly leveraged, or from the possibility of an acquisition target pursuing an initial public offering of its stock;

we may have to incur additional debt to finance future acquisitions as we have done in the past and no assurance can be given as to whether, and on what terms, such additional debt will be available; and

we may find it more difficult or costly to complete acquisitions due to changes in accounting, tax, securities or other regulations.

***Catastrophic events may disrupt or otherwise adversely affect the markets in which we operate, our business and our profitability.***

Our business may be adversely affected by a war, terrorist attack, natural disaster or other catastrophe. A catastrophic event could have a direct negative impact on us or an indirect impact on us by, for example, affecting our customers, the financial markets or the overall economy. The potential for a direct impact is due primarily to our significant investment in our infrastructure. Although we maintain redundant facilities and have contingency plans in place to protect against both man-made and natural threats, it is impossible to fully anticipate and protect against all potential catastrophes. Despite our preparations, a security breach, criminal act, military action, power or communication failure, flood, severe storm or the like could lead to service interruptions and data losses for customers, disruptions to our operations, or damage to our important facilities. The same disasters or circumstances that may lead to our customers requiring access to our availability services may negatively impact our own ability to provide such services. Our three largest availability services facilities are particularly important, and a major disruption at one or more of

those facilities could disrupt or otherwise impair our ability to provide services to our availability services customers. If any of these events happen, we may be exposed to unexpected liability, our customers may leave, our reputation may be tarnished, and there could be a material adverse effect on our business and financial results.

***Our application service provider systems may be subject to disruptions that could adversely affect our reputation and our business.***

Our application service provider systems maintain and process confidential data on behalf of our customers, some of which is critical to their business operations. For example, our trading and brokerage and clearance systems maintain account and trading information for our customers and their clients, and our wealth

## **Table of Contents**

management and insurance systems maintain investor account information for retirement plans, insurance policies and mutual funds. There is no guarantee that the systems and procedures that we maintain to protect against unauthorized access to such information are adequate to protect against all security breaches. If our application service provider systems are disrupted or fail for any reason, or if our systems or facilities are infiltrated or damaged by unauthorized persons, our customers could experience data loss, financial loss, harm to reputation and significant business interruption. If that happens, we may be exposed to unexpected liability, our customers may leave, our reputation may be tarnished, and there could be a material adverse effect on our business and financial results.

***Because the sales cycle for our software is typically lengthy and unpredictable, our results may fluctuate from period to period.***

Our operating results may fluctuate from period to period and be difficult to predict in a particular period due to the timing and magnitude of software sales. We offer a number of our software solutions on a license basis, which means that the customer has the right to run the software on its own computers. The customer usually makes a significant up-front payment to license software, which we generally recognize as revenue when the license contract is signed and the software is delivered. The size of the up-front payment often depends on a number of factors that are different for each customer, such as the number of customer locations, users or accounts. As a result, the sales cycle for a software license may be lengthy and take unexpected turns. Thus, it is difficult to predict when software sales will occur or how much revenue they will generate. Since there are few incremental costs associated with software sales, our operating results may fluctuate from quarter to quarter and year to year due to the timing and magnitude of software sales.

***Rapid changes in technology and our customers' businesses could adversely affect our business and financial results.***

Our business may suffer if we do not successfully adapt our products and services to changes in technology and changes in our customers' businesses. These changes can occur rapidly and at unpredictable intervals and we may not be able to respond adequately. If we do not successfully update and integrate our products and services to adapt to these changes, or if we do not successfully develop new products and services needed by our customers to keep pace with these changes, then our business and financial results may suffer. Our ability to keep up with technology and business changes is subject to a number of risks, and we may find it difficult or costly to, among other things:

- update our products and services and to develop new products fast enough to meet our customers' needs;

- make some features of our products and services work effectively and securely over the Internet;

- integrate more of our FS solutions;

- update our products and services to keep pace with business, regulatory and other developments in the financial services industry, where many of our customers operate; and

- update our services to keep pace with advancements in hardware, software and telecommunications technology.

Some technological changes, such as advancements that have facilitated the ability of our AS customers to develop their own internal solutions, may render some of our products and services less valuable or eventually obsolete. In addition, because of ongoing, rapid technological changes, the useful lives of some technology assets have become shorter and customers are therefore replacing these assets more often. As a result, our customers are increasingly expressing a preference for contracts with shorter terms, which could make our revenue less predictable in the future.

*Customers taking their information availability solutions in-house may continue to create pressure on our organic revenue growth rate.*

Our AS solutions allow customers to leverage our significant infrastructure and take advantage of our experience, technology expertise, resource management capabilities and vendor neutrality. Technological advances

## **Table of Contents**

in recent years have significantly reduced the cost and the complexity of developing in-house solutions. Some customers, especially among the very largest having significant IT resources, prefer to develop and maintain their own in-house availability solutions, which can result in a loss of revenue from those customers. If this trend continues or worsens, there will be continued pressure on our organic revenue growth rate.

***The trend toward information availability solutions utilizing more single customer dedicated resources likely will lower our overall operating margin rate over time.***

In the information availability services industry, especially among our more sophisticated customers, there is an increasing preference for solutions that utilize some level of dedicated resources, such as blended advanced recovery services and managed services. The primary reason for this trend is that adding dedicated resources, although more costly, provides greater control, reduces data loss and facilitates quicker responses to business interruptions. Advanced recovery services often result in greater use of dedicated resources with a modest decrease in operating margin rate. Managed services require significant dedicated resources and, therefore, have an appropriately lower operating margin rate.

***Our brokerage operations are highly regulated and are riskier than our other businesses.***

Organizations like the Securities and Exchange Commission, Financial Services Authority and Financial Industry Regulatory Authority can, among other things, fine, censure, issue cease-and-desist orders and suspend or expel a broker/dealer or any of its officers or employees for failures to comply with the many laws and regulations that govern brokerage operations. Our ability to comply with these laws and regulations is largely dependent on our establishment, maintenance and enforcement of an effective brokerage compliance program. Our failure to establish, maintain and enforce proper brokerage compliance procedures, even if unintentional, could subject us to significant losses, lead to disciplinary or other actions, and tarnish our reputation. Regulations affecting the brokerage industry, in particular with respect to active traders, may change, which could adversely affect our financial results.

We are exposed to certain risks relating to the execution and clearance services provided by our brokerage operations to retail customers, institutional clients (including hedge funds and other broker-dealers), and proprietary traders. These risks include, but are not limited to, customers failing to pay for securities commitments in the marketplace, trading errors, the inability or failure to settle trades, and trade execution or clearance systems failures. In our other businesses, we generally can disclaim liability for trading losses that may be caused by our software, but in our brokerage operations, we cannot limit our liability for trading losses even when we are not at fault. As a result we may suffer losses that are disproportionate to the relatively modest profit contributions of this business.

***We could lose revenue due to fiscal funding or termination for convenience clauses in certain customer contracts, especially in our HE and PS businesses.***

Certain of our customer contracts, particularly those with governments, institutions of higher education and school districts, may be partly or completely terminated by the customer due to budget cuts or sometimes for any reason at all. These types of clauses are often called fiscal funding or termination for convenience clauses. If a customer exercises one of these clauses, the customer would be obligated to pay for the services we performed up to the date of exercise, but would not have to pay for any further services. In addition, governments, institutions of higher education and school districts may require contract terms that differ from our standard terms. While we have not been materially affected by exercises of these clauses in the past or other unusual terms, we may be in the future. If customers that collectively represent a substantial portion of our revenue were to invoke the fiscal funding or termination for convenience clauses of their contracts, our future business and results of operations could be adversely affected.



***If we fail to comply with government regulations in connection with our business or providing technology services to certain financial institutions, our business and results of operations may be adversely affected.***

Because we act as a third-party service provider to financial institutions and provide mission-critical applications for many financial institutions that are regulated by one or more member agencies of the Federal Financial Institutions Examination Council ( FFIEC ), we are subject to examination by the member agencies

## **Table of Contents**

of the FFIEC. More specifically, we are a Multi-Regional Data Processing Servicer of the FFIEC because we provide mission critical applications for financial institutions from several data centers located in different geographic regions. As a result, the FFIEC conducts periodic reviews of certain of our operations in order to identify existing or potential risks associated with our operations that could adversely affect the financial institutions to whom we provide services, evaluate our risk management systems and controls, and determine our compliance with applicable laws that affect the services we provide to financial institutions. In addition to examining areas such as our management of technology, data integrity, information confidentiality and service availability, the reviews also assess our financial stability. Our incurrence of significant debt in connection with the Transaction increases the risk of an FFIEC agency review determining that our financial stability has been weakened. A sufficiently unfavorable review from the FFIEC could result in our financial institution customers not being allowed to use our technology services, which could have a material adverse effect on our business and financial condition.

If we fail to comply with any regulations applicable to our business, we may be exposed to unexpected liability and/or governmental proceedings, our customers may leave, our reputation may be tarnished, and there could be a material adverse effect on our business and financial results. In addition, the future enactment of more restrictive laws or rules on the federal or state level, or, with respect to our international operations, in foreign jurisdictions on the national, provincial, state or other level, could have an adverse impact on business and financial results.

***If we are unable to retain or attract customers, our business and financial results will be adversely affected.***

If we are unable to keep existing customers satisfied, sell additional products and services to existing customers or attract new customers, then our business and financial results may suffer. A variety of factors could affect our ability to successfully retain and attract customers, including the level of demand for our products and services, the level of customer spending for information technology, the level of competition from customers that develop their own solutions internally and from other vendors, the quality of our customer service, our ability to update our products and develop new products and services needed by customers, and our ability to integrate and manage acquired businesses. Further, the markets in which we operate are highly competitive and we may not be able to compete effectively. Our services revenue, which has been largely recurring in nature, comes from the sale of our products and services under fixed-term contracts. We do not have a unilateral right to extend these contracts when they expire. Revenue from our broker/dealer businesses is not subject to minimum or ongoing contractual commitments on the part of brokerage customers. If customers cancel or refuse to renew their contracts, or if customers reduce the usage levels or asset values under their contracts, there could be a material adverse effect on our business and financial results.

***If we fail to retain key employees, our business may be harmed.***

Our success depends on the skill, experience and dedication of our employees. If we are unable to retain and attract sufficiently experienced and capable personnel, especially in product development, sales and management, our business and financial results may suffer. For example, if we are unable to retain and attract a sufficient number of skilled technical personnel, our ability to develop high quality products and provide high quality customer service may be impaired. Experienced and capable personnel in the technology industry remain in high demand, and there is continual competition for their talents. When talented employees leave, we may have difficulty replacing them, and our business may suffer. There can be no assurance that we will be able to successfully retain and attract the personnel that we need.

***We are subject to the risks of doing business internationally.***

A portion of our revenue is generated outside the United States, primarily from customers located in the United Kingdom and Continental Europe. Over the past few years we have expanded our operations in India and acquired businesses in China and Singapore in an effort to increase our presence throughout Asia Pacific. Because we sell our

services outside the United States, our business is subject to risks associated with doing

**Table of Contents**

business internationally. Accordingly, our business and financial results could be adversely affected due to a variety of factors, including:

changes in a specific country's or region's political and cultural climate or economic condition;

unexpected changes in foreign laws and regulatory requirements;

difficulty of effective enforcement of contractual provisions in local jurisdictions;

inadequate intellectual property protection in foreign countries;

trade-protection measures, import or export licensing requirements such as Export Administration Regulations promulgated by the U.S. Department of Commerce and fines, penalties or suspension or revocation of export privileges;

the effects of applicable foreign tax law and potentially adverse law changes;

significant adverse changes in foreign currency exchange rates;

longer accounts receivable cycles;

managing a geographically dispersed workforce; and

difficulties associated with repatriating cash in a tax-efficient manner.

In foreign countries, particularly in those with developing economies, certain business practices may exist that are prohibited by laws and regulations applicable to us, such as the U.S. Foreign Corrupt Practices Act. Although our policies and procedures require compliance with these laws and are designed to facilitate compliance with these laws, our employees, contractors and agents may take actions in violation of applicable laws or our policies. Any such violation, even if prohibited by our policies, could have a material adverse effect on our business and reputation.

***The private equity firms that acquired the Company ( Sponsors ) control us and may have conflicts of interest with us.***

Investment funds associated with or designated by the Sponsors indirectly own, through their ownership in the Parent Companies, a substantial portion of our capital stock. As a result, the Sponsors have control over our decisions to enter into any corporate transaction regardless of whether noteholders believe that any such transaction is in their own best interests. For example, the Sponsors could cause us to make acquisitions or pay dividends that increase the amount of indebtedness that is secured or that is senior to our senior subordinated notes or to sell assets.

Additionally, the Sponsors are in the business of making investments in companies and may from time to time acquire and hold interests in businesses that compete directly or indirectly with us. One or more of the Sponsors may also pursue acquisition opportunities that may be complementary to our business and, as a result, those acquisition opportunities may not be available to us. So long as investment funds associated with or designated by the Sponsors continue to indirectly own a significant amount of the outstanding shares of our common stock, even if such amount is less than 50%, the Sponsors will continue to be able to strongly influence or effectively control our decisions.

***If we are unable to protect our proprietary technologies and defend infringement claims, we could lose one of our competitive advantages and our business could be adversely affected.***

Our success depends in part on our ability to protect our proprietary products and services and to defend against infringement claims. If we are unable to do so, our business and financial results may suffer. To protect our proprietary technology, we rely upon a combination of copyright, patent, trademark and trade secret law, confidentiality restrictions in contracts with employees, customers and others, software security measures, and registered copyrights and patents. Despite our efforts to protect the proprietary technology, unauthorized persons may be able to copy, reverse engineer or otherwise use some of our technology. It also is possible that others will develop and market similar or better technology to compete with us. Furthermore, existing patent, copyright and trade secret laws may afford only limited protection, and the laws of certain countries do not protect proprietary technology as well as United States law. For these reasons, we may have difficulty protecting our proprietary technology against unauthorized copying or use. If any of these events happens,

## **Table of Contents**

there could be a material adverse effect on the value of our proprietary technology and on our business and financial results. In addition, litigation may be necessary to protect our proprietary technology. This type of litigation is often costly and time-consuming, with no assurance of success.

The software industry is characterized by the existence of a large number of patents and copyrights and by frequent litigation based on allegations of infringement or other violations of intellectual property rights. Some of our competitors or other third parties may have been more aggressive than us in applying for or obtaining patent protection for innovative proprietary technologies both in the United States and internationally. In addition, we use a limited amount of open source software in our products and may use more open source software in the future. Because open source software is developed by numerous independent parties over whom we exercise no supervision or control, allegations of infringement for using open source software are possible. Although we monitor our use and our suppliers' use of open source software to avoid subjecting our products to conditions we do not intend, the terms of many open source licenses have not been interpreted by United States or other courts, and there is a risk that these licenses could be construed in a manner that could impose unanticipated conditions or restrictions on our ability to commercialize our products.

As a result of all of these factors, there can be no assurance that in the future third parties will not assert infringement claims against us (as they have already done in the past) and preclude us from using a technology in our products or require us to enter into royalty and licensing arrangements on terms that are not favorable to us, or force us to engage in costly infringement litigation, which could result in us paying monetary damages or being forced to redesign our products to avoid infringement. Additionally, our licenses and service agreements with our customers generally provide that we will defend and indemnify them for claims against them relating to our alleged infringement of the intellectual property rights of third parties with respect to our products or services. We might have to defend or indemnify our customers to the extent they are subject to these types of claims. Any of these claims may be difficult and costly to defend and may lead to unfavorable judgments or settlements, which could have a material adverse effect on our reputation, business and financial results. For these reasons, we may find it difficult or costly to add or retain important features in our products and services.

### ***Defects, design errors or security flaws in our products could harm our reputation and expose us to potential liability.***

Most of our products are very complex software systems that are regularly updated. No matter how careful the design and development, complex software often contains errors and defects when first introduced and when major new updates or enhancements are released. If errors or defects are discovered in our current or future products, we may not be able to correct them in a timely manner, if at all. In our development of updates and enhancements to our products, we may make a major design error that makes the product operate incorrectly or less efficiently.

In addition, certain of our products include security features that are intended to protect the privacy and integrity of customer data. Despite these security features, our products and systems, and our customers' systems may be vulnerable to break-ins and similar problems caused by third parties, such as hackers bypassing firewalls and misappropriating confidential information. Such break-ins or other disruptions could jeopardize the security of information stored in and transmitted through our computer systems and those of our customers, subject us to liability and tarnish our reputation. We may need to expend significant capital resources in order to eliminate or work around errors, defects, design errors or security problems. Any one of these problems in our products may result in the loss of or a delay in market acceptance of our products, the diversion of development resources, a lower rate of license renewals or upgrades and damage to our reputation, and in turn may increase service and warranty costs.

### ***A material weakness in our internal controls could have a material adverse affect on us.***

Effective internal controls are necessary for us to provide reasonable assurance with respect to our financial reports and to effectively prevent fraud. If we cannot provide reasonable assurance with respect to our financial reports and effectively prevent fraud, our reputation and operating results could be harmed. Pursuant to the Sarbanes-Oxley Act of 2002, we are required to furnish a report by management on internal control over financial reporting, including management's assessment of the effectiveness of such control.

## **Table of Contents**

Internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations, including the possibility of human error, the circumvention or overriding of controls, or fraud. Further, the complexities of our quarter-and year-end closing processes increase the risk that a weakness in internal controls over financial reporting may go undetected. Therefore, even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. In addition, projections of any evaluation of effectiveness of internal control over financial reporting to future periods are subject to the risk that the control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. If we fail to maintain the adequacy of our internal controls, including any failure to implement required new or improved controls, or if we experience difficulties in their implementation, we could fail to meet our reporting obligations, and there could be a material adverse effect on our business and financial results.

***Unanticipated changes in our tax provision or the adoption of new tax legislation could affect our profitability or cash flow.***

We are subject to income taxes in the United States and many foreign jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes. We regularly are under audit by tax authorities. Although we believe our tax provision is reasonable, the final determination of our tax liability could be materially different from our historical income tax provisions, which could have a material effect on our financial position, results of operations or cash flows. In addition, tax-law amendments in the U.S. and other jurisdictions could significantly impact how U.S. multinational corporations are taxed. Although we cannot predict whether or in what form such legislation will pass, if enacted it could have an adverse effect on our business and financial results.

## **Risks Relating to the Notes**

***We may not be able to generate sufficient cash to service all of our indebtedness, including the notes, and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.***

Our ability to make scheduled payments or to refinance our debt obligations depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. We may not be able to maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness. See Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, seek additional capital or seek to restructure or refinance our indebtedness, including the notes. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to sell material assets or operations to attempt to meet our debt service and other obligations. The senior secured credit facilities and the indentures under which the notes are issued restrict our ability to use the proceeds from asset sales. We may not be able to consummate those asset sales to raise capital or sell assets at prices that we believe are fair and proceeds that we do receive may not be adequate to meet any debt service obligations then due. See Description of Other Indebtedness—Senior Credit Facilities, Description of Senior Notes Due 2013, Description of Senior Notes Due 2015 and Description of Senior Subordinated Notes.

***Your right to receive payments on each series of notes is effectively junior to those lenders who have a security interest in our assets.***

Our obligations under the notes and our guarantors' obligations under their guarantees of the notes are unsecured, but our obligations under our senior secured credit facilities and senior secured notes and each guarantor's obligations



under their respective guarantees of the senior secured credit facilities and senior secured notes are secured by a security interest in substantially all of our domestic tangible and, in the case of

**Table of Contents**

the senior secured credit facilities, intangible assets, including the stock of most of our wholly owned U.S. subsidiaries, and the assets and a portion of the stock of certain of our non-U.S. subsidiaries. If we are declared bankrupt or insolvent, or if we default under our senior secured credit agreement, the lenders could declare all of the funds borrowed thereunder, together with accrued interest, immediately due and payable. If we were unable to repay such indebtedness, the lenders could foreclose on the pledged assets to the exclusion of holders of the notes, even if an event of default exists under the indentures governing the notes offered hereby at such time. Furthermore, if the lenders foreclose and sell the pledged equity interests in any subsidiary guarantor under the notes, then that guarantor will be released from its guarantee of the notes automatically and immediately upon such sale. In any such event, because the notes will not be secured by any of our assets or the equity interests in subsidiary guarantors, it is possible that there would be no assets remaining from which your claims could be satisfied or, if any assets remained, they might be insufficient to satisfy your claims fully. See Description of Other Indebtedness.

As of December 31, 2009, we had \$4,967 million of senior secured indebtedness (which includes \$250 million face amount of our senior secured notes that are recorded at \$234 million), all of which was indebtedness under our senior secured credit facilities and senior secured notes and which does not include availability of \$804 million under our revolving credit facility after giving effect to certain outstanding letters of credit. The indentures governing the notes offered hereby permit us and our restricted subsidiaries to incur substantial additional indebtedness in the future, including senior secured indebtedness.

***Claims of noteholders will be structurally subordinate to claims of creditors of all of our non-U.S. subsidiaries and some of our U.S. subsidiaries because they will not guarantee the notes.***

The notes will not be guaranteed by any of our non-U.S. subsidiaries, our less than wholly owned U.S. subsidiaries, our receivables subsidiaries or certain other U.S. subsidiaries. Accordingly, claims of holders of the notes will be structurally subordinate to the claims of creditors of these non-guarantor subsidiaries, including trade creditors. All obligations of our non-guarantor subsidiaries will have to be satisfied before any of the assets of such subsidiaries would be available for distribution, upon a liquidation or otherwise, to us or a guarantor of the notes.

Our non-guarantor subsidiaries accounted for approximately \$2,182 million, or 40%, of our total revenue, and approximately \$283 million, or 20%, of our total EBITDA, as of December 31, 2009, and approximately \$4.09 billion, or 29%, of our total assets, and approximately \$1.75 billion, or 15%, of our total liabilities, as of December 31, 2009.

***Your right to receive payments on the senior subordinated notes will be junior to the rights of the lenders under our senior secured credit facilities and all of our other senior debt and any of our future senior indebtedness.***

The senior subordinated notes will be general unsecured obligations that will be junior in right of payment to all of our existing and future senior indebtedness. As of December 31, 2009, we had approximately \$7,067 million of senior indebtedness (including \$250 million face amount of our senior secured notes that are recorded at \$234 million). An additional \$804 million is available to be drawn under our revolving credit facility after giving effect to certain outstanding letters of credit.

We may not pay principal, premium, if any, interest or other amounts on account of the senior subordinated notes in the event of a payment default or certain other defaults in respect of certain of our senior indebtedness, including debt under the senior secured credit facilities, unless the senior indebtedness has been paid in full or the default has been cured or waived. In addition, in the event of certain other defaults with respect to the senior indebtedness, we may not be permitted to pay any amount on account of the senior subordinated notes for a designated period of time.

Because of the subordination provisions in the senior subordinated notes, in the event of our bankruptcy, liquidation or dissolution, our assets will not be available to pay obligations under the senior subordinated notes until we have made all payments in cash on our senior indebtedness. We cannot assure you that sufficient assets will remain after all these payments have been made to make any payments on the senior subordinated notes, including payments of principal or interest when due.

**Table of Contents*****If we default on our obligations to pay our indebtedness, we may not be able to make payments on the notes.***

Any default under the agreements governing our indebtedness, including a default under the senior secured credit agreement, that is not waived by the required lenders, and the remedies sought by the holders of such indebtedness, could prevent us from paying principal, premium, if any, and interest on the notes and substantially decrease the market value of the notes. If we are unable to generate sufficient cash flow and are otherwise unable to obtain funds necessary to meet required payments of principal, premium, if any, and interest on our indebtedness, or if we otherwise fail to comply with the various covenants, including financial and operating covenants, in the instruments governing our indebtedness (including covenants in our senior secured credit facilities and the indentures governing the notes offered hereby), we could be in default under the terms of the agreements governing such indebtedness, including our senior secured credit agreement and the indentures governing the notes offered hereby. In the event of such default, the holders of such indebtedness could elect to declare all the funds borrowed thereunder to be due and payable, together with accrued and unpaid interest, the lenders under our senior secured credit facilities could elect to terminate their commitments thereunder, cease making further loans and institute foreclosure proceedings against our assets, and we could be forced into bankruptcy or liquidation. If our operating performance declines, we may in the future need to obtain waivers from the required lenders under our senior secured credit facilities to avoid being in default. If we breach our covenants under our senior secured credit facilities and seek a waiver, we may not be able to obtain a waiver from the required lenders. If this occurs, we would be in default under our senior secured credit agreement, the lenders could exercise their rights, as described above, and we could be forced into bankruptcy or liquidation.

***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 notes at 101% of their principal amount plus accrued and unpaid interest. The source of funds for any such purchase of the notes will 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 notes upon a change of control because we may not have sufficient financial resources to purchase all of the notes that are tendered upon a change of control. Further, we will be contractually restricted under the terms of our senior secured credit agreement from repurchasing all of the notes tendered by holders upon a change of control. Accordingly, we may not be able to satisfy our obligations to purchase the notes unless we are able to refinance or obtain waivers under our senior secured credit agreement. Our failure to repurchase the notes upon a change of control would cause a default under the indentures governing the notes offered hereby and a cross-default under the senior secured credit agreement. The senior secured credit agreement also provides that a change of control will be a default that permits lenders to accelerate the maturity of borrowings thereunder. Any of our future debt agreements may contain similar provisions.

***The lenders under the senior secured credit facilities will have the discretion to release the guarantors under the senior secured credit agreement in a variety of circumstances, which will cause those guarantors to be released from their guarantees of the notes.***

While any obligations under the senior secured credit facilities remain outstanding, any guarantee of the notes may be released without action by, or consent of, any holder of the notes or the trustee under the indentures governing the notes offered hereby, at the discretion of lenders under the senior secured credit facilities, if the related guarantor is no longer a guarantor of obligations under the senior secured credit facilities or any other indebtedness. See Description of Senior Notes Due 2013, Description of Senior Notes Due 2015 and Description of Senior Subordinated Notes. The lenders under the senior secured credit facilities will have the discretion to release the guarantees under the senior secured credit facilities in a variety of circumstances. You will not have a claim as a creditor against any subsidiary that is no longer a guarantor of the notes, and the indebtedness and other liabilities, including trade payables, whether secured or unsecured, of those subsidiaries will effectively be senior to claims of noteholders.



**Table of Contents**

***Federal and state fraudulent transfer laws may permit a court to void the notes and the related guarantees of the notes, 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 related guarantees. Under federal bankruptcy law and comparable provisions of state fraudulent transfer or conveyance laws, which may vary from state to state, the notes or related guarantees could be voided as a fraudulent transfer or conveyance if (1) we or any of the guarantors, as applicable, issued the notes or incurred the related guarantees with the intent of hindering, delaying or defrauding creditors or (2) we or any of the guarantors, as applicable, received less than reasonably equivalent value or fair consideration in return for either issuing the notes or incurring the related guarantees and, in the case of (2) only, one of the following is also true at the time thereof:

we or any of the guarantors, as applicable, were insolvent or rendered insolvent by reason of the issuance of the notes or the incurrence of the related guarantees;

the issuance of the notes or the incurrence of the related guarantees left us or any of the guarantors, as applicable, with an unreasonably small amount of capital to carry on the business;

we or any of the guarantors intended to, or believed that we or such guarantor would, incur debts beyond our or such guarantor's ability to pay as they mature; or

we or any of the guarantors was a defendant in an action for money damages, or had a judgment for money damages docketed against us or such guarantor if, in either case, after final judgment, the judgment is unsatisfied.

If a court were to find that the issuance of the notes or the incurrence of the related guarantees was a fraudulent transfer or conveyance, the court could void the payment obligations under the notes or such related guarantees or further subordinate the notes or such related guarantees to presently existing and future indebtedness of ours or of the related guarantor, or require the holders of the notes to repay any amounts received with respect to such related guarantees. In the event of a finding that a fraudulent transfer or conveyance occurred, you may not receive any repayment on the notes. Further, the voidance 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 such debt.

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 an antecedent debt is secured or satisfied. A debtor will generally not be considered to have received value in connection with a debt offering if the debtor uses the proceeds of that offering to make a dividend payment or otherwise retire or redeem equity securities issued by the debtor.

We cannot be certain as to the standards a court would use to determine whether or not we or the guarantors were solvent at the relevant time or, regardless of the standard that a court uses, that the issuance of the related guarantees would not be further subordinated to our or any of our guarantors' other debt. Generally, however, an entity would be considered solvent if, at the time it incurred indebtedness:

the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all its assets; or

the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or

it could not pay its debts as they become due.

***Your ability to transfer the notes may be limited by the absence of an active trading market, and there is no assurance that any active trading market will develop for the notes.***

We do not intend to apply for a listing of the notes on a securities exchange or on any automated dealer quotation system. There is currently no established market for the notes and we cannot assure you as to the liquidity of markets that may develop for the notes, your ability to sell the notes or the price at which you

## **Table of Contents**

would be able to sell the notes. If such markets were to exist, the notes could trade at prices that may be lower than their principal amount or purchase price depending on many factors, including prevailing interest rates, the market for similar notes, our financial and operating performance and other factors. The initial purchasers have advised us that they currently intend to make a market with respect to the notes. However, these initial purchasers are not obligated to do so, and any market making with respect to the notes may be discontinued at any time without notice. Therefore, we cannot assure you that an active market for the notes will develop or, if developed, that it will continue. Historically, the market for non-investment grade debt has been subject to 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 prices at which you may sell your notes.

## **FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements within the meaning of the federal securities laws, which involve risks and uncertainties. You can identify forward-looking statements because they contain words such as believes, expects, may, will, should, seeks, approximately, intends, plans, estimates, or anticipates or similar words that concern our strategy, plans or intentions. All statements we make relating to estimated and projected earnings, margins, costs, expenditures, cash flows, growth rates and financial results are forward-looking statements. In addition, we, through our senior management, from time to time make forward-looking public statements concerning our expected future operations and performance and other developments. All of these forward-looking statements are subject to risks and uncertainties that may change at any time, and, therefore, our actual results may differ materially from those we expected. We derive most of our forward-looking statements from our operating budgets and forecasts, which are based upon many detailed assumptions. While we believe that our assumptions are reasonable, we caution that it is very difficult to predict the impact of known factors, and, of course, it is impossible for us to anticipate all factors that could affect our actual results. Important factors that could cause actual results to differ materially from our expectations (cautionary statements) are disclosed under Risk Factors and elsewhere in this prospectus, including, without limitation, in conjunction with the forward-looking statements included in this prospectus. 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. Some of the factors that we believe could affect our results include:

our high degree of debt-related leverage

general economic and market conditions;

the condition of the financial services industry, including the effect of any further consolidation among financial services firms;

the integration of acquired businesses, the performance of acquired businesses and the prospects for future acquisitions;

the effect of war, terrorism, natural disasters or other catastrophic events;

the effect of disruptions to our systems and infrastructure;

the timing and magnitude of software sales;

the timing and scope of technological advances;

customers taking their information availability solutions in-house;



the trend in information availability toward solutions utilizing more dedicated resources;

the market and credit risks associated with clearing broker operations;

the ability to retain and attract customers and key personnel;

risks relating to the foreign countries where we transact business;

**Table of Contents**

the ability to obtain patent protection and avoid patent-related liabilities in the context of a rapidly developing legal framework for software and business-method patents;

a material weakness in our internal controls;

unanticipated changes in our tax provisions or the adoption of new tax legislation; and

the other factors set forth under Risk Factors.

We caution you that the foregoing list of important factors may not contain all of the material factors that are important to you. In addition, in light of these risks and uncertainties, the matters referred to in the forward-looking statements contained in this prospectus may not in fact occur. We undertake no obligation to publicly update any written or oral forward-looking statements made by us or on our behalf as a result of new information, future events or otherwise, except as otherwise required by law.

**USE OF PROCEEDS**

This prospectus is delivered in connection with the sale of notes by Goldman, Sachs & Co. in market-making transactions. We will not receive any of the proceeds from such transactions.

**CASH AND CAPITALIZATION**

	<b>As of December 31, 2009</b>
	<b>(Dollars in millions)</b>
Cash and cash equivalents	\$ 664
Debt:	
Senior secured credit facilities:	
Revolving credit facility <sup>(1)</sup>	\$
Term loan facilities <sup>(2)</sup>	4,717
Senior notes <sup>(3)</sup>	2,100
Senior subordinated notes	1,000
Senior secured notes <sup>(4)</sup>	250
Receivables facility <sup>(5)</sup>	250
Other existing debt <sup>(6)</sup>	19
Total debt	8,336
Equity	2,067
Total capitalization	\$ 10,403

(1) Upon the closing of the Transaction, we entered into a \$1,000 million senior secured revolving credit facility with a six-year maturity, \$149 million of which was drawn on the closing date of the Transaction. On June 9, 2009, we amended the senior secured credit facilities to, among other things, change certain terms and covenants,

reduce existing revolving credit commitments to \$829 million from \$1 billion, and extend a portion (\$580 million) of the senior secured revolving credit facility to May 11, 2013.

- (2) Upon the closing of the Transaction, we entered into \$4,000 million-equivalent of senior secured term loan facilities, comprised of a \$3,685 million facility with SunGard as the borrower and \$315 million-equivalent facilities with a newly formed U.K. subsidiary as the borrower, \$165 million of which is denominated in euros and \$150 million of which is denominated in pounds sterling, with a seven-and-a-half-year maturity. On February 28, 2007, we amended the senior secured credit facilities to, among other things, increase the amount of term loan borrowings of SunGard Data Systems Inc. by \$400 million. Additional borrowings were used to redeem our outstanding floating rate notes. On September 29, 2008, we amended the senior secured credit facilities to, among other things, increase the amount of term loan borrowings of SunGard

**Table of Contents**

Data Systems Inc. by \$500 million. On June 9, 2009, we amended the senior secured credit facilities to, among other things, change certain terms and covenants and extend a portion of the senior secured term loan facility to February 16, 2016.

- (3) The original issuance of the senior notes upon the closing of the Transaction included \$400 million of floating rate notes. On March 26, 2007, we redeemed all outstanding floating rate notes in accordance with the indenture governing the senior notes with the proceeds of additional borrowings under the senior secured term loan facilities. On September 29, 2008 we issued at a \$6 million discount, \$500 million senior notes due 2015 and used the proceeds of that offering and borrowings under the \$500 million incremental senior secured term facility to purchase GL Trade SA and to repay the senior secured notes due 2009 at maturity. As of December 31, 2009, the senior notes due 2015 are recorded at \$495 million.
- (4) Consists of \$250 million face amount of 4.875% senior notes due 2014. Upon consummation of the Transaction, the senior secured notes became secured on an equal and ratable basis with loans under the senior secured credit facilities to the extent required by the indenture governing the senior secured notes and are guaranteed by all our subsidiaries that guarantee the notes. The senior secured notes are recorded at \$234 million as of December 31, 2009 as a result of fair value adjustments related to purchase accounting. The discount of \$16 million on the senior secured notes will continue to be amortized into interest expense and added to the recorded amount over the remaining period up to their maturity date.
- (5) In March 2009 the Company entered into a syndicated receivables facility with an initial maximum commitment of \$250 million. In May 2009 the size of the receivables facility was increased by \$66.5 million.
- (6) Consists of payment obligations relating to historical acquisitions and capital lease obligations.

**Table of Contents****SELECTED HISTORICAL CONSOLIDATED FINANCIAL INFORMATION**

The following table sets forth selected historical consolidated financial data of SunGard Data Systems Inc. as of the dates and for the periods indicated. The selected historical consolidated financial data as of December 31, 2008 and 2009 and for the years ended December 31, 2007, 2008 and 2009 have been derived from our audited consolidated financial statements and related notes appearing elsewhere in this prospectus. The selected historical consolidated financial data as of December 31, 2005, 2006 and 2007 and for the periods from January 1, 2005 through August 10, 2005 and August 11, 2005 through December 31, 2005 and for the year ended December 31, 2006 presented in this table have been derived from audited consolidated financial statements not included in this prospectus. The selected historical consolidated financial data set forth below should be read in conjunction with, and are qualified by reference to, Management's Discussion and Analysis of Financial Condition and Results of Operations and the consolidated financial statements and related notes thereto appearing elsewhere in this prospectus.

	<b>Predecessor</b>		<b>Successor</b>			
	<b>January 1 through August 10, 2005</b>	<b>August 11 through December 31, 2005</b>	<b>Year Ended December 31, 2006</b>	<b>Year Ended December 31, 2007</b>	<b>Year Ended December 31, 2008</b>	<b>Year Ended December 31, 2009</b>
	(Dollars in millions)					
<b>Statement of Operations</b>						
<b>Data:</b>						
Revenue	\$ 2,371	\$ 1,631	\$ 4,323	\$ 4,901	\$ 5,596	\$ 5,508
Operating costs and expenses:						
Cost of sales and direct operating	1,119	741	1,980	2,268	2,744	2,709
Sales, marketing and administration	456	343	915	1,042	1,151	1,112
Product development	154	96	255	271	308	302
Depreciation and amortization	141	89	238	251	278	291
Amortization of acquisition-related intangible assets	84	147	399	438	515	540
Goodwill impairment charge and merger costs <sup>(1)</sup>	121	18	4		130	1,130
Total operating costs and expenses	2,075	1,434	3,791	4,270	5,126	6,084
Income from operations	296	197	532	631	470	(576)
Interest income	9	6	14	19	18	7
Interest expense	(17)	(248)	(656)	(645)	(599)	(637)
Other income (expense) <sup>(2)</sup>		(17)	(29)	(68)	(93)	15
	288	(62)	(139)	(63)	(204)	(1,191)

Edgar Filing: SunGard VPM Inc. - Form S-1

Income (loss) before income taxes						
Income tax (expense) benefit	(142)	33	21	3	(38)	73
Net income (loss)	\$ 146	\$ (29)	\$ (118)	\$ (60)	\$ (242)	\$ (1,118)

**Table of Contents**

	Predecessor		Successor			
	January 1 through August 10, 2005	August 11 through December 31, 2005	Year Ended December 31, 2006	Year Ended December 31, 2007	Year Ended December 31, 2008	Year Ended December 31, 2009
(Dollars in millions)						
<b>Balance Sheet Data:</b>						
Cash and cash equivalents	\$ 317	\$ 316	\$ 427	\$ 975	\$ 664	
Total assets	14,587	14,671	14,840	15,778	13,980	
Total debt (including current portion of long-term debt)	7,429	7,439	7,485	8,875	8,315	
Total stockholders' equity	3,572	3,574	3,556	3,063	2,067	
<b>Statement of Cash Flows Data:</b>						
Net cash provided by (used in):						
Operating activities	\$ 571	\$ 705	\$ 491	\$ 701	\$ 385	\$ 639
Investing activities	(569)	(11,800)	(469)	(564)	(1,109)	(333)
Financing activities	329	10,406	(48)	(32)	1,303	(628)
<b>Other Financial Data:</b>						
EBITDA <sup>(3)</sup>	\$ 521	\$ 416	\$ 1,140	\$ 1,252	\$ 1,298	\$ 1,396
Items included in EBITDA:						
Merger costs <sup>(1)</sup>	121	18	4		2	4
Capital expenditures, net <sup>(4)</sup>	155	119	312	307	392	327
Ratio of earnings to fixed charges <sup>(5)</sup>	6.2x					

- (1) During the period from January 1 through August 10, 2005, we recorded merger costs of \$121 million, primarily \$59 million of accounting, investment banking, legal and other costs associated with the Transaction and a non-cash charge for stock compensation of approximately \$59 million resulting from the acceleration of stock options and restricted stock. During the period from August 11 through December 31, 2005, we recorded merger costs of \$18 million consisting primarily of payroll taxes and certain compensation expenses related to the Transaction. During 2008, we recorded \$128 million of goodwill impairment in the PS segment, and \$2 million of merger costs. During 2009, we recorded \$1,126 million of goodwill impairment in the AS segment and \$4 million of merger costs.
- (2) During the period from August 11 through December 31, 2005, we recorded \$17 million related to the loss on sale of the receivables and discount on retained interests in connection with the accounts receivable securitization program. During 2006, we recorded \$29 million related to the loss on sale of the receivables and discount on retained interests in connection with the accounts receivable securitization program. During 2007, we recorded \$29 million related to the loss on sale of the receivables and discount on retained interests in connection with the accounts receivable securitization program and \$28 million associated with the early retirement of the \$400 million of senior floating rate notes due 2013, of which \$19 million represented the retirement premium paid to the noteholders. During 2008, we recorded \$46 million in foreign exchange losses relating to our Euro

denominated term loan, \$25 million related to the loss on sale of the receivables and discount on retained interests in connection with the accounts receivable securitization program, \$10 million related to hedge settlements associated with the GL TRADE acquisition and \$7 million related to unused alternative financing commitments for the GL TRADE acquisition. During 2009, we recorded \$14 million in foreign currency translation gains related to our Euro denominated term loan.



**Table of Contents**

(3) EBITDA is calculated as follows:

	Predecessor		Successor			
	January 1 through August 10, 2005	August 11 through December 31, 2005	2006	Year Ended December 31, 2007		2008
	(Dollars in millions)					
Net income	\$ 146	\$ (29)	\$ (118)	\$ (60)	\$ (242)	\$ (1,118)
Interest expense, net	8	242	642	626	581	630
Taxes	142	(33)	(21)	(3)	38	(73)
Depreciation and amortization	225	236	637	689	793	831
Goodwill impairment charge					128	1,126
<b>EBITDA</b>	<b>\$ 521</b>	<b>\$ 416</b>	<b>\$ 1,140</b>	<b>\$ 1,252</b>	<b>\$ 1,298</b>	<b>\$ 1,396</b>

EBITDA, a measure used by management to measure operating performance, is defined as net income plus interest, taxes, depreciation and amortization and goodwill impairment. EBITDA is not a recognized term under GAAP and does not purport to be an alternative to net income as a measure of operating performance or to cash flows from operating activities as a measure of liquidity. Additionally, EBITDA is not intended to be a measure of free cash flow available for management's discretionary use, as it does not consider certain cash requirements such as interest payments, tax payments and debt service requirements. Management believes EBITDA is helpful in highlighting trends because EBITDA can differ significantly from company to company depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which companies operate and capital investments. In addition, EBITDA provides more comparability between the historical results of SunGard and results that reflect purchase accounting and the new capital structure. Management compensates for the limitations of using non-GAAP financial measures by using them to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Because not all companies use identical calculations, these presentations of EBITDA may not be comparable to other similarly titled measures of other companies.

- (4) Capital expenditures represent net cash paid for property and equipment as well as software and other assets.
- (5) For purposes of calculating the ratio of earnings to fixed charges, earnings consist of income before income taxes plus fixed charges. Fixed charges include: interest expense, whether expensed or capitalized; amortization of debt issuance cost; and the portion of rental expense representative of the interest factor. Earnings for the period August 11 to December 31, 2005 and for the years ended 2006, 2007, 2008 and 2009 were inadequate to cover fixed charges by \$62 million, \$139 million, \$63 million, \$204 million, and \$1,191 million, respectively.

**Table of Contents**

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION  
AND RESULTS OF OPERATIONS**

**Overview**

We are one of the world's leading software and technology services companies. We provide software and processing solutions to institutions throughout the financial services industry, higher education, and the public sector; and we help enterprises of all types maintain the continuity of their business through information availability services. We support more than 25,000 customers in over 70 countries. We operate our business in four segments: Financial Systems ( FS ), Higher Education ( HE ), Public Sector ( PS ) and Availability Services ( AS ). Our FS segment primarily serves financial services companies, corporate and government treasury departments and energy companies. Our HE segment primarily serves higher education institutions. Our PS segment primarily serves state and local governments and not-for-profit organizations. Our AS segment serves IT-dependent companies across virtually all industries.

SunGard Data Systems Inc. ( SunGard ) was acquired on August 11, 2005 in a leveraged buy-out by a consortium of private equity investment funds associated with Bain Capital Partners, The Blackstone Group, Goldman Sachs & Co., Kohlberg Kravis Roberts & Co., Providence Equity Partners, Silver Lake and TPG (the Transaction ).

SunGard is a wholly owned subsidiary of SunGard Holdco LLC, which is wholly owned by SunGard Holding Corp., which is wholly owned by SunGard Capital Corp. II, ( SCCII ) which is a subsidiary of SunGard Capital Corp. ( SCC ). SCCII and SCC are collectively referred to as the Parent Companies. All four of these companies were formed for the purpose of facilitating the Transaction and are collectively referred to as the Holding Companies.

In FS, we primarily serve financial services companies through a broad range of complementary software solutions that process their investment and trading transactions. The principal purpose of most of these systems is to automate the business processes associated with trading securities, managing portfolios and accounting for investment assets.

In HE, we primarily provide software, strategic and systems integration consulting, and technology management services to higher education organizations around the world, including colleges, universities, campuses, foundations and state systems. HE solutions include administration, advancement, IT management, performance management, enrollment management, academic performance and strategic planning.

In PS, we primarily provide software and processing solutions designed to meet the specialized needs of central, federal, state and local governments, public safety and justice agencies, public schools, utilities, non-profits, and other public sector institutions. Our PS solutions support a range of specialized enterprise resource planning and administrative solutions.

In AS, we help our customers maintain access to the information and computer systems they need to run their businesses by providing them with cost-effective resources to keep their mission-critical IT systems reliable and secure. We offer a complete range of availability services, including recovery services, managed services, consulting services and business continuity management software.

*Global Economic Conditions*

Current instability in the worldwide financial markets, including volatility in and disruption of the credit markets, has resulted in uncertain economic conditions. Late in 2008, a global financial crisis triggered unprecedented market volatility and depressed economic growth. In 2009, the markets began to slowly stabilize as the year progressed, but

have not returned to pre-crisis levels.

Our results of operations typically trail current economic activity, largely due to the multi-year contracts that generate the majority of our revenue. We participate in financial services, higher education and public sector markets and, in our availability services business, across a broad cross-section of industries. We also participate in most major geographic markets around the world. Each of these markets, to varying degrees, has

## **Table of Contents**

experienced some disruption. The results in 2009 reflect the impact of these challenging economic conditions. In response, we have right-sized our expense base in line with expected revenue opportunities but have continued to invest in capital spending, product development and to opportunistically acquire technology through acquisitions.

The following discussion includes historical and certain forward-looking information that should be read together with the accompanying Consolidated Financial Statements and related footnotes and the discussion above of certain risks and uncertainties (see Risk Factors ) that could cause future operating results to differ materially from historical results or the expected results indicated by forward-looking statements.

### **Use of Estimates and Critical Accounting Policies**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make many estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses. Those estimates and judgments are based on historical experience, future expectations and other factors and assumptions we believe to be reasonable under the circumstances. We review our estimates and judgments on an ongoing basis and revise them when necessary. Actual results may differ from the original or revised estimates. A summary of our significant accounting policies is contained in Note 1 of Notes to Consolidated Financial Statements. A description of the most critical policies and those areas where estimates have a relatively greater effect in the financial statements follows. Our management has discussed the critical accounting policies described below with our audit committee.

#### ***Intangible Assets and Purchase Accounting***

Purchase accounting requires that all assets and liabilities be recorded at fair value on the acquisition date, including identifiable intangible assets separate from goodwill. Identifiable intangible assets include customer base (which includes customer contracts and relationships), software and trade name. Goodwill represents the excess of cost over the fair value of net assets acquired.

The estimated fair values and useful lives of identifiable intangible assets are based on many factors, including estimates and assumptions of future operating performance and cash flows of the acquired business, the nature of the business acquired, the specific characteristics of the identified intangible assets, and our historical experience and that of the acquired business. The estimates and assumptions used to determine the fair values and useful lives of identified intangible assets could change due to numerous factors, including product demand, market conditions, technological developments, economic conditions and competition. In connection with our determination of fair values for the Transaction and for other significant acquisitions, we engage independent appraisal firms to assist us with the valuation of intangible (and certain tangible) assets acquired and certain assumed obligations.

We periodically review carrying values and useful lives of long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Factors that could indicate an impairment include significant underperformance of the asset as compared to historical or projected future operating results, or significant negative industry or economic trends. When we determine that the carrying value of a group of assets may not be recoverable, the related estimated future undiscounted cash flows expected to result from the use and eventual disposition of the asset group are compared to the carrying value of the asset group. If the sum of the estimated future undiscounted cash flows is less than the carrying amount, we record an impairment charge based on the difference between the carrying value of the asset group and its fair value, which we estimate based on discounted expected future cash flows. In determining whether an asset group is impaired, we make assumptions regarding recoverability of costs, estimated future cash flows from the assets, intended use of the assets and other relevant factors. If these estimates or their related assumptions change, we may be required to record impairment charges for these assets.

We are required to perform a goodwill impairment test, a two-step test, annually and more frequently when negative conditions or a triggering event arise. We complete our annual goodwill impairment test as of July 1. In step one, the estimated fair value of each reporting unit is compared to its carrying value. If there is

## **Table of Contents**

a deficiency (the estimated fair value is less than the carrying value), a step two test is required. In step two, the amount of any goodwill impairment is calculated by comparing the implied fair value of the reporting unit's goodwill to the carrying value of goodwill, with the resulting impairment reflected in operations. The implied fair value is determined in the same manner as the amount of goodwill recognized in a business combination.

Estimating the fair value of a reporting unit requires various assumptions including the use of projections of future cash flows and discount rates that reflect the risks associated with achieving those cash flows. The assumptions about future cash flows and growth rates are based on management's assessment of a number of factors including the reporting unit's recent performance against budget as well as performance in the market that the reporting unit serves. Discount rate assumptions are based on an assessment of the risk inherent in those future cash flows. Changes to the underlying businesses could affect the future cash flows, which in turn could affect the fair value of the reporting unit.

Based on an evaluation of 2009 year-end results and a reduction in the revenue growth outlook for the AS business, we concluded that AS had experienced a triggering event in its North American reporting unit (AS NA), one of two reporting units identified in the July 1 annual impairment test where the excess of the estimated fair value over the carrying value was less than 10%. None of our other reporting units experienced a triggering event. We first evaluated AS NA's long-lived assets, primarily the customer base and property and equipment, for impairment. In performing the impairment tests for the long-lived assets, we estimated the undiscounted cash flows over the remaining useful lives of the customer base and compared the results to the carrying value of the asset groups. There was no impairment of the long-lived assets.

Next, in performing the goodwill impairment test, we estimated the fair value of AS NA by a combination of (i) estimation of the discounted cash flows based on projected earnings in the future using a discount factor that reflects the risk inherent in the projected cash flows (the income approach) and (ii) analysis of comparable companies market multiples (the market approach). The projected cash flows of the business were lower, based on our evaluation of year-end results and lower growth rates, than those used in the July 1 impairment test. The projections reflect estimated growth rates in the recovery and managed services businesses within AS NA, the impact of continued investment in products, cost savings initiatives and capital spending assumptions associated with the growth in these businesses. We used the same risk-adjusted discount rate in the December 31 test as was used in the July 1 test. As a result, we determined that the carrying value of AS NA was in excess of its fair value. In completing the step 2 test to determine the implied fair value of AS NA's goodwill and therefore the amount of impairment, we first determined the fair value of the tangible and intangible assets and liabilities with the assistance of an external valuation firm. Based on the testing performed, we determined that the carrying value of AS NA's goodwill exceeded its implied fair value by \$1.13 billion and recorded a goodwill impairment charge for this amount. Our total remaining goodwill balance at December 31, 2009 is \$6.18 billion.

After consideration of the AS NA impairment, we have two reporting units, including AS NA, whose goodwill balances total \$1.13 billion at December 31, 2009, where the excess of the estimated fair value over the carrying value of the reporting unit was less than 10%. A one percentage point decrease in the perpetual growth rate or a one percentage point increase in the discount rate would cause these two reporting units to fail the step one test and require a step two analysis, and some or all of this goodwill could be impaired.

As a result of the change in the economic environment in the second half of 2008 and completion of the annual budgeting process, we completed an assessment of the recoverability of our goodwill in December 2008. In completing this review, we considered a number of factors, including a comparison of the budgeted revenue and profitability for 2009 to that included in the annual impairment test conducted as of July 1, 2008, and the amount by which the fair value of each reporting unit exceeded its carrying value in the 2008 impairment analysis, as well as qualitative factors such as the overall economy's effect on each reporting unit. Based on that review, we concluded that the entire enterprise did not experience a triggering event that would require an impairment analysis of all of our

reporting units, but that some reporting units required further impairment analysis. Based on this further analysis, we concluded that the decline in expected future cash flows in one of our PS reporting units was sufficient to result in an impairment of goodwill of \$128 million.

## **Table of Contents**

### ***Revenue Recognition***

We generate services revenue from availability services, processing services, software maintenance and rentals, professional services and broker/dealer fees. All services revenue is recorded as the services are provided based on the fair value of each element. Fair value is determined based on the sales price of each element when sold separately. Most AS services revenue consists of fixed monthly fees based upon the specific computer configuration or business process for which the service is being provided, and the related costs are incurred ratably over the contract period. When recovering from an interruption, customers generally are contractually obligated to pay additional fees, which typically cover our incremental costs of supporting customers during recoveries. FS services revenue includes monthly fees, which may include a fixed minimum fee and/or variable fees based on a measure of volume or activity, such as the number of accounts, trades or transactions, users or the number of hours of service.

For fixed-fee professional services contracts, services revenue is recorded based upon proportional performance measured by the actual number of hours incurred divided by the total estimated number of hours for the project. When contracts include both professional services and software and require a significant amount of program modification or customization, installation, systems integration or related services, the professional services and license revenue is recorded based upon the estimated percentage of completion, measured in the manner described above. Changes in the estimated costs or hours to complete the contract and losses, if any, are reflected in the period during which the change or loss becomes known.

License fees result from contracts that permit the customer to use our software products at its site. Generally, these contracts are multiple-element arrangements since they usually provide for professional services and ongoing software maintenance. In these instances, license fees are recognized upon the signing of the contract and delivery of the software if the license fee is fixed or determinable, collection is probable, and there is sufficient vendor specific evidence of the fair value of each undelivered element. Revenue is recorded when billed when customer payments are extended beyond normal billing terms, or when there is significant acceptance, technology or service risk. Revenue also is recorded over the longest service period in those instances where the software is bundled together with post-delivery services, and there is not sufficient evidence of the fair value of each undelivered service element.

We believe that our revenue recognition practices comply with the complex and evolving rules governing revenue recognition. Future interpretations of existing accounting standards, new standards or changes in our business practices could result in changes in our revenue recognition accounting policies that could have a material effect on our financial results.

### ***Accounting for Income Taxes***

The objectives of accounting for income taxes are to recognize the amount of taxes payable or refundable for the current year and deferred tax liabilities and assets for the future tax consequences of events that have been recognized in an entity's financial statements or tax returns. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized. Deferred tax assets for which no valuation allowance is recorded may not be realized upon changes in facts and circumstances. Tax benefits related to uncertain tax positions taken or expected to be taken on a tax return are recorded when such benefits meet a more likely than not threshold. Otherwise, these tax benefits are recorded when a tax position has been effectively settled, which means that the appropriate taxing authority has completed their examination even though the statute of limitations remains open, or the statute of limitation expires. Considerable judgment is required in assessing and estimating these amounts and differences between the actual outcome of these future tax consequences and our estimates could have a material effect on our financial results.

### ***Accounting for Stock-Based Compensation***



Stock-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as expense over the appropriate service period. Determining the fair value of stock-based awards requires considerable judgment, including estimating the expected term of stock options, expected volatility of

**Table of Contents**

our stock price, and the number of awards expected to be forfeited. In addition, for stock-based awards where vesting is dependent upon achieving certain operating performance goals, we estimate the likelihood of achieving the performance goals. Differences between actual results and these estimates could have a material effect on our financial results. A deferred income tax asset is recorded over the vesting period as stock compensation expense is recorded. Our ability to use the deferred tax asset is ultimately based on the actual value of the stock-based award upon exercise or release of the restricted stock unit. If the actual value is lower than the fair value determined on the date of grant, then there could be an income tax expense for the portion of the deferred tax asset that cannot be used, which could have a material effect on our financial results.

**Results of Operations**

We evaluate performance of our segments based on operating results before interest, income taxes, goodwill impairment charges, amortization of acquisition-related intangible assets, stock compensation and certain other costs (see Note 10 of Notes to Consolidated Financial Statements for the fiscal year ended December 31, 2009 included elsewhere herein).

**Table of Contents****Fiscal Years Ended December 31, 2007, 2008 and 2009**

The following table sets forth, for the periods indicated, certain amounts included in our Consolidated Statements of Operations and the relative percentage that those amounts represent to consolidated revenue (unless otherwise indicated).

	2007		2008		Percent Increase (Decrease) 2008 vs. 2007	2009		Percent Increase (Decrease) 2009 vs. 2008
	% of Revenue		% of Revenue		(In millions)	% of Revenue		
<b>Revenue</b>								
Financial systems (FS)	\$ 2,500	51%	\$ 3,078	55%	23%	\$ 3,068	56%	%
Higher education (HE)	543	11%	540	10%	(1)%	526	10%	(3)%
Public sector systems (PS)	410	8%	411	7%	%	397	7%	(3)%
Software & processing solutions	3,453	70%	4,029	72%	17%	3,991	72%	(1)%
Availability services (AS)	1,448	30%	1,567	28%	8%	1,517	28%	(3)%
	\$ 4,901	100%	\$ 5,596	100%	14%	\$ 5,508	100%	(2)%
<b>Costs and Expenses</b>								
Cost of sales and direct operating	\$ 2,268	46%	\$ 2,744	49%	21%	\$ 2,709	49%	(1)%
Sales, marketing and administration	1,042	21%	1,151	21%	10%	1,112	20%	(3)%
Product development	271	6%	308	6%	14%	302	5%	(2)%
Depreciation and amortization	251	5%	278	5%	11%	291	5%	5%
Amortization of acquisition- related intangible assets	438	9%	515	9%	18%	540	10%	5%
Goodwill impairment charge and merger costs		%	130	2%	%	1,130	21%	769%
	\$ 4,270	87%	\$ 5,126	92%	20%	\$ 6,084	110%	19%
<b>Income from operations</b>								
Financial systems <sup>(1)</sup>	\$ 525	21%	\$ 608	20%	16%	\$ 618	20%	2%
Higher education <sup>(1)</sup>	143	26%	130	24%	(9)%	138	26%	6%
Public sector systems <sup>(1)</sup>	84	20%	79	19%	(6)%	77	19%	(3)%
	752	22%	817	20%	9%	833	21%	2%

Software & processing solutions <sup>(1)</sup>								
Availability services <sup>(1)</sup>	428	30%	443	28%	4%	<b>380</b>	<b>25%</b>	<b>(14)%</b>
Corporate administration	(55)	(1)%	(51)	(1)%	7%	<b>(57)</b>	<b>(1)%</b>	<b>(12)%</b>
Amortization of acquisition- related intangible assets	(438)	(9)%	(515)	(9)%	(18)%	<b>(540)</b>	<b>(10)%</b>	<b>(5)%</b>
Goodwill impairment charge		%	(128)	(2)%	%	<b>(1,126)</b>	<b>(20)%</b>	<b>(780)%</b>
Stock Compensation expense	(32)	(1)%	(35)	(1)%	(9)%	<b>(33)</b>	<b>(1)%</b>	<b>6%</b>
Merger costs and other items <sup>(2)</sup>	(24)	%	(61)	(1)%	(154)%	<b>(33)</b>	<b>(1)%</b>	<b>46%</b>
Income from operations	\$ 631	13%	\$ 470	8%	(26)%	\$ <b>(576)</b>	<b>(10)%</b>	<b>(223)%</b>

(1) Percent of revenue is calculated as a percent of revenue from FS, HE, PS, Software & Processing Solutions, and AS, respectively.

(2) Merger costs and other items include merger costs, management fees paid to the Sponsors, purchase accounting adjustments, including in 2008 certain acquisition-related compensation expense, and, in 2007, an unfavorable arbitration award related to a customer dispute, partially offset in each year by capitalized software development costs.

**Table of Contents**

The following table sets forth, for the periods indicated, certain supplemental revenue data and the relative percentage that those amounts represent to total revenue.

	2007		2008		Percent Increase (Decrease) 2008 vs. 2007	2009		Percent Increase (Decrease) 2009 vs. 2008
	% of Revenue		% of Revenue			% of Revenue		
			(In millions)					
<b>Financial Systems</b>								
Services	\$ 2,155	44%	\$ 2,737	49%	27%	\$ 2,737	50%	%
License and resale fees	232	5%	229	4%	(1)%	197	4%	(14)%
Total products and services	2,387	49%	2,966	53%	24%	2,934	53%	(1)%
Reimbursed expenses	113	2%	112	2%	(1)%	134	2%	20%
	\$ 2,500	51%	\$ 3,078	55%	23%	\$ 3,068	56%	%
<b>Higher Education</b>								
Services	\$ 435	9%	\$ 453	8%	4%	\$ 439	8%	(3)%
License and resale fees	98	2%	77	1%	(21)%	79	1%	3%
Total products and services	533	11%	530	9%	(1)%	518	9%	(2)%
Reimbursed expenses	10	%	10	%	%	8	%	(20)%
	\$ 543	11%	\$ 540	10%	(1)%	\$ 526	10%	(3)%
<b>Public Sector Systems</b>								
Services	\$ 348	7%	\$ 349	6%	%	\$ 289	5%	(17)%
License and resale fees	58	1%	57	1%	(2)%	104	2%	82%
Total products and services	406	8%	406	7%	%	393	7%	(3)%
Reimbursed expenses	4	%	5	%	25%	4	%	(20)%
	\$ 410	8%	\$ 411	7%	%	\$ 397	7%	(3)%
<b>Software &amp; Processing Solutions</b>								
Services	\$ 2,938	60%	\$ 3,539	63%	20%	\$ 3,465	63%	(2)%
License and resale fees	388	8%	363	6%	(6)%	380	7%	5%
	3,326	68%	3,902	70%	17%	3,845	70%	(1)%

Total products and services

Reimbursed expenses	127	3%	127	2%	%	<b>146</b>	<b>3%</b>	<b>15%</b>
	\$ 3,453	70%	\$ 4,029	72%	17%	<b>\$ 3,991</b>	<b>72%</b>	<b>(1)%</b>

**Table of Contents**

	2007		2008		Percent Increase (Decrease) 2008 vs. 2007	2009		Percent Increase (Decrease) 2009 vs. 2008
	% of Revenue		% of Revenue		(In millions)	% of Revenue		
<b>Availability Services</b>								
Services	\$ 1,426	29%	\$ 1,544	28%	8%	\$ 1,496	27%	(3)%
License and resale fees	8	%	6	%	(25)%	4	%	(33)%
Total products and services	1,434	29%	1,550	28%	8%	1,500	27%	(3)%
Reimbursed expenses	14	%	17	%	21%	17	%	%
	\$ 1,448	30%	\$ 1,567	28%	8%	\$ 1,517	28%	(3)%
<b>Total Revenue</b>								
Services	\$ 4,364	89%	\$ 5,083	91%	16%	\$ 4,961	90%	(2)%
License and resale fees	396	8%	369	7%	(7)%	384	7%	4%
Total products and services	4,760	97%	5,452	97%	15%	5,345	97%	(2)%
Reimbursed expenses	141	3%	144	3%	2%	163	3%	13%
	\$ 4,901	100%	\$ 5,596	100%	14%	\$ 5,508	100%	(2)%

**Year Ended December 31, 2009 Compared to Year Ended December 31, 2008****Income from Operations:**

Our total operating margin was -10% in 2009 and 8% in 2008 which included \$1.13 billion and \$128 million of goodwill impairment charges in AS in 2009 and PS in 2008, respectively. In addition to the increase in the goodwill impairment charges, the operating margin was also impacted by the decline in AS, a \$33 million decrease in license fees and a \$25 million increase in amortization of acquisition-related intangible assets, partially offset by margin improvement in our software and processing businesses primarily due to cost savings.

**Financial Systems:**

The FS operating margin was unchanged at 20% in each of 2009 and 2008. Margin improvement from cost savings initiatives, primarily in employee-related and consultant costs, was offset by a \$30 million decrease in software license revenue and the reduced contribution from one of our trading systems businesses, a broker/dealer which has an inherently lower margin than our other FS businesses. The impact of this broker/ dealer on FS operating margin is a decline of almost one margin point.

The most important factors affecting the FS operating margin are:

the level of trading volumes,

the level of IT spending and its impact on the overall demand for professional services and software license sales,

the rate and value of contract renewals, new contract signings and contract terminations,

the overall condition of the financial services industry and the effect of any further consolidation among financial services firms, and



**Table of Contents**

the operating margins of recently acquired businesses, which tend to be lower at the outset and improve over a number of years.

*Higher Education:*

The HE operating margin was 26% in 2009 compared to 24% in 2008. The operating margin increase is due to the impact of cost savings during the year, primarily in employee-related and consultant costs and professional services expenses.

The most important factors affecting the HE operating margin are:

the rate and value of contract renewals, new contract signings and contract terminations,

the level of government funding and endowments, and

the level of IT spending and its impact on the overall demand for professional services and software license sales.

*Public Sector:*

The PS operating margin was 19% in each of 2009 and 2008. The \$2 million decrease is due primarily to a decrease in software license fees.

The most important factors affecting the PS operating margin are:

the rate and value of contract renewals, new contract signings and contract terminations,

the level of government and school district funding, and

the level of IT spending and its impact on the overall demand for professional services and software license sales.

*Availability Services:*

The AS operating margin, excluding the goodwill impairment charge, was 25% in 2009 compared to 28% in 2008, primarily due to facility expansions, mostly in Europe, which increased the fixed cost base in advance of anticipated revenue growth, increases in employee-related costs, mostly in North America, increased depreciation and amortization, and the impact of a change in the mix of revenue from recovery services which typically use shared resources to managed services which use dedicated resources.

The most important factors affecting the AS operating margin are:

the rate and value of contract renewals, new contract signings and contract terminations,

the timing and magnitude of equipment and facilities expenditures,

the level and success of new product development, and

the trend toward availability solutions utilizing more dedicated resources.

The margin rate of the AS European business is lower than the margin rate of the North American business due primarily to lower economies of scale in the distinct geographic markets served. However, the differential in the margins has narrowed over the past several years because of operational improvements in Europe and the growing proportion of managed services in North America.

***Revenue:***

Total revenue was \$5.51 billion in 2009 compared to \$5.60 billion in 2008. Included in 2009 was the full year impact from the acquisitions made in 2008 including the October 2008 acquisition of GL TRADE S.A. Organic revenue declined 3% primarily due to a decrease in professional services revenue in FS and HE. Organic revenue is defined as revenue from businesses owned for at least one year and adjusted for both the effects of businesses sold in the previous twelve months and the impact of currency exchange rates. When

**Table of Contents**

assessing our financial results, we focus on growth in organic revenue because overall revenue growth is affected by the timing and magnitude of acquisitions, dispositions and by currency exchange rates.

Services revenue, which is largely recurring in nature, includes revenue from availability services, processing services, software support and rentals, professional services, broker/dealer fees and hardware rentals. Services revenue decreased to \$4.96 billion from \$5.08 billion, representing approximately 90% of total revenue in 2009 compared to 91% in 2008. The revenue decrease of \$122 million in 2009 was mainly due to a decrease in professional services and processing revenue and the impact of changes in currency exchange rates offset in part by the increase in software rentals, primarily from FS acquired businesses. The year to year decline reflects a change in classification in PS from services revenue to license and resale fees of \$36 million.

Professional services revenue was \$800 million and \$961 million in 2009 and 2008, respectively. The decrease was primarily in FS and HE and was the result of customers delaying or cancelling projects due to the economic climate, as well as completion of certain projects in 2008.

Revenue from license and resale fees was \$384 million and \$369 million for 2009 and 2008, respectively, and includes software license revenue of \$233 million and \$266 million, respectively. The year to year increase reflects a change in classification in PS from services revenue to license and resale fees of \$36 million.

SunGard ended 2009 with a software license backlog of \$35 million in FS, which consisted of signed contracts for licensed software that (i) at our election, was not shipped to the customer until 2010, (ii) we voluntarily extended payment terms or (iii) included products or services not yet deliverable and from which the license element cannot be separated. This revenue backlog will be recognized in future years, largely 2010.

*Financial Systems:*

FS revenue was \$3.07 billion in 2009 compared to \$3.08 billion in 2008. Organic revenue decreased by approximately 5% in 2009. 2009 included the full year impact from acquired businesses which mostly offset the decline in organic revenue, largely professional services.

Professional services revenue decreased \$120 million or 18% to \$533 million. Revenue from license and resale fees included software license revenue of \$174 million and \$204 million, respectively, in 2009 and 2008.

We expect a material decline in 2010 revenue in one of our trading systems businesses, a broker/dealer, as a result of changes in customer mix and lower levels of volatility. The customer mix is impacted by the market-wide dynamics by which active trading firms are opting to become broker/dealers and trade on their own behalf. Beginning in the first quarter of 2010, a major customer of this broker/dealer started trading on its own behalf. This broker/dealer business, which has an inherently lower margin than our other FS businesses, has driven organic revenue growth over the past three years.

*Higher Education:*

HE revenue was \$526 million in 2009 compared to \$540 million in 2008. The \$14 million, or 3%, decrease was all organic and primarily due to a decline in professional services revenue, partially offset by an increase in maintenance and support revenue. Professional services revenue was \$126 million in 2009 compared to \$146 million in 2008. Software license fees were unchanged at \$32 million in 2009.

*Public Sector:*

PS revenue was \$397 million in 2009 compared to \$411 million in 2008. Organic revenue increased approximately 2%. Revenue from license and resale fees included software license fees of \$23 million and \$25 million in 2009 and 2008, respectively.

**Table of Contents**

*Availability Services:*

AS revenue was \$1.52 billion in 2009 compared to \$1.57 billion in 2008, a 3% decrease. AS organic revenue was unchanged in 2009. In North America, revenue decreased 1% overall and 2% organically where decreases in recovery services exceeded growth in managed services and professional services revenue. Revenue from license and resale fees included software license revenue of \$4 million, a decrease of \$2 million from the prior year. Revenue in Europe decreased 12%, but increased 2.5% organically.

*Costs and Expenses:*

Total costs increased to 110% of revenue in 2009 from 92% of 2008 revenue. Included in 2009 was a \$1.13 billion impairment charge related to our AS business and 2008 included a \$128 million impairment charge related to our PS business.

Cost of sales and direct operating expenses as a percentage of total revenue was 49% in each of 2009 and 2008. Lower employee-related and consultant expenses in our software and processing businesses were partially offset by increased costs from acquired businesses, net of a business sold in 2008.

The decrease in sales, marketing and administration expenses of \$39 million was due primarily to decreased costs resulting from FS employee-related expenses partially offset by increased costs from acquired businesses, net of a business sold in 2008, and increases in FS facilities expense.

Because AS software development costs are insignificant, it is more meaningful to measure product development expense as a percentage of revenue from software and processing solutions. In 2009 and 2008, software development expenses were 7% and 8%, respectively, of revenue from software and processing solutions.

Depreciation and amortization as a percentage of total revenue was 5% in each of 2009 and 2008. The \$13 million increase in 2009 was due primarily to capital expenditures supporting AS, FS and HE.

Amortization of acquisition-related intangible assets was 10% and 9% of total revenue in 2009 and 2008, respectively. During 2009, we shortened the remaining useful lives of certain intangible assets and also recorded impairment charges of our customer base and software assets of \$18 million and \$17 million, respectively. During 2008, we recorded impairment charges of our customer base, software and trade name assets of \$47 million, \$17 million and \$3 million, respectively. These impairments are the result of reduced cash flow projections.

We recorded goodwill impairment charges of \$1.13 billion in AS and \$128 million in PS in 2009 and 2008, respectively. These impairments are described above.

Interest expense was \$637 million in 2009 compared to \$599 million in 2008. The increase is primarily due to increased borrowings from the issuance of \$500 million senior notes due 2015, a \$500 million increase in the term loan and borrowings under our receivables facility, partially offset by decreased borrowings under our term loans and revolving credit facility, repayment of our senior notes due in January 2009 and interest rate decreases.

Other income was \$15 million in 2009 compared to other expense of \$93 million in 2008. The income in 2009 was due primarily to \$14 million of foreign currency translation gains related to our Euro denominated term loan. In contrast, during 2008, currency translation related to those same Euro denominated term loans produced \$46 million of foreign currency translation losses. Also incurred in 2008 were \$25 million of losses on sales of receivables related to our terminated off-balance sheet receivables facility and \$17 million of losses on Euros purchased in advance of and fees associated with unused alternative financing commitments for the acquisition of GL TRADE.

We believe that our overall effective income tax rate is typically between 38% and 40%. The effective income tax rates for 2009 and 2008 were a tax benefit of 6% and a tax provision of 19%, respectively, reflecting nondeductible goodwill impairment charges in both years. The reported benefit from income taxes in 2009 includes a \$12 million favorable adjustment primarily related to utilization in our 2008 U.S. federal

**Table of Contents**

income tax return of foreign tax credit carryforwards that were not expected to be utilized at the time of the 2008 tax provision.

Accreted dividends on SCCII's cumulative preferred stock were \$180 million and \$157 million in 2009 and 2008, respectively. The increase in dividends is due to compounding. No dividends have been declared by SCCII.

**Year Ended December 31, 2008 Compared to Year Ended December 31, 2007**

***Income from Operations:***

Our total operating margin decreased to 8% in 2008 from 13% in 2007 primarily due to a \$128 million goodwill impairment charge in PS, intangible asset write-offs of \$67 million and the decline in operating margins at each of our operating segments.

***Financial Systems:***

The FS operating margin was 20% in 2008, compared to 21% for the prior year period. The operating margin decline reflects the impact of the increase in revenue at one of our trading systems businesses which has an inherently lower margin, an increase in restructuring charges and an \$11 million decrease in software license revenue.

***Higher Education:***

The HE operating margin was 24% in 2008 compared to 26% in 2007. The operating margin decline is due to a \$15 million decrease in software license fees.

***Public Sector:***

The PS operating margin was 19% in 2008 compared to 20% in 2007. The operating margin decline is due primarily to the impact of significantly lower margins in the U.K. business and a \$4 million decrease in software license fees.

***Availability Services:***

The AS operating margin was 28% in 2008 compared to 30% in 2007, primarily due to facility expansions in both North America and Europe, which increased the fixed cost base in advance of anticipated revenue growth.

***Revenue:***

Total revenue was \$5.60 billion in 2008 compared to \$4.90 billion in 2007. The increase in total revenue in 2008 is due primarily to organic revenue growth of approximately 10%, with trading volumes of one of our trading systems businesses adding six percentage points to the growth rate.

Services revenue increased to \$5.08 billion from \$4.36 billion, representing approximately 91% of total revenue in 2008 compared to 89% in 2007. The revenue increase of \$719 million in 2008 was due primarily to organic revenue growth, mostly in FS, primarily coming from the broker/dealer mentioned above, and the impact of acquired revenue in FS and AS.

Professional services revenue was \$961 million and \$886 million in 2008 and 2007, respectively. The \$75 million increase was due primarily to FS acquired and organic revenue.

Revenue from license and resale fees was \$369 million and \$396 million in 2008 and 2007, respectively, and includes software license revenue of \$266 million and \$293 million, respectively.



**Table of Contents**

*Financial Systems:*

FS revenue was \$3.08 billion in 2008 compared to \$2.50 billion in 2007. Organic revenue growth was approximately 17% in 2008, with trading volumes of one of our trading systems businesses adding 12 percentage points to the growth rate.

Professional services revenue increased \$63 million or 11%. Revenue from license and resale fees included software license revenue of \$204 million and \$214 million, respectively, in 2008 and 2007.

*Higher Education:*

HE revenue was \$540 million in 2008 compared to \$543 million in 2007. Services revenue increased \$18 million, primarily from increases in software support revenue. Professional services revenue was \$146 million in 2008, an increase of \$7 million. In 2008, longer sales cycles caused software license fees and resale fees to decline by \$15 million and \$6 million, respectively. HE organic revenue decreased 1% in 2008.

*Public Sector:*

PS revenue was \$411 million in 2008 compared to \$410 million in 2007. Organic revenue increased approximately 2%. Software license fees were \$25 million in 2008, a decrease of \$4 million.

*Availability Services:*

AS revenue was \$1.57 billion in 2008 compared to \$1.45 billion in 2007, an 8% increase. AS organic revenue increased approximately 4% in 2008. In North America, revenue grew 10% overall and 3% organically as strong growth in managed services was offset in part by a decrease in basic and advanced recovery services. Revenue from license and resale fees included software license revenue of \$6 million, an increase of \$3 million from the prior year. Revenue in Europe grew 4% overall and 9% organically.

*Costs and Expenses:*

Cost of sales and direct operating expenses as a percentage of total revenue was 49% and 46% in 2008 and 2007, respectively, largely the result of the higher volumes of the trading systems business previously mentioned. Also impacting the period were increased costs resulting from acquired businesses, an increase in FS and HE employee-related expenses supporting increased services revenue and an increase in AS facilities costs.

The increase in sales, marketing and administration expenses of \$109 million was due primarily to increased costs resulting from acquired businesses, AS employee-related expenses and an insurance settlement in 2007, partially offset by decreases in HE and FS employee-related expenses and an unfavorable arbitration award in 2007 related to a customer dispute.

Because AS software development costs are insignificant, it is more meaningful to measure product development expense as a percentage of revenue from software and processing solutions. In 2008 and 2007, software development expenses were unchanged at 8% of revenue from software and processing solutions.

Depreciation and amortization as a percentage of total revenue was 5% in each of 2008 and 2007. The \$27 million increase in 2008 was due primarily to capital expenditures supporting FS and AS and from the AS business acquired in the third quarter of 2007.

Amortization of acquisition-related intangible assets was 9% of total revenue for each of 2008 and 2007. Amortization of acquisition-related intangible assets increased \$77 million in 2008 due primarily to the impact of recent acquisitions made by the Company and a \$57 million increase in impairment charges.

We recorded a goodwill impairment charge of \$128 million in PS in 2008. This impairment is described above.

Interest expense was \$599 million in 2008 compared to \$645 million in 2007. The decrease is primarily due to interest rate decreases and the redemption of the senior floating rate notes in 2007, partially offset by

**Table of Contents**

the issuance of \$500 million senior notes due 2015, a \$500 million increase in the term loan and additional borrowings under our revolving credit facility.

Other expense increased \$25 million in 2008 due primarily to increased foreign currency translation losses primarily related to our Euro denominated term loan and losses on Euros purchased in advance of and fees associated with unused alternative financing commitments for the acquisition of GL TRADE, partially offset by \$28 million of expense in 2007 associated with the early retirement of the \$400 million of senior floating rate notes due 2013, of which \$19 million represented the retirement premium paid to noteholders.

The effective income tax rates for 2008 and 2007 were -19% and 5%, respectively. The rate in 2008 reflects a nondeductible goodwill impairment charge as well as an increase to our income tax reserve for tax matters for open years, some of which are currently under audit. The rate in 2007 reflects a change in the mix of taxable income in various jurisdictions and limitations on our ability to utilize certain foreign tax credits.

Accreted dividends on SCCII s cumulative preferred stock were \$157 million and \$139 million in 2008 and 2007, respectively. The increase in dividends is due to compounding. No dividends have been declared by SCCII.

**Liquidity And Capital Resources**

At December 31, 2009, cash and cash equivalents were \$664 million, a decrease of \$311 million from December 31, 2008, while availability under our revolving credit facility increased \$321 million to \$804 million. Approximately \$65 million of cash and cash equivalents at December 31, 2009 relates to our broker/dealer operations, which are required to be held in accordance with the applicable regulatory requirements and are therefore not immediately available for general corporate use.

Cash flow from operations was \$639 million in 2009 compared to cash flow from operations of \$385 million in 2008. The increase in cash flow from operations is due primarily to a positive impact of approximately \$287 million from the termination in 2008 of our off-balance sheet accounts receivable securitization program, offset by an increased use of cash, principally in working capital, in the balance of the business.

Net cash used in investing activities was \$333 million in 2009 and \$1.1 billion in 2008. During 2009, we spent \$12 million for three acquisitions, whereas we spent \$721 million for six acquisitions during 2008, including \$546 million for the acquisition of GL TRADE in our FS business. Capital expenditures were \$327 million in 2009 and \$392 million in 2008.

In 2009, net cash used in financing activities was \$628 million, primarily related to repayment at maturity of the \$250 million senior secured notes and repayment of \$500 million of borrowings under our revolving credit facility, partially offset by cash received from the new receivables facility (net of associated fees). In 2008, net cash provided by financing activities was \$1.3 billion, the proceeds of which were used to fund the acquisition of GL TRADE, replace the liquidity provided by the terminated off-balance sheet accounts receivable securitization facility and repay \$250 million of senior notes due in January 2009.

**Table of Contents**

As a result of the Transaction (August 11, 2005), we are highly leveraged. See Note 5 of Notes to Consolidated Financial Statements, which contains a full description of our debt. Total debt outstanding as of December 31, 2009 was \$8.32 billion, which consists of the following (in millions):

Senior Secured Credit Facility:	
Secured revolving credit facility of %	\$
Term loans, tranche A, effective interest rate of 3.24%	1,506
Term loans, tranche B, effective interest rate of 6.79%	2,717
Incremental term loan, effective interest rate of 6.75%	494
Total Senior Secured Credit Facility	4,717
Senior Notes due 2014 at 4.875%, net of discount of \$16	234
Senior Notes due 2013 at 9.125%	1,600
Senior Subordinated Notes due 2015 at 10.25%	1,000
Senior Notes due 2015 at 10.625%, net of discount of \$5	495
Secured accounts receivable facility, effective interest rate of 7.5%	250
Other, primarily acquisition purchase price and capital lease obligations	19
	8,315
Short-term borrowings and current portion of long-term debt	(64)
Long-term debt	\$ 8,251

As of December 31, 2009, our senior secured credit facilities consist of (1) \$1.43 billion of U.S. dollar-denominated tranche A term loans, \$66 million of pound sterling-denominated tranche A term loans and \$13 million of euro-denominated tranche A term loans, each maturing on February 28, 2014, (2) \$2.48 billion of U.S. dollar-denominated tranche B term loans, \$64 million of pound sterling-denominated tranche B term loans and \$172 million of euro-denominated tranche B term loans, each maturing on February 28, 2016, (3) \$494 million of U.S. dollar-denominated incremental term loans maturing on February 28, 2014 and (4) an \$829 million revolving credit facility with \$580 million of commitments terminating on May 11, 2013, and \$249 million of commitments terminating on August 11, 2011. As of December 31, 2009, \$804 million was available for borrowing under the revolving credit facility after giving effect to certain outstanding letters of credit.

In June 2009, SunGard amended and restated its existing Credit Agreement ( Amended Credit Agreement ) to (a) extend the maturity date of \$2.5 billion of U.S. dollar-denominated term loans, £40 million of pound sterling-denominated term loans, and 120 million of Euro-denominated term loans from February 2014 to February 2016, (b) reduce existing revolving credit commitments to \$829 million from \$1 billion and extend the termination date of \$580 million of those commitments to May 2013, and (c) amend certain other provisions including those related to negative and financial covenants.

We use interest rate swap agreements to manage the amount of our floating rate debt in order to reduce our exposure to variable rate interest payments associated with the senior secured credit facilities. We pay a stream of fixed interest payments for the term of the swap, and in turn, receive variable interest payments based on one-month LIBOR or three-month LIBOR (0.23% and 0.25%, respectively, at December 31, 2009).

**Table of Contents**

The net receipt or payment from the interest rate swap agreements is included in interest expense. A summary of our interest rate swaps at December 31, 2009 follows:

<b>Inception</b>	<b>Maturity</b>	<b>Notional Amount (In millions)</b>	<b>Interest Rate Paid</b>	<b>Interest Rate Received</b>
February 2006	February 2011	\$ 800	5.00%	LIBOR
January 2008	February 2011	\$ 750	3.17%	LIBOR
February 2008	February 2010	\$ 750	2.71%	LIBOR
January / February 2009	February 2012	\$ 1,200	1.78%	LIBOR
Total/Weighted average interest rate		\$ 3,500	3.01%	

In early 2010, we entered into 3-year interest rate swaps that expire in May 2013 for an aggregate notional amount of \$500 million under which we pay fixed interest payments (at 1.99%) for the term of the swaps and, in turn, receive variable interest payments based on three-month LIBOR rate.

In December 2008, we terminated our off-balance sheet accounts receivable securitization program. Under the accounts receivable facility, eligible receivables were sold to third-party conduits through a wholly owned, bankruptcy remote, special purpose entity that is not consolidated for financial reporting purposes. SunGard serviced the receivables and charged a monthly servicing fee at market rates. The third-party conduits were sponsored by certain lenders under SunGard's senior secured credit facilities.

In March 2009, we entered into a syndicated three-year receivables facility. The facility limit is \$317 million, which consists of a term loan commitment of \$181 million and a revolving commitment of \$136 million. Advances may be borrowed and repaid under the revolving commitment with no impact on the facility limit. The term loan commitment may be repaid at any time at SunGard's option, but will result in a permanent reduction in the facility limit. At December 31, 2009, \$181 million was drawn against the term loan commitment and \$69 million was drawn against the revolving commitment, which represented the full amount available for borrowing based on the terms and conditions of the facility. At December 31, 2009, \$689 million of accounts receivable secure the borrowings under the receivables facility.

Under the receivables facility, SunGard is generally required to pay interest on the amount of each advance at the one month LIBOR rate (with a floor of 3%) plus 4.50% per annum, which at December 31, 2009 was 7.5%. The facility is subject to a fee on the unused portion of 1.00% per annum. The receivables facility contains certain covenants, and SunGard is required to satisfy and maintain specified facility performance ratios, financial ratios and other financial condition tests.

At December 31, 2009, contingent purchase price obligations that depend upon the operating performance of certain acquired businesses could total \$57 million, all of which could be due in the next 12 months. We do not expect to pay any of this amount in the next 12 months. We also have outstanding letters of credit and bid bonds that total approximately \$39 million.

At December 31, 2009, our contractual obligations follow (in millions):

	<b>Total</b>	<b>2010</b>	<b>2011 - 2012</b>	<b>2013 - 2014</b>	<b>2015 and After</b>
Short-term and long-term debt <sup>(1)</sup>	\$ 8,315	\$ 64	\$ 350	\$ 3,830	\$ 4,071
Interest payments <sup>(2)</sup>	2,898	567	1,016	904	411
Operating leases	1,373	211	338	253	571
Purchase obligations <sup>(3)</sup>	288	118	107	58	5
	\$ 12,874	\$ 960	\$ 1,811	\$ 5,045	\$ 5,058

(1) The senior notes due 2014 and the senior notes due 2015 are recorded at \$234 million and \$495 million, respectively, as of December 31, 2009, reflecting the remaining unamortized discount. The \$21 million

**Table of Contents**

discount at December 31, 2009 will be amortized and included in interest expense over the remaining periods to maturity.

- (2) Interest payments consist of interest on both fixed-rate and variable-rate debt. Variable-rate debt consists primarily of the Tranche A secured term loan facility (\$1,506 million at 3.24%), the Tranche B secured term loan facility (\$2,717 million at 6.79%), the Incremental Term Loan (\$494 million at 6.75%) and the secured accounts receivable facility (\$250 million at 7.5%), each as of December 31, 2009. See Note 5 to Notes to Consolidated Financial Statements. The swap agreements entered into in early 2010 will increase the amount of interest payments in the table above by \$4 million in 2010, \$15 million in 2011-2012, and \$4 million in 2013.
- (3) Purchase obligations include our estimate of the minimum outstanding obligations under noncancelable commitments to purchase goods or services.

We expect our cash on hand, cash flows from operations and availability under our revolving credit facility to provide sufficient liquidity to fund our current obligations, projected working capital requirements and capital spending for a period that includes at least the next 12 months.

Depending on market conditions, the Company, its Sponsors and their affiliates, may from time to time repurchase debt securities issued by the Company, in privately negotiated or open market transactions, by tender offer or otherwise.

***Covenant Compliance***

Our senior secured credit facilities and the indentures governing our senior notes due 2013 and 2015 and our senior subordinated notes due 2015 contain various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability to, among other things:

incur additional indebtedness or issue certain preferred shares,

pay dividends on, repurchase or make distributions in respect of our capital stock or make other restricted payments,

make certain investments,

sell certain assets,

create liens,

consolidate, merge, sell or otherwise dispose of all or substantially all of our assets, and

enter into certain transactions with our affiliates.

In addition, pursuant to the Principal Investor Agreement by and among our Holding Companies and the Sponsors, we are required to obtain approval from certain Sponsors prior to the declaration or payment of any dividend by us or any of our subsidiaries (other than dividends payable to us or any of our wholly owned subsidiaries).

Under the senior secured credit facilities, we are required to satisfy and maintain specified financial ratios and other financial condition tests. As of December 31, 2009, we are in compliance with the financial and nonfinancial covenants. While we believe that we will remain in compliance, our continued ability to meet those financial ratios

and tests can be affected by events beyond our control, and there is no assurance that we will meet those ratios and tests.

Adjusted earnings before interest, taxes, depreciation and amortization and goodwill impairment ( EBITDA ) is a non-GAAP measure used to determine our compliance with certain covenants contained in the indentures governing the senior notes due 2013 and 2015 and senior subordinated notes due 2015 and in our senior secured credit facilities. Adjusted EBITDA is defined as EBITDA further adjusted to exclude unusual items and other adjustments permitted in calculating covenant compliance under the indentures and our senior secured credit facilities. We believe that including supplementary information concerning Adjusted



**Table of Contents**

EBITDA is appropriate to provide additional information to investors to demonstrate compliance with our financing covenants.

The breach of covenants in our senior secured credit facilities that are tied to ratios based on Adjusted EBITDA could result in a default and the lenders could elect to declare all amounts borrowed due and payable. Any such acceleration would also result in a default under our indentures. Additionally, under our debt agreements, our ability to engage in activities such as incurring additional indebtedness, making investments and paying dividends is also tied to ratios based on Adjusted EBITDA.

Adjusted EBITDA does not represent net income (loss) or cash flow from operations as those terms are defined by GAAP and does not necessarily indicate whether cash flows will be sufficient to fund cash needs. While Adjusted EBITDA and similar measures are frequently used as measures of operations and the ability to meet debt service requirements, these terms are not necessarily comparable to other similarly titled captions of other companies due to the potential inconsistencies in the method of calculation. Adjusted EBITDA does not reflect the impact of earnings or charges resulting from matters that we may consider not to be indicative of our ongoing operations. In particular, the definition of Adjusted EBITDA in the indentures allows us to add back certain non-cash, extraordinary or unusual charges that are deducted in calculating net income (loss). However, these are expenses that may recur, vary greatly and are difficult to predict. Further, our debt instruments require that Adjusted EBITDA be calculated for the most recent four fiscal quarters. As a result, the measure can be disproportionately affected by a particularly strong or weak quarter. Further, it may not be comparable to the measure for any subsequent four-quarter period or any complete fiscal year.

The following is a reconciliation of net loss, which is a GAAP measure of our operating results, to Adjusted EBITDA as defined in our debt agreements. The terms and related calculations are defined in the indentures.

	<b>Year Ended December 31,</b>		
	<b>2007</b>	<b>2008</b>	<b>2009</b>
	<b>(In millions)</b>		
Net loss	\$ (60)	\$ (242)	\$ (1,118)
Interest expense, net	626	581	630
Taxes	(3)	38	(73)
Depreciation and amortization	689	793	831
Goodwill impairment charge		128	1,126
<b>EBITDA</b>	<b>1,252</b>	<b>1,298</b>	<b>1,396</b>
Purchase accounting adjustments <sup>(1)</sup>	14	39	17
Non-cash charges <sup>(2)</sup>	37	35	36
Restructuring and other charges <sup>(3)</sup>	43	68	42
Acquired EBITDA, net of disposed EBITDA <sup>(4)</sup>	12	57	
Pro forma expense savings related to acquisitions <sup>(5)</sup>		17	3
Other <sup>(6)</sup>	38	76	5
<b>Adjusted EBITDA Senior Secured Credit Facilities</b>	<b>1,396</b>	<b>1,590</b>	<b>1,499</b>
Loss on sale of receivables <sup>(7)</sup>	29	25	
<b>Adjusted EBITDA Senior Notes due 2013 and 2015 and Senior Subordinated Notes due 2015</b>	<b>\$ 1,425</b>	<b>\$ 1,615</b>	<b>\$ 1,499</b>

- (1) Purchase accounting adjustments include the adjustment of deferred revenue and lease reserves to fair value at the dates of the Transaction and subsequent acquisitions made by the Company and certain acquisition-related compensation expense.
- (2) Non-cash charges include stock-based compensation (see Note 7 of Notes to Consolidated Financial Statements) and loss on the sale of assets.

**Table of Contents**

- (3) Restructuring and other charges include debt refinancing costs, severance and related payroll taxes, reserves to consolidate certain facilities, an unfavorable arbitration award related to a customer dispute, settlements with former owners of acquired companies, an insurance recovery and other expenses associated with acquisitions made by the Company.
- (4) Acquired EBITDA net of disposed EBITDA reflects the EBITDA impact of businesses that were acquired or disposed of during the period as if the acquisition or disposition occurred at the beginning of the period.
- (5) Pro forma adjustments represent the full-year impact of savings resulting from post-acquisition integration activities.
- (6) Other includes gains or losses related to fluctuation of foreign currency exchange rates impacting the foreign-denominated debt, management fees paid to the Sponsors and franchise and similar taxes reported in operating expenses, partially offset by certain charges relating to the off-balance sheet accounts receivable securitization facility (terminated in December 2008).
- (7) The loss on sale of receivables under the off-balance sheet accounts receivable securitization facility (terminated in December 2008) is added back in calculating Adjusted EBITDA for purposes of the indentures governing the senior notes due 2013 and 2015 and the senior subordinated notes due 2015 but is not added back in calculating Adjusted EBITDA for purposes of the senior secured credit facilities.

SunGard's covenant requirements and actual ratios for the year ended December 31, 2009 are as follows:

	<b>Covenant Requirements</b>	<b>Actual Ratios</b>
Senior secured credit facilities <sup>(1)</sup>		
Minimum Adjusted EBITDA to consolidated interest expense ratio	1.70x	2.60x
Maximum total debt to Adjusted EBITDA	6.25x	4.99x
Senior Notes due 2013 and 2015 and Senior Subordinated Notes due 2015 <sup>(2)</sup>		
Minimum Adjusted EBITDA to fixed charges ratio required to incur additional debt pursuant to ratio provisions	2.00x	2.54x

- (1) Our senior secured credit facilities require us to maintain an Adjusted EBITDA to consolidated interest expense ratio starting at a minimum of 1.70x for the four-quarter period ended December 31, 2009 and increasing over time to 1.80x by the end of 2010 and 2.20x by the end of 2013. Consolidated interest expense is defined in the senior secured credit facilities as consolidated cash interest expense less cash interest income further adjusted for certain noncash or nonrecurring interest expense. Beginning with the four-quarter period ending December 31, 2009, we are required to maintain a consolidated total debt to Adjusted EBITDA ratio of 6.25x and decreasing over time to 5.75x by the end of 2011 and to 4.75x by the end of 2013. Consolidated total debt is defined in the senior secured credit facilities as total debt less certain indebtedness and further adjusted for cash and cash equivalents on our balance sheet in excess of \$50 million. Failure to satisfy these ratio requirements would constitute a default under the senior secured credit facilities. If our lenders failed to waive any such default, our

repayment obligations under the senior secured credit facilities could be accelerated, which would also constitute a default under our indentures.

- (2) SunGard's ability to incur additional debt and make certain restricted payments under our indentures, subject to specified exceptions, is tied to an Adjusted EBITDA to fixed charges ratio of at least 2.0x, except that we may incur certain debt and make certain restricted payments and certain permitted investments without regard to the ratio, such as our ability to incur up to an aggregate principal amount of \$5.75 billion under credit facilities (inclusive of amounts outstanding under our senior credit facilities from time to time; as of December 31, 2009, we had \$4.72 billion outstanding under our term loan facilities and available commitments of \$804 million under our revolving credit facility), to acquire persons engaged in a similar business that become restricted subsidiaries and to make other investments equal to 6% of our consolidated assets. Fixed charges is defined in the indentures governing the Senior Notes due 2013 and 2015

**Table of Contents**

and the Senior Subordinated Notes due 2015 as consolidated interest expense less interest income, adjusted for acquisitions, and further adjusted for noncash interest.

**Effect of Recent Accounting Pronouncements:**

The Financial Accounting Standards Board issued new revenue recognition guidance for arrangements with multiple deliverables. The new guidance modifies the fair value requirements for revenue recognition by providing best estimate of selling price in addition to vendor specific objective evidence, or VSOE, and vendor objective evidence, now referred to as third-party evidence, or TPE, for determining the selling price of a deliverable. Since the Company will be able to use an estimate of the selling price for the deliverables in an arrangement, all deliverables will be separate units of accounting, provided (a) a delivered item has value to the customer on a standalone basis, and (b) if the arrangement includes a general right of return relative to the delivered item, delivery or performance of the undelivered item is considered probable and substantially in the control of the Company. As a result of the requirement to use the best estimate of the selling price when VSOE or TPE of the selling price cannot be determined, the residual method is no longer permitted. The new guidance is effective for fiscal years beginning on or after June 15, 2010. The Company is currently evaluating the impact of this revenue guidance, but would not expect the guidance to have a material impact on the consolidated financial statements.

**Quantitative and Qualitative Disclosures about Market Risk:**

We do not use derivative financial instruments for trading or speculative purposes. We have invested our available cash in short-term, highly liquid financial instruments, with a substantial portion having initial maturities of three months or less. When necessary, we have borrowed to fund acquisitions.

At December 31, 2009, we had total debt of \$8.32 billion, including \$4.97 billion of variable rate debt. We entered into interest rate swap agreements which fixed the interest rates for \$3.5 billion of our variable rate debt. Swap agreements with a notional value of \$800 million effectively fix our interest rates at 5.00% and expire in February 2011. Swap agreements expiring in February 2010 and 2011 each have a notional value of \$750 million and, effectively, fix our interest rates at 2.71% and 3.17%, respectively. Swap agreements expiring in February 2012 have a notional value of \$1.2 billion and effectively fix our interest rates at 1.78%. Our remaining variable rate debt of \$1.47 billion is subject to changes in underlying interest rates, and, accordingly, our interest payments will fluctuate. During the period when all of our interest rate swap agreements are effective, a 1% change in interest rates would result in a change in interest of approximately \$15 million per year. Upon the expiration of each interest rate swap agreement in February 2010, 2011 and 2012, a 1% change in interest rates would result in a change in interest of approximately \$22 million, \$38 million and \$50 million per year, respectively. See Note 5 of Notes to Consolidated Financial Statements.

In addition, at December 31, 2009, one of our U.K. subsidiaries, whose functional currency is the pound sterling, has \$184 million of debt which is denominated in euros. A 10% change in the euro-pound sterling exchange rate would result in a charge or credit in the statement of operations of approximately \$19 million.

During 2009, approximately 30% of our revenue was from customers outside the United States with approximately 71% of this revenue coming from customers located in the United Kingdom and Continental Europe. Only a portion of the revenue from customers outside the United States is denominated in other currencies, the majority being pounds sterling and euros. Revenue and expenses of our foreign operations are generally denominated in their respective local currencies. We continue to monitor our exposure to currency exchange rates.

**Table of Contents****BUSINESS****Our Company**

We are one of the world's leading software and technology services companies. We provide software and processing solutions to institutions throughout the financial services industry, higher education and the public sector. We also provide disaster recovery services, managed services, information availability consulting services and business continuity management software.

We serve more than 25,000 customers in more than 70 countries. We seek to establish long-term customer relationships by negotiating multi-year contracts and by emphasizing customer support and product quality and integration. We believe that we are one of the most efficient operators of mission-critical IT solutions as a result of the economies of scale we derive from serving multiple customers on shared platforms. Our revenue is highly diversified by customer and product, with no single customer accounting for more than 9% of our total revenue during any of the past three fiscal years. We estimate that approximately 90% of our revenue for the past three fiscal years was recurring in nature.

We operate our business in four segments:

**Our Segments**

	<b>Financial Systems</b>	<b>Software &amp; Processing Higher Education</b>	<b>Public Sector</b>	<b>Availability Services</b>
Revenue for the Year Ended December 31, 2009	\$3.1 billion	\$526 million	\$397 million	\$1.5 billion
Product and Service Offerings	Specialized software and processing solutions that automate the mission-critical business processes associated with trading securities, managing portfolios and accounting for investment assets, and consulting and IT management services	Specialized software and enterprise resource planning solutions, professional services, and consulting and IT management services to address the administrative, academic and community needs of higher education institutions	Specialized software and enterprise resource planning and administrative solutions, public safety and justice solutions, K-12 student information solutions, and consulting and IT management services	Recovery services and managed services, consulting, and business continuity management software that help companies maintain uninterrupted access to their mission-critical IT systems
Number of Customers	14,000	1,600	2,000	10,000
Primary Customers	Financial services companies  Corporate and government treasury	Higher education organizations around the world, including colleges, universities, campuses,	School districts  Central, federal, state and local governments	IT departments of large, medium and small companies across virtually all industries, primarily in

Edgar Filing: SunGard VPM Inc. - Form S-1

departments	foundations and state systems	Public safety and justice agencies	North America and Europe
Energy companies		Not-for-profit organizations	

We were acquired on August 11, 2005 in a leveraged buy-out by a consortium of private equity investment funds associated with Bain Capital Partners, The Blackstone Group, Goldman Sachs & Co., Kohlberg Kravis Roberts & Co., Providence Equity Partners, Silver Lake and TPG (the Transaction). As a result of the Transaction, we are highly leveraged and our equity is no longer publicly traded.

## **Table of Contents**

### **Our Strengths**

*Leading franchise in attractive industries.* Built over many years, our business has leading positions and strong customer relationships in industries with attractive growth dynamics.

*Leading industry positions.* We believe that, within the highly fragmented global market for financial services IT software and services, the majority of businesses within our FS segment are leaders in the sectors in which they participate. We believe that HE and PS are both leading providers of software and services to higher education institutions and the public sector, respectively, and that AS is the pioneer and a leading provider in the information availability services industry.

*Attractive industry dynamics.* While the economic crisis and resulting recession has had a negative impact on the sectors in which we operate, we believe that, over the long term, our primary market segments continue to have strong growth potential. We believe that our FS business will benefit from several key industry dynamics: the shift from internal to outsourced IT spending, the shift from infrastructure to application software spending, and the general increase in IT spending associated with increasing compliance and regulatory requirements and customers' increasing need for real-time information. We anticipate that our HE and PS businesses will benefit from favorable growth dynamics in higher education and public safety and justice IT spending. We believe that our AS business will continue to benefit from favorable growth in the small and medium business sector as well as in the managed services industry. We believe that our strong relationships with our customers in the relatively fragmented software and processing sectors that we serve and our extensive experience and the significant total capital that we have invested in AS help us to maintain leading positions. We believe that these factors should provide us with competitive advantages and enhance our growth potential.

*Highly attractive business model.* We have substantial recurring revenue and a diversified customer base and generate significant operating cash flow.

*Extensive portfolio of businesses with substantial recurring revenue.* With a large portfolio of proprietary services and products in each of our four business segments, we have a diversified and stable business. We estimate that approximately 90% of our revenue for the past three fiscal years was recurring in nature. With the exception of our broker/dealer business, we believe that our FS revenue is more insulated from changes in trading and transaction volumes than the financial services industry at large because our FS customers generally pay us monthly fees that are based on metrics such as number of accounts, trades or transactions, users or number of hours of service. Our portfolio of solutions and the largely recurring nature of our revenue across all four of our segments have reduced volatility in our revenue and income from operations.

*Diversified and stable customer base.* Our customer base is highly diversified with no single customer accounting for more than 9% of total revenue during any of the last three fiscal years. Our base of more than 25,000 customers includes most of the world's largest financial services firms, a variety of other financial services firms, corporate and government treasury departments, energy companies, higher education institutions, school districts, local governments and not-for-profit organizations. Our AS business serves customers across virtually all industries. In addition, our track record of helping our customers improve their operational efficiency, achieve high levels of availability and address regulatory requirements results in stable, long-term customer relationships.

*Significant operating cash flow generation.* With strong operating margins and relatively moderate capital-expenditure and working-capital investment needs, we generate significant operating cash flow. Our strong cash flow allows us to meet our significant debt-service requirements and make discretionary investments to grow the business, both by investing in new products and services and through acquisitions.



*Experienced management team with track record of success with proper incentives.* Our management team fosters an entrepreneurial culture, has a long track record of operational excellence, has a proven ability to acquire and integrate complementary businesses, and is highly committed to our Company's long-term success.

## **Table of Contents**

*Long track record of operational excellence.* We have a solid track record of performance consistent with internal financial targets. Our experienced senior executive officers have proven capabilities in both running a global business and managing numerous applications that are important to our customers. Our FS solutions account for and manage over \$25 trillion in investment assets and process over 5 million transactions per day. In our HE business, 1,600 organizations including colleges, universities, campuses, foundations and state systems rely on our solutions. Our PS products are used by agencies that serve more than 140 million citizens in North America and 40 million citizens in the UK. Our AS business has had a 100% success rate in supporting customer recoveries since our inception.

*Successful, disciplined acquisition program.* To complement our organic growth, we have a highly disciplined program to identify, evaluate, execute and integrate acquisitions. We have completed over 170 acquisitions and overall have improved the operating performance of acquired businesses. Our ongoing acquisition program has contributed significantly to our long-term growth and success.

*Experienced and committed management team.* Our executive officers have on average more than 15 years of industry experience. Our senior managers have committed significant personal capital to our Company in connection with the Transaction.

## **Business Strategy**

We are focused on expanding our position not only as a leading provider of software and processing solutions, but also as the provider of choice for a wide range of information availability services and managed services for IT-departments in companies across virtually all industries. Our operating and financial strategy emphasizes fiscal discipline, profitable revenue growth and significant operating cash flow generation. In pursuit of these objectives, we have implemented the following strategies:

*Expand our industry-leading franchise.* We are constantly enhancing our product and service offerings across our portfolio of businesses, further building and leveraging our customer relationships, and looking to acquire complementary businesses at attractive valuations.

*Enhance our product and service offerings.* We continually support, upgrade and enhance our systems to incorporate new technology and meet the needs of our customers for increased operational efficiency and resilience. Our strong base of recurring revenue drives high operating margins that allow us to consistently reinvest in our products and services. In 2009 and 2008, software development expenses were 7% and 8%, respectively, of revenue from software and processing solutions. We continue to introduce innovative products and services in all four of our business segments. We believe that our focus on product enhancement and innovation will help us to increase our penetration of existing and new customers.

*Extend our strong customer relationships.* We focus on developing trusted, mutually beneficial, long-term relationships with our customers. We look to maximize cross-selling opportunities, increase our share of our customers' total IT spending and maintain a high level of customer satisfaction. Our global account management program allows us to present a single face to our larger FS customers as well as better target potential cross-selling opportunities.

*Acquire and integrate complementary businesses.* We seek opportunistically to acquire businesses that broaden our existing product and service offerings, expand our customer base and strengthen our leadership positions, especially within the fragmented FS, HE and PS markets, and that will provide us with a suitable return on investment. Before committing to an acquisition, we devote significant resources to due diligence and to developing a post-acquisition integration plan, including the identification and quantification of potential

cost savings and synergies.

*Continue to enhance our attractive business model.* We continue to focus on maintaining our attractive business model and, in particular, increasing our recurring revenue base and implementing incremental operational improvements.

## **Table of Contents**

*Increase our recurring revenue base.* We strive to generate a high level of recurring revenue and stable cash flow from operations. We charge customers monthly subscription fees under multi-year contracts, and we continue to prefer such contracts because they offer high levels of revenue stability and visibility. Moreover, we believe that our high quality services and customized solutions help increase the level of integration and efficiency for our customers and reduce customer defections to other vendors or to in-house solutions.

*Implement incremental operational improvements.* We have identified opportunities to further increase revenue, reduce costs and improve cash flow from operations. These include the global account management program within FS, which stimulates cross-selling opportunities and enhances relationship management at our largest customers; the combination of our consulting services and technology services business units to form a global services organization which offers a broader range of services to our customers leveraging a global delivery model; the introduction of a customer relationship management system to enhance sales force automation in our AS business; the implementation of a software-as-a-service (SaaS) application development framework to help accelerate time-to-market and achieve flexible delivery of software solutions; and the consolidation of data centers within FS.

*Enhance our performance-based culture.* We are focused on enhancing our performance-based culture. Our compensation programs are designed to be based primarily on achieving high performance goals. We continue to evaluate the competitiveness of our compensation plans in order to promote retention of key individuals in both our existing and acquired businesses.

## **Business Segment Overview**

### ***Financial Systems***

FS provides mission-critical software and IT services to institutions in virtually every segment of the financial services industry. These systems automate the many complex processes associated primarily with managing investment portfolios and trading of and accounting for investment assets. These solutions address the processing requirements of a broad range of users within financial services. In addition, we also provide professional services that focus on application implementation and integration of these solutions and on custom software development. Since our inception, we have consistently enhanced our FS solutions to add new features, process new types of financial instruments, meet new regulatory requirements, incorporate new technologies and meet evolving customer demands.

We deliver many of our FS solutions as an application service provider, primarily from our data centers located in North America and Europe that customers access through the Internet or virtual private networks. We also deliver some of our FS solutions by licensing the software to customers for use on their own computers.

Our FS businesses are grouped internally into two divisions. The main distinction between the two divisions is that one division serves customers whose businesses are primarily in North America while the other division serves customers whose businesses are primarily international. The grouping of FS businesses in two divisions also takes into account the balance of management workload.

*Americas Division:* The Americas division includes our Brokerage & Clearance, Corporations, Global Services, Insurance, Trading and Wealth Management businesses. It offers software solutions and strategic IT consulting to a broad range of users, including chief financial officers, compliance officers, custodians, insurers and reinsurers, plan administrators, registered investment advisors, treasurers, traders and wealth managers. These solutions help automate and manage the trading and processing requirements of banks, broker/dealers, insurance companies, pension companies, fiduciary trusts and other financial services firms primarily in North America.

*International Division:* The International division includes our Alternative Investments, Banks, Capital Markets & Investment Banking, Global Trading and Institutional Asset Management businesses. It also includes our FS international distribution organization which on behalf of many of our FS businesses conducts business with customers in China, India, Japan, and the rest of Asia-Pacific, Central and Eastern Europe, the

## **Table of Contents**

Middle East, Africa and Latin America. The International division offers software solutions and strategic IT consulting to a broad range of users including asset managers, compliance officers, fund administrators, market makers and traders.

Our FS businesses in the Americas and International divisions are organized in the following customer-facing business areas:

*Alternative Investments:* We offer solutions specifically designed for firms specializing in alternative investments. These solutions support multiple asset classes and their derivatives, including equities, foreign exchange, interest rates, credit, commodities and convertibles. Solutions include strategy-specific applications for convertible and capital structure arbitrage, global repurchase agreements, stock finance, and listed options trading. Our enterprise-wide, straight-through processing solutions meet the trading, risk management, and investor and portfolio accounting requirements of single- and multi-strategy institutions.

*Banks:* We provide an integrated solution suite for asset/liability management, budgeting and planning, regulatory compliance, and profitability. Our products also manage all aspects of universal banking including back-office transaction processing, front-office multi-channel delivery, card management and payments.

*Corporations:* Our solutions provide chief financial officers and treasurers with the ability to monitor cash flow in real time and with increased operational controls on treasury, receivables and payments functions. An end-to-end collaborative financial management framework gives chief financial officers and treasurers tools to help drive maximum value from working capital and reduce risk.

*Brokerage & Clearance:* We are a leading provider of solutions for the global processing of securities and derivatives. These solutions support trade processing, clearing and accounting, helping brokerage and clearing firms streamline operations and control risk and cost. Our solutions provide centralized transactional databases, support cross-asset business functions, and offer consolidated views of accounts and risk management. These solutions help firms gain front-to-back operational efficiencies, realize advantages of scale and support business growth.

*Capital Markets & Investment Banking:* Our solutions support cross-asset trading and straight-through processing of derivative instruments, helping investment banks to manage global trading books in multiple asset classes. These solutions also support securities lending and borrowing, repurchase agreements, and related transactions. We also offer solutions for the enterprise-wide management of market, credit, interest rate and liquidity risk. In addition, we provide a framework for helping banks to manage operational risk and compliance requirements.

*Global Services:* We deliver consulting, technology and professional services for financial services, energy organizations and corporations. Leveraging SunGard's global delivery model, approximately 4,500 consultants and developers help customers achieve value from advanced technology, application management, business process management, business process outsourcing, information management, infrastructure management and testing services.

*Global Trading:* We provide multi-asset, front- to back-office trading solutions for equities, fixed income, derivatives, FX and commodities on exchanges worldwide. These solutions support full lifecycle trading and trade processing activities including information services, market connectivity and order management that help improve trade efficiency and risk monitoring.

*Institutional Asset Management:* We provide asset managers with comprehensive, integrated solutions to support their global investment operations. These solutions help connect every stage of the investment lifecycle, from portfolio analysis and electronic trading connectivity to regulatory compliance and investment accounting and reporting. We also provide systems for trading, pre- and post-trade compliance measurement, risk management,

performance measurement and attribution, and data management.

*Insurance:* We provide IT solutions for the insurance industry in each of the following major business lines: life/health/annuities/pensions, property and casualty, reinsurance and asset management. Our software and services support functions from the front-office through the back-office from customer service and policy administration to actuarial calculations, financial and investment accounting, and reporting.

## **Table of Contents**

*Trading:* We provide traders of U.S. equities, commodities and listed options with Web-based, electronic trading platforms for trade order management, direct market access and risk and compliance management. Our cross-asset solutions automate the transaction lifecycle, providing network connectivity and straight-through processing from pre- to post-trade. Our data analysis tools help improve the speed and ease of optimizing portfolios, assessing risk exposure and identifying market opportunities. Our energy solutions help financial services institutions, industrial and energy companies to efficiently compete in global energy markets by streamlining and integrating the trading, risk management and operations of physical commodities and their associated financial instruments.

*Wealth Management:* Our wealth management solutions help investment advisors, trust bank managers and wealth managers grow their businesses by helping support the needs of their mass affluent and high-net worth clients. We provide solutions for financial planning, asset allocation, surveillance and suitability, new account opening, portfolio management, unified managed account programs, trade execution, asset management, custody and trust accounting. Our compliance and data management solutions help compliance officers mitigate risk and improve efficiencies through centralized data infrastructures, automated trade supervision and code-of-ethics monitoring. We also serve organizations that administer defined-contribution and defined-benefit retirement plans. Our retirement plan recordkeeping systems support many plan types and fulfill functions ranging from processing of contributions and payments to tax reporting and trade management.

### ***Higher Education***

In HE, we provide software solutions, strategic and systems integration consulting, and technology management services to colleges and universities, including community colleges, liberal arts colleges, public universities, foundations, state systems, central and district offices, and international institutions, to help them support communities of learners. Higher education institutions rely on our broad portfolio of solutions and expert guidance to find better ways to teach, learn, manage and connect with their constituents. Our Open Digital Campus strategy combines our deep expertise in higher education with alternative delivery models, modular software components, and modern technologies that help universities and colleges design and build their next-generation digital campuses. Our solutions include administration and enterprise resource planning, advancement, IT management and outsourcing, portal and communication tools, performance management, enrollment management, academic performance and strategic planning.

### ***Public Sector***

In PS, we provide software and processing solutions designed to meet the specialized needs of central, federal, state and local governments, public safety and justice agencies, public schools, utilities, nonprofits, and other public sector institutions. Our systems and services help institutions improve the efficiency of their operations and utilize the Web and wireless technologies in serving their constituents. Our PS products support a range of specialized enterprise resource planning and administrative solutions for functions such as accounting, human resources, payroll, utility billing, land management, public safety and criminal justice, and IT managed services.

### ***Availability Services***

In AS, we help our customers improve the resilience of mission critical systems. We do this by designing, implementing and managing cost-effective solutions using people, process and technology to address enterprise IT availability needs. Since we pioneered commercial disaster recovery in the 1970s, we believe that our specialization in information availability solutions, together with our experience, technology expertise, resource management capabilities, vendor neutrality and diverse service offerings, have uniquely positioned us to meet customers' varied needs in an environment in which businesses are critically dependent on availability of IT. We have a comprehensive portfolio of services that extend from always ready standby services to high availability advanced recovery services



and always on production and managed services, including planning and provisioning of private and public cloud computing and software-as-a-service (SaaS) platforms. We also provide business continuity management software and consulting services to help our customers design, implement and maintain plans to protect their central business systems. To serve our 10,000 AS customers, we

## **Table of Contents**

have 5,000,000 square feet of operations space at over 80 facilities in nine countries and a global network of approximately 25,000 miles. Since our inception, we have had a 100% success rate helping our customers recover from unplanned interruptions resulting from major disasters including the Gulf Coast hurricanes in 2008, widespread flooding in the U.K. in 2007, hurricane Katrina and Gulf Coast hurricanes in 2005, Florida hurricanes in 2004, the Northeast U.S. blackout in 2003 and the terrorist attacks of September 11, 2001.

We provide the following four categories of services: recovery services, managed services, consulting services and business continuity management software. They can be purchased independently or collectively, depending on the customer's requirements. Although recovery services remain our principal revenue generating services, managed services, consulting and business continuity management software increasingly account for a greater percentage of our new sales. Because advanced recovery and managed services are often unique to individual customers and utilize a greater proportion of dedicated (versus shared) resources, they typically require modestly more capital expenditures and command a somewhat lower operating margin rate than traditional systems recovery services. The combination of all of these services provides our customers with a total, end-to-end IT operations and information availability management solution.

*Recovery Services:* AS helps customers maintain access to the information and computer systems they need to run their businesses by providing cost-effective solutions to keep IT systems operational and secure in the event of an unplanned business disruption. These business disruptions can range from man-made events (e.g. power outages, telecommunications disruptions and acts of terrorism) to natural disasters (e.g. floods, hurricanes and earthquakes). AS offers a complete range of recovery services, depending on the length of time deemed acceptable by customers for IT systems outage ranging from minutes (for mission-critical applications) to several hours or several days (for non-mission-critical applications). We deliver these services using processors, servers, storage devices, networks and other resources and infrastructure that are subscribed to by multiple customers, which results in economies of scale for us and cost-effectiveness for our customers. These shared services range from basic standby systems recovery services, workforce continuity services, and mobile recovery options to blended advanced recovery or high availability solutions that typically combine systems recovery services with dedicated data storage resources that allow customers to replicate data to one of our sites, helping them minimize data loss and reduce recovery times.

*Managed Services:* AS provides IT infrastructure and production services that customers use to run their businesses on a day-to-day basis. These services range from co-located IT infrastructure (e.g., where AS provides data center space, power, cooling and network connectivity) to fully managed infrastructure services (e.g., where AS fully manages the daily operation of a customer's IT infrastructure). AS can also provide managed services at the customer's data center. Some managed services require dedicated processors, servers, storage devices, networks and other resources, which are either obtained by the customer or provided by us for the customer's exclusive use. Other managed services are provided on shared infrastructure. Managed services are designed in a flexible manner that allow customers to choose the services they need from a menu of options delivered on pre-agreed schedules or on an on-demand basis. Therefore, the combination of selected managed services is unique to each customer, with solutions crafted to meet that customer's specific needs. Managed services help customers augment their IT resources and skills without having to hire full-time internal IT staff and invest in infrastructure that is not fully used all the time. In 2010, we expect to launch enterprise-grade cloud computing services in North America building on our expertise in information availability and managed services.

*Consulting Services:* AS offers consulting services to help customers solve critical business continuity and IT infrastructure problems including business continuity, data storage and management, information security, and numerous categories of IT infrastructure operations.

*Business Continuity Management Software:* AS offers software solutions that help customers operate a comprehensive and professional business continuity plan across their enterprise and enable ongoing business

operations in a crisis. AS software has flexible modular solutions that allow customers to add functionality as required. Modules are available to support business impact analysis, business continuity planning, incident response and emergency notification. The software solution leverages a common platform for data consistency, as well as standardized reporting for seamless automation of the business continuity process.

**Table of Contents****Acquisitions**

To complement our organic growth, we have a highly disciplined program to identify, evaluate, execute and integrate acquisitions. Generally, we seek to acquire businesses that broaden our existing product lines and service offerings by adding complementary products and service offerings and by expanding our geographic reach. During 2009, we spent approximately \$12 million in cash to acquire three businesses.

The following table lists the businesses we acquired in 2009:

<b>Acquired Company/Business</b>	<b>Date Acquired</b>	<b>Description</b>
Performance Pathways, Inc.	03/01/09	Student assessment and curriculum solutions for K-12 school districts.
ix Systems AG	04/01/09	Integrated CRM solution primarily for private banking in Switzerland and Luxembourg.
Risk	05/04/09	Front-end real-time risk solution for commodities marketplace.

**Product Development**

We continually support, upgrade and enhance our systems and develop new products to meet the needs of our customers for operational efficiency and resilience and to leverage advances in technology. FS is transforming some of the key functionality of its core systems into components to form a new software development and on-demand delivery environment called Infinity. Infinity enables financial institutions to develop and deploy custom applications, integrating SunGard components with their own proprietary or third party components. Infinity uses SunGard's Common Services Architecture (CSA), a service-oriented architecture (SOA) development framework, offering business process management (BPM) and a virtualized, software-as-a-service (SaaS) infrastructure.

Our expenditures for software development during the years ended December 31, 2007, 2008 and 2009, including amounts that were capitalized, totaled approximately \$297 million, \$325 million and \$318 million, respectively. In 2007, 2008 and 2009, software development expenses were 8%, 8% and 7%, respectively, of revenue from software and processing solutions. These amounts do not include routine software support costs that are included in cost of sales, nor do they include costs incurred in performing certain customer-funded development projects in the ordinary course of business.

**Marketing**

Most of our FS and HE solutions are marketed throughout North America and Western Europe and many are marketed worldwide, including Asia-Pacific, Central and Eastern Europe, the Middle East, Africa and Latin America. Our AS and PS solutions are marketed primarily in North America and Europe, with a focus on both new accounts and existing accounts. Our revenue from sales outside the United States during the years ended December 31, 2007, 2008 and 2009 totaled approximately \$1.48 billion, \$1.64 billion and \$1.67 billion, respectively.

**Brand and Intellectual Property**

We own registered marks for the SUNGARD name and own or have applied for trademark registrations for many of our services and software products.

To protect our proprietary services and software, we rely upon a combination of copyright, patent, trademark and trade secret law, confidentiality restrictions in contracts with employees, customers and others, software security measures, and registered copyrights and patents. We also have established policies requiring our personnel and representatives to

maintain the confidentiality of our proprietary property. We have a few registrations of our copyrights and a number of patents and patent applications pending. We will continue to apply for software and business method patents on a case-by-case basis and will continue to monitor ongoing developments in the evolving software and business method patent field (see Risk Factors ).

## **Table of Contents**

### **Competition**

Because most of our computer services and software solutions are specialized and technical in nature, most of the niche areas in which we compete have a relatively small number of significant competitors. Some of our existing competitors and some potential competitors have substantially greater financial, technological and marketing resources than we have (see Risk Factors ).

*Financial Systems.* In our FS business, we compete with numerous other data processing and software vendors that may be broadly categorized into two groups. The first group is comprised of specialized financial systems companies that are much smaller than we are. The second group is comprised of large computer services companies whose principal businesses are not in the financial systems area, some of which are also active acquirors. We also face competition from the internal processing and IT departments of our customers and prospects. The key competitive factors in marketing financial systems are the accuracy and timeliness of processed information provided to customers, features and adaptability of the software, level and quality of customer support, degree of responsiveness, level of software development expertise, total cost of ownership and return on investment. We believe that we compete effectively with respect to each of these factors and that our leadership, reputation and experience in this business are important competitive advantages.

*Higher Education and Public Sector.* In our HE and PS businesses, we compete with a variety of other vendors depending upon customer characteristics such as size, type, location, computing environment and functional requirements. For example, different competitors serve educational institutions and government agencies of different sizes or types and in different states or geographic regions. Competitors in these businesses range from larger providers of generic enterprise resource planning systems to smaller providers of specialized applications and technologies. We also compete with outsourcers and systems integrators, as well as the internal processing and information technology departments of our customers and prospective customers. The key competitive factors in marketing higher education and public sector systems are the accuracy and timeliness of processed information provided to customers, features and adaptability of the software, level and quality of customer support, degree of responsiveness, level of software development expertise and overall net cost. We believe that we compete effectively on each of these factors and that our leadership, reputation and experience in these businesses are important competitive advantages.

*Availability Services.* In our AS business, our greatest source of competition for recovery and advanced recovery services is in-house dedicated solutions, which are solutions that our customers or prospective customers develop and maintain internally instead of purchasing from a vendor such as us. Historically, our single largest commercial competitor in the AS business for recovery and advanced recovery services has been IBM Corporation, which we believe is the only company other than ours that currently provides the full continuum of information availability services. We also face competition from specialized vendors, including hardware manufacturers, data-replication and virtualization software companies, outsourcers, managed hosting companies, IT services companies and telecommunications companies. Competition among managed or data center service providers is fragmented across various competitor types, such as major telecommunication providers, carrier neutral managed services providers, real estate investment trusts, IT outsourcers and regional colocation providers. We believe that we compete effectively with respect to the key competitive dimensions in the information availability industry, namely economies of scale, quality of infrastructure, scope and quality of services, including breadth of hardware platforms and network capacity, level and quality of customer support, level of technical expertise, vendor neutrality and price. We also believe that our experience and reputation as an innovator in information availability solutions, our proven track record, our financial stability and our ability to provide the entire portfolio of information availability services as a single vendor solution are important competitive advantages.

### **Employees**

As of December 31, 2009, we had approximately 20,700 employees. We believe that our success depends partly on our continuing ability to retain and attract skilled technical, sales and management personnel. While skilled personnel are in high demand and competition exists for their talents, we believe that we have been

## **Table of Contents**

able to retain and attract highly qualified personnel (see Risk Factors ). We believe that our employee relations are excellent.

## **Sustainable Development**

We have a strong commitment to sustainability. The customers, communities and environment we do business with and in are increasingly influenced by sustainability issues. Most of our businesses already have established practices for recycling, conservation and disposal of hazardous materials. We believe in accountability, doing business ethically and doing the right thing. We remain dedicated to establishing a corporate culture of sustainable development to help ensure that SunGard can continue to take pride in what we do and the way we do it.

During 2009, we produced our first Sustainability Report. We have been collecting data since 2008 to establish a baseline carbon footprint. The primary sources of our carbon footprint are the electricity that we use to power our data centers and office facilities and the air travel that we undertake in the course of doing business. SunGard is a large consumer of electricity in our 5,000,000 square feet of data center and operations space. In our Availability Services business, we track and manage our utility bills in the U.S. and have installed Internet meters in the U.K. We track and report our carbon footprint using an environmental management system. For further information, please refer to SunGard's 2008 Sustainability Report which is available at <http://sungard.com/aboutsungard/corporateresponsibility.aspx>.

We also continued our partnerships with the World Business Council on Sustainable Development, The Green Grid organization and the Corporate Eco-Forum as part of our objective to work with companies across industries to implement best practices. We are a signatory to the Bali, Poznan and Copenhagen communiqués of the Prince of Wales's Corporate Leaders Group on Climate Change, and we are also partners of the Prince's Rainforest Project. During 2009, we also participated in the Environmental Defense Fund's Climate Corps program as part of Kohlberg Kravis Roberts' Green Portfolio Project.

## **Properties and Facilities**

We lease space, primarily for availability services facilities, data centers, sales offices, customer support offices and administrative offices, in many locations worldwide. We also own some of our computer and office facilities. Our principal facilities include our leased Availability Services facilities in Philadelphia, Pennsylvania (640,000 square feet), Carlstadt, New Jersey (578,600 square feet), and Hounslow, England (195,000 square feet) and include our financial systems application service provider centers in Voorhees, New Jersey, Birmingham, Alabama, Burlington, Massachusetts, Hopkins, Minnesota; Ridgely, New Jersey and Wayne, Pennsylvania. We believe that our leased and owned facilities are adequate for our present operations.

## **Legal Proceedings**

We are presently a party to certain lawsuits arising in the ordinary course of our business. We believe that none of our current legal proceedings will be material to our business, financial condition or results of operations.



**Table of Contents****MANAGEMENT**

Our executive officers and directors are listed below.

<b>Name</b>	<b>Age</b>	<b>Principal Position with SunGard Data Systems Inc.</b>
<b>Executive Officers</b>		
James E. Ashton III	51	Division Chief Executive Officer, Financial Systems
Kathleen Asser Weslock	54	Senior Vice President Human Resources and Chief Human Resources Officer
Cristóbal Conde	50	President, Chief Executive Officer and Director
Harold C. Finders	54	Division Chief Executive Officer, Financial Systems
Till M. Guldemann	61	Vice Chairman
Ron M. Lang	58	Group Chief Executive Officer, Higher Education
Thomas J. McDugall	53	Chief Financial Officer, Financial Systems
Karen M. Mullane	45	Vice President and Controller
Brian Robins	51	Senior Vice President and Chief Marketing Officer
Gilbert O. Santos	50	Group Chief Executive Officer, Public Sector
Victoria E. Silbey	46	Senior Vice President Legal and General Counsel
Richard C. Tarbox	57	Senior Vice President Corporate Development
Robert F. Woods	55	Senior Vice President Finance and Chief Financial Officer
<b>Directors</b>		
Chinh E. Chu	43	Director
John Connaughton	44	Director
James H. Greene, Jr.	59	Director
Glenn H. Hutchins	54	Chairman of the Board of Directors
James L. Mann	76	Director
John Marren	47	Director
Sanjeev Mehra	51	Director
Julie Richardson	47	Director

Mr. Ashton has been Division Chief Executive Officer, Financial Systems, since 2007. Mr. Ashton was Group Chief Executive Officer, SunGard Trading, Treasury & Risk Management from 2005 to 2007. Mr. Ashton served as Group Chief Executive Officer, SunGard Trading and Risk Systems from 1999 to 2005 and Group Chief Executive Officer, SunGard Treasury Systems from 2003 to 2005. From 1997 to 1999, he served as Senior Vice President and General Manager of a wealth management systems business that we acquired in 1997.

Ms. Asser Weslock has been Senior Vice President Human Resources and Chief Human Resources Officer since 2006. From 2005 to 2006, Ms. Asser Weslock was head of Human Resources at Deloitte Financial Services LLP, and from 2001 to 2005 she was Director of Global Human Resources for Shearman & Sterling LLP, an international law firm. Ms. Asser Weslock has over twenty years of human resources experience as both a consultant and a practitioner.

Mr. Conde has been Chief Executive Officer since 2002, President since 2000 and a director since 1999. Mr. Conde served as Chief Operating Officer from 1999 to 2002 and Executive Vice President from 1998 to 1999. Before then, Mr. Conde was Chief Executive Officer of SunGard Trading Systems Group from 1991 to 1998. Mr. Conde was cofounder of a trading and risk systems business that we acquired in 1987. Mr. Conde is presently serving as Interim

Group Chief Executive Officer, SunGard Availability Services.

Mr. Finders has been Division Chief Executive Officer, Financial Systems, since 2007. Mr. Finders was Group Chief Executive Officer, SunGard Europe from 2005 to 2007. From 2001 to 2005, Mr. Finders headed the SunGard Investment Management Systems businesses based in Europe. From 1996 to 2001, he held

**Table of Contents**

various senior management positions with us overseeing a number of our European financial systems businesses. Mr. Finders headed a Geneva-based wealth management systems business that we acquired in 1996.

Mr. Guldemann has been Vice Chairman since 2002. He was our Senior Vice President, Strategy and a member of our board of directors from 1999 to 2002. Mr. Guldemann was Vice Chairman from 1997 to 1999 and Senior Vice President from 1995 to 1997 of a trading and risk systems business that we acquired in 1998.

Mr. Lang has been Group Chief Executive Officer, SunGard Higher Education since 2009 and Group Chief Executive Officer, Enterprise Solutions Group from 2005 until January 2009. He was Chief Product Officer Financial Systems from January to December 2005. From 2000 to 2005, Mr. Lang was Group Chief Executive Officer, SunGard Trading Systems and was responsible for our SunGard Brokerage Systems and SunGard Financial Networks groups from 2003 to January 2005. Mr. Lang was Vice President of Marketing from 1997 to 1998 and President from 1998 to 2000 of a trading and risk systems business that we acquired in 1998.

Mr. McDugall has been Senior Vice President, Financial Systems Chief Financial Officer since 2006. From 2005 to 2006 he served as Group Chief Financial Officer for several groups within Financial Systems. From 1994 to 2005, Mr. McDugall held various positions with us. Mr. McDugall is a director and/or officer of most of our domestic subsidiaries.

Ms. Mullane has been Vice President and Controller since 2006, Vice President and Director of SEC Reporting from 2005 to 2006, Director of SEC Reporting from 2004 to 2005 and Manager of SEC Reporting from 1999 to 2004. From 1997 to 1999, she was Vice President of Finance at NextLink Communications of Pennsylvania and, from 1994 to 1997, she was Director of Finance at EMI Communications. Ms. Mullane is a director and/or officer of most of our domestic subsidiaries.

Mr. Robins has been Senior Vice President Chief Marketing Officer since 2005. From 2003 to 2005, he was Senior Vice President Corporate Marketing and was Vice President Corporate Marketing from 2000 to 2003. From 1995 to 2000, Mr. Robins held various marketing positions, including Vice President Marketing, with a trading and risk systems business that we acquired in 1998.

Mr. Santos has been Group Chief Executive Officer, SunGard Public Sector since 2007. Mr. Santos held various senior executive positions, including most recently President and Chief Executive Officer, with a business that we acquired in 2003 and that he joined in 1998. From 1983 to 1998, Mr. Santos held various executive positions at Motorola, Inc., including Director of the Public Sector Solutions Division and Land Mobile Sector Strategy Office.

Ms. Silbey has been Senior Vice President Legal and General Counsel since 2006 and Vice President Legal and General Counsel from 2005 to 2006. From 1997 to 2005, Ms. Silbey held various legal positions with us, including Vice President Legal and Assistant General Counsel from 2004 to 2005. From 1991 to 1997, she was a lawyer with Morgan, Lewis & Bockius LLP, Philadelphia. Ms. Silbey is a director and officer of most of our domestic and foreign subsidiaries.

Mr. Tarbox has been Senior Vice President Corporate Development since 2001 and was Vice President Corporate Development from 1987 to 2001.

Mr. Woods has been Senior Vice President Finance and our Chief Financial Officer since January 2010. From 2004 to 2009, Mr. Woods was chief financial officer of IKON Office Solutions, a document management systems and services company. Previously, he served as vice president and controller and vice president and treasurer at IBM Corporation and vice president, finance for IBM Asia-Pacific. Mr. Woods is currently a director of Insight Enterprises, Inc.

Mr. Chu has been a Director since 2005. Mr. Chu is a Senior Managing Director in the Corporate Private Equity group of The Blackstone Group, a private equity firm which he joined in 1990. Mr. Chu serves on the Boards of Directors of Alliant Insurance Services, Inc., Bank United, Bayview, Catalent Pharma Solutions, Inc., DJO Incorporated, Graham Packaging Company Inc. and HealthMarkets, Inc. and previously served on the Board of Directors of Celanese Corporation.

**Table of Contents**

Mr. Connaughton has been a Director since 2005. Mr. Connaughton has been a Managing Director of Bain Capital Partners, LLC, a global private investment firm, since 1997 and a member of the firm since 1989. Mr. Connaughton serves on the Boards of Directors of Clear Channel, CRC Health Group, Quintiles Transnational Corp., The Boston Celtics, Warner Chilcott, Warner Music Group Corp. and Hospital Corporation of America and previously served on the Board of Directors of AMC Theatres and Stericycle Inc.

Mr. Greene has been a Director since 2005. Mr. Greene joined Kohlberg Kravis Roberts & Co. LP, a global alternative asset management firm ( KKR ), in 1986 and was a General Partner of KKR from 1993 until 1996, when he became a member of KKR & Co. L.L.C. until October 2009. Mr. Greene is currently a member of KKR Management, LLC, which is the general partner of KKR & Co. L.P. Mr. Greene serves on the Board of Directors of Aricent Inc., Avago Technologies Limited, TASC, Inc., Western New York Energy, LLC and Zhong Technologies, Inc. and previously served on the Board of Directors of Accuride Corporation, Alliance Imaging, Inc., Owens Illinois, Inc., Shoppers Drug Mart Corporation and Sun Microsystems, Inc.

Mr. Hutchins has been Chairman of the Board of Directors since 2005. Mr. Hutchins is a co-founder and Co-Chief Executive of Silver Lake, a technology investment firm that was established in 1999. Mr. Hutchins serves on the Board of Directors of The Nasdaq OMX Group, Inc. and previously served on the Board of Directors of Gartner, Inc., Seagate Technology and TD Ameritrade Holding Corp.

Mr. Mann has been a Director since September 2006 and has been employed by SunGard since 1983. Mr. Mann served as Chairman of the Board from 1987 to 2005 and as a Director from 1983 to 1986. Mr. Mann served as Chief Executive Officer from 1986 to 2002, President from 1986 to 2000, and Chief Operating Officer from 1983 to 1985. Mr. Mann serves on the Board of Directors of athenahealth, Inc.

Mr. Marren has been a Director since 2005. Mr. Marren joined TPG Capital LP, a private equity firm, in 2000 as a partner and leads the firm's technology team. From 1996 to 2000, he was a Managing Director at Morgan Stanley. From 1992 to 1996, he was a Managing Director and Senior Semiconductor Research Analyst at Alex Brown & Sons. Mr. Marren is currently the Chairman of the Board of MEMC Electronic Materials, Inc. and serves on the Board of Directors of Aptina, Avaya Inc., Freescale Semiconductor Inc., Intergraph Corp. and Isola Group SARL and previously served on the Board of Directors of ON Semiconductor Corporation and Conexant Systems Inc.

Mr. Mehra has been a Director since 2005. Mr. Mehra has been a partner of Goldman, Sachs & Co. since 1998 and a Managing Director of Goldman, Sachs & Co.'s Principal Investment Area of its Merchant Banking Division since 1996. He serves on the Boards of Directors of ARAMARK Corporation, Burger King Corporation, First Aviation Services, Inc., Hawker Beechcraft, Inc., KAR Auction Services, Inc. and Sigma Electric and previously served on the Board of Directors of Nalco Holding Company and Hexcel Corporation.

Ms. Richardson has been a Director since 2005. Ms. Richardson has been a Managing Director of Providence Equity Partners since 2003 and oversees the New York-based team. Between 1998 and 2003, Ms. Richardson held various roles at JPMorgan, including Vice Chairman of the firm's investment banking division and Global Co-Head of the firm's Telecom, Media and Technology group. Prior to joining JPMorgan in 1998, Ms. Richardson was a Managing Director at Merrill Lynch, where she spent over 11 years. Ms. Richardson serves on the Boards of Directors of Altegrity, Open Solutions Inc. and Stream Global Services.

The Amended and Restated Certificate of Incorporation of SCC is structured to permit the holders of specific classes of Class A common stock representing funds affiliated with each Sponsor group to elect separate directors (the Sponsor Directors) and also allows for the holders of all outstanding common stock to elect the chief executive officer as an additional director (the CEO director). The Principal Investor Agreement dated August 10, 2005 by and among the four parent companies and the Sponsors further contains agreements among the parties with respect to the election

of our directors. Each Sponsor is entitled to elect one representative to the Board of Directors of SCC, which will then cause the Board of Directors or Managers, as applicable, of the other three parent companies and of SunGard to consist of the same members. In August 2005, in accordance with both the Amended and Restated Certificate of Incorporation of SCC and the Principal Investor Agreement, each of Ms. Richardson and Messrs. Chu, Connaughton, Greene, Hutchins,

## **Table of Contents**

Marren and Mehra were elected to the Boards as Sponsor Directors and Mr. Conde was elected to the Boards as the CEO Director.

In accordance with the charter of the Nominating and Corporate Governance Committee, to the extent consistent with applicable agreements, the Nominating and Corporate Governance Committee will identify, recommend and recruit qualified candidates to fill new positions on the Boards and will conduct the appropriate and necessary inquiries into the backgrounds and qualifications of possible candidates. In September 2006, James L. Mann was selected to serve as a director due to his extensive business and management expertise from having served as SunGard's chief executive officer from 1986 to 2002, his acute business judgment, and his extensive knowledge of the industries in which the Company operates.

As a group, the Sponsor Directors possess experience in owning and managing enterprises like the Company and are familiar with corporate finance, strategic business planning activities and issues involving stakeholders more generally. All of the Company's directors possess high ethical standards, act with integrity, and exercise careful, mature judgment. Each is committed to employing their skills and abilities to aid the long-term interests of the stakeholders of the Company.

The Board has determined that Mr. Connaughton qualifies as an audit committee financial expert within the meaning of regulations adopted by the Securities and Exchange Commission. Mr. Connaughton is not an independent director because of his affiliation with Bain Capital Partners, LLC, the affiliated funds of which hold a 13.70% equity interest in SCC and SCCII (collectively referred to as the Parent Companies).

We adopted a Global Business Conduct and Compliance Program that is applicable to our directors and employees, including the chief executive officer, chief financial officer and controller. The Global Business Conduct and Compliance Program is available on our website at [www.sungard.com/corporateresponsibility](http://www.sungard.com/corporateresponsibility). A free copy of our Global Business Conduct and Compliance Program may be requested from:

SunGard Data Systems Inc.  
Chief Compliance Officer  
680 East Swedesford Road  
Wayne, PA 19087

If we make any substantive amendments to the Global Business Conduct and Compliance Program which apply to our chief executive officer, chief financial officer or controller or grant any waiver, including any implicit waiver, from a provision of the Global Business Conduct and Compliance Program to our directors or executive officers, we will disclose the nature of the amendment or waiver on our website at [www.sungard.com/corporateresponsibility](http://www.sungard.com/corporateresponsibility) or in a report on Form 8-K.

## **Executive Compensation**

### **Compensation Discussion and Analysis**

This section discusses the principles underlying our executive compensation policies and decisions. It provides qualitative information regarding the manner in which compensation is earned by our executive officers and places in context the data presented in the tables that follow. In addition, in this section, we address the compensation paid or awarded during fiscal year 2009 to our chief executive officer (principal executive officer), chief financial officer (principal financial officer) and three other executive officers who were the most highly compensated executive officers in fiscal year 2009. We refer to these five executive officers as our named executives.

Our executive compensation program is overseen and administered by the Compensation Committee. The Compensation Committee operates under a written charter adopted by our Board and has responsibility for discharging the responsibilities of the Board of Directors relating to the compensation of the Company's executive officers and related duties. Management, including our chief executive officer, or CEO, evaluates a number of factors in developing cash and equity compensation recommendations to the Compensation Committee for its consideration and approval. Following this in-depth review and in consultation with management, our CEO makes compensation recommendations for our corporate executive officers and our



## **Table of Contents**

named executives, including the CEO, to the Compensation Committee based on his evaluation of each officer's performance, expectations for the coming year and market compensation data. Our CEO also provides an overview of compensation for other executive officers. The Compensation Committee reviews these proposals and makes all final compensation decisions for corporate executive officers and named executives by exercising its discretion in accepting, modifying or rejecting any management recommendations, including any recommendations from our CEO.

### **Objectives of Our Compensation Program**

Our executive compensation program is intended to meet three principal objectives:

to provide competitive compensation packages to attract and retain superior executive talent;

to reward successful performance by the executive and the Company by linking a significant portion of compensation to future financial and business results; and

to further align the interests of executive officers with those of our ultimate stockholders by providing long-term equity compensation and meaningful equity ownership.

To meet these objectives, our compensation program balances short-term and long-term performance goals and mixes fixed and at-risk compensation that is directly related to stockholder value and overall performance.

Our compensation program for senior executives, including the named executives, is designed to reward Company performance. The compensation program is intended to reinforce the importance of performance and accountability at various operational levels, and therefore a significant portion of total compensation is in both cash and stock-based compensation incentives that reward performance as measured against established goals, i.e., pay for performance. Each element of our compensation program is reviewed individually and considered collectively with the other elements of our compensation program to ensure that it is consistent with the goals and objectives of both that particular element of compensation and our overall compensation program. For each named executive, we look at each individual's contributions to our overall results, our operating and financial performance compared with the targeted goals, and our size and complexity compared with companies in our compensation peer group.

### **Elements of Our Executive Compensation Program**

In 2009, the principal elements of compensation for named executives were:

annual cash compensation consisting of base salary and performance-based incentive bonuses;

long-term equity incentive compensation;

benefits and perquisites; and

severance compensation and change of control protection.

#### *Annual Cash Compensation*

Management, including our CEO, develops recommendations for annual executive cash compensation plans by using compensation survey data for a broad set of organizations of comparable business, size and complexity, and then compares the survey results to publicly available compensation data for a group of companies we consider to be our peer group. We believe that the compensation practices of these companies provide us with appropriate benchmarks

because they also provide technology products and services to a variety of customers and compete with us for executives and other employees.

The survey data used for 2009 compensation purposes comes from two sources: Radford Executive Benchmark Survey, which focuses on technology companies; and Towers Perrin Compensation Data Bank, which focuses on a broader array of organizations including professional services, high-tech and manufacturing

**Table of Contents**

companies. For purposes of establishing compensation recommendations, we use a blend of the Radford and Towers Perrin survey data to reflect our size and industry.

From the Radford survey data for our corporate-level named executives, we assessed compensation from 211 public and private companies using a weighted average of 25% for companies with annual revenues between \$1 billion and \$3 billion and a 75% weighted average for companies with annual revenues over \$3 billion. From the Radford survey data for our division-level named executives, we assessed compensation from 193 public and private companies with annual revenues from \$0.5 billion to \$3 billion. From the Towers Perrin survey data we assessed compensation of 103 companies with annual revenues statistically regressed to \$5.5 billion for our corporate-level named executives and 142 companies with annual revenues statistically regressed to the applicable SunGard division's revenue for our division-level named executives.

The companies we consider within our peer group are financial services and software companies of similar industry and revenue as the Company, and some of which various businesses within the Company compete against for business and for talent. Peer group compensation data is limited to publicly available information and therefore generally does not provide precise comparisons by position as offered by the more comprehensive survey data from Radford and Towers Perrin. As a result, the peer group data provides limited guidance and does not dictate the setting of executive officers' compensation. The following companies comprised our peer group in 2009:

Automatic Data Processing, Inc.	DST Systems, Inc.	MasterCard Incorporated
BMC Software, Inc.	Fidelity National Information	Paychex, Inc.
Broadridge Financial Solutions, Inc.	Services, Inc.	SEI Investments Company
Computer Sciences Corporation	Fiserv, Inc.	The Western Union Company
Convergys Corporation	Iron Mountain Incorporated	

Our annual cash compensation packages for executive officers include base salary and a performance-based executive incentive compensation ( EIC ) bonus. We generally target the 60th percentile of the survey data as our benchmark for base salary and the 85th percentile as our benchmark for total on-target cash compensation. Because we pay for performance, we weight the cash compensation more heavily toward the performance incentives and less toward the base salary.

In early 2009, because the economic outlook remained uncertain and in order to best position our Company to emerge from the economic crisis stronger, we determined that there would be no 2009 increases of salary or target EIC bonus for employees, including the named executives.

*Base Salary.* For base salary, we generally target the 60th percentile of the blended survey data to provide a fixed compensation based on competitive market practice that is not subject to performance risk while also considering other factors, such as individual and Company performance. We review the base salaries for each named executive annually as well as at the time of any promotion or significant change in job responsibilities. Base salaries are determined for each named executive based on his or her position and responsibility by using survey data. Salary for each named executive for calendar year 2009 is reported in Table 1 – Summary Compensation Table below.

*Performance-Based Incentive Compensation.* The annual EIC bonus for executive officers is designed to reward our executives for the achievement of annual financial goals related to the business for which they have responsibility. A minimum incentive may be earned at threshold EIC goals, which are set generally at levels that reflect an improvement over prior year results, and no payment is awarded if the threshold goal is not achieved. On-target EIC goals are set generally at levels that reflect budgeted performance. Consistent with our focus on pay for performance, additional amounts can be earned when actual performance exceeds on-target performance. Additional mid-point

goals between threshold and target with corresponding incentive amounts are also established. The Company may revise or cancel an executive's EIC at any time as a result of a significant change in circumstances or the occurrence of an unusual event that was not anticipated when the performance plan was approved. Internal EBITA targets are adjusted to take into account acquisitions and/or dispositions which were not included in the budgeted EIC targets and other one-time adjustments as approved by the Compensation Committee.

**Table of Contents**

The financial measures used for the 2009 EIC bonuses for the named executives were one or both of the following: (i) Internal EBITA, which represents actual earnings before interest, taxes and amortization, noncash stock compensation expense, management fees paid to the Sponsors and certain other unusual items and (ii) budgeted revenue growth of the Company's business segments. These metrics were selected as the most appropriate measures upon which to base the 2009 EIC bonuses for the named executives because they are important metrics that management and the Sponsors use to evaluate the performance of the Company. While we have established threshold, mid-point, and on-target Internal EBITA goals, as set forth in the table below, EIC bonuses may be increased if the applicable Internal EBITA goal is exceeded. As a result, the named executives may be entitled to receive an increase in bonus equal to a small percentage of the amount by which the applicable Internal EBITA goal is exceeded. We refer to any such increase in the bonus as an "override." Because the 2009 on-target goal was lower than the 2008 on-target goal as a result of the impact of the economic crisis on the Company, it was determined that for the corporate-level named executives, Messrs. Conde, Ruane and Tarbox, (i) if the actual 2009 Internal EBITA is above the 2009 Internal EBITA goal but below the actual 2008 Internal EBITA, they would receive 1/3 of the applicable override; and (ii) if the actual 2009 Internal EBITA exceeds the actual 2008 Internal EBITA, they would receive the override amount described in clause (i) plus an amount equal to the override rate multiplied by the amount by which the actual 2009 Internal EBITA exceeds actual 2008 Internal EBITA. For our division-level named executives, Messrs. Ashton and Finders, EIC bonuses earned on the achievement of Internal EBITA goals were also subject to a multiplier that, depending upon the achievement of year-over-year revenue growth goals of the Financial Systems segment, could result in a further increase or decrease of any bonus earned based on the achievement of Internal EBITA goals. As set forth in the table below, the multiplier ranged from 0 to 1.5, meaning that revenue growth results could reduce or increase amounts earned by these named executives based on the achievement of Internal EBITA goals; with a multiplier of 1 resulting in no adjustment to the award established by the Internal EBITA goals.

The following table provides the 2009 threshold, mid-point and on-target Internal EBITA goals for the named executives and the EIC bonuses paid to them based on actual results from 2009:

Name and Type of Internal EBITA Goal	Internal EBITA Goals			Actual 2009 EIC Bonus Payment
	Threshold	Mid-Point	On-Target	
Cristóbal Conde Consolidated Company Internal EBITA	\$ 1,054,000	\$ 1,081,000	\$ 1,109,000	\$ 2,168,428(1)
Michael J. Ruane Consolidated Company Internal EBITA	\$ 1,054,000	\$ 1,081,000	\$ 1,109,000	\$ 808,996(1)
James E. Ashton III Financial Systems Segment Internal EBITA	\$ 529,985	\$ 543,932	\$ 557,879	\$ 1,355,091(2)
Harold C. Finders Financial Systems Segment Internal EBITA	\$ 529,985	\$ 543,932	\$ 557,879	\$ 1,365,180(2)
Richard C. Tarbox(2) Consolidated Company Internal EBITA	\$ 1,054,000	\$ 1,081,000	\$ 1,109,000	\$ 808,996(1)

(1) Represents the EIC bonus earned as a result of the consolidated Company exceeding the on-target 2009 Internal EBITA goal but not the actual 2008 Internal EBITA. Thus, the bonus amount earned reflects the on-target EIC amount plus 1/3 of the applicable override.

(2)

Represents the EIC bonus earned as a result of the Financial Systems Segment exceeding the on-target 2009 Internal EBITA goal. Thus, the bonus amount earned reflects the on-target EIC amount plus the override. The revenue multiplier applicable to the 2009 EBITA incentive amounts earned was 1 in 2009; therefore, it did not increase or decrease the incentive payment earned based on the achievement of the on-target Internal EBITA goal.

**Table of Contents**

The following table provides the low, target and maximum multiplier applicable to the 2009 Internal EBITA incentive amounts earned by Messrs. Ashton and Finders, which is based on the percentage increase or decrease in revenue of the Financial Systems segment as compared to the prior year.

<b>Name</b>	<b>0 Multiplier Low</b>	<b>1 Multiplier Target</b>	<b>1.5 Multiplier Max</b>	<b>Actual 2009 Multiplier</b>
James E. Ashton III Financial Systems Segment Revenue Growth (% increase/(decrease) over prior year)	(2.0)%	0.5-7.0%	7.0%	1
Harold C. Finders Financial Systems Segment Revenue Growth (% increase/(decrease) over prior year)	(2.0)%	0.5-7.0%	7.0%	1

**Long-Term Equity Compensation**

We intend for our equity program to be the primary vehicle for offering long-term incentives and rewarding our executive officers, managers and key employees. Because of the direct relationship between the value of an option or restricted stock unit on Units ( RSU ) award and the value of our stock, we believe that granting a combination of Class A options and RSUs ( hybrid awards ) is the best method of motivating our executive officers to manage our Company in a manner that is consistent with the interests of our Company and our stockholders. We also regard our equity program as a key retention tool. Retention is an important factor in our determination of the type of award to grant and the number of underlying Units or shares to grant.

In 2005 in connection with the Transaction, executive officers and other managers and key employees were granted a combination of time-based and performance-based options to purchase equity in the Parent Companies. The size of these initial option grants were commensurate with the executive s position, performance and tenure with the Company and were agreed to in connection with the Transaction. These grants were intended to cover the period between the grant date and December 31, 2010, absent promotions or other unusual circumstances. In 2007, Mr. Finders received an option award due to his promotion to Division Chief Executive Officer, Financial Systems. In 2009, Messrs. Ashton, Finders and Tarbox received hybrid awards for outstanding performance in difficult economic conditions and for retention purposes. Additional information on all 2009 and outstanding grants to the named executives is shown in Table 2 2009 Grants of Plan-Based Awards and Table 3 Outstanding Equity Awards at 2009 Fiscal Year-End below.

Performance-based options granted to the named executives in 2005 and 2007 vest upon the attainment of certain annual or cumulative earnings goals based on Internal EBITA targets for the Company during a specified performance period, generally five or six years. The annual vesting goals for the performance-based options were agreed to by the Sponsors and senior management in 2005 in connection with the Transaction and require sustained and superior company-wide performance in each of the years in the performance period but allow for additional vesting for over performance.

In 2009, the performance-based equity awards were amended. As a result of the general economic situation, the turbulence in the financial services industry and continued uncertainty in the markets, the original performance targets established in 2005 and the benefit of accelerated vesting for senior executives in certain liquidity events were determined to not be achievable. The performance-based equity held by named executives was amended to, among

other things:

Reduce the performance targets for 2009 and 2010 to reflect the Company's enterprise-wide EBITA budget for the 2009 and 2010 calendar years.

At the amended targets, the number of shares earned depends on the percentage of the amended target that is achieved between 95% and 106.25%.



**Table of Contents**

If between 95% and 100% of the amended target is achieved, the number of shares that will be earned will be determined by interpolation at a specified linear rate based on the Company's actual EBITA results.

If 100% of the amended target is achieved, approximately 72% of the shares that would have been earned if 100% of the original targets were achieved will be earned.

If the amended target is achieved between 100% and 106.25%, an additional portion of the remaining 28% of the shares that could be earned for the year will be earned pro rata.

If 106.25% of the amended target is achieved, the maximum number of shares that can be earned is the number that would have been earned in such year under the performance awards' current terms if 100% of the original target had been achieved. In no case can 100% of the shares underlying the performance awards for 2009 and 2010 be earned solely under the amended targets.

For each of 2009 and 2010, if the original target is achieved between 100% and 106.25%, then the remaining eligible shares for that year will be earned pro rata based on the Company's attainment of the original target between 100% and 106.25%.

For each of 2009 and 2010, any shares earned will vest as follows: 25% of the earned award will vest on December 31 of the applicable calendar year, and the remaining 75% will vest in equal monthly installments over the next 36 months, subject to continued employment. If the named executive's employment is terminated by the Company without cause or by the named executive for good reason or on account of his disability or death or if a change in control of the Company occurs after 2009 or 2010, the unvested portion of the earned award for each of 2009 and 2010 will vest upon such event.

For the named executives and certain other senior executives only, the performance-based awards were also amended to extend through 2013 the awards' ability to vest on an accelerated basis in the event of a change in control of the Company. The amended awards will vest on an accelerated basis if a change in control transaction results in (i) the Company's investors receiving an amount constituting at least 300% of their initial equity investment in the Company and any subsequent equity investments and (ii) achievement of an internal rate of return by the Company's investors of at least 14%. Any portion of the awards that accelerate will vest on the one-year anniversary of the change in control, provided the executive remains employed with the Company through such date. If an executive terminates employment without cause, resigns for good reason, dies or becomes disabled during the one-year period following the change in control, the amount that would otherwise vest on the one-year anniversary will accelerate.

The amendments to the EBITA targets in each of the named executive's awards are the same as the 2009 amendments made to outstanding performance-based options and RSUs held by other Company employees.

The performance-based equity awarded in 2009 to the named executives have the same performance targets and vesting schedule for calendar years 2009 and 2010 as the amended performance-based equity awards described above. With respect to calendar years 2011-2013, vesting will occur upon the attainment of certain annual or cumulative earnings goals based on Internal EBITA targets for the Company for each year.

Based upon actual year-end 2009 results, 7.20% of each 2005 performance-based option award vested out of a maximum of 16.67% available to vest each of six years in the performance period, and 8.64% of each 2007 and 2009 performance-based equity award vested out of a maximum of 20% available to vest each of five years in the performance period.

***Benefits and Perquisites***

We offer a variety of health and welfare programs to all eligible employees, including the named executives. The named executives are eligible for the same benefit programs on the same basis as the rest of the Company's employees in the particular country in which the named executive resides, including medical

**Table of Contents**

and dental care coverage, life insurance coverage, short-and long-term disability and a 401(k) or defined contribution pension plan.

The Company limits the use of perquisites as a method of compensation and provides executive officers with only those perquisites that we believe are reasonable and consistent with our overall compensation program to better enable the Company to attract and retain superior employees for key positions. The perquisites provided to the named executives include leased automobiles and related tax gross-ups and are quantified in Table 1 Summary Compensation Table below.

***Employment Agreements, Severance Compensation & Change of Control Protection***

In connection with the Transaction, the Company entered into definitive employment agreements with certain senior managers, including the named executives. The executives with such agreements are eligible for payments if employment terminates or if there is a change of control, as described under Potential Payments on Termination or Change of Control below. The agreements were designed to retain executives and provide continuity of management in the event of an actual or threatened change of control.

The agreements include the following terms:

A term through December 31, 2010, with one-year automatic renewals unless terminated on one year's advance notice.

The same base salary as that payable by the Company prior to the Transaction, subject to annual adjustments, if any, made by the Board of Directors or the Compensation Committee of the Board, in consultation with the CEO. See Base Salary above for a description of the determination of base salary for the Company's senior management.

The opportunity to earn an annual cash bonus provided that the aggregate bonus opportunity for the senior management as a group will be consistent with that provided by the Company to executives as a group prior to the Transaction, although the Board of Directors may re-align the performance metrics and other terms in consultation with the CEO. See Performance-Based Incentive Compensation above for a description of the determination of cash bonuses for the Company's senior management.

Employee benefits consistent with those provided by the Company to executives prior to the Transaction, including the right to participate in all employee benefit plans and programs.

Participation in the equity plan of SCC and SCCII.

The right to receive certain severance payments, including upon a termination without cause, a resignation for good reason or a change of control, consistent with the severance payments provided for under the change of control agreement with the Company in effect prior to the Transaction. See Potential Payments Upon Termination or Change of Control below.

Certain restrictive covenants (noncompetition, confidentiality and nonsolicitation) that continue for applicable post-termination periods.

The right to receive a tax gross-up payment should any payment provided under the agreement be subject to the excise tax under section 4999 of the Internal Revenue Code of 1986, as amended.

In addition, under the terms of the equity awards made to executives, full or partial acceleration of vesting of equity occurs if a change of control takes place or due to certain other termination events. These arrangements and potential post-employment termination compensation payments are described in more detail in the section entitled Potential Payments Upon Termination or Change of Control below.

Mr. Ruane resigned from his position as chief financial officer of the Company effective January 1, 2010, but remains an employee of the Company in the role of chief financial officer of the Company's Availability

## **Table of Contents**

Services business. The Company and Mr. Ruane entered into an addendum dated December 23, 2009 (the Addendum ) to his employment agreement. The terms of the Addendum include the following:

Mr. Ruane's annual salary and executive incentive compensation plan will remain unchanged and shall be reviewed annually pursuant to the Company's normal compensation and performance review policies for senior level executives.

An equity grant of 7,535 RSUs and 18,975 Class A options, which grant was approved by the Compensation Committee on February 18, 2010.

A total payment of \$3,646,538, to be paid in equal semi-monthly installments over 24 months commencing January 1, 2010 and ending December 31, 2011, subject to Mr. Ruane's continued employment.

If Mr. Ruane's employment is terminated without cause or due to his death or disability before December 31, 2011, any remaining unpaid payments will be paid in a lump sum payment within 30 days after the date of termination of employment.

If Mr. Ruane's employment is terminated for cause or on account of voluntary termination before December 31, 2011, all such payments shall cease.

If a change of control of the Company or a sale of the Company's Availability Services business occurs before December 31, 2011 while Mr. Ruane is employed by the Company, any remaining unpaid payments will be paid in a lump sum payment upon or within 30 days after the change of control of the Company or sale of the Company's Availability Services business, as applicable.

No other severance amounts shall be payable to or on behalf of Mr. Ruane under Section 2.1 of the Employment Agreement under any circumstances.

## **Accounting and Tax Implications**

The accounting and tax treatment of particular forms of compensation do not materially affect the Compensation Committee's compensation decisions. However, we evaluate the effect of such accounting and tax treatment on an ongoing basis and will make appropriate modifications to compensation policies where appropriate.

## **Stock Ownership**

The Company does not have a formal policy requiring stock ownership by management. Our senior managers, including the named executives, however, have committed significant personal capital to our Company in connection with the Transaction. See Beneficial Ownership below.

## **2010 Compensation Update**

In 2010, we made changes to the annual EIC bonus to ensure that we reward performance that is consistent with the our goals and appropriately balance short- and long-term incentives. The total 2010 EIC bonus (including any override earned) will be capped at 1.75 times the target EIC bonus for our corporate-level senior executives and at 3.0 times the target EIC bonus for our division-level senior executives.

**Table of Contents****Summary Compensation Table**

The following table contains certain information about compensation earned in 2009, 2008 and 2007 by the named executives.

**Table 1 Summary Compensation Table**

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards(1) (\$)	Option Awards(1) (\$)	Non-Equity Incentive Plan Compen- sation(2) (\$)	Change in Pension Value and Nonqualified Deferred Compensation(3) (\$)	All Other Compensation(3) (\$)	Total (\$)
Isidóbal Conde	2009	931,000				2,168,428		57,879	3,157,307
President, Chief Executive Officer and Director	2008	931,000				1,946,000		47,588	2,924,588
	2007	887,000				1,883,400		46,110	2,816,510
Michael J. Ruane(4)	2009	454,000				808,996		54,599	1,317,595
Former Senior Vice President Finance and Chief Financial Officer	2008	454,000				726,000		46,712	1,226,712
	2007	430,000				698,851		40,145	1,168,996
James E. Ashton III(5)	2009	510,000		359,244	13,285	1,355,091		57,049	2,294,669
Division Chief Executive Officer	2008	510,000				770,130		51,084	1,331,214
	2007	468,500				2,061,346		49,573	2,579,419
Harold C. Finders(6)	2009	571,089		359,244	13,285	1,365,180		119,963	2,428,761
Division Chief Executive Officer	2008	522,532				731,666		71,505	1,325,703
	2007	487,740			1,211,165	2,011,400		190,327	3,900,632
Richard C. Tarbox(7)	2009	454,000		179,621	6,642	808,996		55,203	1,504,462
Senior Vice President Corporate Development									

(1) The amounts in these columns reflect the fair value as of grant date, in accordance with FAS 123(R), of awards granted pursuant to the SunGard 2005 Management Incentive Plan. Performance-based awards granted before 2009 to the named executives were amended during 2009 but the amended awards had no incremental value (see the Compensation Discussion and Analysis above for a description of the amendments).

(2) The amounts in this column reflect the cash EIC awards payable under performance-based incentive compensation, which is discussed in further detail above in the Compensation Discussion and Analysis.

(3) For Mr. Conde, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments and related maintenance expenses, automobile tax gross-ups (\$13,801 in 2009 and \$12,341 in each of 2008 and 2007), and annual sales incentive award trips.

For Mr. Ruane, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments and related maintenance expenses, automobile tax gross-ups (\$10,609 in 2009, \$10,844 in 2008 and \$11,066 in 2007), and in 2009 a service award gift and related tax gross-up (\$3,691).

For Mr. Ashton, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments and related maintenance expenses, reimbursement of fuel expenses in 2007, automobile tax gross-ups (\$9,317 in 2009, \$11,524 in 2008, and \$10,104 in 2007), and annual sales incentive award trips.

For Mr. Finders, amount includes health and welfare benefits, company defined contribution pension plan contributions, car lease payments and related fuel and maintenance expenses, and annual sales incentive award trips.

For Mr. Tarbox, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments and related fuel and maintenance expenses, and an automobile tax gross-up (\$13,649 in 2009).

- (4) Mr. Ruane resigned as the Company's chief financial officer effective January 1, 2010 and remains employed as the chief financial officer of the Company's Availability Services business. As of January 1,

**Table of Contents**

2010, Mr. Ruane is no longer an executive officer of the Company. In accordance with the Addendum to Mr. Ruane's employment agreement, Mr. Ruane is entitled to additional amounts payable in 2010 and 2011, as described above in the Compensation Discussion and Analysis.

- (5) For Mr. Ashton, the 2007 salary represents a blended rate of \$374,000 from January 1 to March 31, 2007 and \$500,000 from April 1 to December 31, 2007. In April 2007, Mr. Ashton received a promotion and a salary increase commensurate with his new responsibilities.
- (6) Mr. Finders' compensation was paid in Swiss Francs (CHF). While conversion into U.S. dollars shows an increase in salary from 2008 to 2009, Mr. Finders' annual salary rate was CHF 627,847 in both 2008 and 2009, and he did not receive any salary increase in 2009. All amounts have been converted into U.S. dollars at the currency exchange rates used for purposes of the Company's annual operating budget and establishing compensation for the applicable year, as follows: 0.909599 in 2009; 0.832260 in 2008; and 0.83424 in 2007. For Mr. Finders, the 2007 salary represents a blended rate of \$410,000 from January 1 to March 31, 2007 and \$500,000 from April 1 to December 31, 2007. In April 2007, Mr. Finders received a promotion and a salary increase commensurate with his new responsibilities.
- (7) Mr. Tarbox was not a named executive in 2008 or 2007.

***Grants of Plan-Based Awards in Fiscal Year 2009***

To provide long-term equity incentives following the Transaction, the SunGard 2005 Management Incentive Plan ( Plan ) was established. The Plan as amended authorizes the issuance of equity subject to awards made under the Plan for up to 70 million shares of Class A common stock and 7 million shares of Class L common stock of SCC and 2.5 million shares of preferred stock of SCCII.

Under the Plan, awards of time-based and performance-based options have been granted to purchase Units in the Parent Companies. Each Unit consists of 1.3 shares of Class A common stock and 0.1444 shares of Class L common stock of SCC and 0.05 shares of preferred stock of SCCII. The shares comprising a Unit are in the same proportion as the shares issued to all stockholders of the Parent Companies. The options are exercisable only for whole Units and cannot be separately exercised for the individual classes of stock. In 2009, hybrid equity awards were granted under the Plan, which awards are composed of RSUs for Units in the Parent Companies and options to purchase Class A common stock in SCC. All awards under the Plan are granted at fair market value on the date of grant. In 2009, performance-based awards were amended as described above in the Compensation Discussion and Analysis.

Time-based options vest over five years as follows: 25% one year after date of grant, and 1/48th of the remaining balance each month thereafter for 48 months. Time-based RSUs vest over five years as follows: 10% one year after date of grant, and 1/48th of the remaining balance each month thereafter for 48 months. Performance-based options and RSUs are earned for each of 2009 and 2010 based on the attainment of the Company's enterprise-wide EBITA budget with 25% vesting at December 31 of the applicable calendar year and 75% vesting in 36 equal monthly installments beginning January 31. With respect to each of 2011, 2012 and 2013, vesting will occur upon the attainment of certain annual or cumulative earnings goals based on Internal EBITA targets for the Company for each year.

Time-based and performance-based options can partly or fully vest upon a change of control and certain other termination events, subject to certain conditions, and expire ten years from the date of grant. Once vested, time-based and performance-based RSUs become payable in shares upon the first to occur of a change of control, separation from service without cause, or the date that is five years after the date of grant (or ten years after the date of grant for certain RSUs as amended in 2009).





**Table of Contents**

The following table contains information concerning grants of plan-based awards to the named executives during 2009.

**Table 2 2009 Grants of Plan-Based Awards**

Name	Grant Type	Grant Date	Estimated Possible Payouts under Non-Equity Incentive Plan Awards(1)	Estimated Future Payouts Under Equity Incentive Plan Awards(2)			All Other Stock Awards: Number of Shares of Stock or Units(3)	All Other Option Awards: Number of Securities Underlying Options(4)	Exercise or Base Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards(5)
				Threshold (#)	Target (#)	Maximum (#)	Units(3) (#)	Options(4) (#)	Awards (\$/Sh)	Awards(5) (\$)
Cristóbal Conde	EIC	N/A	2,168,428							
Michael J. Ruane	EIC	N/A	808,996							
James E. Ashton II	EIC	N/A	1,355,091							
	RSUs	09/14/09		2,183	10,914	27,677	15,376			359,244
	Options	09/14/09		5,497	27,486	69,700		38,722	0.44	13,285
Harold C. Finders	EIC	N/A	1,365,180							
	RSUs	09/14/09		2,183	10,914	27,677	15,376			359,244
	Options	09/14/09		5,497	27,486	69,700		38,722	0.44	13,285
Richard C. Farbox	EIC	N/A	808,996							
	RSUs	09/14/09		1,091	5,457	13,838	7,688			179,621
	Options	09/14/09		2,749	13,743	34,850		19,361	0.44	6,642

(1) Amounts reflect the cash EIC bonuses paid to the named executives under the performance-based incentive compensation, which is described in further detail above, including the threshold, mid-point, and on-target goals, in the Compensation Discussion and Analysis and reported in the Non-Equity Incentive Plan Compensation column of Table 1 – Summary Compensation Table above.

(2) Represents performance-based RSUs and Class A options.

(3) Represents time-based RSUs.

(4) Represents time-based Class A options.

(5)

Amounts reflect the fair value as of grant date of awards granted pursuant to the SunGard 2005 Management Incentive Plan.

**Table of Contents****Outstanding Equity Awards at 2009 Fiscal Year-End**

The following table contains certain information with respect to options held as of December 31, 2009 by the named executives.

**Table 3 Outstanding Equity Awards at 2009 Fiscal Year-End**

	Option Awards				Stock Awards					
	Number of Securities Underlying Unexercised. Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards:		Number of Shares or Units of Stock That Have Not Vested(2) (#)	Market Value of Shares or Units of Stock That Have Not Vested(3) (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested(1) (#)	Equity Incentive Plan Awards: Market Payout Value of Unearned Shares or Other Rights That Have Not Vested(4) (\$)		
Number of Securities Underlying Unexercised			Option Exercise Price (\$)	Option Expiration Date						
stóbal Conde	1,550,495(4) 736,147(5)	221,499 172,235(6)		229,647	18.00 18.00	08/11/2015 08/11/2015				
Michael J. [Name]	338,535(4) 171,767(5) 3,424(7) 43,687(7) 59,153(7)	48,362 40,188(6)		53,584	18.00 18.00 4.50 4.50 4.50	08/11/2015 08/11/2015 02/26/2013 02/25/2014 03/03/2015				
es E. Ashton	178,402(4) 117,784(5) (8) 1,506(9)	25,486 27,558(6) 38,722 4,517(6)		36,743	18.00 18.00 0.44 0.44	08/11/2015 08/11/2015 09/14/2019 09/14/2019				
old C. [Name]	155,051(4) 51,506(10) 43,616(5) 23,068(11) (8)	22,150 54,827 17,224(6) 12,403(6) 38,722		22,965 33,552	18.00 20.72 18.00 20.72 0.44	08/11/2015 09/20/2017 08/11/2015 09/20/2017 09/14/2019				
							17,169	343,389	9,773	195,400

Edgar Filing: SunGard VPM Inc. - Form S-1

	1,506(9)	4,517(6)	24,611	0.44	09/14/2019				
hard C.						17,169	343,389	9,773	195,4
box	154,139(4)	22,020		18.00	08/11/2015				
	117,784(5)	27,558(6)	36,743	18.00	08/11/2015				
	(8)	19,361		0.44	09/14/2019				
	753(9)	2,258(6)	12,306	0.44	09/14/2019				
	24,666(7)			4.50	02/26/2013				
	111,771(7)			4.50	03/03/2013				
	43,687(7)			4.50	02/25/2014				
	59,153(7)			4.50	03/03/2015				
						8,585	171,694	4,886	97,7

- (1) Represents anticipated achievement of performance goals in future years for unearned portions of performance-based awards.
- (2) Represents (i) time-based RSUs granted on September 14, 2009 which vest over five years with 10% vesting on the first anniversary of the date of grant, and 1/48th of the remaining balance vesting each month thereafter for 48 months, and (ii) the unvested portion of performance-based RSUs earned for calendar year 2009.
- (3) Based upon a fair market value of \$20 per Unit as of December 31, 2009.

**Table of Contents**

- (4) Time-based options granted on August 12, 2005 and which vest over five years with 25% vesting one year from the date of grant, and 1/48th of the remaining balance vesting each month thereafter for 48 months.
- (5) Represents (i) performance-based options granted on August 12, 2005 which vest upon the attainment of certain annual or cumulative earnings goals for the Company during the six-year period beginning January 1, 2005 for calendar years 2005-2008 and (ii) performance-based options earned and vested for calendar year 2009 pursuant to the awards amended in 2009; vesting of the remaining earned portion is described in note 6.
- (6) Represents the unvested portion of performance-based options earned for calendar year 2009, which vests in 36 equal monthly installments beginning January 31, 2010.
- (7) To the extent outstanding options of SunGard were not exercised before closing the Transaction, such options converted into fully vested options to purchase equity units in the Parent Companies.
- (8) Time-based Class A options granted on September 14, 2009, which vest over five years with 25% vesting one year from the date of grant, and 1/48th of the remaining balance vesting each month thereafter for 48 months.
- (9) Performance-based Class A options granted on September 14, 2009 are earned upon the attainment of certain annual or cumulative earnings goals for the Company during the five-year period beginning January 1, 2009. Represents performance-based Class A options earned and vested for calendar year 2009. Vesting of the remaining earned portion is described in note 6.
- (10) Time-based options granted on September 21, 2007, which vest over five years with 25% vesting one year from the date of grant, and 1/48th of the remaining balance vesting each month thereafter for 48 months.
- (11) Represents (i) performance-based options granted on September 21, 2007, which vest upon the attainment of certain annual or cumulative earnings goals for the Company during the five-year period beginning January 1, 2007 for calendar years 2007-2008 and (ii) performance-based options earned and vested for calendar year 2009 pursuant to the 2009 amended awards; vesting of the remaining earned portion is described in note 6.

***Option Exercises and Stock Vested***

The following table contains certain information with respect to stock option exercises and the vesting of RSUs during 2009 for each of the named executives.

**Table 4 2009 Option Exercises and Stock Vesting**

Name	Option Awards		Stock Awards	
	Number of Shares	Value Realized	Number of Shares	Value Realized
	Acquired	Value Realized	Acquired	Value Realized
	on Exercise	on Exercise	on Vesting(1)	on Vesting(2)
	(#)	(\$)	(#)	(\$)
Cristóbal Conde				

Michael J. Ruane				
James E. Ashton III	318,519	4,618,521	598	11,960
Harold C. Finders	30,000	30,000	598	11,960
Richard C. Tarbox	190,159	2,757,312	299	5,980

(1) Represents vested performance-based RSUs for 2009, which are not distributed until five years after date of grant. For RSUs earned in 2009, 25% vest at December 31, 2009, shown in the table above, and 1/36th of the remaining balance vests each month thereafter for 36 months, which portion is not reflected in the table.

(2) Based upon a fair market value of \$20 per Unit as of December 31, 2009.

**Table of Contents**

***Pension Benefits***

None of the named executives receive benefits under any defined benefit or actuarial pension plan.

***Employment and Change of Control Agreements***

As discussed above, the Company entered into a definitive employment agreement with each of the named executives. The terms of these agreements are described above under Compensation Discussion and Analysis.

***Potential Payments Upon Termination or Change of Control***

Pursuant to the terms of the executive employment agreements and equity award agreements, set forth below is a description of the potential payments the named executives would receive if their employment was terminated on December 31, 2009.

The terms cause, good reason, change of control and sale of business are defined in the executive employment agreements. Forms of these agreements have been filed as exhibits to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005.

*Termination without Cause or Resignation for Good Reason; Certain Change in Control or Sale of Business Transactions.* If a named executive's employment is terminated by the Company without cause, or a named executive terminates his employment in certain circumstances which constitute good reason, including certain change of control and sale of business transactions, then:

the Company will pay the named executive officer the following:

a lump sum cash severance amount equal to the applicable multiplier multiplied by the sum of 2009 base salary and target incentive bonus;

a lump sum cash payment of all accrued compensation (as defined in the agreement) as of December 31, 2009;

a lump sum cash payment in an amount equal to the applicable multiplier multiplied by the Company's cost of the named executive officer's medical, dental and vision coverage in effect on December 31, 2009, as increased by a tax gross-up payment equal to the income and FICA tax imposed on such payment;

a lump sum cash payment in an amount equal to the applicable multiplier multiplied by \$17,500, in lieu of retirement, life insurance and long term disability coverage, as increased by a tax gross-up payment equal to the income and FICA tax imposed on such payment;

an amount equal to any excise tax charged to the named executive as a result of the receipt of any change of control payments;

performance-based equity awards vest on a pro rata basis through the termination date, any unvested portion of performance-based equity awards earned for calendar year 2009 or 2010 become fully vested at the termination date, time-based equity awards immediately stop vesting and all unvested time-based equity awards are forfeited;



if a change of control occurs and employment is not offered, then all unvested performance-based equity awards vest on a return-on-equity basis and all unvested time-based equity awards become fully vested;

if a sale of the business occurs and the employment agreement is not assumed, then performance-based equity awards vest on a pro rata basis through the termination date, any unvested portion of performance-based equity awards earned for calendar year 2009 or 2010 become fully vested at the termination date, all unvested time-based equity awards become fully vested and all unvested performance-based equity awards are forfeited.

**Table of Contents**

*Resignation without Good Reason; Voluntary Retirement and Certain Change in Control Transactions.* If a named executive terminates his employment voluntarily without good reason, including certain change of control transactions and retirements, then:

with the exception of certain voluntary retirements, the Company will pay the named executive only a lump sum cash payment of all accrued compensation with the exception of his 2009 pro rated target incentive bonus. Under the terms of Mr. Conde's employment agreement, if a change of control occurs and Mr. Conde is offered employment but he resigns, his resignation is considered for good reason;

if the named executive voluntarily retires after August 11, 2008, provided he is at least 62 years of age, the Company will pay the named executive a lump sum cash payment of all accrued compensation and upon satisfying certain conditions, \$10,000 per month for twelve months from the date of termination;

all performance-based equity awards stop vesting as of the date of termination, no performance-based equity awards are earned in the year of termination, all time-based equity awards immediately stop vesting, and all unvested time-based and performance-based equity awards are forfeited;

if a change of control occurs and employment is offered but the named executive resigns, then all amended unvested performance-based options on Units vest on a return-on-equity basis, performance-based RSUs and Class A performance-based options do not vest and all unvested time-based equity awards become fully vested; and

if the named executive retires after August 11, 2008, provided he is at least 62 years of age, then all performance-based equity awards stop vesting as of the date of termination, no performance-based equity awards are earned in the year of termination, all time-based equity awards continue to vest throughout the consulting period and all unvested performance-based equity awards are forfeited.

*Termination for Cause.* If the Company terminates a named executive's employment for cause, then:

the Company will pay the named executive only a lump sum cash payment of all accrued compensation with the exception of his 2009 pro rated target incentive bonus;

all vested and unvested time and performance equity awards are forfeited.

*Disability or Death.* If a named executive's employment is terminated due to his disability or death, then:

the Company will pay the named executive (or his beneficiary in the event of death) a lump sum cash payment of all accrued compensation;

in the event of disability, if the named executive elected to participate, he shall receive payments under an insurance policy offered through the Company until he reaches retirement age as defined by the 1983 Amended Social Security Normal Retirement Age or other applicable law;

in the event of death, the named executive's beneficiary shall receive payments under an insurance policy offered through the Company; and

performance-based equity awards vest on a pro rata basis through the termination date, any unvested portion of performance-based equity awards earned for calendar year 2009 or 2010 become fully vested at the termination

date, all time-based equity awards immediately stop vesting and all unvested time-based equity awards are forfeited.

In order to receive any of the above described severance benefits, the named executive is required to execute a release of all claims against the Company. In order to exercise stock options or receive distribution of RSU shares, the named executive must execute a certificate of compliance with the restrictive covenants contained in his employment agreement and all other agreements.

The tables below reflect the amount of compensation payable to each of the named executives in the event of termination of such executive's employment. The amounts shown assume that such termination was effective as of December 31, 2009, and thus includes amounts earned through such time and are estimates of

**Table of Contents**

the amounts which would be paid out to the named executives upon their termination. The actual amounts to be paid, if any, can only be determined at the time of such named executive's separation from the Company.

*Cristóbal Conde Potential Termination Payments and Benefits*

	<b>Termination Without Cause or Resignation For Good Reason</b>	<b>Termination For Cause; Resignation Without Good Reason</b>	<b>Termination Due to Voluntary Retirement</b>	<b>Termination Due to Sale of Business Employment Not Offered</b>	<b>Termination Due to Change of Control Employment Not Offered</b>	<b>Termination Due to Change of Control Employment Offered but Resigns</b>	<b>Termination Due to Disability</b>
Target (1)	\$ 8,631,000			\$ 8,631,000	\$ 8,631,000	\$ 8,631,000	
Bonus of on ty(2)	\$ 1,946,000		\$ 1,946,000	\$ 1,946,000	\$ 1,946,000	\$ 1,946,000	\$ 1,946,000
ed Equity	\$ 344,471(3)			\$ 442,998 344,471(3)	\$ 442,998 \$ 4,906,792(4)	\$ 442,998 \$ 4,906,792(4)	\$ 344,471(3)
<b>quisites:</b> re	\$ 178,296			\$ 178,296	\$ 178,296	\$ 178,296	
s ceeds Pay ss-Up	\$ 17,904	\$ 17,904	\$ 17,904	\$ 17,904	\$ 17,904	\$ 17,904	\$ 17,904
	\$ 11,117,671	\$ 17,904	\$ 1,963,904	\$ 11,560,669	\$ 16,122,990	\$ 16,122,990	\$ 2,308,375

- (1) Consists of three times the sum of (a) 2009 base salary of \$931,000 and (b) 2009 target incentive bonus of \$1,946,000.
- (2) Represents the value of accelerated unvested time-based equity based upon a fair market price of \$20.00 per Unit as of December 31, 2009. Excludes the value of vested time-based equity.
- (3) Represents the value of the accelerated unvested portion of the performance-based equity earned for calendar year 2009. Excludes the value of vested performance-based equity earned for calendar year 2009.
- (4) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 300% of their equity investment ( Investment ) and an internal rate of return ( IRR ) of 16% or higher. If the Sponsors receive less than 300% of their Investment or an amount constituting at least 300% of their Investment but less than 14% IRR, the performance-based equity will not accelerate. Excludes the value of

vested performance-based equity.

- (5) Consists of three times the sum of (a) the Company's cost of Mr. Conde's medical, dental and vision coverage and (b) \$17,500 in lieu of the Company's retirement plan matching contribution, life insurance and long-term disability coverage. The health and welfare benefits have been increased by a tax gross-up equal to the estimated income and FICA tax that would be imposed on such payments.

**Table of Contents***Michael J. Ruane Potential Termination Payments and Benefits*

The table below reflects the benefits Mr. Ruane would receive under the terms of his employment agreement and the Addendum to such agreement, which is discussed in further detail above in the Compensation Discussion and Analysis.

Benefits and	Termination Without Cause	Termination For Cause; Resignation Without Good Reason	Termination Due to Voluntary Retirement or Resignation For Good Reason	Termination Due to Sale of Availability Business Employment Not Offered	Termination Due to Change of Control Employment Not Offered	Termination Due to Change of Control Employment Offered but Resigns	Termination Due to Disability
Compensation(1)	\$ 3,646,538			\$ 3,646,538	\$ 3,646,538	\$ 3,646,538	\$ 3,646,538
Bonus of Termination Benefit(2)	\$ 726,000		\$ 726,000	\$ 726,000	\$ 726,000		\$ 726,000
Accelerated Equity Benefits(3)	\$ 80,376(3)		\$ 80,376(3)(4)	\$ 80,376(3)	\$ 1,144,912(5)	\$ 248,124(6)	\$ 80,376(3)
Termination Benefits(7)	\$ 65,966						\$ 65,966
Termination Pay Cross-Up	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731
	\$ 4,527,611	\$ 8,731	\$ 815,107	\$ 4,558,369	\$ 5,622,905	\$ 4,000,117	\$ 4,527,611

(1) Represents the amount of additional compensation due and payable to Mr. Ruane pursuant to the terms of the Addendum to employment agreement, as described above in the Compensation Discussion and Analysis.

(2) Represents the value of accelerated unvested time-based equity based upon a fair market price of \$20.00 per Unit as of December 31, 2009. Excludes the value of vested time-based equity.

(3) Represents the value of the accelerated unvested portion of the performance-based equity earned for calendar year 2009. Excludes the value of vested performance-based equity earned for calendar year 2009.

(4) Upon a termination due to voluntary retirement, Mr. Ruane would not receive this amount.

- (5) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 300% of their Investment and an IRR of 16% or higher. If the Sponsors receive less than 300% of their Investment or an amount constituting at least 300% of their Investment but less than 14% IRR, the performance-based equity will not accelerate. Excludes the value of vested performance-based equity.
- (6) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 200% of their Investment. If the Sponsors receive an amount constituting less than 200% of their Investment the performance-based equity will not accelerate.
- (7) Represents three times the Company's cost of Mr. Ruane's medical, dental and vision coverage. The health benefits have been increased by a tax gross-up equal to the estimated income and FICA tax that would be imposed on such payments.

**Table of Contents**

*James E. Ashton III Potential Termination Payments and Benefits*

	<b>Termination Without Cause or Resignation For Good Reason</b>	<b>Termination For Cause; Resignation Due to Without Good Reason</b>	<b>Termination Due to Sale of Business Employment Not Offered</b>	<b>Termination Due to Change of Control Employment Not Offered</b>	<b>Termination Due to Change of Control Employment Offered but Resigns</b>	<b>Termination Due to Disability</b>	<b>Termination Due to Death</b>
<b>Termination:</b>							
Salary & Target Incentive Bonus(1)	\$ 2,142,000		\$ 2,142,000	\$ 2,142,000			
Incentive Bonus of Termination Based Equity Awards(2)	\$ 561,000	\$ 561,000	\$ 561,000	\$ 561,000		\$ 561,000	\$ 561,000
Performance-Based Awards(3)	\$ 90,985(3)		\$ 90,985(3)	\$ 1,326,667(4)	\$ 170,142(5)	\$ 90,985(3)	\$ 90,985(3)
<b>Medical &amp; Perquisites:</b>							
Medical and Welfare(6)	\$ 99,251		\$ 99,251	\$ 99,251			
Life Insurance Benefits(7)						\$ 1,412,288	
Life Insurance Proceeds							\$ 1,000,000
Vacation Pay							
Tax & Gross-Up							
	\$ 2,893,236	\$ 561,000	\$ 3,251,728	\$ 4,487,410	\$ 528,634	\$ 2,064,272	\$ 1,651,000

- (1) Consists of two times the sum of (a) 2009 base salary of \$510,000 and (b) 2009 target incentive bonus of \$561,000.
- (2) Represents the value of accelerated unvested time-based equity awards based upon a fair market price of \$20.00 per Unit as of December 31, 2009. Excludes the value of vested and underwater time-based equity.
- (3) Represents the value of the accelerated unvested portion of the performance-based equity awards earned for calendar year 2009. Excludes the value of vested performance-based equity earned for calendar year 2009 and underwater performance-based equity.
- (4) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 300% of their Investment and an IRR of 16% or higher. If the Sponsors receive less than 300% of their Investment or an amount constituting at least 300% of their Investment but less than 14% IRR, the



performance-based equity will not accelerate. Excludes the value of vested and underwater performance-based equity.

- (5) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 200% of their Investment. If the Sponsors receive an amount constituting less than 200% of their Investment the performance-based equity will not accelerate. Excludes the value of vested performance-based equity.
- (6) Consists of two times the sum of (a) the Company's cost for Mr. Ashton's medical, dental and vision coverage and (b) \$17,500 in lieu of the Company's retirement plan matching contribution, life insurance and long-term disability coverage. The health and welfare benefits have been increased by a tax gross-up equal to the estimated income and FICA tax that would be imposed on such payments.
- (7) Reflects the estimated lump-sum present value of all future payments which Mr. Ashton would be entitled to receive under the Company's fully insured disability program. Mr. Ashton is entitled to receive such benefits until he reaches the age of 66 years and 8 months.

**Table of Contents****Harold C. Finders Potential Termination Payments and Benefits**

	Termination Without Cause or Resignation For Good Reason	Termination For Cause; Resignation Due to Voluntary Retirement	Termination Due to Sale of Business Employment Not Offered	Termination Due to Change of Control Employment Not Offered	Termination Due to Change of Control Employment Offered but Resigns	Termination Due to Disability	Termination Due to Death
<b>Termination:</b>							
Salary & Target Bonus(1)	\$ 2,419,973		\$ 2,419,973	\$ 2,419,973			
Incentive Bonus of Termination Based Equity (2)	\$ 604,993	\$ 604,993	\$ 604,993	\$ 604,993		\$ 604,993	\$ 604,993
Performance-Based Awards	\$ 70,317(3)		\$ 70,317(3)	\$ 1,032,267(4)	\$ 106,341(5)	\$ 70,317(3)	\$ 70,317(3)
<b>Benefits &amp; Perquisites:</b>							
Medical Welfare (6)	\$ 103,362		\$ 103,362	\$ 103,362			
Life Insurance Benefits(7)						\$ 15,106,854	
Other Benefits(8)							\$ 2,700,000
Vacation Pay							
Taxes & Gross-Up	\$ 3,198,645	\$ 604,993	\$ 3,550,465	\$ 4,512,415	\$ 458,161	\$ 15,782,164	\$ 3,370,000

- (1) Consists of two times the sum of (a) 2009 base salary of \$604,993 and (b) 2009 target incentive bonus of \$604,993. Mr. Finders' payments would be in Swiss Francs (CHF). All amounts reported in the table have been converted into U.S. dollars at the December 31, 2009 currency exchange rate of 0.96360.
- (2) Represents the value of accelerated unvested time-based equity awards based upon a fair market price of \$20.00 per Unit as of December 31, 2009. Excludes the value of vested and underwater time-based equity.
- (3) Represents the value of the accelerated unvested portion of the performance-based equity awards earned for calendar year 2009. Excludes the value of vested performance-based equity earned for calendar year 2009 and underwater performance-based equity.
- (4) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 300% of their Investment and an IRR of 16% or higher. If the Sponsors receive less than

300% of their Investment or an amount constituting at least 300% of their Investment but less than 14% IRR, the performance-based equity will not accelerate. Excludes the value of vested and underwater performance-based equity.

- (5) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 200% of their Investment. If the Sponsors receive an amount constituting less than 200% of their Investment the performance-based equity will not accelerate. Excludes the value of vested and underwater performance-based equity.
- (6) Consists of two times the sum of (a) the Company's cost for Mr. Finders' medical benefits and (b) \$17,500 in lieu of the Company's defined contribution pension plan contribution, life insurance and long-term disability coverage. The health and welfare benefits have been increased by a tax gross-up equal to the estimated taxes that would be imposed on such payments.
- (7) Represents a lump sum payment upon disability due to an accident of \$14,098,432 and the estimated present value of annual annuity payments to age 65. Upon disability due to sickness, Mr. Finders would receive \$4,308,435 which represents the estimated present value of annual annuity payments to age 65. Each of Mr. Finders' children would also receive an annual annuity payment of \$47,427 until they reach

**Table of Contents**

the age of 25 (five and eight years remaining). Portions of the reported benefits payable upon Mr. Finders disability are financed by contributions made by Mr. Finders.

- (8) Represents a lump sum payment upon death due to an accident. Mr. Finders spouse would also receive an annual annuity for life of \$48,565 and each of his children would receive an annual annuity of \$18,212 until they reach the age of 25 (five and eight years remaining). Upon death due to sickness, Mr. Finders estate would receive a lump sum of \$1,778,516 and Mr. Finders spouse would receive an annual annuity for life of \$248,992 and each of his children would receive an annual annuity of \$47,427 until they reach the age of 25 (five and eight years remaining). Portions of the reported benefits payable upon Mr. Finders death are financed by contributions made by Mr. Finders.

*Richard C. Tarbox Termination Payments and Benefits*

	<b>Termination Without Cause or Resignation For Good Reason</b>	<b>Termination For Cause; Resignation Without Good Reason</b>	<b>Termination Due to Voluntary Retirement</b>	<b>Termination Due to Sale of Business Employment Not Offered</b>	<b>Termination Due to Change of Control Employment Not Offered</b>	<b>Termination Due to Change of Control Employment Offered but Resigns</b>	<b>Termination Due to Disability</b>	<b>Termination Due to Other</b>
<b>Termination:</b>								
Incentive Bonus & Target Bonus(1)	\$ 3,540,000			\$ 3,540,000	\$ 3,540,000			
Incentive Bonus Termination Equity	\$ 726,000		\$ 726,000	\$ 726,000	\$ 726,000		\$ 726,000	\$ 726,000
Equity-Based Awards	\$ 73,049(3)			\$ 73,049(3)	\$ 1,055,865(4)	\$ 170,142(5)	\$ 73,049(3)	\$ 73,049(3)
<b>Perquisites:</b>								
Welfare Benefits(7)	\$ 148,877			\$ 148,877	\$ 148,877		\$ 693,765	
Life Insurance Proceeds								\$ 9,000,000
Vacation Pay & Gross-Up	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731	\$ 8,731
	\$ 4,496,657	\$ 8,731	\$ 734,731	\$ 4,694,457	\$ 5,677,273	\$ 376,673	\$ 1,501,545	\$ 1,501,545

(1) Consists of three times the sum of (a) 2009 base salary of \$454,000 and (b) 2009 target incentive bonus of \$726,000.

- (2) Represents the value of accelerated unvested time-based equity awards based upon a fair market price of \$20.00 per Unit as of December 31, 2009. Excludes the value of vested and underwater time-based equity.
- (3) Represents the value of the accelerated unvested portion of performance-based equity earned for calendar year 2009. Excludes the value of vested performance-based equity earned for calendar year 2009 and underwater performance-based equity.
- (4) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 300% of their Investment and an IRR of 16% or higher. If the Sponsors receive less than 300% of their Investment or an amount constituting at least 300% of their Investment but less than 14% IRR, the performance-based equity will not accelerate. Excludes the value of vested and underwater performance-based equity.
- (5) Represents the value of accelerated unvested performance-based equity if the Sponsors receive an amount constituting at least 200% of their Investment. If the Sponsors receive an amount constituting less than 200% of their Investment the performance-based equity will not accelerate. Excludes the value of vested performance-based equity.

**Table of Contents**

- (6) Consists of three times the sum of (a) the Company's cost for Mr. Tarbox's medical, dental and vision coverage and (b) \$17,500 in lieu of the Company's retirement plan matching contribution, life insurance and long-term disability coverage. The health and welfare benefits have been increased by a tax gross-up equal to the estimated income and FICA tax that would be imposed on such payments.
- (7) Reflects the estimated lump-sum present value of all future payments which Mr. Tarbox would be entitled to receive under the Company's fully insured disability program. Mr. Tarbox is entitled to receive such benefits until he reaches the age of 66 years.

**Director Compensation**

None of our directors except Mr. Mann receive compensation for serving as directors. Mr. Mann receives annual director equity awards; he does not receive any cash director fees. On November 11, 2009, Mr. Mann was granted a time-based hybrid equity grant consisting of an RSU for 1,868 Units and a Class A option for 4,704 shares at an exercise price of \$0.28 per share. The RSU vests over five years as follows: 10% one year after date of grant, and 1/48th of the remaining balance each month thereafter for 48 months. Once vested, the RSUs become payable in shares upon the first to occur of a change of control, removal or resignation as a director, or the date that is five years after the date of grant. The option expires ten years from the date of grant and vests over five years as follows: 25% one year after date of grant and 1/48th of the remaining balance each month thereafter for 48 months. The following table contains for Mr. Mann compensation received during the year ended December 31, 2009 for serving as a director of the Company.

Name	Fees Earned or Paid in		Option Awards(1)	Non-Equity Incentive Plan Compensation	Change in Pension Value and Nonqualified Deferred Compensation Earnings	All Other Compensation	Total
	Cash	Stock Awards					
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
James L. Mann(2)		830	38,360				38,190

- (1) The amount in this column reflects the fair value as of grant date of awards granted pursuant to the SunGard 2005 Management Incentive Plan.
- (2) In addition to serving as a director, Mr. Mann is currently an employee of the Company and received in 2009 a base salary of \$300,000 and health and welfare benefits, a matching 401(k) savings plan contribution, automobile benefits including reimbursement of fuel and maintenance expenses and an automobile tax gross-up (\$3,930).

**Compensation Committee Interlocks and Insider Participation**

Our Compensation Committee is currently comprised of Messrs. Connaughton, Greene and Marren, who were each appointed to the Compensation Committee in 2005 in connection with the Transaction, and Ms. Richardson, who was appointed to the Compensation Committee in 2008. None of these individuals has been at any time an officer or employee of our Company. During 2009, we had no compensation committee interlocks meaning that it was not the

case that an executive officer of ours served as a director or member of the compensation committee of another entity and an executive officer of the other entity served as a director or member of our Compensation Committee.

**Table of Contents****SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS**

All of our outstanding stock is beneficially owned by SCC and SCCII through its wholly owned subsidiaries. The following table presents information regarding beneficial ownership of the equity securities of SCC and SCCII as of March 1, 2010 by each person who is known by us to beneficially own more than 5% of the equity securities of SCC and SCCII, by each of our directors, by each of the named executives, and by all of our directors and executive officers as a group.

Name of Beneficial Owner	Number of Shares Beneficially Owned(1)			Percent of Classes(2)
	Class A Common	Class L Common	Preferred	
Bain Funds(3)	34,849,657	3,872,184	1,340,371	13.65%
Blackstone Funds(4)	34,849,657	3,872,184	1,340,371	13.65%
GS Limited Partnerships(5)	28,393,651	3,154,850	1,092,063	11.12%
KKR Funds(6)	34,849,657	3,872,184	1,340,371	13.65%
Providence Equity Funds(7)	21,295,238	2,366,138	819,048	8.34%
Silver Lake Funds(8)	34,488,546	3,832,061	1,326,483	13.51%
TPG Funds(9)	34,849,657	3,872,184	1,340,371	13.65%
James E. Ashton III(10) (named executive)	822,706	91,161	31,565	
Chinh E. Chu(4)(11) (director)	34,849,657	3,872,184	1,340,371	13.65%
Cristóbal Conde(10)(12) (director and named executive)	4,730,376	525,490	181,938	1.85%
John Connaughton(13) (director)				
Harold C. Finders(10) (named executive)	535,670	59,294	23,362	
James H. Greene, Jr.(14) (director)				
Glenn H. Hutchins(8)(15) (director)	34,488,546	3,832,061	1,326,483	13.51%
James L. Mann(10) (director)	81,642	8,651	2,995	
John Marren(16) (director)				
Sanjeev Mehra(5)(17) (director)	28,393,651	3,154,850	1,092,063	11.12%
Julie Richardson(7)(18) (director)	21,295,238	2,366,138	819,048	8.34%
Michael J. Ruane(19) (named executive)	1,226,280	136,229	47,165	
Richard C. Tarbox(10) (named executive)	1,178,790	130,844	45,299	
All 21 directors and executive officers as a group(10)(11)(12)(13)(14)(15)(16)(17)(18)(20)	131,250,949	14,575,604	5,048,313	51.41%

(1) Includes shares held in the beneficial owner's name or jointly with others, or in the name of a bank, nominee or trustee for the beneficial owner's account. Unless otherwise indicated in the footnotes to this table and subject to community property laws where applicable, we believe that each stockholder named in this table has sole voting and investment power with respect to the shares indicated as beneficially owned. Class A shares of common stock of SCC, Class L shares of common stock of SCC and preferred shares of SCCII are referred to in the notes to this table as, respectively, Class A shares, Class L shares and preferred shares.



- (2) Unless otherwise indicated, the beneficial ownership of any named person does not exceed, in the aggregate, one percent of the outstanding equity securities of SCC and SCCII Corp. II on March 1, 2010, as adjusted as required by applicable rules.
- (3) Includes (i) 34,693,273 Class A shares, 3,801,832 Class L shares and 1,313,076 preferred shares held by Bain Capital Integral Investors, LLC ( Bain Integral ), whose administrative member is Bain Capital Investors, LLC ( BCI ); and (ii) 156,384 Class A shares, 70,352 Class L shares and 27,295 preferred shares held by BCIP TCV, LLC ( BCIP TCV and, together with Bain Integral, the Bain Funds ),

**Table of Contents**

whose administrative member is BCI. The address of each of the entities listed in this footnote is c/o Bain Capital, LLC, 111 Huntington Avenue, Boston, Massachusetts 02199.

- (4) Includes (i) 18,317,228 Class A shares, 2,035,248 Class L shares and 704,509 preferred shares held by Blackstone Capital Partners IV L.P. ( BCP IV ), whose general partner is Blackstone Management Associates IV L.L.C. ( BMA IV ); (ii) 289,253 Class A shares, 32,139 Class L shares and 11,125 preferred shares held by Blackstone Capital Partners IV-A L.P. ( BCP IV-A ), whose general partner is BMA IV; (iii) 810,541 Class A shares, 90,060 Class L shares and 31,175 preferred shares held by Blackstone Family Investment Partnership IV-A L.P. ( BFIP IV-A ), whose general partner is BMA IV; (iv) 66,204 Class A shares, 7,356 Class L shares and 2,546 preferred shares held by Blackstone Participation Partnership IV L.P. ( BPP IV ), whose general partner is BMA IV; (v) 14,444,444 Class A shares, 1,604,938 Class L shares and 555,556 preferred shares held by Blackstone GT Communications Partners L.P. ( BGTCP ), whose general partner is Blackstone Communications Management Associates I L.L.C. ( BCMA IV ); and (vi) 921,986 Class A shares, 102,443 Class L shares and 35,461 preferred shares held by Blackstone Family Communications Partnership L.P. ( BFCP and, collectively with BCP IV, BCP IV-A, BFIP IV-A, BPP IV and BGTCP, the Blackstone Funds ), whose general partner is BCMA IV. Messrs. Peter G. Peterson and Stephen A. Schwarzman are the founding members of BMA IV and BCMA IV and as such may be deemed to share beneficial ownership of the shares held or controlled by the Blackstone Funds. Each of BMA IV and BCMA IV and Messrs. Peterson and Schwarzman disclaims beneficial ownership of such shares. The address of each of the entities listed in this footnote is c/o The Blackstone Group, L.P., 345 Park Avenue, New York, New York 10154.
- (5) The Goldman Sachs Group, Inc., which we refer to as GS Group, Goldman, Sachs & Co., which we refer to as Goldman Sachs, and certain of their affiliates may be deemed to own beneficially and indirectly Class A shares, Class L shares and preferred shares which are owned directly or indirectly by investment partnerships of which affiliates of Goldman Sachs and GS Group are the general partner, managing limited partner or managing partner. We refer to these investment partnerships as the GS Limited Partnerships. Goldman Sachs is an affiliate of each of, and investment manager for certain of, the GS Limited Partnerships. GS Group, Goldman, Sachs and the GS Limited Partnerships share voting power and investment power with certain of their respective affiliates. The GS Limited Partnerships and their respective beneficial ownership of shares of SCC and SCC II include: (i) 8,034,125 Class A shares, 892,681 Class L shares and 309,005 preferred shares held by GS Capital Partners 2000, L.P.; (ii) 2,552,674 Class A shares, 283,630 Class L shares and 98,180 preferred shares held by GS Capital Partners 2000 Employee Fund, L.P.; (iii) 2,919,293 Class A shares, 324,366 Class L shares and preferred 112,281 held by GS Capital Partners 2000 Offshore, L.P.; (iv) 354,921 Class A shares, 39,436 Class L shares and 13,651 preferred shares held by Goldman Sachs Direct Investment Fund 2000, L.P.; (v) 335,812 Class A shares, 37,312 Class L shares and 12,916 preferred shares held by GS Capital Partners 2000 GmbH & Co. Beteiligungs KG; (vi) 7,475,480 Class A shares, 830,609 Class L shares and 287,518 preferred shares held by GS Capital Partners V Fund, L.P.; (vii) 3,861,537 Class A shares, 429,060 Class L shares and 148,521 preferred shares held by GS Capital Partners V Offshore Fund, L.P.; (viii) 296,373 Class A shares, 32,930 Class L shares and 11,399 preferred shares held by GS Capital Partners V GmbH & Co. KG; and (ix) 2,563,436 Class A shares, 284,826 Class L shares and 98,594 preferred shares held by GS Capital Partners V Institutional, L.P. Each of Goldman Sachs and GS Group disclaims beneficial ownership of the shares owned directly and indirectly by the GS Limited Partnerships, except to the extent of their pecuniary interest therein, if any. The address for GS Group, Goldman Sachs and the GS Limited Partnerships is 200 West Street, New York, New York 10282.
- (6) Includes (i) 33,937,852 Class A shares, 3,770,872 Class L shares and 1,305,302 preferred shares held by KKR Millennium Fund L.P. ( KKR Millennium Fund ), whose general partner is KKR Associates Millennium L.P., whose general partner is KKR Millennium GP LLC; and (ii) 911,806 Class A shares, 101,312 Class L shares and 35,069 preferred shares held by KKR Partners III, L.P. ( KKR III and, together with KKR Millennium Fund, the KKR Funds ), whose general partner is KKR III GP LLC. The address of each of the entities listed in this footnote

is c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New York 10019.

**Table of Contents**

- (7) Includes (i) 18,390,397 Class A shares, 2,043,377 Class L shares and 707,323 preferred shares held by Providence Equity Partners V LP ( PEP V ), whose general partner is Providence Equity GP V LP, whose general partner is Providence Equity Partners V L.L.C. ( PEP V LLC ); and (ii) 2,904,841 Class A shares, 322,760 Class L shares and 111,725 preferred shares held by Providence Equity Partners V-A LP ( PEP V-A and, together with PEP V, the Providence Equity Funds ), whose general partner is Providence Equity GP V LP, whose general partner is PEP V LLC. PEP V LLC may be deemed to share beneficial ownership of the shares owned by PEP V and PEP V-A. PEP V LLC disclaims this beneficial ownership. Messrs. Angelakis, Creamer, Masiello, Mathieu, Nelson, Pelson and Salem are members of PEP V LLC and may also be deemed to possess indirect beneficial ownership of the securities owned by the Providence Equity Funds, but disclaim such beneficial ownership. The address of each of the entities listed in this footnote is c/o Providence Equity Partners Inc., 50 Kennedy Plaza, 18th Floor, Providence, Rhode Island 02903.
- (8) Includes (i) 34,440,889 Class A shares, 3,826,765 Class L shares and 1,324,650 preferred shares held by Silver Lake Partners II, L.P. ( SLP II ), whose general partner is Silver Lake Technology Associates II, L.L.C. ( SLTA II ); and (ii) 47,657 Class A shares, 5,295 Class L shares and 1,833 preferred shares held by Silver Lake Technology Investors II, L.P. ( SLTI II and, together with SLP II, the Silver Lake Funds ), whose general partner is SLTA II. The address of each of the entities listed in this footnote is c/o Silver Lake, 9 West 57th Street, 32nd Floor, New York, New York 10019.
- (9) Includes (i) 20,745,833 Class A shares, 2,305,093 Class L shares and 797,917 preferred shares held by TPG Partners IV, L.P. ( TPG IV ), whose general partner is TPG GenPar IV, L.P. ( TPG GenPar IV ), whose general partner is TPG Advisors IV, Inc. ( TPG Advisors IV ); (ii) 2,349,389 Class A shares, 261,043 Class L shares and 90,361 preferred shares held by T3 Partners II, L.P. ( T3 Partners II ), whose general partner is T3 GenPar II, L.P. ( T3 GenPar II ), whose general partner is T3 Advisors II, Inc. ( T3 Advisors II ); (iii) 377,000 Class A shares, 41,889 Class L shares and 14,500 preferred shares held by T3 Parallel II, L.P. ( T3 Parallel II ), whose general partner is T3 GenPar II, whose general partner is T3 Advisors II; (iv) 5,416,667 Class A shares, 601,852 Class L shares and 208,333 preferred shares held by TPG Solar III LLC ( TPG Solar III ), whose managing member is TPG Partners III, L.P. ( TPG Partners III ), whose general partner is TPG GenPar III, L.P. ( TPG GenPar III ), whose general partner is TPG Advisors III, Inc. ( TPG Advisors III ); and (v) 5,960,768 Class A shares, 662,308 Class L shares and 229,260 preferred shares held by TPG Solar Co-Invest LLC ( TPG Solar Co-Invest and, collectively with TPG IV, T3 Partners II, T3 Parallel II and TPG Solar III, the TPG Funds ), whose managing member is TPG GenPar IV, whose general partner is TPG Advisors IV. Messrs. David Bonderman and James G. Coulter are directors, officers and sole shareholders of each of TPG Advisors IV, T3 Advisors II and TPG Advisors III. Because of these relationships, each of Messrs. Bonderman and Coulter and TPG Advisors IV, T3 Advisors II and TPG Advisors III may be deemed to have investment powers and beneficial ownership with respect to the shares directly held by the TPG Funds. The address of each of the entities and persons identified in this footnote is c/o TPG Capital, L.P., 301 Commerce Street, Fort Worth, Texas 76102.
- (10) Includes the following shares which the beneficial owner has the right to acquire within 60 days after March 1, 2010 by exercising stock options:

<b>Beneficial Owner</b>	<b>Shares of Class A Common Stock</b>	<b>Shares of Class L Common Stock</b>	<b>Shares of Preferred Stock</b>
James E. Ashton III	408,632	45,167	15,639
Cristóbal Conde	3,141,487	348,947	120,826
Harold C. Finders	424,448	46,937	16,253

Edgar Filing: SunGard VPM Inc. - Form S-1

James L. Mann	9,538	627	217
Richard C. Tarbox	931,583	103,385	35,792
All 21 directors and officers as a group	7,900,878	870,065	301,247

(11) Mr. Chu, a director of the Parent Companies and SunGard, is a member of BMA IV and BCMA IV and a senior managing director of The Blackstone Group, L.P. Amounts disclosed for Mr. Chu are also included above in the amounts disclosed in the table next to Blackstone Funds. Mr. Chu disclaims beneficial

**Table of Contents**

ownership of any shares owned directly or indirectly by the Blackstone Funds, except to the extent of his pecuniary interest therein. Mr. Chu does not have sole voting or investment power with respect to the shares owned by the Blackstone Funds.

- (12) In connection with a loan, Mr. Conde pledged the following shares as security: 361,111.11 Class A shares, 40,123.46 Class L shares and 13,888.89 preferred shares.
- (13) Investment and voting decisions at BCI are made jointly by three or more individuals who are managing directors of the entity, and therefore no individual managing director of BCI is the beneficial owner of the securities, except with respect to the shares in which such member holds a pecuniary interest. Mr. Connaughton, a director of the Parent Companies and SunGard, is a member and managing director of BCI and may therefore be deemed to beneficially own the amounts disclosed in the table next to Bain Funds. Mr. Connaughton disclaims beneficial ownership of any shares owned directly or indirectly by the Bain Funds, except to the extent of his pecuniary interest therein.
- (14) Mr. Greene, a director of the Parent Companies and SunGard, is an executive of Kohlberg Kravis Roberts & Co. L.P. and/or one or more of its affiliates. Mr. Greene disclaims beneficial ownership of any shares owned directly or indirectly by the KKR Funds, except to the extent of his pecuniary interest therein.
- (15) Mr. Hutchins, a director of the Parent Companies and SunGard, is a managing director of SLTA II. Amounts disclosed for Mr. Hutchins are also included above in the amounts disclosed in the table next to Silver Lake Funds. Mr. Hutchins disclaims beneficial ownership of any shares owned directly or indirectly by the Silver Lake Funds, except to the extent of his pecuniary interest therein.
- (16) Mr. Marren, a director of the Parent Companies and SunGard, is a senior partner of TPG Capital, L.P., an affiliate of the TPG Funds.
- (17) Mr. Mehra, a director of the Parent Companies and SunGard, is a managing director of Goldman Sachs. Amounts disclosed for Mr. Mehra are also included above in the amounts disclosed in the table next to GS Limited Partnerships. Mr. Mehra disclaims beneficial ownership of any shares owned directly or indirectly by the GS Limited Partnerships, except to the extent of his pecuniary interest therein.
- (18) Ms. Richardson, a director of the Parent Companies and SunGard, is a managing director of Providence Equity Partners, Inc., an affiliate of the Providence Equity Funds. Amounts disclosed for Ms. Richardson are also included above in the amounts disclosed in the table next to Providence Equity Funds. Ms. Richardson disclaims beneficial ownership of any shares owned directly or indirectly by the Providence Equity Funds, except to the extent of her pecuniary interest therein.
- (19) Includes the following shares which Mr. Ruane has the right to acquire within 60 days after March 1, 2010 by exercising stock options: 838,776 Class A shares, 93,173 Class L shares and 32,261 preferred shares.
- (20) Excluding shares beneficially owned by Ms. Richardson and Messrs. Chu, Hutchins and Mehra and by Mr. Ruane, who is no longer an executive officer, the number of shares beneficially owned by all directors and executive officers as a group is as follows: Class A shares 12,223,857; Class L shares 1,350,372; preferred shares 470,348; percent of classes 4.79%.

**CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS**

Pursuant to our Global Business Conduct and Compliance Program, all employees and directors (including our named executives) who have, or whose immediate family members have, any financial interests in other entities where such involvement is or may appear to cause a conflict of interest situation are required to report to us the conflict. If the conflict involves a director or executive officer or is considered material, the situation will be reviewed by the Compliance Committee. The Compliance Committee will then consult with the Audit Committee and determine whether a conflict exists or will exist, and if so, what action should be taken to resolve the conflict or potential conflict. In other cases, conflicts are reviewed and resolved by the Compliance Committee. Additionally, in connection with the Transaction, the Company's four parent companies and the Sponsors entered into a principal investor agreement which requires affiliated party transactions

**Table of Contents**

involving the Sponsors to be approved by the majority of Sponsors not involved in the affiliated party transaction.

Other than as described under this heading, the Company has not adopted any formal policies or procedures for the review, approval or ratification of certain related-party transactions that may be required to be reported under the SEC disclosure rules. Such transactions, if and when they are proposed or have occurred, have traditionally been (and will continue to be) reviewed by the Audit Committee (other than the committee members involved, if any) on a case-by-case basis.

On August 11, 2005, upon completion of the Transaction, the Company and its four parent companies entered into a management agreement with affiliates of each of the Sponsors pursuant to which such entities or their affiliates will provide management consultant services, including financial, managerial and operational advice and implementation of strategies for improving the operating, marketing and financial performance of the Company and its subsidiaries. Under the management agreement, affiliates of the Sponsors receive quarterly annual management fees equal to 1% of the Company's quarterly EBITDA, as defined in the Indenture dated August 11, 2005 governing the senior notes due 2013 (but assuming the management fee had not been paid for purposes of such calculation), and reimbursement for out-of-pocket expenses incurred by them or their affiliates in connection with the provision of management consulting services pursuant to the agreement. During the years ended December 31, 2007, 2008 and 2009, the Company recorded \$17 million, \$23 million and \$15 million respectively relating to management fees.

In the event that the management agreement is terminated, the Sponsors will receive a lump sum payment equal to the present value of the annual management fees that would have been payable for the remainder of the term of the management agreement. The initial term of the management agreement is ten years, and it extends annually for one year unless the Sponsors or the Company and its parent companies provide notice to the other. Finally, the management agreement provides that affiliates of the Sponsors will be entitled to receive a fee equal to 1% of the gross transaction value in connection with certain subsequent financing, acquisition, disposition and change of control transactions in excess of a threshold amount.

In addition to serving as a director, Mr. Mann is currently an employee of the Company and accordingly in 2009 received salary and benefits. See note 2 to the table under Director Compensation.

Our Sponsors and/or their respective affiliates have from time to time entered into, and may continue to enter into, arrangements with us to use our products and services in the ordinary course of their business, which often result in revenues to SunGard in excess of \$120,000 annually.

In June 2009, certain of our Sponsors and/or their respective affiliates received fees in connection with participating in the refinancing of our senior secured credit facility. Kohlberg Kravis Roberts & Co. received \$525,548, Goldman Sachs & Co. received \$427,612, The Blackstone Group received \$251,046, Bain Capital Partners received \$242,183 and TPG received \$111,938.

Effective February 16, 2007, we entered into a three-year participation agreement with one-year renewal terms ( participation agreement ) with Core Trust Purchasing Group, a division of HealthTrust Purchasing Corporation ( CPG ), designating CPG as our exclusive group purchasing organization for the purchase of certain products and services from third party vendors. CPG secures from vendors pricing terms for goods and services that are believed to be more favorable than participants in the group purchasing organization could obtain for themselves on an individual basis. Under the participation agreement, we must purchase 80% of the requirements of our participating locations for core categories of specified products and services, from vendors participating in the group purchasing arrangement with CPG or CPG may terminate the contract. In connection with purchases by its participants (including us), CPG receives a commission from the vendors in respect of such purchases. Although CPG is not affiliated with Blackstone, in consideration for Blackstone's facilitating our participation in CPG and monitoring the services CPG provides to us,



CPG remits a portion of the commissions received from vendors in respect of our purchases under the participation agreement to an affiliate of Blackstone, with whom Chinh E. Chu, a member of our Boards of Directors, is affiliated and in which he may have an indirect pecuniary interest.

**Table of Contents**

**DIRECTOR INDEPENDENCE**

SCC, SCCII and SunGard are privately-held corporations. Our Sponsor Directors are not independent because of their affiliations with funds which hold more than 5% equity interests in the Parent Companies. Messrs. Conde and Mann are not independent directors because they are currently employed by the Company.

**DESCRIPTION OF OTHER INDEBTEDNESS**

**Senior Secured Credit Facilities**

*Overview*

In connection with the Transaction, we entered into a senior secured credit agreement with J.P. Morgan Securities Inc., as joint lead arranger and joint bookrunner, Citigroup Global Markets Inc., as joint lead arranger, joint bookrunner and co-syndication agent, Deutsche Bank Securities Inc., as joint bookrunner and co-syndication agent, and JPMorgan Chase Bank, N.A. as administrative agent and collateral agent.

The senior secured credit facilities entered into in connection with the Transaction provided senior secured financing of \$5,000 million, consisting of:

\$4,000 million-equivalent in term loan facilities, comprised of a \$3,685 million facility and \$315 million-equivalent facilities, \$165 million of which is denominated in euros and \$150 million of which is denominated in pounds sterling; and

a \$1,000 million revolving credit facility.

In February 2007, we entered into an amendment to, among other things, increase the amount of term loan facilities by \$400 million. After giving effect to the amendment, the aggregate amount of the U.S. dollar denominated portion of the term loan facilities was approximately \$4,030 million.

In September 2008, we entered into a second amendment to, among other things, increase the amount of term loan facilities by \$500 million. After giving effect to the second amendment, the aggregate amount of the U.S. dollar denominated portion of the term loan facilities was approximately \$4,459 million.

In June 2009, we entered into an amendment and restatement to, among other things, (a) extend the maturity date of \$2.5 billion of dollar-denominated term loans, £40 million of pound sterling-denominated term loans, and 120 million of euro-denominated term loans to February 28, 2016, (b) reduce existing revolving credit commitments to \$829 million and extend the termination date of \$580 million of revolving credit commitments to May 11, 2013, and (c) amend certain other provisions, including provisions relating to negative covenants and financial covenants.

SunGard is the primary borrower under the senior secured credit facilities, except that a U.K. subsidiary, organized under the laws of the United Kingdom, is the borrower under the sterling and euro term loan facilities. We also have the ability to designate one or more of our other U.K. subsidiaries as borrowers under the revolving credit facility. The revolving credit facility includes borrowing capacity available for letters of credit and for borrowings on same-day notice referred to as the swingline loans and is available in U.S. dollars, euros and pound sterling.

***Interest Rate and Fees***

Borrowings under the senior secured credit facilities bear interest at a rate equal to an applicable margin plus, at our option, either (a) a base rate determined by reference to the higher of (1) the prime rate of JPMorgan Chase Bank, N.A. and (2) the federal funds rate plus 1/2 of 1% or (b) a LIBOR rate determined by reference to the costs of funds for deposits in the currency of such borrowing for either 30, 60, 90 or 180 days. The initial applicable margin for borrowings was, under the revolving credit facility, 1.50% with respect to base rate borrowings and 2.50% with respect to LIBOR borrowings and, under the term loan facilities, 1.50% with respect to base rate borrowings and 2.50% with respect to LIBOR borrowings.

## **Table of Contents**

In February 2007, we entered into an amendment to, among other things, reduce the interest rate margin on all outstanding term loans under the senior secured credit agreement with respect to both base rate borrowings and LIBOR borrowings, subject to our attaining certain leverage ratios.

The second amendment in September 2008 changed certain terms applicable to the incremental term loan. Borrowings can either be at a base rate or a eurocurrency rate. Base rate borrowings reset daily and bear interest at a minimum of 4.0% plus a spread of 2.75%. Eurocurrency borrowings can be made for periods of 30, 60, 90 or 180 days and bear interest at a minimum of 3.0% plus a spread of 3.75%. The interest rate at December 31, 2009 was 6.75%.

Pursuant to the June 2009 amendment and restatement, interest rate spreads with respect to the extended term loans and interest rate spreads (and letter of credit fees) with respect to the extended portion of the revolving credit facility will be the applicable rate as set forth in the amended and restated agreement. All other interest rate spreads and fees remain unchanged, however, the 30 day borrowing option is not available for the extended term loans. As of December 31, 2009, the interest rate for the extended term loans, after adjusting for interest rate swaps, was 6.79% and for the unextended term loans, after adjusting for interest rate swaps, was 3.24%.

In addition to paying interest on outstanding principal under the senior secured credit facilities, we are required to pay a commitment fee to the lenders under the revolving credit facility in respect of the unutilized commitments thereunder. The commitment fee rates with respect to unused commitments terminating in 2011 and unused commitments terminating in 2013 are 0.50% per annum and 0.75% per annum, respectively, and may change subject to attaining certain leverage ratios. We must also pay customary letter of credit fees.

## ***Prepayments***

The senior secured credit agreement requires us to prepay outstanding term loans, subject to certain exceptions, with:

50% (which percentage is reduced to 0% if our total leverage ratio is less than 5.00 to 1.00) of our annual excess cash flow;

100% of the net cash proceeds of all nonordinary course asset sales or other dispositions of property by SunGard Holdco LLC and its subsidiaries (including insurance and condemnation proceeds), other than the sale of receivables in connection with the receivables facility, if we do not commit to reinvest those proceeds in assets to be used in our business or to make certain other permitted investments within 15 months as long as such reinvestment is completed within 180 days;

100% of the net cash proceeds of any incurrence of debt, other than proceeds from the receivables facility and other debt permitted under the senior secured credit agreement; and

100% of the net cash proceeds of financings under the receivables facility in excess of \$750 million, including increases in the amount of the receivables facility.

The foregoing mandatory prepayments are applied pro rata to the term loan facilities and to installments of the term loan facilities.

We may voluntarily repay outstanding loans under the senior secured credit facilities at any time without premium or penalty, other than customary breakage costs with respect to LIBOR loans.

## ***Amortization***

We are required to repay installments on the loans under the term loan facilities in quarterly principal amounts of 0.25% of their funded total principal amount through their respective maturity dates with the remaining amount payable on their respective maturity dates. Maturity dates for all our term loan facilities will automatically become May 15, 2013 if all the senior notes are not extended, renewed or refinanced on or prior to May 15, 2013 and the maturity dates for our extended term loan facilities will automatically become

**Table of Contents**

May 15, 2015 if all the senior subordinated notes are not extended, renewed or refinanced on or prior to May 15, 2015.

Principal amounts outstanding under the revolving credit facility are due and payable in full at maturity on August 11, 2011 for the unextended portion of the revolving credit facility and on May 11, 2013 for the extended portion.

***Guarantee and Security***

All obligations under the senior secured credit agreement are unconditionally guaranteed by SunGard Holdco LLC and, subject to certain exceptions, each of our existing and future domestic wholly owned subsidiaries, referred to, collectively, as U.S. Guarantors. In addition, if our U.K. subsidiary borrowers borrow under the revolving credit facility, those borrowings are required to be unconditionally guaranteed by certain of our wholly owned U.K. subsidiaries.

All obligations under the senior secured credit facilities, and the guarantees of those obligations, are secured by substantially all the following assets of SunGard Holdco LLC, us and each U.S. Guarantor, subject to certain exceptions:

a pledge of 100% of the capital stock of SunGard Data Systems Inc., 100% of the capital stock of each U.S. Guarantor and 65% of the capital stock of each of our wholly owned foreign subsidiaries that are directly owned by us or one of the U.S. Guarantors; and

a security interest in, and mortgages on, substantially all tangible and intangible assets of SunGard Holdco LLC, SunGard Data Systems Inc. and each U.S. Guarantor.

In addition, any obligations of U.K. borrowers under the revolving credit facility, and any U.K. guarantees of such obligations, are required to be secured by the following (subject to certain exceptions and only to the extent that the granting of such security interests does not give rise to the requirement that the senior secured notes described under Senior Secured Notes below be equally and ratably secured by such assets):

a pledge of the capital stock of each U.K. borrower and each U.K. guarantor; and

a lien on substantially all tangible and intangible assets of each U.K. borrower and each U.K. guarantor.

***Certain Covenants and Events of Default***

The senior secured credit agreement contains a number of covenants that, among other things, restrict, subject to certain exceptions, our ability to:

incur additional indebtedness or issue preferred stock;

create liens on assets;

enter into sale and leaseback transactions;

engage in mergers or consolidations;

sell assets;

pay dividends and distributions or repurchase our capital stock;

make investments, loans or advances;

make capital expenditures;

repay subordinated indebtedness (including the senior subordinated notes);

make certain acquisitions;

engage in certain transactions with affiliates;

**Table of Contents**

amend material agreements governing our subordinated indebtedness (including the senior subordinated notes);  
change our lines of business; and  
change the status of SunGard Holdco LLC as a passive holding company.

In addition, the senior secured credit agreement requires us to maintain the following financial covenants:

a maximum total leverage ratio; and  
a minimum interest coverage ratio.

The senior secured credit agreement also contains certain customary affirmative covenants and events of default.

**Receivables Facility**

In connection with the Transaction, certain of our domestic subsidiaries entered into a receivables facility that provided, in the aggregate, up to \$375 million in funding for a period of six years following the closing of the Transaction. In December 2005, the agreements governing the principal receivables facility were amended to, among other things, increase the aggregate availability from \$375 million to a maximum amount of \$450 million and change certain other terms thereof, and the company terminated its transitional receivables facility (which had provided an amount of funding up to a maximum of \$375 million less that amount of funding under the principal receivables facility). In December 2008, we terminated our accounts receivable securitization program. Under the accounts receivable facility, eligible receivables were sold to third-party conduits through a wholly owned, bankruptcy remote special purpose entity that is not consolidated for financial reporting purposes. We serviced the receivables and charged a monthly servicing fee at market rates. The third-party conduits were sponsored by certain lenders under our senior secured credit facilities.

In March 2009, SunGard AR Financing LLC, a newly-formed wholly-owned, bankruptcy-remote, special purpose financing subsidiary ( Financing ) of the company entered into a syndicated three-year receivables facility. The facility limit is \$317 million of which approximately \$136 million is on a revolving basis and the balance is a term loan.

Subject to obtaining the commitment of additional lenders, and the satisfaction of other customary conditions, the receivables facility may be increased up to a maximum amount of \$500 million.

In May 2009, the company increased the size of its receivables facility by \$66.5 million.

At December 31, 2009, \$181 million was drawn against the term loan commitment and \$69 million was drawn against the revolving commitment, representing the full amount available for borrowing. Subsidiaries of the company that participate in the receivables facility ( Sellers ) transfer their receivables as a true sale to Financing pursuant to the Receivables Sale Agreement dated as of March 27, 2009 (the Receivables Sale Agreement ) and without recourse except for recourse for breaches of customary representations and warranties related to the receivables. Additional subsidiaries of the company may become parties to the receivables facility, subject to the satisfaction of specified conditions. Upon becoming parties, receivables originated by these subsidiaries will be included in the receivables balance eligible for funding under the receivables facility and will be included in the calculation of available funding thereunder.



Availability of funding under the receivables facility depends primarily upon the outstanding trade accounts receivable balance of the Sellers. Aggregate availability is determined by using a formula that reduces the gross receivables balance by factors that take into account historical default and dilution rates, excessive concentrations and average days outstanding and the costs of the facility.

***Interest Rates and Fees***

Under the receivables facility, Financing is generally required to pay interest on the amount of each advance at the one month LIBOR rate, adjusted for statutory reserves, plus 4.50% per annum. Financing is

## **Table of Contents**

required to pay a fee on the unused portion of the receivables facility of 1.00% per annum, payable monthly in arrears. In addition, the company, acting as the initial receivables servicer, services, administers and collects receivables transferred pursuant to the receivables facility. Under the receivables facility, the company receives a monthly servicing fee of 1.00% per annum of the daily average outstanding balance of the receivables under such facility, payable monthly in arrears by Financing.

The receivables facility may be terminated for material breaches of representations and warranties, bankruptcies of any Seller, the collection agent or Financing, a default by any Seller or Financing in the performance of any payment required to be made under the transaction documents, a merger or similar transaction involving Financing, cross acceleration under our other facilities, a change of control affecting the company, and a failure to maintain a minimum fixed charge coverage ratio, among other reasons.

### ***Guaranty and Security***

The company unconditionally guarantees the performance of the Sellers' obligations under the Receivables Sale Agreement. All obligations under the receivables facility are secured by the receivables purchased by Financing under the Receivables Sale Agreement.

### **Senior Secured Notes**

In January 2004, SunGard issued \$250 million aggregate principal amount of 3.750% senior notes due 2009 and \$250 million aggregate principal amount of 4.875% senior notes due 2014 under a single indenture. Upon consummation of the Transaction, the senior secured notes became secured on an equal and ratable basis with loans under the senior secured credit facilities to the extent required by the indenture governing the senior secured notes and are guaranteed by all our subsidiaries that guarantee the notes. The terms of the indenture governing the senior secured notes provide that, in addition to customary events of default, a payment default or other default resulting in acceleration of payment obligations under any other indebtedness of SunGard or its subsidiaries aggregating more than \$75 million, including the notes, constitute an event of default under the indenture governing the senior secured notes.

In January 2009, SunGard repaid the 3.750% senior notes due 2009 in full at maturity.

## **DESCRIPTION OF SENIOR NOTES DUE 2013**

### **General**

Certain terms used in this description are defined under the subheading *Certain Definitions*. In this description, (i) the terms *we*, *our* and *us* each refer to (a) prior to the consummation of the Acquisition, Solar Capital Corp. and not any of its Affiliates and (b) from and after the consummation of the Acquisition, SunGard Data Systems Inc. ( *SunGard* ) and its consolidated Subsidiaries, assuming completion of the Transaction; and (ii) the term *Issuer* refers only to (a) prior to the consummation of the Acquisition, Solar Capital Corp. and not any of its Affiliates and (b) from and after the consummation of the Acquisition, SunGard Data Systems Inc. and not any of its Subsidiaries.

The Issuer issued \$1,600 million aggregate principal amount of 9 1/8% senior notes due 2013 (the *Senior Notes* ) under an indenture dated August 11, 2005 (the *Indenture* ) among the Issuer, the Guarantors and The Bank of New York, as trustee (the *Trustee* ). The Senior Notes were issued in a private transaction that was not subject to the registration requirements of the Securities Act. Except as set forth herein, the terms of the Senior Notes are substantially identical and include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act.

The following description is only a summary of the material provisions of the Indenture, does not purport to be complete and is qualified in its entirety by reference to the provisions of those agreements, including the definitions therein of certain terms used below. We urge you to read the Indenture because it, not this description, defines your rights as Holders of the Senior Notes. You may request copies of the Indenture at our address set forth under the heading Prospectus Summary.

## **Table of Contents**

### **Brief Description of Senior Notes**

The Senior Notes are:

unsecured senior obligations of the Issuer;

*pari passu* in right of payment with all existing and future Senior Indebtedness (including the Senior Credit Facilities and Senior Secured Notes) of the Issuer;

effectively subordinated to all secured Indebtedness of the Issuer (including the Senior Credit Facilities and Senior Secured Notes);

senior in right of payment to any future Subordinated Indebtedness (as defined with respect to the Senior Notes) (including the Senior Subordinated Notes) of the Issuer;

initially guaranteed on a senior unsecured basis by each Restricted Subsidiary that guarantees the Senior Credit Facilities; and

subject to registration with the SEC pursuant to a Registration Rights Agreement.

### **Guarantees**

The Guarantors, as primary obligors and not merely as sureties, jointly and severally irrevocably and unconditionally guarantee, on an unsecured senior basis, the performance and full and punctual payment when due, whether at maturity, by acceleration or otherwise, of all obligations of the Issuer under the Indenture and the Senior Notes, whether for payment of principal of or interest on or Additional Interest in respect of the Senior Notes, expenses, indemnification or otherwise, on the terms set forth in the Indenture by executing the Indenture.

The Restricted Subsidiaries (other than as detailed below) guarantee the Senior Notes. Each of the Guarantees of the Senior Notes is a general unsecured obligation of each Guarantor and is *pari passu* in right of payment with all existing and future Senior Indebtedness of each such entity, is effectively subordinated to all secured Indebtedness of each such entity and is senior in right of payment to all existing and future Subordinated Indebtedness (including the Senior Subordinated Notes) of each such entity. The Senior Notes are structurally subordinated to Indebtedness of Subsidiaries of the Issuer that do not Guarantee the Senior Notes.

Not all of the Issuer's Subsidiaries guarantee the Senior Notes. In the event of a bankruptcy, liquidation or reorganization of any of these non-guarantor Subsidiaries, the non-guarantor Subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to the Issuer. None of our Foreign Subsidiaries, broker-dealer subsidiaries, non-Wholly Owned Subsidiaries (subject to certain limited exceptions) or any Receivables Subsidiary guarantee the Senior Notes. As of December 31, 2009, the non-guarantor Subsidiaries generated 40% and 20% of SunGard's total revenue and EBITDA, respectively. In addition, as of December 31, 2009, the non-guarantor Subsidiaries held 29% of SunGard's consolidated assets.

The obligations of each Guarantor under its Guarantees are limited as necessary to prevent the Guarantees from constituting a fraudulent conveyance under applicable law.

Any entity that makes a payment under its Guarantee is entitled upon payment in full of all guaranteed obligations under the Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment

determined in accordance with GAAP.

If a Guarantee were rendered voidable, it could be subordinated by a court to all other indebtedness (including guarantees and other contingent liabilities) of the Guarantor, and, depending on the amount of such indebtedness, a Guarantor's liability on its Guarantee could be reduced to zero. See Risk Factors Risks Related to the Notes Federal and state fraudulent transfer laws may permit a court to void the notes and the related guarantees of the notes, and, if that occurs, you may not receive any payments on the notes.

## **Table of Contents**

A Guarantee by a Guarantor provides by its terms that it shall be automatically and unconditionally released and discharged upon:

- (1) (a) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Restricted Subsidiary or all or substantially all the assets of such Guarantor which sale, exchange or transfer is made in compliance with the applicable provisions of the Indenture;
  - (b) the release or discharge of the guarantee by such Guarantor of the Senior Credit Facilities or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee;
  - (c) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary; or
  - (d) the Issuer exercising its legal defeasance option or covenant defeasance option as described under Legal Defeasance and Covenant Defeasance or the Issuer's obligations under the Indenture being discharged in accordance with the terms of the Indenture; and
- (2) such Guarantor delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

## **Ranking**

### ***Senior Secured Indebtedness Versus the Senior Notes***

The payment of the principal of, premium, if any, and interest on the Senior Notes and the payment of any Guarantee rank *pari passu* in right of payment to all Senior Indebtedness of the Issuer or the relevant Guarantor, as the case may be, including the obligations of the Issuer and such Guarantor under the Senior Credit Facilities and the Senior Secured Notes.

The Senior Notes are effectively subordinated in right of payment to all of the Issuer's and the Guarantor's existing and future secured Indebtedness to the extent of the value of the assets securing such Indebtedness. As of December 31, 2009, SunGard had \$4,967 million of secured Indebtedness, consisting entirely of secured Indebtedness under the Senior Credit Facilities and the Senior Secured Notes (which have a face amount of \$250 million, but are recorded at \$234 million and have been secured as of the Issue Date). As of December 31, 2009, \$250 million was outstanding under our Receivables Facility.

Although the Indenture contains limitations on the amount of additional Indebtedness that the Issuer and the Guarantors may incur, under certain circumstances the amount of such Indebtedness could be substantial and, in any case, such Indebtedness may be Senior Indebtedness. See Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

### **Paying Agent and Registrar for the Senior Notes**

The Issuer maintains one or more paying agents for the Senior Notes in the Borough of Manhattan, City of New York. The initial paying agent for the Senior Notes is the Trustee.

The Issuer also maintains a registrar with offices in the Borough of Manhattan, City of New York. The initial registrar is the Trustee. The registrar maintains a register reflecting ownership of the Senior Notes outstanding from time to

time and makes payments on and facilitates transfer of Senior Notes on behalf of the Issuer.

The Issuer may change the paying agents or the registrars without prior notice to the Holders. The Issuer or any of its Subsidiaries may act as a paying agent or registrar.

## **Table of Contents**

### **Transfer and Exchange**

A Holder may transfer or exchange Senior Notes in accordance with the Indenture. The registrar and the Trustee may require a Holder to furnish appropriate endorsements and transfer documents in connection with a transfer of Senior Notes. Holders will be required to pay all taxes due on transfer. The Issuer is not required to transfer or exchange any Senior Note selected for redemption. Also, the Issuer is not required to transfer or exchange any Senior Note for a period of 15 days before a selection of Senior Notes to be redeemed.

### **Principal, Maturity and Interest**

The Issuer issued \$1,600 million of Senior Notes in this offering. The Senior Notes mature on August 15, 2013. Subject to compliance with the covenant described below under the caption *Certain Covenants – Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*, the Issuer may issue additional Senior Notes from time to time after this offering under the Indenture ( *Additional Senior Notes* ). Holders of each series of Senior Notes do not have separate rights to, among other things, give notice of Defaults or to direct the Trustee to exercise remedies during Event of Default or otherwise. The Senior Notes offered by the Issuer and any Additional Senior Notes subsequently issued under the Indenture are treated as a single class for all purposes under the Indenture, including waivers, amendments, redemptions and offers to purchase. Unless the context requires otherwise, references to *Senior Notes* for all purposes of the Indenture and this *Description of Senior Notes* include any Additional Senior Notes that are actually issued.

Interest on the Senior Notes accrues at the rate of 9 1/8% per annum and is payable semi-annually in arrears on February 15 and August 15, commencing on February 15, 2006, to the Holders of Senior Notes of record on the immediately preceding February 1 and August 1. Interest on the Senior Notes accrues from the most recent date to which interest has been paid or, if no interest has been paid, from and including the Issue Date. Interest on the Senior Notes is computed on the basis of a 360-day year comprised of twelve 30-day months.

### ***Additional Interest***

Additional Interest may accrue on the Senior Notes in certain circumstances pursuant to the Registration Rights Agreement. All references in the Indenture, in any context, to any interest or other amount payable on or with respect to the Senior Notes shall be deemed to include any Additional Interest pursuant to the Registration Rights Agreement. Principal of, premium, if any, and interest on the Senior Notes are payable at the office or agency of the Issuer maintained for such purpose within the City and State of New York or, at the option of the Issuer, payment of interest may be made by check mailed to the Holders of the Senior 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 the Senior Notes represented by one or more global notes registered in the name of or held by DTC or its nominee are made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof. Until otherwise designated by the Issuer, the Issuer's office or agency in New York is the office of the Trustee maintained for such purpose.

### **Mandatory Redemption; Offers to Purchase; Open Market Purchases**

The Issuer is not required to make any mandatory redemption or sinking fund payments with respect to the Senior Notes. However, under certain circumstances, the Issuer may be required to offer to purchase Senior Notes as described under the caption *Repurchase at the Option of Holders*. We may at any time and from time to time purchase Senior Notes in the open market or otherwise.

### **Optional Redemption**



Except as set forth below, the Issuer is not entitled to redeem Senior Notes at its option prior to August 15, 2009.

At any time prior to August 15, 2009, the Issuer may redeem all or a part of the Senior Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to the registered address of each

**Table of Contents**

Holder of Senior Notes, at a redemption price equal to 100% of the principal amount of the Senior Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the date of redemption (the *Redemption Date* ), subject to the rights of Holders of Senior Notes on the relevant record date to receive interest due on the relevant interest payment date.

On and after August 15, 2009, the Issuer may redeem the Senior Notes, in whole or in part, upon notice as described under the heading *Repurchase at the Option of Holders Selection and Notice*, at the redemption prices (expressed as percentages of principal amount of the Senior Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Senior Notes of record on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on August 15 of each of the years indicated below:

<b>Year</b>	<b>Percentage</b>
2009	104.563%
2010	102.281%
2011 and thereafter	100.000%

In addition, until August 15, 2008, the Issuer may, at its option, on one or more occasions redeem up to 35% of the aggregate principal amount of Senior Notes at a redemption price equal to 109.125% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Senior Notes of record on the relevant record date to receive interest due on the relevant interest payment date, with the net cash proceeds of one or more Equity Offerings; *provided* that at least 50% of the sum of the aggregate principal amount of Senior Notes originally issued under the Indenture and any Additional Senior Notes issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; *provided further* that each such redemption occurs within 90 days of the date of closing of each such Equity Offering.

Notice of any redemption upon any Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

The Trustee shall select the Senior Notes to be purchased in the manner described under *Repurchase at the Option of Holders Selection and Notice*.

**Repurchase at the Option of Holders*****Change of Control***

The Senior Notes provide that if a Change of Control occurs, unless the Issuer has previously or concurrently mailed a redemption notice with respect to all the outstanding Senior Notes as described under *Optional Redemption*, the Issuer will make an offer to purchase all of the Senior 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 and Additional Interest, if any, to the date of purchase, subject to the right of Holders of the Senior Notes 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 Issuer will send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Senior Notes to the address of such Holder appearing in the security register with a copy to the Trustee, with the following information:

- (1) that a Change of Control Offer is being made pursuant to the covenant entitled *Change of Control*, and that all Senior Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;
- (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 mailed (the *Change of Control Payment Date* );

**Table of Contents**

- (3) that any Senior Note not properly tendered will remain outstanding and continue to accrue interest;
- (4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Senior Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;
- (5) that Holders electing to have any Senior Notes purchased pursuant to a Change of Control Offer will be required to surrender such Senior Notes, with the form entitled *Option of Holder to Elect Purchase* on the reverse of such Senior 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) that Holders will be entitled to withdraw their tendered Senior Notes and their election to require the Issuer to purchase such Senior Notes, *provided* that the paying agent receives, not later than the close of business on the 30th day following the date of the Change of Control notice, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Senior Notes, the principal amount of Senior Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Senior Notes and its election to have such Senior Notes purchased;
- (7) that if the Issuer is redeeming less than all of the Senior Notes, the Holders of the remaining Senior Notes will be issued new Senior Notes and such new Senior Notes will be equal in principal amount to the unpurchased portion of the Senior Notes surrendered. The unpurchased portion of the Senior Notes must be equal to \$2,000 or an integral multiple thereof; and
- (8) the other instructions, as determined by us, consistent with the covenant described hereunder, that a Holder must follow.

The Issuer 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 Senior 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 Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

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

- (1) accept for payment all Senior Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,
- (2) deposit with the paying agent an amount equal to the aggregate Change of Control Payment in respect of all Senior Notes or portions thereof so tendered, and
- (3) deliver, or cause to be delivered, to the Trustee for cancellation the Senior Notes so accepted together with an Officer's Certificate to the Trustee stating that such Senior Notes or portions thereof have been tendered to and purchased by the Issuer.

The Senior Credit Facilities, and future credit agreements or other agreements relating to Senior Indebtedness to which the Issuer becomes a party may, provide that certain change of control events with respect to the Issuer would constitute a default thereunder (including a Change of Control under the Indenture). If we experience a change of control that triggers a default under our Senior Credit Facilities, we could seek a waiver of such default or seek to refinance our Senior Credit Facilities. In the event we do not obtain such a waiver or refinance the Senior Credit

Facilities, such default could result in amounts outstanding under our Senior Credit Facilities being declared due and payable and cause a Receivables Facility to be wound-down.

Our ability to pay cash to the Holders of Senior Notes following the occurrence of a Change of Control may be limited by our then-existing financial resources. Therefore, sufficient funds may not be available when necessary to make any required repurchases.

## **Table of Contents**

The Change of Control purchase feature of the Senior Notes may in certain circumstances make more difficult or discourage a sale or takeover of us and, thus, the removal of incumbent management. The Change of Control purchase feature is a result of negotiations between the Initial Purchasers and us. We have no present intention to engage in a transaction involving a Change of Control, 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 Indenture, but that could 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 Indenture can be waived only with the consent of the Holders of a majority in principal amount of the Senior Notes then outstanding. Except for the limitations contained in such covenants, however, the Indenture does not contain any covenants or provisions that may afford Holders of the Senior Notes protection in the event of a highly leveraged transaction.

We will not be required to make a Change of Control Offer following a Change of Control if 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 Indenture applicable to a Change of Control Offer made by us and purchases all Senior Notes validly tendered and not withdrawn under such Change of Control Offer. 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, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

The definition of Change of Control includes a disposition of all or substantially all of the assets of the Issuer to any Person. 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 Issuer. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder of Senior Notes may require the Issuer to make an offer to repurchase the Senior Notes as described above.

The provisions under the Indenture relative to the Issuer's obligation to make an offer to repurchase the Senior 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 Senior Notes.

## ***Asset Sales***

The Indenture provides that the Issuer will not, and will not permit any of its Restricted Subsidiaries to, cause, make or suffer to exist an Asset Sale, unless:

(1) the Issuer 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 (as determined in good faith by the Issuer) 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 Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that the amount of:

(a) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto) of the Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Senior Notes, that are assumed by the transferee of any such assets and for which the Issuer and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(b) any securities received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale, and

**Table of Contents**

(c) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed 2.5% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value,

shall be deemed to be cash for purposes of this provision and for no other purpose.

Within 450 days after the receipt of any Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

(1) to permanently reduce:

(a) Obligations under the Senior Credit Facilities or the Senior Secured Notes; and to correspondingly reduce commitments with respect thereto;

(b) Obligations under Senior Indebtedness that is secured by a Lien, which Lien is permitted by the Indenture, and to correspondingly reduce commitments with respect thereto;

(c) Obligations under other Senior Indebtedness (and to correspondingly reduce commitments with respect thereto), *provided* that the Issuer shall equally and ratably reduce Obligations under the Senior Notes as provided under Optional Redemption, through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Senior Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Senior Notes that would otherwise be prepaid; or

(d) Indebtedness of a Restricted Subsidiary that is not a Guarantor, other than Indebtedness owed to the Issuer or another Restricted Subsidiary;

(2) to make (a) an Investment in 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 Issuer or another of its Restricted Subsidiaries, 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 assets, in each of (a), (b) and (c), used or useful in a Similar Business, or

(3) 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 Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) properties or (c) acquisitions of other assets that, in each of (a), (b) and (c), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

*provided* that, in the case of clauses (2) and (3) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer, or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (an *Acceptable Commitment* ) and, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, the Issuer or such Restricted Subsidiary enters into another Acceptable Commitment (a *Second Commitment* ) within 180 days of such cancellation or termination; *provided further* that if any Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall



constitute Excess Proceeds.

Any Net Proceeds from the Asset Sale that are not invested or applied as provided and within the time period set forth in the first sentence of the preceding paragraph will be deemed to constitute *Excess Proceeds*. When the aggregate amount of Excess Proceeds exceeds \$100 million, the Issuer shall make an offer to all Holders of the Senior Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Senior Notes ( *Pari Passu Indebtedness* ), to the holders of such Pari Passu Indebtedness (an *Asset*

## **Table of Contents**

*Sale Offer* ), to purchase the maximum aggregate principal amount of the Senior Notes and such Pari Passu Indebtedness that is an integral multiple of \$2,000 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 and Additional Interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed \$100 million by mailing the notice required pursuant to the terms of the Indenture, with a copy to the Trustee.

To the extent that the aggregate amount of Senior Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Senior Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Senior Notes and such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Senior Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

Pending the final application of any Net Proceeds pursuant to this covenant, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by the Indenture.

The Issuer 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 Senior 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 Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

## ***Selection and Notice***

If the Issuer is redeeming less than all of the Senior Notes issued by it at any time, the Trustee will select the Senior Notes to be redeemed (a) if the Senior Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Senior Notes are listed or (b) on a pro rata basis to the extent practicable.

Notices of purchase or redemption shall be mailed by first-class mail, postage prepaid, at least 30 but not more than 60 days before the purchase or redemption date to each Holder of Senior Notes at such Holder's registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Senior Notes or a satisfaction and discharge of the Indenture. If any Senior Note is to be purchased or redeemed in part only, any notice of purchase or redemption that relates to such Senior Note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed.

The Issuer will issue a new Senior Note in a principal amount equal to the unredeemed portion of the original Senior Note in the name of the Holder upon cancellation of the original Senior Note. Senior Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Senior Notes or portions of them called for redemption.

## **Certain Covenants**

Set forth below are summaries of certain covenants contained in the Indenture. If on any date following the date of the Issue Date (i) the Senior Notes have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has

occurred and is continuing under the Indenture then, beginning on that day and continuing at all times thereafter regardless of any subsequent changes in the rating of the Senior Notes, the covenants

**Table of Contents**

specifically listed under the following captions in this Description of Senior Notes section of this prospectus will no longer be applicable to the Senior Notes:

- (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 Merger, Consolidation or Sale of All or Substantially All Assets ;
- (5) Transactions with Affiliates ;
- (6) Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries ; and
- (7) Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.

In addition, during any period of time that: (i) the Senior Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default has occurred and is continuing under the Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a *Covenant Suspension Event* ), the Issuer and the Restricted Subsidiaries will not be subject to the covenant described under Repurchase at the Option of Holders Change of Control (the *Suspended Covenant* ). In the event that the Issuer and the Restricted Subsidiaries are not subject to the Suspended Covenant under the Indenture for any period of time as a result of the foregoing, and on any subsequent date (the *Reversion Date* ) one or both of the Rating Agencies (a) withdraw their Investment Grade Rating or downgrade the rating assigned to the Senior Notes below an Investment Grade Rating and/or (b) the Issuer or any of its Affiliates enter into an agreement to effect a transaction that would result in a Change of Control and one or more of the Rating Agencies indicate 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 Senior Notes below an Investment Grade Rating, then the Issuer and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenant under the Indenture with respect to future events, including, without limitation, a proposed transaction described in clause (b) above.

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

***Limitation on Restricted Payments***

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(I) declare or pay any dividend or make any payment or distribution on account of the Issuer s, or any of its Restricted Subsidiaries Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

(a) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; 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 Issuer 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;

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer, including in connection with any merger or consolidation;

**Table of Contents**

(III) 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:

(a) Indebtedness permitted under clauses (7) and (8) of the covenant described under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; or

(b) 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; or

(IV) make any Restricted Investment

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

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Issuer could incur \$1.00 of additional Indebtedness under the provisions of the first paragraph of the covenant described under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (1), (2) (with respect to the payment of dividends on Refunding Capital Stock (as defined below) pursuant to clause (b) thereof only), (6)(c), (9) and (14) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum of (without duplication):

(a) 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) beginning July 1, 2005, to the end of the Issuer'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*

(b) 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by the Issuer since immediately after the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ) from the issue or sale of:

(i) (A) Equity Interests of the Issuer, including Treasury Capital Stock (as defined below), but excluding cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received from the sale of:

(x) Equity Interests to members of management, directors or consultants of the Issuer, any direct or indirect parent company of the Issuer and the Issuer's Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph; and

(y) Designated Preferred Stock

and (B) to the extent such net cash proceeds are actually contributed to the Issuer, Equity Interests of the Issuer's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph); or

**Table of Contents**

(ii) debt securities of the Issuer that have been converted into or exchanged for such Equity Interests of the Issuer;

*provided, however*, that this clause (b) shall not include the proceeds from (W) Refunding Capital Stock (as defined below), (X) Equity Interests or convertible debt securities of the Issuer sold to a Restricted Subsidiary, as the case may be, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; *plus*

(c) 100% of the aggregate amount of cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property contributed to the capital of the Issuer following the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ) (other than by a Restricted Subsidiary and other than by any Excluded Contributions); *plus*

(d) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) of Restricted Investments made by the Issuer or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Issuer or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Issuer or its Restricted Subsidiaries, in each case after the Issue Date; or

(ii) the sale (other than to the Issuer or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; *plus*

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary, as determined by the Issuer in good faith or if, in the case of an Unrestricted Subsidiary, such fair market value may exceed \$150 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary other than an Unrestricted Subsidiary to the extent the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment.

The foregoing provisions will not prohibit:

(1) the payment of any dividend 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 Indenture;

(2) (a) the redemption, repurchase, retirement or other acquisition of any Equity Interests ( *Treasury Capital Stock* ) or Subordinated Indebtedness of the Issuer or any Equity Interests of any direct or indirect parent company of the Issuer, in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent contributed to the Issuer (in each case, other than any Disqualified Stock) ( *Refunding Capital Stock* ) and (b) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (6) of this paragraph, the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests



of any direct or indirect parent company of the Issuer) in an aggregate

**Table of Contents**

amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Issuer or a Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Issuer or a Guarantor, as the case may be, 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 of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any reasonable premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness;

(b) such new Indebtedness is subordinated to the Senior Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, acquired or retired for value;

(c) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired; and

(d) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Issuer or any of its direct or indirect parent companies held by any future, present or former employee, director or consultant of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement; *provided, however*, that the aggregate Restricted Payments made under this clause (4) do not exceed in any calendar year \$25 million (which shall increase to \$50 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent corporation of the Issuer) (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$50 million in any calendar year (which shall increase to \$100 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent corporation of the Issuer)); *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer, Equity Interests of any of the Issuer's direct or indirect parent companies, in each case to members of management, directors or consultants of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (3) of the preceding paragraph; *plus*

(b) the cash proceeds of key man life insurance policies received by the Issuer or its Restricted Subsidiaries after the Issue Date; *less*

(c) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a) and (b) of this clause (4);

and *provided further* that cancellation of Indebtedness owing to the Issuer from members of management of the Issuer, any of the Issuer's direct or indirect parent companies or any of the Issuer's Restricted

**Table of Contents**

Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of the Indenture;

(5) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries 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 ;

(6) (a) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Issuer after the Issue Date;

(b) the declaration and payment of dividends to a direct or indirect parent company of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent corporation issued after the Issue Date, *provided* that the amount of dividends paid pursuant to this clause (b) shall not exceed the aggregate amount of cash actually contributed to the Issuer from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this paragraph;

*provided, however*, in the case of each of (a), (b) and (c) of this clause (6), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Issuer and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(7) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (7) that are at the 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 or marketable securities, not to exceed 2% 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);

(8) 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;

(9) the declaration and payment of dividends on the Issuer's common stock (or the payment of dividends to any direct or indirect parent entity to fund a payment of dividends on such entity's common stock), following the first public offering of the Issuer's common stock or the common stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% per annum of the net cash proceeds received by or contributed to the Issuer in or from any such public offering, other than public offerings with respect to the Issuer's common stock registered on Form S-8 and other than any public sale constituting an Excluded Contribution;

(10) Restricted Payments that are made with Excluded Contributions;

(11) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (11) not to exceed the greater of (x) \$275 million or (y) 1.875% of Total Assets at the time made;

(12) distributions or payments of Receivables Fees;

(13) any Restricted Payment used to fund the Transaction and the fees and expenses related thereto or owed to Affiliates, in each case to the extent permitted by the covenant described under Transactions with Affiliates ;

**Table of Contents**

(14) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness 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 all Senior Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(15) the declaration and payment of dividends by the Issuer to, or the making of loans to, any direct or indirect parent in amounts required for any direct or indirect parent companies to pay, in each case without duplication,

(a) franchise taxes and other fees, taxes and expenses required to maintain their corporate existence;

(b) federal, state and local income taxes, to the extent such income taxes are attributable to the income of the Issuer and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; *provided* that in each case the amount of such payments in any fiscal year does not exceed the amount that the Issuer and its Restricted Subsidiaries would be required to pay in respect of federal, state and local taxes for such fiscal year were the Issuer, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such parent entity;

(c) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Issuer to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(d) general corporate operating and overhead costs and expenses of any direct or indirect parent company of the Issuer to the extent such costs and expenses are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries; and

(e) fees and expenses other than to Affiliates of the Issuer related to any unsuccessful equity or debt offering of such parent entity; and

(16) the distribution, dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary by Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are cash and/or Cash Equivalents);

*provided, however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (11) and (16), no Default shall have occurred and be continuing or would occur as a consequence thereof.

As of the Issue Date, all of the Issuer's Subsidiaries were Restricted Subsidiaries. The Issuer 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 Issuer 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 (7), (10), (11) or (16) 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 Indenture.

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

The Issuer will not, and will not permit any of its Restricted Subsidiaries 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

**Table of Contents**

Indebtedness) and the Issuer 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 Issuer may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any of its Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries most recently ended four 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:

(1) the incurrence of Indebtedness under Credit Facilities by the Issuer or any of its Restricted Subsidiaries and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof), up to an aggregate principal amount of \$5,750 million outstanding at any one time, less up to \$1,000 million in the aggregate of mandatory principal payments actually made by the borrower thereunder in respect of Indebtedness thereunder with Net Proceeds from an Asset Sale or series of related Asset Sales that constitutes the sale, transfer, conveyance or other disposition of all or substantially all of a segment (as defined under GAAP) of the Issuer (other than any segment predominantly composed of assets acquired by the Issuer or its Restricted Subsidiaries subsequent to the Issue Date);

(2) the incurrence by the Issuer and any Guarantor of Indebtedness represented by (a) the Senior Notes (including any Guarantee) (other than any Additional Senior Notes) and (b) the Senior Subordinated Notes (including any guarantee thereof);

(3) Indebtedness of the Issuer and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (1) and (2));

(4) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and Preferred Stock incurred by the Issuer or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment (other than software) 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;

(5) Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, 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;

(6) Indebtedness arising from agreements of the Issuer or its Restricted Subsidiaries 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; *provided, however*, that

(a) such Indebtedness is not reflected on the balance sheet of the Issuer, or any of its Restricted Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance



sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (6)(a)); and

(b) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds

**Table of Contents**

being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(7) Indebtedness of the Issuer to a Restricted Subsidiary; *provided* that any such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Senior Notes; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(8) Indebtedness of a Restricted Subsidiary to the Issuer or another Restricted Subsidiary; *provided* that if a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Senior Notes of such Guarantor; *provided further* that any subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(9) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer 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 Issuer or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock;

(10) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk with respect to any Indebtedness permitted to be incurred pursuant to Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock, exchange rate risk or commodity pricing risk;

(11) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(12) (a) Indebtedness or Disqualified Stock of the Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary equal to 200% of the net cash proceeds received by the Issuer since immediately after the Issue Date from the issue or sale of Equity Interests of the Issuer or cash contributed to the capital of the Issuer (in each case, other than proceeds of Disqualified Stock or sales of Equity Interests to the Issuer or any of its Subsidiaries) as determined in accordance with clauses (3)(b) and (3)(c) of the first paragraph of Limitation on Restricted Payments to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges pursuant to the second paragraph of Limitation on Restricted Payments or to make Permitted Investments (other than Permitted Investments specified in clauses (1) and (3) of the definition thereof) and (b) Indebtedness or Disqualified Stock of Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer 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 (12)(b), does not at any one time outstanding exceed \$600 million (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (12)(b) shall cease to be deemed incurred or outstanding for purposes of this clause (12)(b) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Issuer or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (12)(b));

(13) the incurrence by the Issuer or any Restricted Subsidiary, of the Issuer 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 (2), (3) and (12)(a) above, this clause (13) and clause (14) below or any Indebtedness, Disqualified Stock or Preferred Stock issued to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock

**Table of Contents**

including additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay premiums (including reasonable tender premiums), defeasance costs and fees in connection therewith (the *Refinancing Indebtedness* ) prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness:

(a) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,

(b) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated or *pari passu* to the Senior Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or *pari passu* to the Senior Notes or the Guarantee 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

(c) shall not include:

(i) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer;

(ii) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer, that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(iii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and *provided further* that subclause (a) of this clause (13) will not apply to any refunding or refinancing of any Indebtedness outstanding under a Credit Facility;

(14) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Issuer or a Restricted Subsidiary incurred to finance an acquisition or (y) Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into the Issuer or a Restricted Subsidiary in accordance with the terms of the Indenture; *provided* that either

(i) such Indebtedness, Disqualified Stock or Preferred Stock:

(a) is not Secured Indebtedness and is subordinated to the Senior Notes on terms no less favorable to the Holders thereof than the subordination terms set forth in the indenture governing the Senior Subordinated Notes as in effect on the Issue Date;

(b) is not incurred while a Default exists and no Default shall result therefrom;

(c) matures and does not require any payment of principal prior to the final maturity of the Senior Notes (other than in a manner consistent with the terms of the Indenture); and

(d) in the case of clause (y), is not incurred in contemplation of such acquisition or merger; or

(ii) after giving effect to such acquisition or merger, either

(a) the Issuer 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

(b) the Fixed Charge Coverage Ratio of the Issuer and the Restricted Subsidiaries is greater than immediately prior to such acquisition or merger;

**Table of Contents**

(15) 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 two Business Days of its incurrence;

(16) Indebtedness of the Issuer or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(17) (a) any guarantee by the Issuer or a Restricted Subsidiary 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 Indenture, or

(b) any guarantee by a Restricted Subsidiary of Indebtedness of the Issuer *provided* that such guarantee is incurred in accordance with the covenant described below under Limitation on Guarantees of Indebtedness by Restricted Subsidiaries ;

(18) Indebtedness of Foreign Subsidiaries of the Issuer incurred not to exceed at any one time outstanding and together with any other Indebtedness incurred under this clause (18) 5% of the Total Assets of the Foreign Subsidiaries (it being understood that any Indebtedness incurred pursuant to this clause (18) shall cease to be deemed incurred or outstanding for purposes of this clause (18) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Issuer or such Restricted Subsidiary could have incurred such Indebtedness under the first paragraph of this covenant without reliance on this clause (18));

(19) Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred to finance or assumed in connection with an acquisition in a principal amount not to exceed \$200 million in the aggregate at any one time outstanding together with all other Indebtedness, Disqualified Stock and/or Preferred Stock issued under this clause (19) (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (19) shall cease to be deemed incurred or outstanding for purposes of this clause (19) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (19));

(20) Indebtedness of the Issuer or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business; and

(21) Indebtedness consisting of Indebtedness issued by the Issuer or any of its Restricted Subsidiaries to current or former officers, directors and employees thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent described in clause (4) of the second paragraph under the caption Limitation on Restricted Payments.

For purposes of determining compliance with this covenant:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (21) above or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer, in its sole discretion, will classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses; *provided* that all Indebtedness outstanding under

the Credit Facilities on the Issue Date will be treated as incurred on the Issue Date under clause (1) of the preceding paragraph; and

(2) at the time of incurrence, the Issuer will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in the first and second paragraphs above.

## **Table of Contents**

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 U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. 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 Indenture provides that the Issuer will not, and will not permit any Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinated or junior in right of payment to any Indebtedness of the Issuer or such Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Senior Notes or such Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Issuer or such Guarantor, as the case may be.

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

## ***Liens***

The Issuer will not, and will not permit any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness or any related Guarantee, on any asset or property of the Issuer or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(1) in the case of Liens securing Subordinated Indebtedness, the Senior Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(2) in all other cases, the Senior Notes or the Guarantees are equally and ratably secured, except that the foregoing shall not apply to (a) Liens securing the Senior Notes and the related Guarantees, (b) Liens securing Indebtedness permitted to be incurred under Credit Facilities, including any letter of credit facility relating thereto, that was permitted by the terms of the Indenture to be incurred pursuant to clause (1) of the second paragraph under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock and (c) Liens incurred to secure Obligations in respect of any Indebtedness permitted to be incurred pursuant to the covenant described above under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock; *provided* that, with respect to Liens securing Obligations permitted under this subclause (c), at the time of incurrence and after giving pro forma effect thereto, the Consolidated Secured Debt Ratio would be no greater than 4.0 to 1.0.





**Table of Contents**

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

The Issuer may not consolidate or merge with or into or wind up into (whether or not the Issuer 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 Issuer is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the *Successor Company* );

(2) the Successor Company, if other than the Issuer, expressly assumes all the obligations of the Issuer under the Senior Notes pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Default exists;

(4) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions 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, the Issuer and its Restricted Subsidiaries would be greater than such Ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(5) each Guarantor, unless it is the other party to the transactions described above, in which case clause (b) of the second succeeding paragraph shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under the Indenture, the Senior Notes and the Registration Rights Agreement; and

(6) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture.

The Successor Company will succeed to, and be substituted for the Issuer, as the case may be, under the Indenture, the Guarantees and the Senior Notes, as applicable. Notwithstanding the foregoing clauses (3) and (4),

(1) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Issuer, and

(2) the Issuer may merge with an Affiliate of the Issuer, as the case may be, solely for the purpose of reincorporating the Issuer in a State of the United States so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

Subject to certain limitations described in the Indenture governing release of a Guarantee upon the sale, disposition or transfer of a guarantor, no Guarantor will, and the Issuer will not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Issuer or Guarantor 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) (a) such Guarantor is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the

**Table of Contents**

laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the *Successor Person* );

(b) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under the Indenture and such Guarantor's related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(c) immediately after such transaction, no Default exists; and

(d) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture; or

(2) the transaction is made in compliance with the covenant described under *Repurchase at the Option of Holders Asset Sales*.

Subject to certain limitations described in the Indenture, the Successor Person will succeed to, and be substituted for, such Guarantor under the Indenture and such Guarantor's Guarantee. Notwithstanding the foregoing, any Guarantor may merge into or transfer all or part of its properties and assets to another Guarantor or the Issuer.

***Transactions with Affiliates***

The Issuer will not, and will not permit any of its Restricted Subsidiaries 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 Issuer (each of the foregoing, an *Affiliate Transaction* ) involving aggregate payments or consideration in excess of \$20 million, unless:

(1) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and

(2) the Issuer delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$50 million, a resolution adopted by the majority of the board of directors of the Issuer approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (1) above.

The foregoing provisions will not apply to the following:

(1) transactions between or among the Issuer or any of its Restricted Subsidiaries;

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

(3) the payment of management, consulting, monitoring and advisory fees and related expenses to the Investors pursuant to the Sponsor Management Agreement in an aggregate amount in any fiscal year not to exceed 1% of EBITDA for such fiscal year (calculated, solely for the purpose of this clause (3), assuming (a) that such fees and related expenses had not been paid, when calculating Net Income, and (b) without giving effect to clause (h) of the definition of EBITDA) (plus any unpaid management, consulting, monitoring and advisory fees and related expenses

within such amount accrued in any prior year) and the termination fees pursuant to the Sponsor Management Agreement not to exceed the amount set forth in the Sponsor Management Agreement as in effect on the Issue Date;

(4) the payment of reasonable and customary fees paid to, and indemnities provided on behalf of, officers, directors, employees or consultants of Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries;

**Table of Contents**

(5) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(6) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(7) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement are not otherwise disadvantageous to the Holders when taken as a whole;

(8) the Transaction and the payment of all fees and expenses related to the Transaction, in each case as disclosed in this prospectus;

(9) transactions with customers, clients, suppliers, 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 Indenture which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Issuer or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance of Equity Interests (other than Disqualified Stock) of the Issuer to any Permitted Holder or to any director, officer, employee or consultant;

(11) sales of accounts receivable, or participations therein, in connection with any Receivables Facility;

(12) payments by the Issuer or any of its Restricted Subsidiaries to any of the Investors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by a majority of the board of directors of the Issuer in good faith;

(13) payments or loans (or cancellation of loans) to employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and employment agreements, stock option plans and other similar arrangements with such employees or consultants which, in each case, are approved by the Issuer in good faith; and

(14) investments by the Investors in securities of the Issuer or any of its Restricted Subsidiaries so long as (i) the investment is being offered generally to other investors on the same or more favorable terms and (ii) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities.

**Table of Contents**

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

The Issuer will not, and will not permit any of its Restricted Subsidiaries that are not Guarantors 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:

- (1) (a) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or
- (b) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;
- (2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or
- (3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries, except (in each case) for such encumbrances or restrictions existing under or by reason of:
  - (a) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Credit Facilities and the related documentation and the indenture governing the Senior Subordinated Notes and the related documentation;
  - (b) the Indenture and the Senior Notes;
  - (c) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (3) above on the property so acquired;
  - (d) applicable law or any applicable rule, regulation or order;
  - (e) any agreement or other instrument of a Person acquired by the Issuer or any of its Restricted Subsidiaries 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 and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;
  - (f) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Issuer 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;
  - (g) 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;
  - (h) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
  - (i) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred subsequent to the Issue Date pursuant to the provisions of the covenant described under **Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock** ;
  - (j) customary provisions in joint venture agreements and other similar agreements relating solely to such joint venture;

(k) customary provisions contained in leases or licenses of intellectual property and other agreements, in each case, entered into in the ordinary course of business;

(l) any encumbrances or restrictions of the type referred to in clauses (1), (2) and (3) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (k) above; *provided* that such amendments, modifications, restatements, renewals,



## **Table of Contents**

increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(m) restrictions created in connection with any Receivables Facility that, in the good faith determination of the Issuer are necessary or advisable to effect such Receivables Facility.

### ***Limitation on Guarantees of Indebtedness by Restricted Subsidiaries***

The Issuer will not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other capital markets debt securities), other than a Guarantor or a Foreign Subsidiary, to guarantee the payment of any Indebtedness of the Issuer or any other Guarantor unless:

(1) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to the Indenture providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Guarantor:

(a) if the Senior Notes or such Guarantor's Guarantee are subordinated in right of payment to such Indebtedness, the Guarantee under the supplemental indenture shall be subordinated to such Restricted Subsidiary's guarantee with respect to such Indebtedness substantially to the same extent as the Senior Notes are subordinated to such Indebtedness; and

(b) if such Indebtedness is by its express terms subordinated in right of payment to the Senior Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Senior Notes;

(2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee; and

(3) such Restricted Subsidiary shall deliver to the Trustee an Opinion of Counsel to the effect that:

(a) such Guarantee has been duly executed and authorized; and

(b) such Guarantee constitutes a valid, binding and enforceable obligation of such Restricted Subsidiary, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity;

*provided* that this covenant shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

### ***Reports and Other Information***

Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly

reporting pursuant to rules and regulations promulgated by the SEC, the Indenture requires the Issuer to file with the SEC (and make available to the Trustee and Holders of the Senior Notes (without exhibits), without cost to any Holder, within 15 days after it files them with the SEC) from and after the Issue Date,

(1) within 90 days (or any other time period then in effect under the rules and regulations of the Exchange Act with respect to the filing of a Form 10-K by a non-accelerated filer) after the end of each

**Table of Contents**

fiscal year, annual reports on Form 10-K, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form;

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 10-Q containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form;

(3) promptly from time to time after the occurrence of an event required to be therein reported, such other reports on Form 8-K, or any successor or comparable form; and

(4) any other information, documents and other reports which the Issuer would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

in each case, in a manner that complies in all material respects with the requirements specified in such form; *provided* that the Issuer shall not be so obligated to file such reports with the SEC if the SEC does not permit such filing, in which event the Issuer will make available such information to prospective purchasers of Senior Notes, in addition to providing such information to the Trustee and the Holders of the Senior Notes, in each case within 15 days after the time the Issuer would be required to file such information with the SEC, if it were subject to Sections 13 or 15(d) of the Exchange Act. In addition, to the extent not satisfied by the foregoing, the Issuer will agree that, for so long as any Senior Notes are outstanding, it will furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

In the event that any direct or indirect parent company of the Issuer becomes a guarantor of the Senior Notes, the Indenture will permit the Issuer to satisfy its obligations in this covenant with respect to financial information relating to the Issuer by furnishing financial information relating to such parent; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

Notwithstanding the foregoing, such requirements shall be deemed satisfied prior to the commencement of the exchange offers or the effectiveness of the shelf registration statement by the filing with the SEC of the exchange offer registration statement or shelf registration statement, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act.

**Events of Default and Remedies**

The Indenture provides that each of the following is an Event of Default:

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Senior Notes;

(2) default for 30 days or more in the payment when due of interest or Additional Interest on or with respect to the Senior Notes;

(3) failure by the Issuer or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less 30% in principal amount of the Senior Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (1) and (2) above) contained in the Indenture or the Senior 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 Issuer or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries, other than Indebtedness owed to the Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Senior Notes, if both:

(a) such default either results from the failure to pay any principal of 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

**Table of Contents**

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 \$100 million or more at any one time outstanding;

(5) failure by the Issuer or any Significant Subsidiary to pay final judgments aggregating in excess of \$100 million, 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, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(6) certain events of bankruptcy or insolvency with respect to the Issuer or any Significant Subsidiary; or

(7) the Guarantee of any Significant Subsidiary shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of any Guarantor that is a Significant Subsidiary, as the case may be, denies that it has any further liability under its Guarantee or gives notice to such effect, other than by reason of the termination of the Indenture or the release of any such Guarantee in accordance with the Indenture.

If any Event of Default (other than of a type specified in clause (6) above) occurs and is continuing under the Indenture, the Trustee or the Holders of at least 30% in principal amount of the then total outstanding Senior Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Senior Notes 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 Senior Notes will become due and payable without further action or notice. The Indenture provides that the Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. In addition, the Trustee shall have no obligation to accelerate the Senior Notes if in the best judgment of the Trustee acceleration is not in the best interest of the Holders of the Senior Notes.

The Indenture provides that the Holders of a majority in aggregate principal amount of the then outstanding Senior Notes by notice to the Trustee may on behalf of the Holders of all of the Senior Notes waive any existing Default and its consequences under the Indenture except a continuing Default in the payment of interest on, premium, if any, or the principal of any Senior 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 acceleration of the Senior 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:

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

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

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

Subject to the provisions of the Indenture relating to the duties of the Trustee thereunder, in case an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the

Indenture at the request or direction of any of the Holders of the Senior Notes unless the Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense.

## **Table of Contents**

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder of a Senior Note may pursue any remedy with respect to the Indenture or the Senior Notes unless:

- (1) such Holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) Holders of at least 30% in principal amount of the total outstanding Senior Notes have requested the Trustee to pursue the remedy;
- (3) Holders of the Senior Notes have offered the Trustee reasonable security or indemnity against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (5) Holders of a majority in principal amount of the total outstanding Senior Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Subject to certain restrictions, under the Indenture the Holders of a majority in principal amount of the total outstanding Senior Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Senior Note or that would involve the Trustee in personal liability.

The Indenture provides that the Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required, within five Business Days, upon becoming aware of any Default, to deliver to the Trustee a statement specifying such Default.

### **No Personal Liability of Directors, Officers, Employees and Stockholders**

No director, officer, employee, incorporator or stockholder of the Issuer or any Guarantor or any of their parent companies has any liability for any obligations of the Issuer or the Guarantors under the Senior Notes, the Guarantees or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Senior Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Senior 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 obligations of the Issuer and the Guarantors under the Indenture will terminate (other than certain obligations) and will be released upon payment in full of all of the Senior Notes. The Issuer may, at its option and at any time, elect to have all of its obligations discharged with respect to the Senior Notes and have the Issuer and each Guarantor's obligation discharged with respect to its Guarantee ( *Legal Defeasance* ) and cure all then existing Events of Default except for:

- (1) the rights of Holders of Senior Notes to receive payments in respect of the principal of, premium, if any, and interest on the Senior Notes when such payments are due solely out of the trust created pursuant to the Indenture;

(2) the Issuer's obligations with respect to Senior Notes concerning issuing temporary Senior Notes, registration of such Senior Notes, mutilated, destroyed, lost or stolen Senior 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 Issuer's obligations in connection therewith; and

(4) the Legal Defeasance provisions of the Indenture.



**Table of Contents**

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

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Senior Notes:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Senior Notes, 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 Senior Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Senior Notes and the Issuer must specify whether such Senior Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(a) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Senior 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 shall confirm that, subject to customary assumptions and exclusions, the Holders of the Senior Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, 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 Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Senior Notes 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 such 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 (other than that resulting from borrowing funds to be applied to make such deposit and 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 the Senior Credit Facilities, the Senior Subordinated Notes or the indenture pursuant to which the Senior Subordinated Notes were issued or any other material agreement or instrument (other than the Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(6) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

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

## **Table of Contents**

(8) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (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 Indenture will be discharged and will cease to be of further effect as to all Senior Notes, when either:

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

(2) (a) all Senior Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Senior Notes, 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 the Senior Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(b) no Default (other than that resulting from borrowing funds to be applied to make such deposit) with respect to the Indenture or the Senior Notes 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 the Senior Credit Facilities, Senior Subordinated Notes (or the indenture under which the Senior Subordinated Notes are issued) or any other material agreement or instrument (other than the Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(c) the Issuer has paid or caused to be paid all sums payable by it under the Indenture; and

(d) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Senior Notes at maturity or the redemption date, as the case may be.

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

## **Amendment, Supplement and Waiver**

Except as provided in the next two succeeding paragraphs, the Indenture, any Guarantee and the Senior Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the Senior Notes then outstanding, including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Senior Notes, and any existing Default or compliance with any provision of the Indenture or the Senior Notes issued thereunder may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Senior Notes, other than Senior Notes beneficially owned by the Issuer or its Affiliates (including consents obtained in connection with a purchase of or tender offer or exchange offer for the Senior Notes).

The Indenture provides that, without the consent of each affected Holder of Senior Notes, an amendment or waiver may not, with respect to any Senior Notes held by a non-consenting Holder:

(1) reduce the principal amount of such Senior Notes whose Holders must consent to an amendment, supplement or waiver;

**Table of Contents**

- (2) reduce the principal of or change the fixed final maturity of any such Senior Note or alter or waive the provisions with respect to the redemption of such Senior 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 Senior Note;
- (4) waive a Default in the payment of principal of or premium, if any, or interest on the Senior Notes, except a rescission of acceleration of the Senior Notes by the Holders of at least a majority in aggregate principal amount of the Senior Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in the Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;
- (5) make any Senior Note payable in money other than that stated therein;
- (6) make any change in the provisions of the 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 Senior 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 Senior 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 Senior Notes;
- (9) make any change to or modify the ranking of the Senior Notes that would adversely affect the Holders; or
- (10) except as expressly permitted by the Indenture, modify the Guarantees of any Significant Subsidiary in any manner adverse to the Holders of the Senior Notes.

Notwithstanding the foregoing, the Issuer, any Guarantor (with respect to a Guarantee or the Indenture to which it is a party) and the Trustee may amend or supplement the Indenture and any Guarantee or Senior Notes without the consent of any Holder;

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to provide for uncertificated Senior Notes of such series in addition to or in place of certificated Senior Notes;
- (3) to comply with the covenant relating to mergers, consolidations and sales of assets;
- (4) to provide the assumption of the Issuer's or any Guarantor's obligations to the Holders;
- (5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder;
- (6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;
- (7) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;

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

(9) 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;

(10) to add a Guarantor under the Indenture;

(11) to conform the text of the Indenture, Guarantees or the Senior Notes to any provision of this Description of Senior Notes to the extent that such provision in this Description of Senior Notes was intended to be a verbatim recitation of a provision of the Indenture, Guarantee or Senior Notes; or

## **Table of Contents**

(12) making any amendment to the provisions of the Indenture relating to the transfer and legending of Senior Notes as permitted by the Indenture, including, without limitation to facilitate the issuance and administration of the Senior Notes; *provided, however*, that (i) compliance with the Indenture as so amended would not result in Senior Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Senior Notes.

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

## **Notices**

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 Indenture contains certain limitations on the rights of the Trustee thereunder, should it become a creditor of the Issuer, 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 is permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue or resign.

The Indenture provides that the Holders of a majority in principal amount of the outstanding Senior Notes 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 Indenture provides 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 in the conduct of his own affairs. Subject to such provisions, the Trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder of the Senior Notes, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

## **Governing Law**

The Indenture, the Senior Notes and any Guarantee are 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 Indenture. For purposes of the 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 merged with or into or became a Restricted Subsidiary of such specified Person, including 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.

*Acquisition* means the transactions contemplated by the Transaction Agreement.

*Additional Interest* means all additional interest then owing pursuant to the Registration Rights Agreement.



**Table of Contents**

*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, with respect to any Senior Note on any Redemption Date, the greater of:

- (1) 1.0% of the principal amount of such Senior Note; and
- (2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Senior Note at August 15, 2009 (such redemption price being set forth in the table appearing above under the caption *Optional Redemption* ), plus (ii) all required interest payments due on such Senior Note through August 15, 2009 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Senior Note.

*Asset Sale* means:

- (1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction) of the Issuer or any of its Restricted Subsidiaries (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 transactions;

in each case, other than:

- (a) any disposition of Cash Equivalents or Investment Grade Securities or obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business;
- (b) the disposition of all or substantially all of the assets of the Issuer in a manner permitted pursuant to the provisions described above under *Certain Covenants Merger, Consolidation or Sale of All or Substantially All Assets* or any disposition that constitutes a Change of Control pursuant to the 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 \$50 million;
- (e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary of the Issuer to the Issuer or by the Issuer or a Restricted Subsidiary of the Issuer to another Restricted Subsidiary of the Issuer;
- (f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business;
- (g) the lease, assignment or sub-lease of any real or personal property in the ordinary course of business;

- (h) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
- (i) foreclosures on assets;

**Table of Contents**

- (j) sales of accounts receivable, or participations therein, in connection with any Receivables Facility; and
- (k) any financing transaction with respect to property built or acquired by the Issuer or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations permitted by the Indenture.

*Business Day* means each day which is not a Legal Holiday.

*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 or membership interests (whether general or limited); 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.

*Capitalized Software Expenditures* shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

*Cash Equivalents* means:

- (1) United States dollars;
- (2) (a) euro, or any national currency of any participating member state of the EMU; or
- (b) 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;
- (3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. 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;
- (4) 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 of not less than \$500 million in the case of U.S. banks and \$100 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at least P-1 by Moody's or at least A-1 by S&P and in each case maturing within 24 months after the date of creation thereof;

(7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof;

**Table of Contents**

(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, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 24 months or less from the date of acquisition;

(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 24 months or less from the date of acquisition; and

(11) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

*Change of Control* means the occurrence of any of the following:

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder; or

(2) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Issuer.

*Consolidated Depreciation and Amortization Expense* means with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees and Capitalized Software Expenditures 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, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (v) any expense resulting from the discounting of the Senior Secured Notes in connection with the application of purchase accounting in connection with the Transaction, (w) any Additional Interest and any additional interest with respect to the Senior Subordinated Notes, (x) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (y) any expensing of bridge, commitment and other financing fees and

(z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Receivables Facility); plus

**Table of Contents**

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

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

*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, without duplication,

(1) any after-tax effect of extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including relating to the Transaction to the extent incurred on or prior to June 30, 2006), severance, relocation costs and curtailments or modifications to pension and post-retirement employee benefit plans 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 after-tax effect of income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,

(4) any after-tax effect of 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 Issuer, 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 Issuer 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 (3)(a) of the first paragraph of *Certain Covenants Limitation on Restricted Payments*, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded if 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 stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, *provided* that Consolidated Net Income of the Issuer 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 Issuer or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) effects of adjustments (including the effects of such adjustments pushed down to the Issuer and its Restricted Subsidiaries) in the property and equipment, software and other intangible assets, deferred revenue and debt line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting in relation to the Transaction or any consummated acquisition or the amortization or write-off of any

amounts thereof, net of taxes, shall be excluded,

(8) any after-tax effect of income (loss) from the early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(9) any impairment charge or asset write-off, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,



**Table of Contents**

(10) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights shall be excluded,

(11) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded, and

(12) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transaction in accordance with GAAP shall be excluded.

Notwithstanding the foregoing, for the purpose of the covenant described under **Certain Covenants** **Limitation on Restricted Payments** only (other than clause (3)(d) thereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Issuer and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Issuer and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Issuer or any of its Restricted Subsidiaries, 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 (3)(d) thereof.

**Consolidated Secured Debt Ratio** as of any date of determination means, the ratio of (1) Consolidated Total Indebtedness of the Issuer and its Restricted Subsidiaries that is secured by Liens as of the end of the most recent fiscal period for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur to (2) the Issuer's EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur, in each case with such *pro forma* adjustments to Consolidated Total Indebtedness and EBITDA as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

**Consolidated Total Indebtedness** means, as at any date of determination, an amount equal to the sum of (1) the aggregate amount of all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, Obligations in respect of Capitalized Lease Obligations and debt obligations evidenced by promissory notes and similar instruments (and excluding, for the avoidance of doubt, all obligations relating to Receivables Facilities) and (2) the aggregate amount of all outstanding Disqualified Stock of the Issuer and all Preferred Stock of its Restricted Subsidiaries on a consolidated basis, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP. For purposes hereof, the maximum fixed repurchase price of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to the Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Issuer.

**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,

**Table of Contents**

(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, with respect to the Issuer or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, 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 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 permitted to be borrowed thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under *Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

*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 Non-cash Consideration* means the fair market value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Issuer, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

*Designated Preferred Stock* means Preferred Stock of the Issuer or any parent corporation thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer or the applicable parent corporation thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of the first paragraph of the *Certain Covenants Limitation on Restricted Payments* covenant.

*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 solely 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 solely 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 Senior Notes or the date the Senior Notes are no longer outstanding; *provided, however*, that if such Capital Stock is issued to any plan for the benefit of employees of the Issuer 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 Issuer 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

**Table of Contents**

(1) increased (without duplication) by:

(a) provision for taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as the Pennsylvania capital tax) and foreign withholding taxes of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) Fixed Charges of such Person for such period (including (x) net losses or Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities, in each case, to the extent included in Fixed Charges) to the extent the same was deducted (and not added back) in calculating such Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by the Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Senior Notes and the Credit Facilities and (ii) any amendment or other modification of the Senior Notes, and, in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) the amount of any restructuring charge or reserve deducted (and not added back) in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions after the Issue Date and costs related to the closure and/or consolidation of facilities; *plus*

(f) any other non-cash charges, including any write offs or write downs, reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(g) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(h) the amount of management, monitoring, consulting and advisory fees and related expenses paid in such period to the Investors to the extent otherwise permitted under Certain Covenants Transactions with Affiliates ; *plus*

(i) the amount of net cost savings projected by the Issuer in good faith to be realized as a result of specified actions taken during such period (calculated on a *pro forma* basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that (x) such cost savings are reasonably identifiable and factually supportable, (y) such actions are taken within 36 months after the Issue Date and (z) the aggregate amount of cost savings added pursuant to this clause (i) shall not exceed \$100 million for any four consecutive quarter period (which adjustments may be incremental to *pro forma* adjustments made pursuant to the second paragraph of the definition of Fixed Charge Coverage Ratio ); *plus*

(j) the amount of loss on sale of receivables and related assets to the Receivables Subsidiary in connection with a Receivables Facility; *plus*

(k) any costs or expense incurred by the Issuer or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or

**Table of Contents**

expenses are funded with cash proceeds contributed to the capital of the Issuer or net cash proceeds of an issuance of Equity Interest of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (3) of the first paragraph under Certain Covenants Limitation on Restricted Payments ;

(2) decreased by (without duplication) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period, and

(3) increased or decreased by (without duplication):

(a) any net gain or loss resulting in such period from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133; *plus* or *minus*, as applicable,

(b) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk).

*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 stock or Preferred Stock of the Issuer or any of its direct or indirect parent companies (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Issuer s or any direct or indirect parent company s common stock registered on Form S-8;

(2) issuances to any Subsidiary of the Issuer; and

(3) any such public or private sale that constitutes an Excluded Contribution.

*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 SEC promulgated thereunder.

*Excluded Contribution* means net cash proceeds, marketable securities or Qualified Proceeds received by the Issuer from

(1) contributions to its common equity capital, and

(2) the sale (other than to a Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer,

in each case designated as Excluded Contributions pursuant to an officer s certificate executed by the principal financial officer of the Issuer on the date such capital contributions are made or the date such Equity Interests are sold,

as the case may be, which are excluded from the calculation set forth in clause (3) of the first paragraph under Certain Covenants Limitation on Restricted Payments.

*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 Issuer or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) 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 or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the *Fixed Charge Coverage Ratio Calculation Date*), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, retirement or



**Table of Contents**

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, mergers, consolidations and disposed operations (as determined in accordance with GAAP) that have been made by the Issuer or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, 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 merged with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, 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, 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 Issuer. 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 Fixed Charge Coverage Ratio 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 Issuer 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 except as set forth in the first paragraph of this definition. 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 Issuer may designate.

*Fixed Charges* means, with respect to any Person for any period, the sum of:

- (1) Consolidated Interest Expense of such Person for such period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

*Foreign Subsidiary* means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

*GAAP* means generally accepted accounting principles in the United States which are in effect on the Issue Date.

*Government Securities* means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) 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,

**Table of Contents**

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 letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

*Guarantee* means the guarantee by any Guarantor of the Issuer's Obligations under the Indenture.

*Guarantor* means, each Restricted Subsidiary that Guarantees the Senior Notes in accordance with the terms of the Indenture.

*Hedging Obligations* means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate or currency risks either generally or under specific contingencies.

*Holder* means the Person in whose name a Senior Note is registered on the registrar's books.

*Indebtedness* means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) 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

(d) 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;

(2) 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 obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of the such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

*provided, however,* that notwithstanding the foregoing, Indebtedness shall be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or (b) obligations under or in respect of Receivables Facilities.

**Table of Contents**

*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 Issuer, qualified to perform the task for which it has been engaged.

*Initial Purchasers* means Deutsche Bank Securities Inc., Citigroup Global Markets Inc., J.P. Morgan Securities Inc., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, Banc of America Securities LLC, RBC Capital Markets Corporation and BNY Capital Markets, Inc.

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

*Investment Grade Securities* means:

- (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;
- (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and
- (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

*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 and similar advances to officers 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 Issuer 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 Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Issuer 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 Issuer shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Issuer Investment in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Issuer 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 Issuer.

*Investors* means Silver Lake Partners, Bain Capital Partners, The Blackstone Group, Goldman Sachs Capital Partners, Kohlberg Kravis Roberts & Co. L.P., Providence Equity Partners, Inc., Texas Pacific Group and each of their respective Affiliates but not including, however, any portfolio companies of any of the foregoing.

*Issue Date* means August 11, 2005.

*Issuer* has the meaning set forth in the first paragraph under *General* ; *provided* that when used in the context of determining the fair market value of an asset or liability under the Indenture, *Issuer* shall be

**Table of Contents**

deemed to mean the board of directors of the Issuer when the fair market value is equal to or in excess of \$250 million (unless otherwise expressly stated).

*Legal Holiday* means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York.

*Lien* means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority 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.

*Moody's* means Moody's Investors Service, Inc. and any successor to its rating agency business.

*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 Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including 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 Senior Indebtedness required (other than required by clause (1) of the second paragraph of *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 Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including 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 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, the Chief Executive Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Issuer.

*Officer's Certificate* means a certificate signed on behalf of the Issuer by an Officer of the Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, that meets the requirements set forth in the Indenture.

*Opinion of Counsel* means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer or the Trustee.

*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 Issuer or any of its Restricted Subsidiaries and another Person; *provided*, that any cash or Cash Equivalents received must be applied in accordance with the Repurchase at the Option of Holders Asset Sales covenant.



**Table of Contents**

*Permitted Holders* means each of the Investors and members of management of the Issuer (or its direct parent) who are holders of Equity Interests of the Issuer (or any of its direct or indirect parent companies) on the Issue Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided*, that, in the case of such group and without giving effect to the existence of such group or any other group, such Investors and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies.

*Permitted Investments* means:

- (1) any Investment in the Issuer or any of its Restricted Subsidiaries;
- (2) any Investment in cash and Cash Equivalents or Investment Grade Securities;
- (3) any Investment by the Issuer or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary; or
  - (b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary, and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;
- (4) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities 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;
- (5) any Investment existing on the Issue Date;
- (6) any Investment acquired by the Issuer or any of its Restricted Subsidiaries:
  - (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or
  - (b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (7) Hedging Obligations permitted under clause (10) of the covenant described in Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock
- (8) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed 2.5% 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);

(9) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Issuer, or any of its direct or indirect parent companies; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of the first paragraph under the covenant described in Certain Covenants Limitation on Restricted Payments ;

(10) guarantees of Indebtedness permitted under the covenant described in Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(11) 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

**Table of Contents**

Covenants Transactions with Affiliates (except transactions described in clauses (2), (5) and (9) of such paragraph);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;

(13) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) 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 or marketable securities), not to exceed 3.5% 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);

(14) Investments relating to a Receivables Subsidiary that, in the good faith determination of the Issuer are necessary or advisable to effect any Receivables Facility;

(15) advances to, or guarantees of Indebtedness of, employees not in excess of \$15 million outstanding at any one time, in the aggregate; and

(16) loans and advances 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 or consistent with past practices or to fund such Person's purchase of Equity Interests of the Issuer or any direct or indirect parent company thereof.

*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 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, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, 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 if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(3) Liens for taxes, assessments or other governmental charges 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 diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(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, easements or reservations of, or rights of others for, licenses, rights-of-way, 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 securing Indebtedness permitted to be incurred pursuant to clause (4), (12)(b), (18) or (19) of the second paragraph under Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; *provided* that Liens securing Indebtedness permitted to be incurred pursuant to clause (18) extend only to the assets of Foreign Subsidiaries and Liens securing

**Table of Contents**

Indebtedness permitted to be incurred pursuant to clause (19) are solely on acquired property or the assets of the acquired entity, as the case may be;

(7) Liens existing on the Issue Date;

(8) 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 of its Restricted Subsidiaries;

(9) Liens on property at the time the Issuer or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries; *provided, however*, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition; *provided, further, however*, that the Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer 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 ;

(11) Liens securing Hedging Obligations so long as related Indebtedness is, and is permitted to be under the Indenture, secured by a Lien on the same property securing such Hedging Obligations;

(12) 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;

(13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries and do not secure any Indebtedness;

(14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;

(15) Liens in favor of the Issuer or any Guarantor;

(16) Liens on equipment of the Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuer's clients;

(17) Liens on accounts receivable and related assets incurred in connection with a Receivables Facility;

(18) 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 the foregoing clauses (6), (7), (8), (9) and (27); *provided, however*, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6), (7), (8), (9) and (27) at the time the original Lien became a Permitted Lien under the Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension,

renewal or replacement;

(19) deposits made in the ordinary course of business to secure liability to insurance carriers;

(20) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed \$50 million at any one time outstanding;

**Table of Contents**

(21) Liens securing judgments 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 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;

(22) 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;

(23) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code 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;

(24) Liens deemed to exist in connection with Investments in repurchase agreements permitted under *Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock* ; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(25) 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;

(26) 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 Issuer or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business; and

(27) Liens to secure the Senior Secured Notes.

For purposes of this definition, the term *Indebtedness* shall be deemed to include interest on such Indebtedness.

*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.

*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 Issuer in good faith.

*Rating Agencies* means Moody's and S&P or if Moody's or S&P or both shall not make a rating on the Senior Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer which shall be substituted for Moody's or S&P or both, as the case may be.

*Receivables Facility* means any of one or more receivables financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the Obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Issuer or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) pursuant to which the Issuer or any of its Restricted Subsidiaries sells its accounts receivable to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.



**Table of Contents**

*Receivables Fees* means distributions or payments made directly or by means of discounts with respect to any accounts receivable 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 Receivables Facility.

*Receivables Subsidiary* means any Subsidiary formed for the purpose of, and that solely engages only in one or more Receivables Facilities and other activities reasonably related thereto.

*Registration Rights Agreement* means the Registration Rights Agreement related to the Senior Notes dated as of the Issue Date, among Solar Capital Corp., SunGard, the Guarantors and the Initial Purchasers.

*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 Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer 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 Issuer (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 & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

*Sale and Lease-Back Transaction* means any arrangement providing for the leasing by the Issuer or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing.

*SEC* means the U.S. Securities and Exchange Commission.

*Secured Indebtedness* means any Indebtedness of the Issuer or any of its Restricted Subsidiaries secured by a Lien.

*Securities Act* means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

*Senior Credit Facilities* means the Credit Facility under the Credit Agreement entered into as of the Issue Date by and among SunGard Holdco LLC, the Issuer, the lenders party thereto in their capacities as lenders thereunder and JPMorgan Chase Bank, N.A., as Administrative Agent, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements, refundings or refinancings 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 (*provided* that such increase in borrowings is permitted under Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock above).

*Senior Indebtedness* means:

(1) all Indebtedness of the Issuer or any Guarantor outstanding under the Senior Credit Facilities or Senior Notes and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Issuer or any Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts (whether existing on the Issue Date or thereafter

**Table of Contents**

created or incurred) and all obligations of the Issuer or any Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(2) all Hedging Obligations (and guarantees thereof) owing to a Lender (as defined in the Senior Credit Facilities) or any Affiliate of such Lender (or any Person that was a Lender or an Affiliate of such Lender at the time the applicable agreement giving rise to such Hedging Obligation was entered into), *provided* that such Hedging Obligations are permitted to be incurred under the terms of the Indenture;

(3) any other Indebtedness of the Issuer or any Guarantor permitted to be incurred under the terms of the Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is on a parity with or subordinated in right of payment to the Senior Subordinated Notes or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clauses (1), (2) and (3);

*provided, however*, that Senior Indebtedness shall not include:

(a) any obligation of such Person to the Issuer or any of its Subsidiaries;

(b) any liability for federal, state, local or other taxes owed or owing by such Person;

(c) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or

(e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of the Indenture.

*Senior Secured Notes* means the \$250 million aggregate principal amount of 3.75% senior notes due 2009 and \$250 million aggregate principal amount of 4.875% senior notes due 2014, each of SunGard and outstanding on the Issue Date.

*Senior Subordinated Notes* means the \$1,000,000,000 aggregate principal amount of the Issuer's 10 1/4% senior subordinated notes due 2015 issued on the Issue Date.

*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 Issue Date.

*Similar Business* means any business conducted or proposed to be conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

*Sponsor Management Agreement* means the management agreement between certain of the management companies associated with the Investors and SunGard.

*Subordinated Indebtedness* means, with respect to the Senior Notes,

(1) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Senior Notes, and

(2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Senior Notes.

*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 more than 50% 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

**Table of Contents**

indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) more than 50% 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 Issuer and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of the Issuer or such other Person as may be expressly stated.

*Transaction* means the transactions contemplated by the Transaction Agreement, the issuance of the Senior Notes and the Senior Subordinated Notes, the granting of Liens on the Senior Secured Notes, fundings under any Receivables Facility and borrowings under the Senior Credit Facilities as in effect on the Issue Date.

*Transaction Agreement* means the Agreement and Plan of Merger, dated as of March 27, 2005 between Solar Capital Corp. and SunGard as the same may be amended prior to the Issue Date.

*Treasury Rate* means, as of any Redemption Date, 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 August 15, 2009; *provided, however*, that if the period from the Redemption Date to August 15, 2009 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.

*Trust Indenture Act* means the Trust Indenture Act of 1939, as amended (15 U.S.C §§ 77aaa-777bbbb).

*Unrestricted Subsidiary* means:

(1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary of the Issuer (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 Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); *provided that*

(1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Issuer;

(2) such designation complies with the covenants described under Certain Covenants Limitation on Restricted Payments ; and (3) each of:

(a) the Subsidiary to be so designated; and

(b) its Subsidiaries

## **Table of Contents**

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 Issuer or any Restricted Subsidiary.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

(1) the Issuer could incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test described in the first paragraph 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 Issuer its Restricted Subsidiaries would be greater than such ratio for the Issuer 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 Issuer shall be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Issuer or any committee thereof giving effect to such designation and an Officer's 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 Subsidiary* of any Person means a Subsidiary of such Person, 100% of the outstanding Equity 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.

## **DESCRIPTION OF SENIOR NOTES DUE 2015**

### **General**

Certain terms used in this description are defined under the subheading *Certain Definitions*. In this description, (i) the terms *we*, *our* and *us* each refer to SunGard Data Systems Inc. (*SunGard*) and its consolidated Subsidiaries and (ii) term *Issuer* refers only to SunGard and not any of its Subsidiaries.

The Issuer expects to issue up to \$500,000,000 aggregate principal amount of 10.625% senior notes due 2015 (the *Senior Notes*) under an indenture dated as of September 29, 2008 (the *Indenture*) among the Issuer, the Guarantors and The Bank of New York Mellon, as trustee (the *Trustee*) in exchange for up to \$500,000,000 aggregate principal amount of the currently outstanding 10.625% senior notes due 2015 issued on September 29, 2008. The currently outstanding 10.625% senior notes due 2015 were issued in a private transaction that was not subject to the registration

requirements of the Securities Act. Except as set forth herein, the terms of the Senior Notes will be substantially identical and include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act.

The following description is only a summary of the material provisions of the Indenture and does not purport to be complete and is qualified in its entirety by reference to the provisions of that agreement, including the definitions therein of certain terms used below. We urge you to read the Indenture because it, not



## **Table of Contents**

this description, define your rights as Holders of the Senior Notes. You may request copies of the Indenture or the escrow agreement at our address set forth under the heading Offering Circular Summary.

### **Brief Description of Senior Notes**

The Senior Notes:

will be unsecured senior obligations of the Issuer;

will be *pari passu* in right of payment with all existing and future Senior Indebtedness (including the Senior Credit Facilities and Existing Senior Notes) of the Issuer;

will be effectively subordinated to all secured Indebtedness of the Issuer (including the Senior Credit Facilities and the Existing Senior Secured Notes);

will be senior in right of payment to any future Subordinated Indebtedness (as defined with respect to the Senior Notes) (including the Existing Senior Subordinated Notes) of the Issuer;

will be initially guaranteed on a senior unsecured basis by each Restricted Subsidiary that guarantees the Senior Credit Facilities;

will be deposited in the escrow account until we consummate the acquisition of the GL Trade Block if, on the closing date of this offering, we do not expect the closing of the acquisition of the GL Trade Block to occur within two business days of the closing of this offering; and

will be subject to registration with the SEC pursuant to the Registration Rights Agreement.

### **Guarantees**

The Guarantors, as primary obligors and not merely as sureties, will initially jointly and severally irrevocably and unconditionally guarantee, on an unsecured senior basis, the performance and full and punctual payment when due, whether at maturity, by acceleration or otherwise, of all obligations of the Issuer under the Indenture and the Senior Notes, whether for payment of principal of or interest on or Additional Interest in respect of the Senior Notes, expenses, indemnification or otherwise, on the terms set forth in the Indenture by executing the Indenture.

The Restricted Subsidiaries (other than as detailed below) will initially guarantee the Senior Notes. Each of the Guarantees of the Senior Notes will be a general unsecured senior obligation of each Guarantor and will be *pari passu* in right of payment with all existing and future Senior Indebtedness of each such entity, will be effectively subordinated to all secured Indebtedness of each such entity and will be senior in right of payment to all existing and future Subordinated Indebtedness (including the Existing Senior Subordinated Notes) of each such entity. The Senior Notes will be structurally subordinated to Indebtedness of Subsidiaries of the Issuer that do not Guarantee the Senior Notes.

Not all of the Issuer's Subsidiaries will Guarantee the Senior Notes. In the event of a bankruptcy, liquidation or reorganization of any of these non-guarantor Subsidiaries, the non-guarantor Subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to the Issuer. None of our Foreign Subsidiaries, broker-dealer subsidiaries, non-Wholly Owned Subsidiaries (subject to certain limited exceptions) or any Receivables Subsidiary will guarantee the Senior Notes. As of December 31, 2009, the non-guarantor Subsidiaries generated 40% and 20% of our total revenue and EBITDA, respectively. In addition, as of December 31, 2009, the

non-guarantor Subsidiaries held 29% of our consolidated assets.

The obligations of each Guarantor under its Guarantees will be limited as necessary to prevent the Guarantees from constituting a fraudulent conveyance under applicable law.

Any entity that makes a payment under its Guarantee will be entitled upon payment in full of all guaranteed obligations under the Indenture to a contribution from each other Guarantor in an amount equal to

## **Table of Contents**

such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

If a Guarantee was rendered voidable, it could be subordinated by a court to all other indebtedness (including guarantees and other contingent liabilities) of the Guarantor, and, depending on the amount of such indebtedness, a Guarantor's liability on its Guarantee could be reduced to zero. See Risk Factors Risks Related to the Notes Federal and state fraudulent transfer laws may permit a court to void the guarantees, and, if that occurs, you may not receive any payment on the notes.

A Guarantee by a Guarantor shall provide by its terms that it shall be automatically and unconditionally released and discharged upon:

- (1)(a) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Restricted Subsidiary or all or substantially all the assets of such Guarantor which sale, exchange or transfer is made in compliance with the applicable provisions of the Indenture;
  - (b) the release or discharge of the guarantee by such Guarantor of the Senior Credit Facilities or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee;
  - (c) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary; or
  - (d) the Issuer exercising its legal defeasance option or covenant defeasance option as described under Legal Defeasance and Covenant Defeasance or the Issuer's obligations under the Indenture being discharged in accordance with the terms of the Indenture; and
- (2) such Guarantor delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

## **Ranking**

### ***Senior Secured Indebtedness Versus the Senior Notes***

The payment of the principal of, premium, if any, and interest on the Senior Notes and the payment of any Guarantee will rank *pari passu* in right of payment to all Senior Indebtedness of the Issuer or the relevant Guarantor, as the case may be, including the obligations of the Issuer and such Guarantor under the Senior Credit Facilities and the Existing Senior Notes.

The Senior Notes will be effectively subordinated in right of payment to all of the Issuer's and the Guarantors' existing and future secured Indebtedness to the extent of the value of the assets securing such Indebtedness. As of December 31, 2009, SunGard had \$4,967 million of secured Indebtedness, consisting entirely of secured Indebtedness under the Senior Credit Facilities and the Existing Senior Secured Notes (which have a face amount of \$250 million, but are recorded at \$234 million). As of December 31, 2009, \$250 million was outstanding under our Receivables Facility.

Although the Indenture will contain limitations on the amount of additional Indebtedness that the Issuer and the Guarantors may incur, under certain circumstances the amount of such Indebtedness could be substantial and, in any case, such Indebtedness may be Senior Indebtedness. See Certain Covenants Limitation on Incurrence of

Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

**Paying Agent and Registrar for the Senior Notes**

The Issuer will maintain one or more paying agents for the Senior Notes in the Borough of Manhattan, City of New York. The initial paying agent for the Senior Notes will be the Trustee.

## **Table of Contents**

The Issuer will also maintain a registrar with offices in the Borough of Manhattan, City of New York. The initial registrar will be the Trustee. The registrar will maintain a register reflecting ownership of the Senior Notes outstanding from time to time and will make payments on and facilitate transfer of Senior Notes on behalf of the Issuer.

The Issuer may change the paying agents or the registrars without prior notice to the Holders. The Issuer or any of its Subsidiaries may act as a paying agent or registrar.

## **Transfer and Exchange**

A Holder may transfer or exchange Senior Notes in accordance with the Indenture. The registrar and the Trustee may require a Holder to furnish appropriate endorsements and transfer documents in connection with a transfer of Senior Notes. Holders will be required to pay all taxes due on transfer. The Issuer is not required to transfer or exchange any Senior Note selected for redemption. Also, the Issuer is not required to transfer or exchange any Senior Note for a period of 15 days before a selection of Senior Notes to be redeemed.

## **Principal, Maturity and Interest**

The Issuer will issue \$500,000,000 of Senior Notes in this offering. The Senior Notes will mature on May 15, 2015. Subject to compliance with the covenant described below under the caption *Certain Covenants* *Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*, the Issuer may issue additional Senior Notes from time to time after this offering under the Indenture ( *Additional Senior Notes* ). The Senior Notes offered by the Issuer and any Additional Senior Notes subsequently issued under the Indenture will be treated as a single class for all purposes under the Indenture, including waivers, amendments, redemptions and offers to purchase. Unless the context requires otherwise, references to *Senior Notes* for all purposes of the Indenture and this *Description of Notes* include any Additional Senior Notes that are actually issued.

Interest on the Senior Notes will accrue at the rate of 10.625% *per annum* and will be payable semi-annually in arrears on April 1 and October 1, commencing on April 1, 2009, to Holders of record on the immediately preceding March 15 and September 15. Interest on the Senior Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including the Issue Date. Interest on the Senior Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

## **Additional Interest**

Additional Interest may accrue on the Senior Notes in certain circumstances pursuant to the Registration Rights Agreement. All references in the Indenture and this *Description of Notes*, in any context, to any interest or other amount payable on or with respect to the Senior Notes shall be deemed to include any Additional Interest pursuant to the Registration Rights Agreement. Principal of, premium, if any, and interest on the Senior Notes will be payable at the office or agency of the Issuer maintained for such purpose within the City and State of New York or, at the option of the Issuer, payment of interest may be made by check mailed to the Holders of the Senior 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 the Senior 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 Issuer, the Issuer's office or agency in New York will be the office of the Trustee maintained for such purpose.

## **Mandatory Redemption; Offers to Purchase; Open Market Purchases**

The Issuer is not required to make any mandatory redemption or sinking fund payments with respect to the Senior Notes. However, under certain circumstances, the Issuer may be required to offer to purchase Senior Notes as described under the caption Repurchase at the Option of Holders. We may at any time and from time to time purchase Senior Notes in the open market or otherwise.

**Table of Contents****Optional Redemption**

Except as set forth below, the Issuer will not be entitled to redeem the Senior Notes at its option prior to April 1, 2012.

At any time prior to April 1, 2012, the Issuer may redeem all or a part of the Senior Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to the registered address of each Holder of Senior Notes, at a redemption price equal to 100% of the principal amount of the Senior Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the date of redemption (the *Redemption Date*), subject to the rights of Holders of Senior Notes on the relevant record date to receive interest due on the relevant interest payment date.

On and after April 1, 2012, the Issuer may redeem the Senior Notes, in whole or in part, upon notice as described under the heading *Repurchase at the Option of Holders Selection and Notice*, at the redemption prices (expressed as percentages of principal amount of the Senior Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Senior Notes of record on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on April 1, of each of the years indicated below:

<b>Year</b>	<b>Percentage</b>
2012	105.313%
2013	102.656%
2014 and thereafter	100.000%

In addition, until October 1, 2011, the Issuer may, at its option, on one or more occasions redeem up to 35% of the aggregate principal amount of Senior Notes at a redemption price equal to 110.625% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Senior Notes of record on the relevant record date to receive interest due on the relevant interest payment date, with the net cash proceeds of one or more Equity Offerings; *provided* that at least 50% of the sum of the aggregate principal amount of Senior Notes originally issued under the Indenture and any Additional Senior Notes Senior issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; *provided further* that each such redemption occurs within 90 days of the date of closing of each such Equity Offering.

Notice of any redemption upon any Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

The Trustee shall select the Senior Notes to be redeemed in the manner described under *Repurchase at the Option of Holders Selection and Notice*.

**Repurchase at the Option of Holders*****Change of Control***

The Senior Notes will provide that if a Change of Control occurs, unless the Issuer has previously or concurrently mailed a redemption notice with respect to all the outstanding Senior Notes as described under *Optional Redemption*, the Issuer will make an offer to purchase all of the Senior 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 and Additional Interest, if any, to the date of purchase, subject to the right of Holders of the Senior Notes 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 Issuer will send notice of such Change of Control Offer by first-class mail, with a copy to the



**Table of Contents**

Trustee, to each Holder of Senior Notes to the address of such Holder appearing in the security register with a copy to the Trustee, with the following information:

- (1) that a Change of Control Offer is being made pursuant to the covenant entitled *Change of Control*, and that all Senior Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;
- (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 mailed (the *Change of Control Payment Date* );
- (3) that any Senior Note not properly tendered will remain outstanding and continue to accrue interest;
- (4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Senior Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;
- (5) that Holders electing to have any Senior Notes purchased pursuant to a Change of Control Offer will be required to surrender such Senior Notes, with the form entitled *Option of Holder to Elect Purchase* on the reverse of such Senior 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) that Holders will be entitled to withdraw their tendered Senior Notes and their election to require the Issuer to purchase such Senior Notes, *provided* that the paying agent receives, not later than the close of business on the 30th day following the date of the Change of Control notice, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Senior Notes, the principal amount of Senior Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Senior Notes and its election to have such Senior Notes purchased;
- (7) that if the Issuer is redeeming less than all of the Senior Notes, the Holders of the remaining Senior Notes will be issued new Senior Notes and such new Senior Notes will be equal in principal amount to the unpurchased portion of the Senior Notes surrendered. The unpurchased portion of the Senior Notes must be equal to \$2,000 or an integral multiple thereof; and
- (8) the other instructions, as determined by us, consistent with the covenant described hereunder, that a Holder must follow.

The Issuer 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 Senior 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 Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

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

- (1) accept for payment all Senior Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,
- (2) deposit with the paying agent an amount equal to the aggregate Change of Control Payment in respect of all Senior Notes or portions thereof so tendered, and

(3) deliver, or cause to be delivered, to the Trustee for cancellation the Senior Notes so accepted together with an Officer's Certificate to the Trustee stating that such Senior Notes or portions thereof have been tendered to and purchased by the Issuer.

The Senior Credit Facilities will, and future Credit Facilities or other agreements relating to Senior Indebtedness to which the Issuer becomes a party may, provide that certain change of control events with respect to the Issuer would constitute a default thereunder (including a Change of Control under the

## **Table of Contents**

Indenture). If we experience a change of control that triggers a default under our Senior Credit Facilities, we could seek a waiver of such default or seek to refinance our Senior Credit Facilities. In the event we do not obtain such a waiver or refinance the Senior Credit Facilities, such default could result in amounts outstanding under our Senior Credit Facilities being declared due and payable and cause a Receivables Facility to be wound-down.

Our ability to pay cash to the Holders of Senior Notes following the occurrence of a Change of Control may be limited by our then-existing financial resources. Therefore, sufficient funds may not be available when necessary to make any required repurchases.

The Change of Control purchase feature of the Senior Notes may in certain circumstances make more difficult or discourage a sale or takeover of us and, thus, the removal of incumbent management. The Change of Control purchase feature is a result of negotiations between the Initial Purchasers and us. After the Issue Date, we have no present intention to engage in a transaction involving a Change of Control, 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 Indenture, but that could 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 Indenture can be waived only with the consent of the Holders of a majority in principal amount of the Senior Notes then outstanding. Except for the limitations contained in such covenants, however, the Indenture will not contain any covenants or provisions that may afford Holders of the Senior Notes protection in the event of a highly leveraged transaction.

We will not be required to make a Change of Control Offer following a Change of Control if 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 Indenture applicable to a Change of Control Offer made by us and purchases all Senior Notes validly tendered and not withdrawn under such Change of Control Offer. 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, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

The definition of *Change of Control* includes a disposition of all or substantially all of the assets of the Issuer to any Person. 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 Issuer. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder of Senior Notes may require the Issuer to make an offer to repurchase the Senior Notes as described above.

The provisions under the Indenture relative to the Issuer's obligation to make an offer to repurchase the Senior 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 Senior Notes.

## ***Asset Sales***

The Indenture will provide that the Issuer will not, and will not permit any of its Restricted Subsidiaries to, cause, make or suffer to exist an Asset Sale, unless:

(1) the Issuer 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 (as determined in good faith by the Issuer) of the assets sold or otherwise disposed of; and



**Table of Contents**

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that the amount of:

(a) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto) of the Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Senior Notes, that are assumed by the transferee of any such assets and for which the Issuer and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(b) any securities received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale, and

(c) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed 2.5% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value,

shall be deemed to be cash for purposes of this provision and for no other purpose.

Within 450 days after the receipt of any Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

(1) to permanently reduce:

(a) Obligations under the Senior Credit Facilities, and to correspondingly reduce commitments with respect thereto;

(b) Obligations under Senior Indebtedness that is secured by a Lien, which Lien is permitted by the Indenture, and to correspondingly reduce commitments with respect thereto;

(c) Obligations under other Senior Indebtedness (and to correspondingly reduce commitments with respect thereto), *provided* that the Issuer shall equally and ratably reduce Obligations under the Senior Notes as provided under Optional Redemption, through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Senior Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Senior Notes that would otherwise be prepaid; or

(d) Indebtedness of a Restricted Subsidiary that is not a Guarantor, other than Indebtedness owed to the Issuer or another Restricted Subsidiary;

(2) to make (a) an Investment in 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 Issuer or another of its Restricted Subsidiaries, 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 assets, in each of (a), (b) and (c), used or useful in a Similar Business, or

(3) 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 Issuer or another of its Restricted Subsidiaries, as the case

may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) properties or (c) acquisitions of other assets that, in each of (a), (b) and (c), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

*provided* that, in the case of clauses (2) and (3) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer, or such other

## **Table of Contents**

Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (an *Acceptable Commitment* ) and, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, the Issuer or such Restricted Subsidiary enters into another Acceptable Commitment (a *Second Commitment* ) within 180 days of such cancellation or termination; *provided further* that if any Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

Any Net Proceeds from an Asset Sale that are not invested or applied as provided and within the time period set forth in the first sentence of the preceding paragraph will be deemed to constitute *Excess Proceeds*. When the aggregate amount of Excess Proceeds exceeds \$100.0 million, the Issuer shall make an offer to all Holders of the Senior Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Senior Notes ( *Pari Passu Indebtedness* ), to the holders of such Pari Passu Indebtedness (an *Asset Sale Offer* ), to purchase the maximum aggregate principal amount of the Senior Notes and such Pari Passu Indebtedness that is an integral multiple of \$2,000 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 and Additional Interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed \$100.0 million by mailing the notice required pursuant to the terms of the Indenture, with a copy to the Trustee.

To the extent that the aggregate amount of Senior Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Senior Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Senior Notes and such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Senior Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

Pending the final application of any Net Proceeds pursuant to this covenant, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by the Indenture.

The Issuer 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 Senior 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 Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

### ***Selection and Notice***

If the Issuer is redeeming less than all of the Senior Notes issued by it at any time, the Trustee will select the Senior Notes to be redeemed (a) if the Senior Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Senior Notes are listed or (b) on a pro rata basis to the extent practicable.

Notices of purchase or redemption shall be mailed by first-class mail, postage prepaid, at least 30 but not more than 60 days before the purchase or redemption date to each Holder of Senior Notes at such Holder's registered address, except that (a) redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Senior Notes or a satisfaction and discharge of the Indenture and

(b) redemption notices need not be mailed more than one Business Day before the redemption date if the notice is issued in connection with a special mandatory redemption. If any Senior Note is to be purchased or redeemed in part only, any notice of purchase or redemption that relates to such Senior Note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed.



## **Table of Contents**

The Issuer will issue a new Senior Note in a principal amount equal to the unredeemed portion of the original Senior Note in the name of the Holder upon cancellation of the original Senior Note. Senior Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Senior Notes or portions of them called for redemption.

## **Certain Covenants**

Set forth below are summaries of certain covenants contained in the Indenture. If on any date following the date of the Issue Date (i) the Senior Notes have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has occurred and is continuing under the Indenture then, beginning on that day and continuing at all times thereafter regardless of any subsequent changes in the rating of the Senior Notes, the covenants specifically listed under the following captions in this Description of Notes section of this offering circular will no longer be applicable to the Senior Notes:

- (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 Merger, Consolidation or Sale of All or Substantially All Assets ;
- (5) Transactions with Affiliates ;
- (6) Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries ; and
- (7) Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.

In addition, during any period of time that: (i) the Senior Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default has occurred and is continuing under the Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a *Covenant Suspension Event* ), the Issuer and the Restricted Subsidiaries will not be subject to the covenant described under Repurchase at the Option of Holders Change of Control (the *Suspended Covenant* ). In the event that the Issuer and the Restricted Subsidiaries are not subject to the Suspended Covenant under the Indenture for any period of time as a result of the foregoing, and on any subsequent date (the *Reversion Date* ) one or both of the Rating Agencies (a) withdraw their Investment Grade Rating or downgrade the rating assigned to the Senior Notes below an Investment Grade Rating and/or (b) the Issuer or any of its Affiliates enter into an agreement to effect a transaction that would result in a Change of Control and one or more of the Rating Agencies indicate 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 Senior Notes below an Investment Grade Rating, then the Issuer and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenant under the Indenture with respect to future events, including, without limitation, a proposed transaction described in clause (b) above.

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

### ***Limitation on Restricted Payments***

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(I) declare or pay any dividend or make any payment or distribution on account of the Issuer's, or any of its Restricted Subsidiaries' Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

(a) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or

**Table of Contents**

(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 Issuer 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;

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer, including in connection with any merger or consolidation;

(III) 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:

(a) Indebtedness permitted under clauses (7) and (8) of the covenant described under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; or

(b) 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; or

(IV) make any Restricted Investment

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

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Issuer could incur \$1.00 of additional Indebtedness under the provisions of the first paragraph of the covenant described under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after August 11, 2005 (including Restricted Payments permitted by clauses (1), (2) (with respect to the payment of dividends on Refunding Capital Stock (as defined below) pursuant to clause (b) thereof only), (6)(c), (9) and (14) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum of (without duplication):

(a) 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) beginning July 1, 2005, to the end of the Issuer'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*

(b) 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by the Issuer since immediately after August 11, 2005 (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ) from the issue or sale of:

(i) (A) Equity Interests of the Issuer, including Treasury Capital Stock (as defined below), but excluding cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received from the sale of: (x) Equity Interests to members of management, directors or consultants of the

Issuer, any direct or indirect parent company of the Issuer and the Issuer's Subsidiaries after the Issue Date to the extent such

**Table of Contents**

amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph; and (y) Designated Preferred Stock; and

(B) to the extent such net cash proceeds are actually contributed to the Issuer, Equity Interests of the Issuer's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph); or

(ii) debt securities of the Issuer that have been converted into or exchanged for such Equity Interests of the Issuer;

*provided, however*, that this clause (b) shall not include the proceeds from (W) Refunding Capital Stock (as defined below), (X) Equity Interests or convertible debt securities of the Issuer sold to a Restricted Subsidiary, as the case may be, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; *plus*

(c) 100% of the aggregate amount of cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property contributed to the capital of the Issuer following August 11, 2005 (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ) (other than by a Restricted Subsidiary and other than by any Excluded Contributions); *plus*

(d) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) of Restricted Investments made by the Issuer or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Issuer or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Issuer or its Restricted Subsidiaries, in each case after August 11, 2005; or

(ii) the sale (other than to the Issuer or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after August 11, 2005; *plus*

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary after August 11, 2005, the fair market value of the Investment in such Unrestricted Subsidiary, as determined by the Issuer in good faith or if, in the case of an Unrestricted Subsidiary, such fair market value may exceed \$150.0 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary other than an Unrestricted Subsidiary to the extent the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment.

The foregoing provisions will not prohibit:

(1) the payment of any dividend 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 Indenture;

(2) (a) the redemption, repurchase, retirement or other acquisition of any Equity Interests ( *Treasury Capital Stock* ) or Subordinated Indebtedness of the Issuer or any Equity Interests of any direct or indirect parent company of the Issuer, in exchange for, or out of the proceeds of the substantially

**Table of Contents**

concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent contributed to the Issuer (in each case, other than any Disqualified Stock) ( *Refunding Capital Stock* ) and (b) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (6) of this paragraph, the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Issuer) in an aggregate amount per year no greater than the aggregate amount of dividends *per annum* that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Issuer or a Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Issuer or a Guarantor, as the case may be, 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 of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any reasonable premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness;

(b) such new Indebtedness is subordinated to the Senior Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, acquired or retired for value;

(c) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired; and

(d) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Issuer or any of its direct or indirect parent companies held by any future, present or former employee, director or consultant of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement; *provided, however*, that the aggregate Restricted Payments made under this clause (4) do not exceed in any calendar year \$25.0 million (which shall increase to \$50.0 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent corporation of the Issuer) (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$50.0 million in any calendar year (which shall increase to \$100.0 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent corporation of the Issuer)); *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer, Equity Interests of any of the Issuer's direct or indirect parent companies, in each case to members of management, directors or consultants of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (3) of the preceding paragraph; *plus*





**Table of Contents**

(b) the cash proceeds of key man life insurance policies received by the Issuer or its Restricted Subsidiaries after the Issue Date; *less*

(c) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a) and (b) of this clause (4);

and *provided further* that cancellation of Indebtedness owing to the Issuer from members of management of the Issuer, any of the Issuer's direct or indirect parent companies or any of the Issuer's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of the Indenture;

(5) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries 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 ;

(6)(a) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Issuer after the Issue Date;

(b) the declaration and payment of dividends to a direct or indirect parent company of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent corporation issued after the Issue Date, *provided* that the amount of dividends paid pursuant to this clause (b) shall not exceed the aggregate amount of cash actually contributed to the Issuer from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this paragraph;

*provided, however*, in the case of each of (a), (b) and (c) of this clause (6), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Issuer and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(7) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (7) that are at the 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 or marketable securities, not to exceed 2.0% 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);

(8) 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;

(9) the declaration and payment of dividends on the Issuer's common stock (or the payment of dividends to any direct or indirect parent entity to fund a payment of dividends on such entity's common stock), following the first public offering of the Issuer's common stock or the common stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% *per annum* of the net cash proceeds received by or contributed to the Issuer in or from any such public offering, other than public offerings with respect to the Issuer's common stock registered on Form S-8 and other than any public sale constituting an Excluded Contribution;

(10) Restricted Payments that are made with Excluded Contributions;

161

---

**Table of Contents**

(11) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (11) not to exceed the greater of (x) \$275.0 million or (y) 1.875% of Total Assets at the time made;

(12) distributions or payments of Receivables Fees;

(13) any Restricted Payment used to fund the Transaction and the fees and expenses related thereto or owed to Affiliates, in each case to the extent permitted by the covenant described under Transactions with Affiliates ;

(14) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness 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 all Senior Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(15) the declaration and payment of dividends by the Issuer to, or the making of loans to, any direct or indirect parent in amounts required for any direct or indirect parent companies to pay, in each case without duplication,

(a) franchise taxes and other fees, taxes and expenses required to maintain their corporate existence;

(b) federal, state and local income taxes, to the extent such income taxes are attributable to the income of the Issuer and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; *provided* that in each case the amount of such payments in any fiscal year does not exceed the amount that the Issuer and its Restricted Subsidiaries would be required to pay in respect of federal, state and local taxes for such fiscal year were the Issuer, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such parent entity;

(c) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Issuer to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(d) general corporate operating and overhead costs and expenses of any direct or indirect parent company of the Issuer to the extent such costs and expenses are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries; and

(e) fees and expenses other than to Affiliates of the Issuer related to any unsuccessful equity or debt offering of such parent entity; and

(16) the distribution, dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary by Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are cash and/or Cash Equivalents);

*provided, however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (11) and (16), no Default shall have occurred and be continuing or would occur as a consequence thereof.

As of the Issue Date, all of the Issuer's Subsidiaries will be Restricted Subsidiaries. The Issuer 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 Issuer 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 (7), (10), (11) or (16) of the second paragraph of this

**Table of Contents**

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 Indenture.

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

The Issuer will not, and will not permit any of its Restricted Subsidiaries 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 Issuer 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 Issuer may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any of its Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries most recently ended four 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:

- (1) the incurrence of Indebtedness under Credit Facilities by the Issuer or any of its Restricted Subsidiaries and the issuance and creation of letters of credit and bankers acceptances thereunder (with letters of credit and bankers acceptances being deemed to have a principal amount equal to the face amount thereof), up to an aggregate principal amount of \$5,750.0 million outstanding at any one time, less up to \$1,000.0 million in the aggregate of mandatory principal payments actually made by the borrower thereunder in respect of Indebtedness thereunder with Net Proceeds from an Asset Sale or series of related Asset Sales that constitutes the sale, transfer, conveyance or other disposition of all or substantially all of a segment (as defined under GAAP) of the Issuer (other than any segment predominantly composed of assets acquired by the Issuer or its Restricted Subsidiaries subsequent to the Issue Date);
- (2) the incurrence by the Issuer and any Guarantor of Indebtedness represented by the Senior Notes (including any Guarantee) (other than any Additional Senior Notes);
- (3) Indebtedness of the Issuer and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (1) and (2));
- (4) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and Preferred Stock incurred by the Issuer or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment (other than software) 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;
- (5) Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of workers compensation claims, 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;

(6) Indebtedness arising from agreements of the Issuer or its Restricted Subsidiaries 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

**Table of Contents**

Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; *provided, however*, that

(a) such Indebtedness is not reflected on the balance sheet of the Issuer, or any of its Restricted Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (6)(a)); and

(b) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(7) Indebtedness of the Issuer to a Restricted Subsidiary; *provided* that any such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Senior Notes; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(8) Indebtedness of a Restricted Subsidiary to the Issuer or another Restricted Subsidiary; *provided* that if a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Senior Notes of such Guarantor; *provided further* that any subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(9) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer 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 Issuer or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock;

(10) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk with respect to any Indebtedness permitted to be incurred pursuant to Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock, exchange rate risk or commodity pricing risk;

(11) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(12) (a) Indebtedness or Disqualified Stock of the Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary equal to 200.0% of the net cash proceeds received by the Issuer since immediately after the Issue Date from the issue or sale of Equity Interests of the Issuer or cash contributed to the capital of the Issuer (in each case, other than proceeds of Disqualified Stock or sales of Equity Interests to the Issuer or any of its Subsidiaries) as determined in accordance with clauses (3)(b) and (3)(c) of the first paragraph of Limitation on Restricted Payments to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges pursuant to the second paragraph of Limitation on Restricted Payments or to make Permitted Investments (other than Permitted Investments specified in clauses (1) and (3) of the definition thereof) and (b) Indebtedness or Disqualified Stock of Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer 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 (12)(b), does not at any one time outstanding exceed \$600.0 million (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (12)(b) shall cease to be deemed incurred or outstanding for purposes of this clause (12)(b) but shall be deemed incurred for



**Table of Contents**

the purposes of the first paragraph of this covenant from and after the first date on which the Issuer or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (12)(b));

(13) the incurrence by the Issuer or any Restricted Subsidiary, of the Issuer 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 (2), (3) and (12)(a) above, this clause (13) and clause (14) below 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 reasonable tender premiums), defeasance costs and fees in connection therewith (the *Refinancing Indebtedness* ) prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness:

(a) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,

(b) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated or *pari passu* to the Senior Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or *pari passu* to the Senior Notes or the Guarantee 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

(c) shall not include:

(i) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer;

(ii) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer, that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(iii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and *provided further* that subclause (a) of this clause (13) will not apply to any refunding or refinancing of any Indebtedness outstanding under a Credit Facility;

(14) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Issuer or a Restricted Subsidiary incurred to finance an acquisition or (y) Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into the Issuer or a Restricted Subsidiary in accordance with the terms of the Indenture; *provided* that either

(i) such Indebtedness, Disqualified Stock or Preferred Stock:

(a) is not Secured Indebtedness and is subordinated to the Senior Notes on terms no less favorable to the Holders thereof than the subordination terms set forth in the indenture governing the Existing Senior Subordinated Notes as in effect on the Issue Date;

(b) is not incurred while a Default exists and no Default shall result therefrom;

(c) matures and does not require any payment of principal prior to the final maturity of the Senior Notes (other than in a manner consistent with the terms of the Indenture); and

(d) in the case of clause (y), is not incurred in contemplation of such acquisition or merger; or

**Table of Contents**

(ii) after giving effect to such acquisition or merger, either

(a) the Issuer 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

(b) the Fixed Charge Coverage Ratio of the Issuer and the Restricted Subsidiaries is greater than immediately prior to such acquisition or merger;

(15) 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 two Business Days of its incurrence;

(16) Indebtedness of the Issuer or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(17)(a) any guarantee by the Issuer or a Restricted Subsidiary 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 Indenture, or

(b) any guarantee by a Restricted Subsidiary of Indebtedness of the Issuer *provided* that such guarantee is incurred in accordance with the covenant described below under Limitation on Guarantees of Indebtedness by Restricted Subsidiaries ;

(18) Indebtedness of Foreign Subsidiaries of the Issuer incurred not to exceed at any one time outstanding and together with any other Indebtedness incurred under this clause (18) 5.0% of the Total Assets of the Foreign Subsidiaries (it being understood that any Indebtedness incurred pursuant to this clause (18) shall cease to be deemed incurred or outstanding for purposes of this clause (18) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Issuer or such Restricted Subsidiary could have incurred such Indebtedness under the first paragraph of this covenant without reliance on this clause (18));

(19) Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred to finance or assumed in connection with an acquisition in a principal amount not to exceed \$200.0 million in the aggregate at any one time outstanding together with all other Indebtedness, Disqualified Stock and/or Preferred Stock issued under this clause (19) (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (19) shall cease to be deemed incurred or outstanding for purposes of this clause (19) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (19));

(20) Indebtedness of the Issuer or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business; and

(21) Indebtedness consisting of Indebtedness issued by the Issuer or any of its Restricted Subsidiaries to current or former officers, directors and employees thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent described in clause (4) of the second paragraph under the caption Limitation on Restricted Payments.

For purposes of determining compliance with this covenant:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (21) above or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer, in its sole discretion, will classify or reclassify such

## **Table of Contents**

item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses; *provided* that all Indebtedness outstanding under the Credit Facilities on the Issue Date will be treated as incurred on the Issue Date under clause (1) of the preceding paragraph; and

(2) at the time of incurrence, the Issuer will be entitled to 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 U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. 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 Indenture will provide that the Issuer will not, and will not permit any Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinated or junior in right of payment to any Indebtedness of the Issuer or such Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Senior Notes or such Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Issuer or such Guarantor, as the case may be.

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

## ***Liens***

The Issuer will not, and will not permit any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness or any related Guarantee, on any asset or property of the Issuer or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(1) in the case of Liens securing Subordinated Indebtedness, the Senior Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(2) in all other cases, the Senior Notes or the Guarantees are equally and ratably secured, except that the foregoing shall not apply to (a) Liens securing the Senior Notes and the related Guarantees, (b) Liens securing Indebtedness permitted to be incurred under Credit Facilities, including any letter of credit facility relating thereto, that was

permitted by the terms of the Indenture to be incurred pursuant to clause (1) of the second paragraph under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock and (c) Liens incurred to secure Obligations in respect of any Indebtedness permitted to be incurred pursuant to the covenant described above under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; *provided* that, with

**Table of Contents**

respect to Liens securing Obligations permitted under this subclause (c), at the time of incurrence and after giving *pro forma* effect thereto, the Consolidated Secured Debt Ratio would be no greater than 4.0 to 1.0.

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

The Issuer may not consolidate or merge with or into or wind up into (whether or not the Issuer 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 Issuer is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the *Successor Company* );

(2) the Successor Company, if other than the Issuer, expressly assumes all the obligations of the Issuer under the Senior Notes pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Default exists;

(4) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions 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, the Issuer and its Restricted Subsidiaries would be greater than such Ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(5) each Guarantor, unless it is the other party to the transactions described above, in which case clause (b) of the second succeeding paragraph shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under the Indenture, the Senior Notes and the Registration Rights Agreement; and

(6) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture.

The Successor Company will succeed to, and be substituted for the Issuer, as the case may be, under the Indenture, the Guarantees and the Senior Notes, as applicable. Notwithstanding the foregoing clauses (3) and (4),

(1) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Issuer, and

(2) the Issuer may merge with an Affiliate of the Issuer, as the case may be, solely for the purpose of reincorporating the Issuer in a State of the United States so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

Subject to certain limitations described in the Indenture governing release of a Guarantee upon the sale, disposition or transfer of a guarantor, no Guarantor will, and the Issuer will not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Issuer or Guarantor is the surviving



**Table of Contents**

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)(a) such Guarantor is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the *Successor Person* );

(b) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under the Indenture and such Guarantor's related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(c) immediately after such transaction, no Default exists; and

(d) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture; or

(2) the transaction is made in compliance with the covenant described under Repurchase at the Option of Holders Asset Sales.

Subject to certain limitations described in the Indenture, the Successor Person will succeed to, and be substituted for, such Guarantor under the Indenture and such Guarantor's Guarantee. Notwithstanding the foregoing, any Guarantor may merge into or transfer all or part of its properties and assets to another Guarantor or the Issuer.

***Transactions with Affiliates***

The Issuer will not, and will not permit any of its Restricted Subsidiaries 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 Issuer (each of the foregoing, an *Affiliate Transaction* ) involving aggregate payments or consideration in excess of \$20.0 million, unless:

(1) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and

(2) the Issuer delivers to the Trustee 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 majority of the board of directors of the Issuer approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (1) above.

The foregoing provisions will not apply to the following:

(1) transactions between or among the Issuer or any of its Restricted Subsidiaries;

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

(3) the payment of management, consulting, monitoring and advisory fees and related expenses to the Investors pursuant to the Sponsor Management Agreement in an aggregate amount in any fiscal year not to exceed 1% of EBITDA for such fiscal year (calculated, solely for the purpose of this clause (3), assuming (a) that such fees and related expenses had not been paid, when calculating Net Income, and (b) without giving effect to clause (h) of the definition of EBITDA) (plus any unpaid management, consulting, monitoring and advisory fees and related expenses within such amount accrued in any prior

**Table of Contents**

year) and the termination fees pursuant to the Sponsor Management Agreement not to exceed the amount set forth in the Sponsor Management Agreement as in effect on the Issue Date;

(4) the payment of reasonable and customary fees paid to, and indemnities provided on behalf of, officers, directors, employees or consultants of Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries;

(5) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(6) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(7) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement are not otherwise disadvantageous to the Holders when taken as a whole;

(8) the Transaction and the payment of all fees and expenses related to the Transaction, in each case as described in this offering circular;

(9) transactions with customers, clients, suppliers, 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 Indenture which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Issuer or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance of Equity Interests (other than Disqualified Stock) of the Issuer to any Permitted Holder or to any director, officer, employee or consultant;

(11) sales of accounts receivable, or participations therein, in connection with any Receivables Facility;

(12) payments by the Issuer or any of its Restricted Subsidiaries to any of the Investors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by a majority of the board of directors of the Issuer in good faith;

(13) payments or loans (or cancellation of loans) to employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and employment agreements, stock option plans and other similar arrangements with such employees or consultants which, in each case, are approved by the Issuer in good faith; and

(14) investments by the Investors in securities of the Issuer or any of its Restricted Subsidiaries so long as (i) the investment is being offered generally to other investors on the same or more favorable terms and (ii) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities.

**Table of Contents**

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

The Issuer will not, and will not permit any of its Restricted Subsidiaries that are not Guarantors 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:

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

(b) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries,

except (in each case) for such encumbrances or restrictions existing under or by reason of:

(a) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Credit Facilities and the related documentation and the indentures governing the Existing Senior Notes, the Existing Senior Secured Notes and the Existing Senior Subordinated Notes and the related documentation;

(b) the Indenture and the Senior Notes;

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

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

(e) any agreement or other instrument of a Person acquired by the Issuer or any of its Restricted Subsidiaries 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 and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(f) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Issuer 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;

(g) 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;

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

(i) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred subsequent to the Issue Date pursuant to the provisions of the covenant described under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

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

(k) customary provisions contained in leases or licenses of intellectual property and other agreements, in each case, entered into in the ordinary course of business;

(l) any encumbrances or restrictions of the type referred to in clauses (1), (2) and (3) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in

## **Table of Contents**

clauses (a) through (k) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(m) restrictions created in connection with any Receivables Facility that, in the good faith determination of the Issuer are necessary or advisable to effect such Receivables Facility.

### ***Limitation on Guarantees of Indebtedness by Restricted Subsidiaries***

The Issuer will not permit any of its Wholly Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly Owned Subsidiaries if such non-Wholly Owned Subsidiaries guarantee other capital markets debt securities), other than a Guarantor or a Foreign Subsidiary, to guarantee the payment of any Indebtedness of the Issuer or any other Guarantor unless:

(1) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to the Indenture providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Guarantor:

(a) if the Senior Notes or such Guarantor's Guarantee are subordinated in right of payment to such Indebtedness, the Guarantee under the supplemental indenture shall be subordinated to such Restricted Subsidiary's guarantee with respect to such Indebtedness substantially to the same extent as the Senior Notes are subordinated to such Indebtedness; and

(b) if such Indebtedness is by its express terms subordinated in right of payment to the Senior Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Senior Notes;

(2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee; and

(3) such Restricted Subsidiary shall deliver to the Trustee an Opinion of Counsel to the effect that:

(a) such Guarantee has been duly executed and authorized; and

(b) such Guarantee constitutes a valid, binding and enforceable obligation of such Restricted Subsidiary, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity;

*provided* that this covenant shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

### ***Reports and Other Information***

Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Indenture will require the Issuer to file with the SEC (and make available to the Trustee and Holders of the Senior Notes (without exhibits), without cost to any Holder, within 15 days after it files them with the SEC) from and after the Issue Date,

(1) within 90 days (or any other time period then in effect under the rules and regulations of the Exchange Act with respect to the filing of a Form 10-K by a non-accelerated filer) after the end of each



**Table of Contents**

fiscal year, annual reports on Form 10-K, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form;

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 10-Q containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form;

(3) promptly from time to time after the occurrence of an event required to be therein reported, such other reports on Form 8-K, or any successor or comparable form; and

(4) any other information, documents and other reports which the Issuer would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

in each case, in a manner that complies in all material respects with the requirements specified in such form; *provided* that the Issuer shall not be so obligated to file such reports with the SEC if the SEC does not permit such filing, in which event the Issuer will make available such information to prospective purchasers of Senior Notes, in addition to providing such information to the Trustee and the Holders of the Senior Notes, in each case within 15 days after the time the Issuer would be required to file such information with the SEC, if it were subject to Sections 13 or 15(d) of the Exchange Act. In addition, to the extent not satisfied by the foregoing, the Issuer will agree that, for so long as any Senior Notes are outstanding, it will furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

In the event that any direct or indirect parent company of the Issuer becomes a guarantor of the Senior Notes, the Indenture will permit the Issuer to satisfy its obligations in this covenant with respect to financial information relating to the Issuer by furnishing financial information relating to such parent; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

Notwithstanding the foregoing, such requirements shall be deemed satisfied prior to the commencement of the exchange offer or the effectiveness of the shelf registration statement by the filing with the SEC of the exchange offer registration statement or shelf registration statement, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act.

**Events of Default and Remedies**

The Indenture will provide that each of the following is an Event of Default:

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Senior Notes;

(2) default for 30 days or more in the payment when due of interest or Additional Interest on or with respect to the Senior Notes;

(3) failure by the Issuer or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less 30% in principal amount of the Senior Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (1) and (2) above) contained in the Indenture or the Senior 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 Issuer or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries, other than Indebtedness owed to the Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Senior Notes, if both:

(a) such default either results from the failure to pay any principal of 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

**Table of Contents**

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 \$100.0 million or more at any one time outstanding;

(5) failure by the Issuer or any Significant Subsidiary to pay final judgments aggregating in excess of \$100.0 million, 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, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(6) certain events of bankruptcy or insolvency with respect to the Issuer or any Significant Subsidiary; or

(7) the Guarantee of any Significant Subsidiary shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of any Guarantor that is a Significant Subsidiary, as the case may be, denies that it has any further liability under its Guarantee or gives notice to such effect, other than by reason of the termination of the Indenture or the release of any such Guarantee in accordance with the Indenture.

If any Event of Default (other than of a type specified in clause (6) above) occurs and is continuing under the Indenture, the Trustee or the Holders of at least 30% in principal amount of the then total outstanding Senior Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Senior Notes 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 Senior Notes will become due and payable without further action or notice. The Indenture will provide that the Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. In addition, the Trustee shall have no obligation to accelerate the Senior Notes if in the best judgment of the Trustee acceleration is not in the best interest of the Holders of the Senior Notes.

The Indenture provides that the Holders of a majority in aggregate principal amount of the then outstanding Senior Notes by notice to the Trustee may on behalf of the Holders of all of the Senior Notes waive any existing Default and its consequences under the Indenture except a continuing Default in the payment of interest on, premium, if any, or the principal of any Senior 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 acceleration of the Senior 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:

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

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

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

Subject to the provisions of the Indenture relating to the duties of the Trustee thereunder, in case an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the

Indenture at the request or direction of any of the Holders of the Senior Notes unless the Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense.

## **Table of Contents**

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder of a Senior Note may pursue any remedy with respect to the Indenture or the Senior Notes unless:

- (1) such Holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) Holders of at least 30% in principal amount of the total outstanding Senior Notes have requested the Trustee to pursue the remedy;
- (3) Holders of the Senior Notes have offered the Trustee reasonable security or indemnity against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (5) Holders of a majority in principal amount of the total outstanding Senior Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Subject to certain restrictions, under the Indenture the Holders of a majority in principal amount of the total outstanding Senior Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Senior Note or that would involve the Trustee in personal liability.

The Indenture will provide that the Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required, within five Business Days, upon becoming aware of any Default, to deliver to the Trustee a statement specifying such Default.

## **No Personal Liability of Directors, Officers, Employees and Stockholders**

No director, officer, employee, incorporator or stockholder of the Issuer or any Guarantor or any of their parent companies shall have any liability for any obligations of the Issuer or the Guarantors under the Senior Notes, the Guarantees, the Indenture or the escrow agreement or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Senior Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Senior 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 obligations of the Issuer and the Guarantors under the Indenture will terminate (other than certain obligations) and will be released upon payment in full of all of the Senior Notes. The Issuer may, at its option and at any time, elect to have all of its obligations discharged with respect to the Senior Notes and have the Issuer and each Guarantor's obligation discharged with respect to its Guarantee ( *Legal Defeasance* ) and cure all then existing Events of Default except for:

- (1) the rights of Holders of Senior Notes to receive payments in respect of the principal of, premium, if any, and interest on the Senior Notes when such payments are due solely out of the trust created pursuant to the Indenture;

(2) the Issuer's obligations with respect to Senior Notes concerning issuing temporary Senior Notes, registration of such Senior Notes, mutilated, destroyed, lost or stolen Senior 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 Issuer's obligations in connection therewith; and

(4) the Legal Defeasance provisions of the Indenture.

**Table of Contents**

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

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Senior Notes:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Senior Notes, 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 Senior Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Senior Notes and the Issuer must specify whether such Senior Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(a) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Senior 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 shall confirm that, subject to customary assumptions and exclusions, the Holders of the Senior Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, 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 Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Senior Notes 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 such 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 (other than that resulting from borrowing funds to be applied to make such deposit and 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 the Senior Credit Facilities, the Senior Subordinated Notes or the indenture pursuant to which the Senior Subordinated Notes were issued or any other material agreement or instrument (other than the Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(6) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

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



## **Table of Contents**

(8) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (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 Indenture will be discharged and will cease to be of further effect as to all Senior Notes, when either:

- (1) all Senior Notes theretofore authenticated and delivered, except lost, stolen or destroyed Senior Notes which have been replaced or paid and Senior Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or
- (2)(a) all Senior Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Senior Notes, 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 the Senior Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;
- (b) no Default (other than that resulting from borrowing funds to be applied to make such deposit) with respect to the Indenture or the Senior Notes 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 the Senior Credit Facilities, Senior Subordinated Notes (or the indenture under which the Senior Subordinated Notes are issued) or any other material agreement or instrument (other than the Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;
- (c) the Issuer has paid or caused to be paid all sums payable by it under the Indenture; and
- (d) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Senior Notes at maturity or the redemption date, as the case may be.

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

## **Amendment, Supplement and Waiver**

Except as provided in the next two succeeding paragraphs, the Indenture, any Guarantee and the Senior Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the Senior Notes then outstanding, including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Senior Notes, and any existing Default or compliance with any provision of the Indenture or the Senior Notes issued thereunder may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Senior Notes, other than Senior Notes beneficially owned by the Issuer or its Affiliates (including consents obtained in connection with a purchase of or tender offer or exchange offer for the Senior Notes).

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

(1) reduce the principal amount of such Senior Notes whose Holders must consent to an amendment, supplement or waiver;

**Table of Contents**

- (2) reduce the principal of or change the fixed final maturity of any such Senior Note or alter or waive the provisions with respect to the redemption of such Senior 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 Senior Note;
- (4) waive a Default in the payment of principal of or premium, if any, or interest on the Senior Notes, except a rescission of acceleration of the Senior Notes by the Holders of at least a majority in aggregate principal amount of the Senior Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in the Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;
- (5) make any Senior Note payable in money other than that stated therein;
- (6) make any change in the provisions of the 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 Senior 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 Senior 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 Senior Notes;
- (9) make any change to or modify the ranking of the Senior Notes that would adversely affect the Holders; or
- (10) except as expressly permitted by the Indenture, modify the Guarantees of any Significant Subsidiary in any manner adverse to the Holders of the Senior Notes.

Notwithstanding the foregoing, the Issuer, any Guarantor (with respect to a Guarantee or the Indenture to which it is a party) and the Trustee may amend or supplement the Indenture and any Guarantee or Senior Notes without the consent of any Holder;

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to provide for uncertificated Senior Notes of such series in addition to or in place of certificated Senior Notes;
- (3) to comply with the covenant relating to mergers, consolidations and sales of assets;
- (4) to provide the assumption of the Issuer's or any Guarantor's obligations to the Holders;
- (5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder;
- (6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;
- (7) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;

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

(9) 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;

(10) to add a Guarantor under the Indenture;

(11) to conform the text of the Indenture, Guarantees or the Senior Notes to any provision of this Description of Notes to the extent that such provision in this Description of Notes was intended to be a verbatim recitation of a provision of the Indenture, Guarantee or Senior Notes; or

## **Table of Contents**

(12) making any amendment to the provisions of the Indenture relating to the transfer and legending of Senior Notes as permitted by the Indenture, including, without limitation to facilitate the issuance and administration of the Senior Notes; *provided, however*, that (i) compliance with the Indenture as so amended would not result in Senior Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Senior Notes.

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

## **Notices**

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 Indenture will contain certain limitations on the rights of the Trustee thereunder, should it become a creditor of the Issuer, 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 SEC for permission to continue or resign.

The Indenture will provide that the Holders of a majority in principal amount of the outstanding Senior Notes 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 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 in the conduct of his own affairs. Subject to such provisions, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder of the Senior Notes, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

## **Governing Law**

The Indenture, the Senior Notes and any Guarantee 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 Indenture. For purposes of the 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 merged with or into or became a Restricted Subsidiary of such specified Person, including 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.

*Acquisition* means the transactions contemplated by the Transaction Agreement.

*Additional Interest* means all additional interest then owing pursuant to the Registration Rights Agreement.

**Table of Contents**

*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, with respect to any Senior Note on any Redemption Date, the greater of:

- (1) 1.0% of the principal amount of such Senior Note; and
- (2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Senior Note at April 1, 2012 (such redemption price being set forth in the table appearing above under the caption *Optional Redemption* ), plus (ii) all required interest payments due on such Senior Note through April 1, 2012 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Senior Note.

*Asset Sale* means:

- (1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease- Back Transaction) of the Issuer or any of its Restricted Subsidiaries (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 transactions;

in each case, other than:

- (a) any disposition of Cash Equivalents or Investment Grade Securities or obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business;
- (b) the disposition of all or substantially all of the assets of the Issuer in a manner permitted pursuant to the provisions described above under *Certain Covenants Merger, Consolidation or Sale of All or Substantially All Assets* or any disposition that constitutes a Change of Control pursuant to the 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 \$50.0 million;
- (e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary of the Issuer to the Issuer or by the Issuer or a Restricted Subsidiary of the Issuer to another Restricted Subsidiary of the Issuer;
- (f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business;
- (g) the lease, assignment or sub-lease of any real or personal property in the ordinary course of business;

- (h) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
- (i) foreclosures on assets;



**Table of Contents**

- (j) sales of accounts receivable, or participations therein, in connection with any Receivables Facility; and
- (k) any financing transaction with respect to property built or acquired by the Issuer or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations permitted by the Indenture.

*Business Day* means each day which is not a Legal Holiday.

*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 or membership interests (whether general or limited); 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.

*Capitalized Software Expenditures* shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

*Cash Equivalents* means:

- (1) United States dollars;
- (2)(a) euro, or any national currency of any participating member state of the EMU; or
- (b) 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;
- (3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. 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;
- (4) 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 of not less than \$500.0 million in the case of U.S. banks and \$100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at least P-1 by Moody's or at least A-1 by S&P and in each case maturing within 24 months after the date of creation thereof;

(7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof;

**Table of Contents**

(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, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 24 months or less from the date of acquisition;

(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 24 months or less from the date of acquisition; and

(11) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

*Change of Control* means the occurrence of any of the following:

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder; or

(2) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Issuer.

*Consolidated Depreciation and Amortization Expense* means with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees and Capitalized Software Expenditures 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, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (v) any expense resulting from the discounting of the Existing Senior Secured Notes in connection with the application of purchase accounting in connection with the Transaction, (w) any Additional Interest and any additional interest with respect to the Existing Senior Notes or the Existing Senior Subordinated Notes, (x) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (y) any expensing of

bridge, commitment and other financing fees and (z) commissions,

**Table of Contents**

discounts, yield and other fees and charges (including any interest expense) related to any Receivables Facility); *plus*

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

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

*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, without duplication,

(1) any after-tax effect of extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including relating to the Transaction to the extent incurred on or prior June 30, 2006), severance, relocation costs and curtailments or modifications to pension and post-retirement employee benefit plans 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 after-tax effect of income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,

(4) any after-tax effect of 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 Issuer, 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 Issuer 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 (3)(a) of the first paragraph of *Certain Covenants Limitation on Restricted Payments*, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded if 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 stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, *provided* that Consolidated Net Income of the Issuer 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 Issuer or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) effects of adjustments (including the effects of such adjustments pushed down to the Issuer and its Restricted Subsidiaries) in the property and equipment, software and other intangible assets, deferred revenue and debt line items

in such Person's consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting in relation to the Transaction or any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(8) any after-tax effect of income (loss) from the early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

**Table of Contents**

(9) any impairment charge or asset write-off, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(10) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights shall be excluded,

(11) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded, and

(12) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transaction in accordance with GAAP shall be excluded.

Notwithstanding the foregoing, for the purpose of the covenant described under **Certain Covenants Limitation on Restricted Payments** only (other than clause (3)(d) thereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Issuer and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Issuer and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Issuer or any of its Restricted Subsidiaries, 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 (3)(d) thereof.

*Consolidated Secured Debt Ratio* as of any date of determination means, the ratio of (1) Consolidated Total Indebtedness of the Issuer and its Restricted Subsidiaries that is secured by Liens as of the end of the most recent fiscal period for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur to (2) the Issuer's EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur, in each case with such *pro forma* adjustments to Consolidated Total Indebtedness and EBITDA as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

*Consolidated Total Indebtedness* means, as at any date of determination, an amount equal to the sum of (1) the aggregate amount of all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, Obligations in respect of Capitalized Lease Obligations and debt obligations evidenced by promissory notes and similar instruments (and excluding, for the avoidance of doubt, all obligations relating to Receivables Facilities) and (2) the aggregate amount of all outstanding Disqualified Stock of the Issuer and all Preferred Stock of its Restricted Subsidiaries on a consolidated basis, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP. For purposes hereof, the maximum fixed repurchase price of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to the Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Issuer.

*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,



**Table of Contents**

(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, with respect to the Issuer or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, 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 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 permitted to be borrowed thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

*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 Non-cash Consideration* means the fair market value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Issuer, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

*Designated Preferred Stock* means Preferred Stock of the Issuer or any parent corporation thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer or the applicable parent corporation thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of the first paragraph of the Certain Covenants Limitation on Restricted Payments covenant.

*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 solely 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 solely 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 Senior Notes or the date the Senior Notes are no longer outstanding; *provided*,

*however*, that if such Capital Stock is issued to any plan for the benefit of employees of the Issuer 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 Issuer 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

**Table of Contents**

(1) increased (without duplication) by:

(a) provision for taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as the Pennsylvania capital tax) and foreign withholding taxes of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) Fixed Charges of such Person for such period (including (x) net losses or Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities, in each case, to the extent included in Fixed Charges) to the extent the same was deducted (and not added back) in calculating such Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by the Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Senior Notes and (ii) any amendment or other modification of the Senior Notes, and, in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) the amount of any restructuring charge or reserve deducted (and not added back) in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions after the Issue Date and costs related to the closure and/or consolidation of facilities; *plus*

(f) any other non-cash charges, including any write offs or write downs, reducing Consolidated Net Income for such period (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(g) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(h) the amount of management, monitoring, consulting and advisory fees and related expenses paid in such period to the Investors to the extent otherwise permitted under Certain Covenants Transactions with Affiliates ; *plus*

(i) the amount of net cost savings projected by the Issuer in good faith to be realized as a result of specified actions taken during such period (calculated on a pro forma basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided that (x) such cost savings are reasonably identifiable and factually supportable, (y) such actions are taken within 36 months after the Issue Date and (z) the aggregate amount of cost savings added pursuant to this clause (i) shall not exceed \$100.0 million for any four consecutive quarter period (which adjustments may be incremental to pro forma adjustments made pursuant to the second paragraph of the definition of Fixed Charge Coverage Ratio ); *plus*

(j) the amount of loss on sale of receivables and related assets to the Receivables Subsidiary in connection with a Receivables Facility; *plus*

(k) any costs or expense incurred by the Issuer or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or

shareholder agreement, to the extent that such cost or

**Table of Contents**

expenses are funded with cash proceeds contributed to the capital of the Issuer or net cash proceeds of an issuance of Equity Interest of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (3) of the first paragraph under Certain Covenants Limitation on Restricted Payments ;

(2) decreased by (without duplication) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period, and

(3) increased or decreased by (without duplication):

(a) any net gain or loss resulting in such period from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133; *plus* or *minus*, as applicable, and

(b) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk).

*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 stock or Preferred Stock of the Issuer or any of its direct or indirect parent companies (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Issuer s or any direct or indirect parent company s common stock registered on Form S-8;

(2) issuances to any Subsidiary of the Issuer; and

(3) any such public or private sale that constitutes an Excluded Contribution.

*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 SEC promulgated thereunder.

*Excluded Contribution* means net cash proceeds, marketable securities or Qualified Proceeds received by the Issuer from

(1) contributions to its common equity capital, and

(2) the sale (other than to a Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer,

in each case designated as Excluded Contributions pursuant to an officer s certificate executed by the principal financial officer of the Issuer on the date such capital contributions are made or the date such Equity Interests are sold,

as the case may be, which are excluded from the calculation set forth in clause (3) of the first paragraph under **Certain Covenants** **Limitation on Restricted Payments**.

*Existing Senior Notes* means \$1,600,000,000 aggregate principal amount of SunGard's 9 1/8% senior notes due 2013, issued on August 11, 2005 and outstanding on the Issue Date.

*Existing Senior Secured Notes* means (a) the \$250.0 million aggregate principal amount of 3.75% senior notes due 2009 and (b) \$250.0 million aggregate principal amount of 4.875% senior notes due 2014.

*Existing Senior Subordinated Notes* means \$1,000,000,000 aggregate principal amount of SunGard's 10 1/4% senior subordinated senior notes due 2015 issued on August 11, 2005 and outstanding on the Issue Date.

**Table of Contents**

*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 Issuer or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) 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 or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the *Fixed Charge Coverage Ratio Calculation Date*), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, 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, mergers, consolidations and disposed operations (as determined in accordance with GAAP) that have been made by the Issuer or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, 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 merged with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, 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, 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 Issuer. 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 Fixed Charge Coverage Ratio 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 Issuer 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 except as set forth in the first paragraph of this definition. 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 Issuer may designate.

*Fixed Charges* means, with respect to any Person for any period, the sum of:

- (1) Consolidated Interest Expense of such Person for such period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

*Foreign Subsidiary* means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.



**Table of Contents**

*GAAP* means generally accepted accounting principles in the United States which are in effect on the Issue Date.

*GL Trade Block* means approximately 64.5% of the outstanding equity interests of GL Trade S.A., a French company, as described in this offering circular under the caption Offering Circular Summary Recent Developments Acquisition of GL Trade , on substantially the terms described in the offering circular or on any other terms agreed to by the Issuer.

*Government Securities* means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) 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 letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

*Guarantee* means the guarantee by any Guarantor of the Issuer's Obligations under the Indenture.

*Guarantor* means, each Restricted Subsidiary that Guarantees the Senior Notes in accordance with the terms of the Indenture.

*Hedging Obligations* means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate or currency risks either generally or under specific contingencies.

*Holder* means the Person in whose name a Senior Note is registered on the registrar's books.

*Indebtedness* means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) 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

(d) representing any Hedging Obligations;

**Table of Contents**

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;

(2) 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 obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of the such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

*provided, however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or (b) obligations under or in respect of Receivables Facilities.

*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 Issuer, qualified to perform the task for which it has been engaged.

*Initial Purchasers* means Goldman, Sachs & Co., Citigroup Global Markets Inc., Lehman Brothers Inc. and KKR Capital Markets LLC.

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

*Investment Grade Securities* means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

*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 and similar advances to officers 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 Issuer 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 Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Issuer 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 Issuer shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Issuer Investment in such Subsidiary at the time of such redesignation; less

**Table of Contents**

(b) the portion (proportionate to the Issuer 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 Issuer.

*Investors* means Silver Lake Partners, Bain Capital Partners, The Blackstone Group, Goldman Sachs Capital Partners, Kohlberg Kravis Roberts & Co. L.P., Providence Equity Partners, Inc., Texas Pacific Group and each of their respective Affiliates but not including, however, any portfolio companies of any of the foregoing.

*Issue Date* means September 29, 2008.

*Issuer* has the meaning set forth in the first paragraph under *General*; *provided* that when used in the context of determining the fair market value of an asset or liability under the Indenture, *Issuer* shall be deemed to mean the board of directors of the Issuer when the fair market value is equal to or in excess of \$250.0 million (unless otherwise expressly stated).

*Legal Holiday* means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York.

*Lien* means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority 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.

*Moody's* means Moody's Investors Service, Inc. and any successor to its rating agency business.

*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 Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including 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 Senior Indebtedness required (other than required by clause (1) of the second paragraph of *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 Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including 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 reimbursement obligations with respect to letters of credit and bankers 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.

**Table of Contents**

*Officer* means the Chairman of the Board, the Chief Executive Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Issuer or a Guarantor, as applicable.

*Officer's Certificate* means a certificate signed on behalf of the Issuer by an Officer of the Issuer or on behalf of a Guarantor by an Officer of such Guarantor, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, that meets the requirements set forth in the Indenture.

*Opinion of Counsel* means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer or the Trustee.

*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 Issuer or any of its Restricted Subsidiaries and another Person; *provided*, that any cash or Cash Equivalents received must be applied in accordance with the *Repurchase at the Option of Holders Asset Sales* covenant.

*Permitted Holders* means each of the Investors and members of management of the Issuer (or its direct parent) who are holders of Equity Interests of the Issuer (or any of its direct or indirect parent companies) on the Issue Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided*, that, in the case of such group and without giving effect to the existence of such group or any other group, such Investors and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies.

*Permitted Investments* means:

- (1) any Investment in the Issuer or any of its Restricted Subsidiaries;
- (2) any Investment in cash and Cash Equivalents or Investment Grade Securities;
- (3) any Investment by the Issuer or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary; or
  - (b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary,and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;
- (4) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities 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;
- (5) any Investment existing on the Issue Date;
- (6) any Investment acquired by the Issuer or any of its Restricted Subsidiaries;

(a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or

(b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;



**Table of Contents**

(7) Hedging Obligations permitted under clause (10) of the covenant described in Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(8) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed 2.5% 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);

(9) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Issuer, or any of its direct or indirect parent companies; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of the first paragraph under the covenant described in Certain Covenants Limitations on Restricted Payments ;

(10) guarantees of Indebtedness permitted under the covenant described in Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(11) 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 (except transactions described in clauses (2), (5) and (9) of such paragraph);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;

(13) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) 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 or marketable securities), not to exceed 3.5% 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);

(14) Investments relating to a Receivables Subsidiary that, in the good faith determination of the Issuer are necessary or advisable to effect any Receivables Facility;

(15) advances to, or guarantees of Indebtedness of, employees not in excess of \$15.0 million outstanding at any one time, in the aggregate; and

(16) loans and advances 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 or consistent with past practices or to fund such Person's purchase of Equity Interests of the Issuer or any direct or indirect parent company thereof.

*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 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, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, 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 if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

**Table of Contents**

(3) Liens for taxes, assessments or other governmental charges 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 diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(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, easements or reservations of, or rights of others for, licenses, rights-of-way, 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 securing Indebtedness permitted to be incurred pursuant to clause (4), (12)(b), (18) or (19) of the second paragraph under **Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock** ; *provided* that Liens securing Indebtedness permitted to be incurred pursuant to clause (18) extend only to the assets of Foreign Subsidiaries and Liens securing Indebtedness permitted to be incurred pursuant to clause (19) are solely on acquired property or the assets of the acquired entity, as the case may be;

(7) Liens existing on the Issue Date;

(8) 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 of its Restricted Subsidiaries;

(9) Liens on property at the time the Issuer or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries; *provided, however*, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition; *provided, further, however*, that the Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer 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** ;

(11) Liens securing Hedging Obligations so long as related Indebtedness is, and is permitted to be under the Indenture, secured by a Lien on the same property securing such Hedging Obligations;

(12) 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;

(13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries and do not secure any Indebtedness;

(14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;

(15) Liens in favor of the Issuer or any Guarantor;

(16) Liens on equipment of the Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuer's clients;

**Table of Contents**

- (17) Liens on accounts receivable and related assets incurred in connection with a Receivables Facility;
- (18) 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 the foregoing clauses (6), (7), (8), (9) and (27); *provided, however*, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6), (7), (8), (9) and (27) at the time the original Lien became a Permitted Lien under the Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;
- (19) deposits made in the ordinary course of business to secure liability to insurance carriers;
- (20) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed \$50.0 million at any one time outstanding;
- (21) Liens securing judgments 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 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;
- (22) 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;
- (23) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code 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;
- (24) Liens deemed to exist in connection with Investments in repurchase agreements permitted under *Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock* ; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;
- (25) 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;
- (26) 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 Issuer or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business; and
- (27) Liens to secure the Existing Senior Secured Notes.

For purposes of this definition, the term *Indebtedness* shall be deemed to include interest on such Indebtedness.

*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.

**Table of Contents**

*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 Issuer in good faith.

*Rating Agencies* means Moody's and S&P or if Moody's or S&P or both shall not make a rating on the Senior Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer which shall be substituted for Moody's or S&P or both, as the case may be.

*Receivables Facility* means any of one or more receivables financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the Obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Issuer or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) pursuant to which the Issuer or any of its Restricted Subsidiaries sells its accounts receivable to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

*Receivables Fees* means distributions or payments made directly or by means of discounts with respect to any accounts receivable 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 Receivables Facility.

*Receivables Subsidiary* means any Subsidiary formed for the purpose of, and that solely engages only in one or more Receivables Facilities and other activities reasonably related thereto.

*Registration Rights Agreement* means the Registration Rights Agreement related to the Senior Notes dated as of the Issue Date, among the Issuer, the Guarantors and the Initial Purchasers.

*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 Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer 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 Issuer (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 & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

*Sale and Lease-Back Transaction* means any arrangement providing for the leasing by the Issuer or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing.

*SEC* means the U.S. Securities and Exchange Commission.

*Secured Indebtedness* means any Indebtedness of the Issuer or any of its Restricted Subsidiaries secured by a Lien.

*Securities Act* means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

*Senior Credit Facilities* means the Credit Facility under the Credit Agreement dated as of August 11, 2005, as amended as of the Issue Date, by and among SunGard Holdco LLC, the Issuer, the lenders party



**Table of Contents**

thereto in their capacities as lenders thereunder and JPMorgan Chase Bank, N.A., as Administrative Agent, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements, refundings or refinancings 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 (*provided* that such increase in borrowings is permitted under Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock above).

*Senior Indebtedness* means:

(1) all Indebtedness of the Issuer or any Guarantor outstanding under the Senior Credit Facilities, the Existing Senior Secured Notes, the Existing Senior Notes or Senior Notes and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Issuer or any Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts (whether existing on the Issue Date or thereafter created or incurred) and all obligations of the Issuer or any Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(2) all Hedging Obligations (and guarantees thereof) owing to a Lender (as defined in the Senior Credit Facilities) or any Affiliate of such Lender (or any Person that was a Lender or an Affiliate of such Lender at the time the applicable agreement giving rise to such Hedging Obligation was entered into), *provided* that such Hedging Obligations are permitted to be incurred under the terms of the Indenture;

(3) any other Indebtedness of the Issuer or any Guarantor permitted to be incurred under the terms of the Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is on a parity with or subordinated in right of payment to the Senior Subordinated Notes or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clauses (1), (2) and (3);

*provided, however*, that Senior Indebtedness shall not include:

(a) any obligation of such Person to the Issuer or any of its Subsidiaries;

(b) any liability for federal, state, local or other taxes owed or owing by such Person;

(c) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or

(e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of the Indenture.

*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 Issue Date.

*Similar Business* means any business conducted or proposed to be conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

*Sponsor Management Agreement* means the management agreement between certain of the management companies associated with the Investors and SunGard.

**Table of Contents**

*Subordinated Indebtedness* means, with respect to the Senior Notes,

- (1) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Senior Notes, and
- (2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Senior Notes.

*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 more than 50% 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 or is consolidated under GAAP with such Person at such time; and
- (2) any partnership, joint venture, limited liability company or similar entity of which
  - (x) more than 50% 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 Issuer and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of the Issuer or such other Person as may be expressly stated.

*Transaction* means the transactions contemplated by the Transaction Agreement, the issuance of the Existing Senior Notes and the Existing Senior Subordinated Notes, the granting of Liens on the Existing Senior Secured Notes, fundings under any Receivables Facility and borrowings under the Senior Credit Facilities as in effect on or since August 11, 2005.

*Transaction Agreement* means the Agreement and Plan of Merger, dated as of March 27, 2005 between Solar Capital Corp. and SunGard as amended from time to time prior to August 11, 2005.

*Treasury Rate* means, as of any Redemption Date, 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 April 1, 2012; *provided, however*, that if the period from the Redemption Date to April 1, 2012 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.

*Trust Indenture Act* means the Trust Indenture Act of 1939, as amended (15 U.S.C §§ 77aaa-777bbbb).

*Unrestricted Subsidiary* means:

(1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary of the Issuer (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 Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); *provided that*

**Table of Contents**

(1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Issuer;

(2) such designation complies with the covenants described under Certain Covenants Limitation on Restricted Payments ; and

(3) each of:

(a) the Subsidiary to be so designated; and

(b) 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 Issuer or any Restricted Subsidiary.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

(1) the Issuer could incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test described in the first paragraph 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 Issuer its Restricted Subsidiaries would be greater than such ratio for the Issuer 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 Issuer shall be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Issuer or any committee thereof giving effect to such designation and an Officer s 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 Subsidiary* of any Person means a Subsidiary of such Person, 100% of the outstanding Equity 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.

**DESCRIPTION OF SENIOR SUBORDINATED NOTES**

**General**

Certain terms used in this description are defined under the subheading *Certain Definitions*. In this description, (i) the terms *we*, *our* and *us* each refer to (a) prior to the consummation of the Acquisition, Solar Capital Corp. and not any of its Affiliates and (b) from and after the consummation of the Acquisition, SunGard Data Systems Inc. ( *SunGard* ) and its consolidated Subsidiaries, assuming completion of the

## **Table of Contents**

Transaction; and (ii) the term *Issuer* refers only to (a) prior to the consummation of the Acquisition, Solar Capital Corp. and not any of its Affiliates and (b) from and after the consummation of the Acquisition, SunGard Data Systems Inc. and not any of its Subsidiaries.

The Issuer issued \$1,000 million aggregate principal amount of 101/4% senior subordinated notes due 2015 (the *Senior Subordinated Notes* ) under an indenture dated August 11, 2005 (the *Indenture* ) among the Issuer, the Guarantors and The Bank of New York, as trustee (the *Trustee* ). The Senior Subordinated Notes were issued in a private transaction that was not subject to the registration requirements of the Securities Act. Except as set forth herein, the terms of the Senior Subordinated Notes are substantially identical and include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act.

The following description is only a summary of the material provisions of the Indenture, does not purport to be complete and is qualified in its entirety by reference to the provisions of those agreements, including the definitions therein of certain terms used below. We urge you to read the Indenture because it, not this description, defines your rights as Holders of the Senior Subordinated Notes. You may request copies of the Indenture at our address set forth under the heading Prospectus Summary.

### **Brief Description of Senior Subordinated Notes**

The Senior Subordinated Notes are:

unsecured senior subordinated obligations of the Issuer;

subordinated in right of payment to all existing and future Senior Indebtedness (including the Senior Credit Facilities, the Senior Secured Notes and the Senior Notes) of the Issuer;

effectively subordinated to all secured Indebtedness of the Issuer (including the Senior Credit Facilities and Senior Secured Notes);

senior in right of payment to any future Subordinated Indebtedness (as defined with respect to the Senior Subordinated Notes) of the Issuer;

initially guaranteed on an unsecured senior subordinated basis by each Restricted Subsidiary that guarantees the Senior Credit Facilities; and

subject to registration with the SEC pursuant to a Registration Rights Agreement.

### **Guarantees**

The Guarantors, as primary obligors and not merely as sureties, jointly and severally irrevocably and unconditionally guarantee, on an unsecured senior subordinated basis, the performance and full and punctual payment when due, whether at maturity, by acceleration or otherwise, of all obligations of the Issuer under the Indenture and the Senior Subordinated Notes, whether for payment of principal of or interest on or Additional Interest in respect of the Senior Subordinated Notes, expenses, indemnification or otherwise, on the terms set forth in the Indenture by executing the Indenture.

The Restricted Subsidiaries (other than as detailed below) guarantee the Senior Subordinated Notes. Each of the Guarantees of the Senior Subordinated Notes is a general unsecured obligation of each Guarantor, is subordinated in right of payment to all existing and future Senior Indebtedness of each such entity and is effectively subordinated to

all secured Indebtedness of each such entity. The Senior Subordinated Notes are structurally subordinated to Indebtedness of Subsidiaries of the Issuer that do not Guarantee the Senior Subordinated Notes.

Not all of the Issuer's Subsidiaries Guarantee the Senior Subordinated Notes. In the event of a bankruptcy, liquidation or reorganization of any of these non-guarantor Subsidiaries, the non-guarantor Subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to the Issuer. None of our Foreign Subsidiaries, broker-dealer subsidiaries, non-Wholly Owned Subsidiaries (subject to certain limited exceptions) or any Receivables Subsidiary guarantee the Senior Subordinated Notes.



## **Table of Contents**

As of December 31, 2009, the non-guarantor Subsidiaries generated 40% and 20% of SunGard's total revenue and EBITDA, respectively. In addition, as of December 31, 2009, the non-guarantor Subsidiaries held 29% of SunGard's consolidated assets.

The obligations of each Guarantor under its Guarantees are limited as necessary to prevent the Guarantees from constituting a fraudulent conveyance under applicable law.

Any entity that makes a payment under its Guarantee is entitled upon payment in full of all guaranteed obligations under the Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

If a Guarantee were rendered voidable, it could be subordinated by a court to all other indebtedness (including guarantees and other contingent liabilities) of the Guarantor, and, depending on the amount of such indebtedness, a Guarantor's liability on its Guarantee could be reduced to zero. See Risk Factors Risks Related to the Notes Federal and state fraudulent transfer laws may permit a court to void the notes and the related guarantees of the notes, and, if that occurs, you may not receive any payments on the notes.

A Guarantee by a Guarantor shall provide by its terms that it shall be automatically and unconditionally released and discharged upon:

- (1) (a) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Restricted Subsidiary or all or substantially all the assets of such Guarantor which sale, exchange or transfer is made in compliance with the applicable provisions of the Indenture;
  - (b) the release or discharge of the guarantee by such Guarantor of the Senior Credit Facilities or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee;
  - (c) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary; or
  - (d) the Issuer exercising its legal defeasance option or covenant defeasance option as described under Legal Defeasance and Covenant Defeasance or the Issuer's obligations under the Indenture being discharged in accordance with the terms of the Indenture; and
- (2) such Guarantor delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

## **Ranking**

### ***Senior Indebtedness Versus the Senior Subordinated Notes***

The payment of the principal of, premium, if any, and interest on the Senior Subordinated Notes and the payment of any Guarantee are subordinate in right of payment to the prior payment in cash in full of all Senior Indebtedness of the Issuer or the relevant Guarantor, as the case may be, including the obligations of the Issuer and such Guarantor under the Senior Credit Facilities, the Senior Secured Notes and the Senior Notes.

The Senior Subordinated Notes are subordinated in right of payment to all of the Issuer's and the Guarantor's existing and future Senior Indebtedness and effectively subordinated to all of the Issuer's and the Guarantor's existing and future Secured Indebtedness to the extent of the value of the assets securing such Indebtedness. As of December 31, 2009, SunGard had \$7,067 million of Senior Indebtedness (of which \$4,967 million was secured Indebtedness, consisting entirely of secured Indebtedness under the Senior Credit Facilities and the Senior Secured Notes (which have a face amount of \$250 million, but are recorded at \$234 million and were secured as of the Issue Date)). As of December 31, 2009, \$250 million was outstanding under our Receivables Facility.

## **Table of Contents**

Although the Indenture contains limitations on the amount of additional Indebtedness that the Issuer and the Guarantors may incur, under certain circumstances the amount of such Indebtedness could be substantial and, in any case, such Indebtedness may be Senior Indebtedness. See **Certain Covenants** **Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock**.

## **Paying Agent and Registrar for the Senior Subordinated Notes**

The Issuer maintains one or more paying agents for the Senior Subordinated Notes in the Borough of Manhattan, City of New York. The initial paying agent for the Senior Subordinated Notes is the Trustee.

The Issuer also maintains a registrar with offices in the Borough of Manhattan, City of New York. The initial registrar is the Trustee. The registrar maintains a register reflecting ownership of the Senior Subordinated Notes outstanding from time to time and makes payments on and facilitate transfer of Senior Subordinated Notes on behalf of the Issuer.

The Issuer may change the paying agents or the registrars without prior notice to the Holders. The Issuer or any of its Subsidiaries may act as a paying agent or registrar.

## **Subordination of the Senior Subordinated Notes**

Only Indebtedness of the Issuer or a Guarantor that is Senior Indebtedness will rank senior to the Senior Subordinated Notes and the Guarantees in accordance with the provisions of the Indenture. The Senior Subordinated Notes and Guarantees will in all respects rank *pari passu* with all other Senior Subordinated Indebtedness of the Issuer and the relevant Guarantor, respectively.

We agree in the Indenture that the Issuer and the Guarantors will not incur any Indebtedness that is subordinate or junior in right of payment to the Senior Indebtedness of such Person, unless such Indebtedness is Senior Subordinated Indebtedness of the applicable Person or is expressly subordinated in right of payment to Senior Subordinated Indebtedness of such Person. The Indenture does not treat (i) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (ii) Senior Indebtedness as subordinated or junior to any other Senior Indebtedness merely because it has a junior priority with respect to the same collateral.

Neither the Issuer nor any Guarantor is permitted to pay principal of, premium, if any, or interest on the Senior Subordinated Notes (or pay any other obligations relating to the Senior Subordinated Notes, including Additional Interest, fees, costs, expenses, indemnities and rescission or damage claims) or make any deposit pursuant to the provisions described under **Legal Defeasance and Covenant Defeasance** or **Satisfaction and Discharge** below and may not purchase, redeem or otherwise retire any Senior Subordinated Notes (collectively, *pay the notes* ) (except in the form of Permitted Junior Securities) if either of the following occurs (a *Payment Default* ):

- (1) any Obligation on any Designated Senior Indebtedness of the Issuer is not paid in full in cash when due (after giving effect to any applicable grace period); or
- (2) any other default on Designated Senior Indebtedness of the Issuer occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms;

unless, in either case, the Payment Default has been cured or waived and any such acceleration has been rescinded or such Designated Senior Indebtedness has been paid in full in cash. Regardless of the foregoing, the Issuer is permitted to pay the Senior Subordinated Notes if the Issuer and the Trustee receive written notice approving such payment from the Representatives of all Designated Senior Indebtedness with respect to which the Payment Default has occurred and is continuing.

During the continuance of any default (other than a Payment Default) (a *Non-Payment Default* ) with respect to any Designated Senior Indebtedness pursuant to which the maturity thereof may be accelerated without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, the Issuer is not permitted to pay the Senior Subordinated Notes (except in the form of Permitted Junior Securities) for a period (a *Payment Blockage Period* ) commencing upon the receipt

**Table of Contents**

by the Trustee (with a copy to the Issuer) of written notice (a *Blockage Notice* ) of such Non-Payment Default from the Representative of such Designated Senior Indebtedness specifying an election to effect a Payment Blockage Period and ending 179 days thereafter. The Payment Blockage Period will end earlier if such Payment Blockage Period is terminated:

- (1) by written notice to the Trustee and the Issuer from the Person or Persons who gave such Blockage Notice;
- (2) because the default giving rise to such Blockage Notice is cured, waived or otherwise no longer continuing; or
- (3) because such Designated Senior Indebtedness has been discharged or repaid in full in cash.

Notwithstanding the provisions described above, unless the holders of such Designated Senior Indebtedness or the Representative of such Designated Senior Indebtedness have accelerated the maturity of such Designated Senior Indebtedness, the Issuer and related Guarantors are permitted to resume paying the Senior Subordinated Notes after the end of such Payment Blockage Period. The Senior Subordinated Notes shall not be subject to more than one Payment Blockage Period in any consecutive 360-day period irrespective of the number of defaults with respect to Designated Senior Indebtedness during such period; *provided* that if any Blockage Notice is delivered to the Trustee by or on behalf of the holders of Designated Senior Indebtedness of the Issuer (other than the holders of Indebtedness under the Senior Credit Facilities), a Representative of holders of Indebtedness under the Senior Credit Facilities may give another Blockage Notice within such period. However, in no event may the total number of days during which any Payment Blockage Period or Periods on the Senior Subordinated Notes is in effect exceed 179 days in the aggregate during any consecutive 360-day period, and there must be at least 181 days during any consecutive 360-day period during which no Payment Blockage Period is in effect. Notwithstanding the foregoing, however, no default that existed or was continuing on the date of delivery of any Blockage Notice to the Trustee will be, or be made, the basis for a subsequent Blockage Notice unless such default has been waived for a period of not less than 90 days (it being acknowledged that any subsequent action, or any breach of any financial covenants during the period after the date of delivery of a Blockage Notice, that, in either case, would give rise to a Non-Payment Default pursuant to any provisions under which a Non-Payment Default previously existed or was continuing shall constitute a new Non-Payment Default for this purpose).

In connection with the Senior Subordinated Notes, in the event of any payment or distribution of the assets of the Issuer upon a total or partial liquidation or dissolution or reorganization of or similar proceeding relating to the Issuer or its property:

- (1) the holders of Senior Indebtedness of the Issuer will be entitled to receive payment in full in cash of such Senior Indebtedness before the Holders of the Senior Subordinated Notes are entitled to receive any payment;
- (2) until the Senior Indebtedness of the Issuer is paid in full in cash, any payment or distribution to which Holders of the Senior Subordinated Notes would be entitled but for the subordination provisions of the Indenture will be made to holders of such Senior Indebtedness as their interests may appear, except that Holders of Senior Subordinated Notes may receive Permitted Junior Securities; and
- (3) if a distribution is made to Holders of the Senior Subordinated Notes that, due to the subordination provisions, should not have been made to them, such Holders of the Senior Subordinated Notes are required to hold it in trust for the holders of Senior Indebtedness of the Issuer and pay it over to them as their interests may appear.

The subordination and payment blockage provisions described above will not prevent a Default from occurring under the Indenture upon the failure of the Issuer to pay interest or principal with respect to the Senior Subordinated Notes when due by their terms. If payment of the Senior Subordinated Notes is accelerated because of an Event of Default,

the Issuer must promptly notify the holders of Designated Senior Indebtedness or the Representative of such Designated Senior Indebtedness of the acceleration. So long as there shall remain outstanding any Senior Indebtedness under the Senior Credit Facilities, a Blockage Notice

## **Table of Contents**

may be given only by the administrative agent thereunder unless otherwise agreed to in writing by the requisite lenders named therein. If any Designated Senior Indebtedness of the Issuer is outstanding, neither the Issuer nor any Guarantor may pay the Senior Subordinated Notes until five Business Days after the Representatives of all the issuers of such Designated Senior Indebtedness receive notice of such acceleration and, thereafter, may pay the Senior Subordinated Notes only if the Indenture otherwise permits payment at that time.

Each Guarantor's obligations under its Guarantee are senior subordinated obligations of that Guarantor. As such, the rights of Holders to receive payment pursuant to such Guarantee will be subordinated in right of payment to the rights of holders of Senior Indebtedness of such Guarantor. The terms of the subordination and payment blockage provisions described above with respect to the Issuer's obligations under the Senior Subordinated Notes apply equally to the obligations of such Guarantor under its Guarantee.

A Holder by its acceptance of Senior Subordinated Notes agrees to be bound by such provisions and authorizes and expressly directs the Trustee, on its behalf, to take such action as may be necessary or appropriate to effectuate the subordination provided for in the Indenture and appoints the Trustee its attorney-in-fact for such purpose.

By reason of the subordination provisions contained in the Indenture, in the event of a liquidation or insolvency proceeding, creditors of the Issuer or a Guarantor who are holders of Senior Indebtedness of the Issuer or such Guarantor, as the case may be, may recover more, ratably, than the Holders of the Senior Subordinated Notes, and creditors who are not holders of Senior Indebtedness may recover less, ratably, than holders of Senior Indebtedness and may recover more, ratably, than the Holders of the Senior Subordinated Notes.

The terms of the subordination provisions described above will not apply to payments from money or the proceeds of Government Securities held in trust by the Trustee for the payment of principal of and interest on the Senior Subordinated Notes pursuant to the provisions described under "Legal Defeasance and Covenant Defeasance" or "Satisfaction and Discharge," if the foregoing subordination provisions were not violated at the time the applicable amounts were deposited in trust pursuant to such provisions.

## **Transfer and Exchange**

A Holder may transfer or exchange Senior Subordinated Notes in accordance with the Indenture. The registrar and the Trustee may require a Holder to furnish appropriate endorsements and transfer documents in connection with a transfer of Senior Subordinated Notes. Holders will be required to pay all taxes due on transfer. The Issuer is not required to transfer or exchange any Senior Subordinated Note selected for redemption. Also, the Issuer is not required to transfer or exchange any Senior Subordinated Note for a period of 15 days before a selection of Senior Subordinated Notes to be redeemed.

## **Principal, Maturity and Interest**

The Issuer issued \$1,000 million of Senior Subordinated Notes in this offering. The Senior Subordinated Notes mature on August 15, 2015. Subject to compliance with the covenant described below under the caption "Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," the Issuer may issue additional Senior Subordinated Notes from time to time after this offering under the Indenture ( "*Additional Senior Subordinated Notes* "). The Senior Subordinated Notes offered by the Issuer and any Additional Senior Subordinated Notes subsequently issued under the Indenture will be treated as a single class for all purposes under the Indenture, including waivers, amendments, redemptions and offers to purchase. Unless the context requires otherwise, references to "Senior Subordinated Notes" for all purposes of the Indenture and this "Description of Senior Subordinated Notes" include any Additional Senior Subordinated Notes that are actually issued.

Interest on the Senior Subordinated Notes accrues at the rate of 10<sup>1</sup>/<sub>4</sub>% per annum and is payable semi-annually in arrears on February 15 and August 15, commencing on February 15, 2006 to the Holders of Senior Subordinated Notes of record on the immediately preceding February 1 and August 1. Interest on the Senior



**Table of Contents**

Subordinated Notes accrues from the most recent date to which interest has been paid or, if no interest has been paid, from and including the Issue Date. Interest on the Senior Subordinated Notes is computed on the basis of a 360 day year comprised of twelve 30 day months.

***Additional Interest***

Additional Interest may accrue on the Senior Subordinated Notes in certain circumstances pursuant to the Registration Rights Agreement. All references in the Indenture, in any context, to any interest or other amount payable on or with respect to the Senior Subordinated Notes shall be deemed to include any Additional Interest pursuant to the Registration Rights Agreement. Principal of, premium, if any, and interest on the Senior Subordinated Notes are payable at the office or agency of the Issuer maintained for such purpose within the City and State of New York or, at the option of the Issuer, payment of interest may be made by check mailed to the Holders of the Senior Subordinated 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 the Senior Subordinated Notes represented by one or more global notes registered in the name of or held by DTC or its nominee are made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof. Until otherwise designated by the Issuer, the Issuer's office or agency in New York is the office of the Trustee maintained for such purpose.

**Mandatory Redemption; Offers to Purchase; Open Market Purchases**

The Issuer is not required to make any mandatory redemption or sinking fund payments with respect to the Senior Subordinated Notes. However, under certain circumstances, the Issuer may be required to offer to purchase Senior Subordinated Notes as described under the caption *Repurchase at the Option of Holders*. We may at any time and from time to time purchase Senior Subordinated Notes in the open market or otherwise.

**Optional Redemption**

Except as set forth below, the Issuer is not entitled to redeem the Senior Subordinated Notes at its option prior to August 15, 2010.

At any time prior to August 15, 2010 the Issuer may redeem all or a part of the Senior Subordinated Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to the registered address of each Holder, at a redemption price equal to 100% of the principal amount of Senior Subordinated Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the date of redemption (the *Redemption Date*), subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date.

On and after August 15, 2010 the Issuer may redeem the Senior Subordinated Notes, in whole or in part, upon notice as described under the heading *Repurchase at the Option of Holders - Selection and Notice* at the redemption prices (expressed as percentages of principal amount of the Senior Subordinated Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable 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 twelve-month period beginning on August 15 of each of the years indicated below:

<b>Year</b>	<b>Percentage</b>
2010	105.125%
2011	103.417%

2012	101.708%
2013 and thereafter	100.000%

In addition, until August 15, 2008, the Issuer may, at its option, redeem up to 35% of the aggregate principal amount of Senior Subordinated Notes issued by it at a redemption price equal to 110.25% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to

## **Table of Contents**

the applicable Redemption Date, subject to the right of Holders of Senior Subordinated Notes of record on the relevant record date to receive interest due on the relevant interest payment date, with the net cash proceeds of one or more Equity Offerings; *provided* that at least 50% of the sum of the aggregate principal amount of Senior Subordinated Notes originally issued under the Indenture and any Additional Senior Subordinated Notes that are Senior Subordinated Notes issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; *provided further* that each such redemption occurs within 90 days of the date of closing of each such Equity Offering.

Notice of any redemption upon any Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

The Trustee shall select the Senior Subordinated Notes to be purchased in the manner described under Repurchase at the Option of Holders Selection and Notice.

### **Repurchase at the Option of Holders**

#### ***Change of Control***

The Senior Subordinated Notes provide that if a Change of Control occurs, unless the Issuer has previously or concurrently mailed a redemption notice with respect to all the outstanding Senior Subordinated Notes as described under Optional Redemption, the Issuer will make an offer to purchase all of the Senior Subordinated 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 and Additional Interest, if any, to the date of purchase, subject to the right of Holders of the Senior Subordinated Notes 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 Issuer will send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Senior Subordinated Notes to the address of such Holder appearing in the security register with a copy to the Trustee, with the following information:

- (1) that a Change of Control Offer is being made pursuant to the covenant entitled Change of Control, and that all Senior Subordinated Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;
- (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 mailed (the *Change of Control Payment Date*);
- (3) that any Senior Subordinated Note not properly tendered will remain outstanding and continue to accrue interest;
- (4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Senior Subordinated Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;
- (5) that Holders electing to have any Senior Subordinated Notes purchased pursuant to a Change of Control Offer will be required to surrender such Senior Subordinated Notes, with the form entitled Option of Holder to Elect Purchase on the reverse of such Senior Subordinated 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) that Holders will be entitled to withdraw their tendered Senior Subordinated Notes and their election to require the Issuer to purchase such Senior Subordinated Notes, *provided* that the paying agent receives, not later than the close of business on the 30th day following the date of the Change of Control notice, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Senior Subordinated Notes, the principal amount of Senior Subordinated Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Senior Subordinated Notes and its election to have such Senior Subordinated Notes purchased;

**Table of Contents**

(7) that if the Issuer is redeeming less than all of the Senior Subordinated Notes, the Holders of the remaining Senior Subordinated Notes will be issued new Senior Subordinated Notes and such new Senior Subordinated Notes will be equal in principal amount to the unpurchased portion of the Senior Subordinated Notes surrendered. The unpurchased portion of the Senior Subordinated Notes must be equal to \$2,000 or an integral multiple thereof; and

(8) the other instructions, as determined by us, consistent with the covenant described hereunder, that a Holder must follow.

The Issuer 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 Senior Subordinated 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 Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

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

(1) accept for payment all Senior Subordinated Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,

(2) deposit with the paying agent an amount equal to the aggregate Change of Control Payment in respect of all Senior Subordinated Notes or portions thereof so tendered, and

(3) deliver, or cause to be delivered, to the Trustee for cancellation the Senior Subordinated Notes so accepted together with an Officer's Certificate to the Trustee stating that such Senior Subordinated Notes or portions thereof have been tendered to and purchased by the Issuer.

The Senior Credit Facilities and Senior Notes limit, and future credit agreements or other agreements relating to Senior Indebtedness to which the Issuer becomes a party may prohibit or limit, the Issuer from purchasing any Senior Subordinated Notes as a result of a Change of Control. The Senior Secured Notes do not currently have any such limitations. In the event a Change of Control occurs at a time when the Issuer is prohibited from purchasing the Senior Subordinated Notes, the Issuer could seek the consent of its lenders and the holders of the Senior Notes to permit the purchase of the Senior Subordinated Notes or could attempt to refinance the borrowings that contain such prohibition. If the Issuer does not obtain such consent or repay such borrowings, the Issuer will remain prohibited from purchasing the Senior Subordinated Notes. In such case, the Issuer's failure to purchase tendered Senior Subordinated Notes would constitute an Event of Default under the Indenture. If, as a result thereof, a default occurs with respect to any Senior Indebtedness, the subordination provisions in the Indenture would restrict payments to the Holders of Senior Subordinated Notes under certain circumstances. The Senior Credit Facilities provide that certain change of control events with respect to the Issuer would constitute a default thereunder (including a Change of Control under the Indenture). If we experience a change of control that triggers a default under our Senior Credit Facilities, we could seek a waiver of such default or seek to refinance our Senior Credit Facilities. In the event we do not obtain such a waiver or refinance the Senior Credit Facilities, such default could result in amounts outstanding under our Senior Credit Facilities being declared due and payable and cause a Receivables Facility to be wound-down.

Our ability to pay cash to the Holders of Senior Subordinated Notes following the occurrence of a Change of Control may be limited by our then-existing financial resources. Therefore, sufficient funds may not be available when necessary to make any required repurchases.

The Change of Control purchase feature of the Senior Subordinated Notes may in certain circumstances make more difficult or discourage a sale or takeover of us and, thus, the removal of incumbent management. The Change of Control purchase feature is a result of negotiations between the Initial Purchasers and us. After the Issue Date, we have no present intention to engage in a transaction involving a Change of Control, 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

**Table of Contents**

recapitalizations, that would not constitute a Change of Control under the Indenture, but that could 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 Indenture can be waived only with the consent of the Holders of a majority in principal amount of the Senior Subordinated Notes then outstanding. Except for the limitations contained in such covenants, however, the Indenture does not contain any covenants or provisions that may afford Holders of the Senior Subordinated Notes protection in the event of a highly leveraged transaction.

We will not be required to make a Change of Control Offer following a Change of Control if 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 Indenture applicable to a Change of Control Offer made by us and purchases all Senior Subordinated Notes validly tendered and not withdrawn under such Change of Control Offer. 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, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

The definition of Change of Control includes a disposition of all or substantially all of the assets of the Issuer to any Person. 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 Issuer. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder of Senior Subordinated Notes may require the Issuer to make an offer to repurchase the Senior Subordinated Notes as described above.

The provisions under the Indenture relative to the Issuer's obligation to make an offer to repurchase the Senior Subordinated 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 Senior Subordinated Notes.

***Asset Sales***

The Indenture provides that the Issuer will not, and will not permit any of its Restricted Subsidiaries to, cause, make or suffer to exist an Asset Sale, unless:

(1) the Issuer 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 (as determined in good faith by the Issuer) 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 Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that the amount of:

(a) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto) of the Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Senior Subordinated Notes, that are assumed by the transferee of any such assets and for which the Issuer and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(b) any securities received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale, and

(c) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed 2.5% of Total Assets at the time of the receipt of such Designated Non-cash Consideration,



**Table of Contents**

with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash for purposes of this provision and for no other purpose.

Within 450 days after the receipt of any Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

(1) to permanently reduce:

(a) Obligations under the Senior Indebtedness, and to correspondingly reduce commitments with respect thereto;

(b) Obligations under Senior Subordinated Indebtedness (and to correspondingly reduce commitments with respect thereto); *provided* that the Issuer shall equally and ratably reduce Obligations under the Senior Subordinated Notes as provided under Optional Redemption, through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders of Senior Subordinated Notes to purchase their Senior Subordinated Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Senior Subordinated Notes that would otherwise be prepaid, or

(c) Indebtedness of a Restricted Subsidiary that is not a Guarantor, other than Indebtedness owed to the Issuer or another Restricted Subsidiary,

(2) to make (a) an Investment in 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 Issuer or another of its Restricted Subsidiaries, 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 assets, in each of (a), (b) and (c), used or useful in a Similar Business, or

(3) 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 Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) properties or (c) acquisitions of other assets that, in each of (a), (b) and (c), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

*provided* that, in the case of clauses (2) and (3) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer, or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (an *Acceptable Commitment* ) and, in the event any *Acceptable Commitment* is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, the Issuer or such Restricted Subsidiary enters into another *Acceptable Commitment* (a *Second Commitment* ) within 180 days of such cancellation or termination; *provided further* that if any *Second Commitment* is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute *Excess Proceeds*.

Any Net Proceeds from the Asset Sale that are not invested or applied as provided and within the time period set forth in the first sentence of the preceding paragraph will be deemed to constitute *Excess Proceeds*. When the aggregate amount of *Excess Proceeds* exceeds \$100 million, the Issuer shall make an offer to all Holders of the Senior Subordinated Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Senior Subordinated Notes ( *Pari Passu Indebtedness* ), to the holders of such *Pari Passu Indebtedness* (an *Asset Sale Offer* ), to purchase the

maximum aggregate principal amount of the Senior Subordinated Notes and such Pari Passu Indebtedness that is an integral multiple of \$2,000 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 and Additional Interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess

## **Table of Contents**

Proceeds exceed \$100 million by mailing the notice required pursuant to the terms of the Indenture, with a copy to the Trustee.

To the extent that the aggregate amount of Senior Subordinated Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Senior Subordinated Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Senior Subordinated Notes and such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Senior Subordinated Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

Pending the final application of any Net Proceeds pursuant to this covenant, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by the Indenture.

The Issuer 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 Senior Subordinated 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 Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

The Senior Credit Facilities and Senior Notes limit, and future credit agreements or other agreements relating to Senior Indebtedness to which the Issuer becomes a party may prohibit or limit, the Issuer from purchasing any Senior Subordinated Notes pursuant to this Asset Sales covenant. In the event the Issuer is prohibited from purchasing the Senior Subordinated Notes, the Issuer could seek the consent of its lenders and the holders of the Senior Notes to the purchase of the Senior Subordinated Notes or could attempt to refinance the borrowings that contain such prohibition. If the Issuer does not obtain such consent or repay such borrowings, it will remain prohibited from purchasing the Senior Subordinated Notes. In such case, the Issuer's failure to purchase tendered Senior Subordinated Notes would constitute an Event of Default under the Indenture. If, as a result thereof, a default occurs with respect to any Senior Indebtedness, the subordination provisions in the Indenture would restrict payments to the Holders of the Senior Subordinated Notes under certain circumstances.

### ***Selection and Notice***

If the Issuer is redeeming less than all of the Senior Subordinated Notes issued by it at any time, the Trustee will select the Senior Subordinated Notes to be redeemed (a) if the Senior Subordinated Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Senior Subordinated Notes are listed or (b) on a pro rata basis to the extent practicable.

Notices of purchase or redemption shall be mailed by first-class mail, postage prepaid, at least 30 but not more than 60 days before the purchase or redemption date to each Holder of Senior Subordinated Notes at such Holder's registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Senior Subordinated Notes or a satisfaction and discharge of the Indenture. If any Senior Subordinated Note is to be purchased or redeemed in part only, any notice of purchase or redemption that relates to such Senior Subordinated Note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed.

The Issuer will issue a new Senior Subordinated Note in a principal amount equal to the unredeemed portion of the original Senior Subordinated Note in the name of the Holder upon cancellation of the original Senior Subordinated Note. Senior Subordinated Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Senior Subordinated Notes or portions of them called for redemption.

**Table of Contents**

**Certain Covenants**

Set forth below are summaries of certain covenants contained in the Indenture. If on any date following the date of the Issue Date (i) the Senior Subordinated Notes have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has occurred and is continuing under the Indenture then, beginning on that day and continuing at all times thereafter regardless of any subsequent changes in the rating of the Senior Subordinated Notes, the covenants specifically listed under the following captions in this Description of Senior Subordinated Notes section of this prospectus will no longer be applicable to the Senior Subordinated Notes:

- (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 Merger, Consolidation or Sale of All or Substantially All Assets ;
- (5) Transactions with Affiliates ;
- (6) Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries ;
- (7) Limitation on Guarantees of Indebtedness by Restricted Subsidiaries ; and
- (8) Limitation on Layering.

*In addition, during any period of time that:* (i) the Senior Subordinated Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default has occurred and is continuing under the Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a *Covenant Suspension Event* ), the Issuer and the Restricted Subsidiaries will not be subject to the covenant described under Repurchase at the Option of Holders Change of Control (the *Suspended Covenant* ). In the event that the Issuer and the Restricted Subsidiaries are not subject to the Suspended Covenant under the Indenture for any period of time as a result of the foregoing, and on any subsequent date (the *Reversion Date* ) one or both of the Rating Agencies (a) withdraw their Investment Grade Rating or downgrade the rating assigned to the Senior Subordinated Notes below an Investment Grade Rating and/or (b) the Issuer or any of its Affiliates enter into an agreement to effect a transaction that would result in a Change of Control and one or more of the Rating Agencies indicate 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 Senior Subordinated Notes below an Investment Grade Rating, then the Issuer and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenant under the Indenture with respect to future events, including, without limitation, a proposed transaction described in clause (b) above.

There can be no assurance that the Senior Subordinated Notes will ever achieve or maintain Investment Grade Ratings.

***Limitation on Restricted Payments***

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(I) declare or pay any dividend or make any payment or distribution on account of the Issuer's, or any of its Restricted Subsidiaries' Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

(a) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or

**Table of Contents**

(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 Issuer 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;

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer, including in connection with any merger or consolidation;

(III) 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:

(a) Indebtedness permitted under clauses (7) and (8) of the covenant described under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; or

(b) 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; or

(IV) make any Restricted Investment

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

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Issuer could incur \$1.00 of additional Indebtedness under the provisions of the first paragraph of the covenant described under Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (1), (2) (with respect to the payment of dividends on Refunding Capital Stock (as defined below) pursuant to clause (b) thereof only), (6)(c), (9) and (14) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum of (without duplication):

(a) 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) beginning July 1, 2005, to the end of the Issuer'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*

(b) 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by the Issuer since immediately after the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ) from the issue or sale of:

(i) (A) Equity Interests of the Issuer, including Treasury Capital Stock (as defined below), but excluding cash proceeds and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received from the sale of:

(x) Equity Interests to members of management, directors or consultants of the Issuer, any direct or indirect parent company of the Issuer and the Issuer's Subsidiaries after the

212

---



**Table of Contents**

Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph; and

(y) Designated Preferred Stock

and (B) to the extent such net cash proceeds are actually contributed to the Issuer, Equity Interests of the Issuer's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph); or

(ii) debt securities of the Issuer that have been converted into or exchanged for such Equity Interests of the Issuer;

*provided, however*, that this clause (b) shall not include the proceeds from (W) Refunding Capital Stock (as defined below), (X) Equity Interests or convertible debt securities of the Issuer sold to a Restricted Subsidiary, as the case may be, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; *plus*

(c) 100% of the aggregate amount of cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property contributed to the capital of the Issuer following the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ) (other than by a Restricted Subsidiary and other than by any Excluded Contributions); *plus*

(d) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Issuer, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) of Restricted Investments made by the Issuer or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Issuer or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Issuer or its Restricted Subsidiaries, in each case after the Issue Date; or

(ii) the sale (other than to the Issuer or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; *plus*

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary, as determined by the Issuer in good faith or if, in the case of an Unrestricted Subsidiary, such fair market value may exceed \$150 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary other than an Unrestricted Subsidiary to the extent the Investment in such Unrestricted Subsidiary was made by the Issuer or a Restricted Subsidiary pursuant to clause (7) of the next succeeding paragraph or to the extent such Investment constituted a Permitted Investment.

The foregoing provisions will not prohibit:

(1) the payment of any dividend 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 Indenture;

(2) (a) the redemption, repurchase, retirement or other acquisition of any Equity Interests ( *Treasury Capital Stock* ) or Subordinated Indebtedness of the Issuer or any Equity Interests of any direct or

**Table of Contents**

indirect parent company of the Issuer, in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent contributed to the Issuer (in each case, other than any Disqualified Stock) ( *Refunding Capital Stock* ) and (b) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (6) of this paragraph, the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Issuer) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Issuer or a Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Issuer or a Guarantor, as the case may be, 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 of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any reasonable premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness;

(b) such new Indebtedness is subordinated to the Senior Subordinated Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, acquired or retired for value;

(c) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired; and

(d) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Issuer or any of its direct or indirect parent companies held by any future, present or former employee, director or consultant of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement; *provided, however*, that the aggregate Restricted Payments made under this clause (4) do not exceed in any calendar year \$25 million (which shall increase to \$50 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent corporation of the Issuer) (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$50 million in any calendar year (which shall increase to \$100 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent corporation of the Issuer)); *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer, Equity Interests of any of the Issuer's direct or indirect parent companies, in each case to members of management, directors or consultants of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise



**Table of Contents**

been applied to the payment of Restricted Payments by virtue of clause (3) of the preceding paragraph; *plus*

(b) the cash proceeds of key man life insurance policies received by the Issuer or its Restricted Subsidiaries after the Issue Date; *less*

(c) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a) and (b) of this clause (4);

and *provided further* that cancellation of Indebtedness owing to the Issuer from members of management of the Issuer, any of the Issuer's direct or indirect parent companies or any of the Issuer's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of the Indenture;

(5) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries 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 ;

(6) (a) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Issuer after the Issue Date;

(b) the declaration and payment of dividends to a direct or indirect parent company of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent corporation issued after the Issue Date, *provided* that the amount of dividends paid pursuant to this clause (b) shall not exceed the aggregate amount of cash actually contributed to the Issuer from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this paragraph;

*provided, however*, in the case of each of (a), (b) and (c) of this clause (6), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Issuer and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(7) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (7) that are at the 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 or marketable securities, not to exceed 2% 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);

(8) 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;

(9) the declaration and payment of dividends on the Issuer's common stock (or the payment of dividends to any direct or indirect parent entity to fund a payment of dividends on such entity's common stock), following the first public offering of the Issuer's common stock or the common stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% per annum of the net cash proceeds received by or contributed to the Issuer in or from any

such public offering, other than public offerings with respect to the Issuer's common stock registered on Form S-8 and other than any public sale constituting an Excluded Contribution;

(10) Restricted Payments that are made with Excluded Contributions;

**Table of Contents**

(11) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (11) not to exceed the greater of (x) \$275 million or (y) 1.875% of Total Assets at the time made;

(12) distributions or payments of Receivables Fees;

(13) any Restricted Payment used to fund the Transaction and the fees and expenses related thereto or owed to Affiliates, in each case to the extent permitted by the covenant described under Transactions with Affiliates ;

(14) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness 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 all Senior Subordinated Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(15) the declaration and payment of dividends by the Issuer to, or the making of loans to, any direct or indirect parent in amounts required for any direct or indirect parent companies to pay, in each case without duplication,

(a) franchise taxes and other fees, taxes and expenses required to maintain their corporate existence;

(b) federal, state and local income taxes, to the extent such income taxes are attributable to the income of the Issuer and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; *provided* that in each case the amount of such payments in any fiscal year does not exceed the amount that the Issuer and its Restricted Subsidiaries would be required to pay in respect of federal, state and local taxes for such fiscal year were the Issuer, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such parent entity;

(c) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Issuer to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(d) general corporate operating and overhead costs and expenses of any direct or indirect parent company of the Issuer to the extent such costs and expenses are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries; and

(e) fees and expenses other than to Affiliates of the Issuer related to any unsuccessful equity or debt offering of such parent entity; and

(16) the distribution, dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary by Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are cash and/or Cash Equivalents);

*provided, however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (11) and (16), no Default shall have occurred and be continuing or would occur as a consequence thereof.

As of the Issue Date, all of the Issuer's Subsidiaries were Restricted Subsidiaries. The Issuer 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 Issuer 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 (7), (10), (11) or (16) of the second paragraph of this covenant, or pursuant to the definition of Permitted Investments, and if such Subsidiary otherwise meets the



**Table of Contents**

definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in the Indenture.

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

The Issuer will not, and will not permit any of its Restricted Subsidiaries 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 Issuer 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 Issuer may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any of its Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries most recently ended four 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:

- (1) the incurrence of Indebtedness under Credit Facilities by the Issuer or any of its Restricted Subsidiaries and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof), up to an aggregate principal amount of \$5,750 million outstanding at any one time, less up to \$1,000 million in the aggregate of mandatory principal payments actually made by the borrower thereunder in respect of Indebtedness thereunder with Net Proceeds from an Asset Sale or series of related Asset Sales that constitutes the sale, transfer, conveyance or other disposition of all or substantially all of a segment (as defined under GAAP) of the Issuer (other than any segment predominantly composed of assets acquired by the Issuer or its Restricted Subsidiaries subsequent to the Issue Date);
- (2) the incurrence by the Issuer and any Guarantor of Indebtedness represented by (a) the Senior Subordinated Notes (including any Guarantee) (other than any Additional Senior Subordinated Notes) and (b) the Senior Notes (including any guarantee thereof);
- (3) Indebtedness of the Issuer and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (1) and (2));
- (4) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and Preferred Stock incurred by the Issuer or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment (other than software) 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;
- (5) Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, 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;

(6) Indebtedness arising from agreements of the Issuer or its Restricted Subsidiaries 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; *provided, however, that*

**Table of Contents**

(a) such Indebtedness is not reflected on the balance sheet of the Issuer, or any of its Restricted Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (6)(a)); and

(b) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(7) Indebtedness of the Issuer to a Restricted Subsidiary; *provided* that any such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Senior Subordinated Notes; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(8) Indebtedness of a Restricted Subsidiary to the Issuer or another Restricted Subsidiary; *provided* that if a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Senior Subordinated Notes of such Guarantor; *provided further* that any subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(9) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer 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 Issuer or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock;

(10) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk with respect to any Indebtedness permitted to be incurred pursuant to Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock, exchange rate risk or commodity pricing risk;

(11) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(12) (a) Indebtedness or Disqualified Stock of the Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary equal to 200% of the net cash proceeds received by the Issuer since immediately after the Issue Date from the issue or sale of Equity Interests of the Issuer or cash contributed to the capital of the Issuer (in each case, other than proceeds of Disqualified Stock or sales of Equity Interests to the Issuer or any of its Subsidiaries) as determined in accordance with clauses (3)(b) and (3)(c) of the first paragraph of Limitation on Restricted Payments to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges pursuant to the second paragraph of Limitation on Restricted Payments or to make Permitted Investments (other than Permitted Investments specified in clauses (1) and (3) of the definition thereof) and (b) Indebtedness or Disqualified Stock of Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer 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 (12)(b), does not at any one time outstanding exceed \$600 million (it being understood that any

Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (12)(b) shall cease to be deemed incurred or outstanding for purposes of this clause (12)(b) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Issuer or

**Table of Contents**

such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (12)(b));

(13) the incurrence by the Issuer or any Restricted Subsidiary, of the Issuer 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 (2), (3) and (12)(a) above, this clause (13) and clause (14) below 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 reasonable tender premiums), defeasance costs and fees in connection therewith (the *Refinancing Indebtedness* ) prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness:

(a) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,

(b) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated or *pari passu* to the Senior Subordinated Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or *pari passu* to the Senior Subordinated Notes or the Guarantee 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

(c) shall not include:

(i) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer;

(ii) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer, that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(iii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and *provided further* that subclause (a) of this clause (13) will not apply to any refunding or refinancing of any Indebtedness outstanding under any Senior Indebtedness;

(14) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Issuer or a Restricted Subsidiary incurred to finance an acquisition or (y) Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into the Issuer or a Restricted Subsidiary in accordance with the terms of the Indenture; *provided* that either

(i) such Indebtedness, Disqualified Stock or Preferred Stock:

(a) is not Secured Indebtedness and is Senior Subordinated Indebtedness or Subordinated Indebtedness with terms no less favorable to the Holders thereof than the subordination terms set forth in the Indenture as in effect on the Issue Date;

(b) is not incurred while a Default exists and no Default shall result therefrom;

(c) matures and does not require any payment of principal prior to the final maturity of the Senior Subordinated Notes (other than in a manner consistent with the terms of the Indenture); and

(d) in the case of clause (y), is not incurred in contemplation of such acquisition or merger; or

**Table of Contents**

(ii) after giving effect to such acquisition or merger, either

(a) the Issuer 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

(b) the Fixed Charge Coverage Ratio of the Issuer and the Restricted Subsidiaries is greater than immediately prior to such acquisition or merger;

(15) 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 two Business Days of its incurrence;

(16) Indebtedness of the Issuer or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(17) (a) any guarantee by the Issuer or a Restricted Subsidiary 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 Indenture, or

(b) any guarantee by a Restricted Subsidiary of Indebtedness of the Issuer *provided* that such guarantee is incurred in accordance with the covenant described below under Limitation on Guarantees of Indebtedness by Restricted Subsidiaries ;

(18) Indebtedness of Foreign Subsidiaries of the Issuer incurred not to exceed at any one time outstanding and together with any other Indebtedness incurred under this clause (18) 5% of the Total Assets of the Foreign Subsidiaries (it being understood that any Indebtedness incurred pursuant to this clause (18) shall cease to be deemed incurred or outstanding for purposes of this clause (18) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Issuer or such Restricted Subsidiary could have incurred such Indebtedness under the first paragraph of this covenant without reliance on this clause (18));

(19) Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred to finance or assumed in connection with an acquisition in a principal amount not to exceed \$200 million in the aggregate at any one time outstanding together with all other Indebtedness, Disqualified Stock and/or Preferred Stock issued under this clause (19) (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (19) shall cease to be deemed incurred or outstanding for purposes of this clause (19) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (19));

(20) Indebtedness of the Issuer or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business; and

(21) Indebtedness consisting of Indebtedness issued by the Issuer or any of its Restricted Subsidiaries to current or former officers, directors and employees thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent described in clause (4) of the second paragraph under the caption Limitation on Restricted Payments.

For purposes of determining compliance with this covenant:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (21) above or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer, in its sole discretion, will classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be



## **Table of Contents**

required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses; *provided* that all Indebtedness outstanding under the Credit Facilities on the Issue Date will be treated as incurred on the Issue Date under clause (1) of the preceding paragraph; and

(2) at the time of incurrence, the Issuer will be entitled to 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 U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. 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.

## ***Liens***

The Issuer will not, and will not permit any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness ranking *pari passu* with or subordinated to the Senior Subordinated Notes or any related Guarantee, on any asset or property of the Issuer or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(1) in the case of Liens securing Subordinated Indebtedness, the Senior Subordinated Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(2) in all other cases, the Senior Subordinated Notes or the Guarantees are equally and ratably secured, except that the foregoing shall not apply to (a) Liens securing the Senior Subordinated Notes and the related Guarantees and (b) Liens securing Senior Indebtedness of the Issuer or any Guarantor.

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

The Issuer may not consolidate or merge with or into or wind up into (whether or not the Issuer 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 Issuer is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Person, as the case

may be, being herein called the *Successor Company* );

**Table of Contents**

(2) the Successor Company, if other than the Issuer, expressly assumes all the obligations of the Issuer under the Senior Subordinated Notes pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Default exists;

(4) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions 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, the Issuer and its Restricted Subsidiaries would be greater than such Ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(5) each Guarantor, unless it is the other party to the transactions described above, in which case clause (b) of the second succeeding paragraph shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under the Indenture, the Senior Subordinated Notes and the Registration Rights Agreement; and

(6) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture.

The Successor Company will succeed to, and be substituted for the Issuer, as the case may be, under the Indenture, the Guarantees and the Senior Subordinated Notes, as applicable. Notwithstanding the foregoing clauses (3) and (4),

(1) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Issuer, and

(2) the Issuer may merge with an Affiliate of the Issuer, as the case may be, solely for the purpose of reincorporating the Issuer in a State of the United States so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

Subject to certain limitations described in the Indenture governing release of a Guarantee upon the sale, disposition or transfer of a guarantor, no Guarantor will, and the Issuer will not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Issuer or Guarantor 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) (a) such Guarantor is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the *Successor Person* );

(b) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under the Indenture and such Guarantor's related Guarantee pursuant to supplemental indentures or other documents or

instruments in form reasonably satisfactory to the Trustee;

(c) immediately after such transaction, no Default exists; and

(d) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture; or

**Table of Contents**

(2) the transaction is made in compliance with the covenant described under Repurchase at the Option of Holders Asset Sales.

Subject to certain limitations described in the Indenture, the Successor Person will succeed to, and be substituted for, such Guarantor under the Indenture and such Guarantor's Guarantee. Notwithstanding the foregoing, any Guarantor may merge into or transfer all or part of its properties and assets to another Guarantor or the Issuer.

***Transactions with Affiliates***

The Issuer will not, and will not permit any of its Restricted Subsidiaries 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 Issuer (each of the foregoing, an *Affiliate Transaction*) involving aggregate payments or consideration in excess of \$20 million, unless:

(1) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and

(2) the Issuer delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$50 million, a resolution adopted by the majority of the board of directors of the Issuer approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (1) above.

The foregoing provisions will not apply to the following:

(1) transactions between or among the Issuer or any of its Restricted Subsidiaries;

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

(3) the payment of management, consulting, monitoring and advisory fees and related expenses to the Investors pursuant to the Sponsor Management Agreement in an aggregate amount in any fiscal year not to exceed 1% of EBITDA for such fiscal year (calculated, solely for the purpose of this clause (3), assuming (a) that such fees and related expenses had not been paid, when calculating Net Income, and (b) without giving effect to clause (h) of the definition of EBITDA) (plus any unpaid management, consulting, monitoring and advisory fees and related expenses within such amount accrued in any prior year) and the termination fees pursuant to the Sponsor Management Agreement not to exceed the amount set forth in the Sponsor Management Agreement as in effect on the Issue Date;

(4) the payment of reasonable and customary fees paid to, and indemnities provided on behalf of, officers, directors, employees or consultants of Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries;

(5) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(6) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(7) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or

**Table of Contents**

purchase agreement related thereto) to which it is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement are not otherwise disadvantageous to the Holders when taken as a whole;

(8) the Transaction and the payment of all fees and expenses related to the Transaction, in each case as disclosed in this prospectus;

(9) transactions with customers, clients, suppliers, 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 Indenture which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Issuer or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance of Equity Interests (other than Disqualified Stock) of the Issuer to any Permitted Holder or to any director, officer, employee or consultant;

(11) sales of accounts receivable, or participations therein, in connection with any Receivables Facility;

(12) payments by the Issuer or any of its Restricted Subsidiaries to any of the Investors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by a majority of the board of directors of the Issuer in good faith;

(13) payments or loans (or cancellation of loans) to employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and employment agreements, stock option plans and other similar arrangements with such employees or consultants which, in each case, are approved by the Issuer in good faith; and

(14) investments by the Investors in securities of the Issuer or any of its Restricted Subsidiaries so long as (i) the investment is being offered generally to other investors on the same or more favorable terms and (ii) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities.

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

The Issuer will not, and will not permit any of its Restricted Subsidiaries that are not Guarantors 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:

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

(b) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries, except (in each case) for such encumbrances or restrictions existing under or by reason of:

(a) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Credit Facilities and the related documentation and the Senior Notes and the related indenture;

(b) the Indenture and the Senior Subordinated Notes;



**Table of Contents**

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

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

(e) any agreement or other instrument of a Person acquired by the Issuer or any of its Restricted Subsidiaries 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 and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(f) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Issuer 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;

(g) 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;

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

(i) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred subsequent to the Issue Date pursuant to the provisions of the covenant described under **Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock** ;

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

(k) customary provisions contained in leases or licenses of intellectual property and other agreements, in each case, entered into in the ordinary course of business;

(l) any encumbrances or restrictions of the type referred to in clauses (1), (2) and (3) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (k) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(m) restrictions created in connection with any Receivables Facility that, in the good faith determination of the Issuer are necessary or advisable to effect such Receivables Facility.

***Limitation on Guarantees of Indebtedness by Restricted Subsidiaries***

The Issuer will not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other capital markets debt securities), other than a Guarantor or a Foreign Subsidiary, to guarantee the payment of any Indebtedness of the Issuer or any other Guarantor unless:

(1) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to the Indenture providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Guarantor:

(a) if the Senior Subordinated Notes or such Guarantor's Guarantee are subordinated in right of payment to such Indebtedness, the Guarantee under the supplemental indenture shall be subordinated

## **Table of Contents**

to such Restricted Subsidiary's guarantee with respect to such Indebtedness substantially to the same extent as the Senior Subordinated Notes are subordinated to such Indebtedness; and

(b) if such Indebtedness is by its express terms subordinated in right of payment to the Senior Subordinated Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Senior Subordinated Notes;

(2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee; and

(3) such Restricted Subsidiary shall deliver to the Trustee an Opinion of Counsel to the effect that:

(a) such Guarantee has been duly executed and authorized; and

(b) such Guarantee constitutes a valid, binding and enforceable obligation of such Restricted Subsidiary, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity;

*provided* that this covenant shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

### ***Limitation on Layering***

The Indenture provides that the Issuer will not, and will not permit any Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinate in right of payment to any Senior Indebtedness of the Issuer or such Guarantor, as the case may be, unless such Indebtedness is either:

(1) equal in right of payment with the Senior Subordinated Notes or such Guarantor's Guarantee of the Senior Subordinated Notes, as the case may be; or

(2) expressly subordinated in right of payment to the Senior Subordinated Notes or such Guarantor's Guarantee of the Senior Subordinated Notes, as the case may be.

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

### ***Reports and Other Information***

Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Indenture requires the Issuer to file with the SEC (and make available to the Trustee and Holders of the Senior Subordinated Notes (without exhibits), without cost to any Holder, within 15 days after it files them with the SEC) from and after the Issue Date,

(1) within 90 days (or any other time period then in effect under the rules and regulations of the Exchange Act with respect to the filing of a Form 10-K by a non-accelerated filer) after the end of each fiscal year, annual reports on Form 10-K, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form;

## **Table of Contents**

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 10-Q containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form;

(3) promptly from time to time after the occurrence of an event required to be therein reported, such other reports on Form 8-K, or any successor or comparable form; and

(4) any other information, documents and other reports which the Issuer would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

in each case, in a manner that complies in all material respects with the requirements specified in such form; *provided* that the Issuer shall not be so obligated to file such reports with the SEC if the SEC does not permit such filing, in which event the Issuer will make available such information to prospective purchasers of Senior Subordinated Notes, in addition to providing such information to the Trustee and the Holders of the Senior Subordinated Notes, in each case within 15 days after the time the Issuer would be required to file such information with the SEC, if it were subject to Sections 13 or 15(d) of the Exchange Act. In addition, to the extent not satisfied by the foregoing, the Issuer will agree that, for so long as any Senior Subordinated Notes are outstanding, it will furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

In the event that any direct or indirect parent company of the Issuer becomes a guarantor of the Senior Subordinated Notes, the Indenture permits the Issuer to satisfy its obligations in this covenant with respect to financial information relating to the Issuer by furnishing financial information relating to such parent; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

Notwithstanding the foregoing, such requirements shall be deemed satisfied prior to the commencement of the exchange offer or the effectiveness of the shelf registration statement by the filing with the SEC of the exchange offer registration statement or shelf registration statement, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act.

## **Events of Default and Remedies**

The Indenture provides that each of the following is an Event of Default:

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Senior Subordinated Notes (whether or not prohibited by the subordination provisions of the Indenture);

(2) default for 30 days or more in the payment when due of interest or Additional Interest on or with respect to the Senior Subordinated Notes (whether or not prohibited by the subordination provisions of the Indenture);

(3) failure by the Issuer or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less 30% in principal amount of the Senior Subordinated Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (1) and (2) above) contained in the Indenture or the Senior Subordinated 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 Issuer or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries, other than Indebtedness owed to the Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Senior Subordinated Notes, if both:

(a) such default either results from the failure to pay any principal of 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

**Table of Contents**

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 \$100 million or more at any one time outstanding;

(5) failure by the Issuer or any Significant Subsidiary to pay final judgments aggregating in excess of \$100 million, 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, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(6) certain events of bankruptcy or insolvency with respect to the Issuer or any Significant Subsidiary; or

(7) the Guarantee of any Significant Subsidiary shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of any Guarantor that is a Significant Subsidiary, as the case may be, denies that it has any further liability under its Guarantee or gives notice to such effect, other than by reason of the termination of the Indenture or the release of any such Guarantee in accordance with the Indenture.

If any Event of Default (other than of a type specified in clause (6) above) occurs and is continuing under the Indenture, the Trustee or the Holders of at least 30% in principal amount of the then total outstanding Senior Subordinated Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Senior Subordinated Notes to be due and payable immediately; *provided, however*, that so long as any Indebtedness permitted to be incurred under the Indenture as part of the Senior Credit Facilities shall be outstanding, no such acceleration shall be effective until the earlier of:

(1) acceleration of any such Indebtedness under the Senior Credit Facilities; or

(2) five Business Days after the giving of written notice of such acceleration to the Issuer and the administrative agent under the Senior Credit Facilities.

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 Senior Subordinated Notes will become due and payable without further action or notice. The Indenture provides that the Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. In addition, the Trustee shall have no obligation to accelerate the Senior Subordinated Notes if in the best judgment of the Trustee acceleration is not in the best interest of the Holders of the Senior Subordinated Notes.

The Indenture provides that the Holders of a majority in aggregate principal amount of the then outstanding Senior Subordinated Notes by notice to the Trustee may on behalf of the Holders of all of the Senior Subordinated Notes waive any existing Default and its consequences under the Indenture except a continuing Default in the payment of interest on, premium, if any, or the principal of any Senior Subordinated 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 acceleration of the Senior Subordinated 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:

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

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

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



## **Table of Contents**

Subject to the provisions of the Indenture relating to the duties of the Trustee thereunder, in case an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the Holders of the Senior Subordinated Notes unless the Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder of a Senior Subordinated Note may pursue any remedy with respect to the Indenture or the Senior Subordinated Notes unless:

- (1) such Holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) Holders of at least 30% in principal amount of the total outstanding Senior Subordinated Notes have requested the Trustee to pursue the remedy;
- (3) Holders of the Senior Subordinated Notes have offered the Trustee reasonable security or indemnity against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (5) Holders of a majority in principal amount of the total outstanding Senior Subordinated Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Subject to certain restrictions, under the Indenture the Holders of a majority in principal amount of the total outstanding Senior Subordinated Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Senior Subordinated Note or that would involve the Trustee in personal liability.

The Indenture provides that the Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required, within five Business Days, upon becoming aware of any Default, to deliver to the Trustee a statement specifying such Default.

## **No Personal Liability of Directors, Officers, Employees and Stockholders**

No director, officer, employee, incorporator or stockholder of the Issuer or any Guarantor or any of their parent companies shall have any liability for any obligations of the Issuer or the Guarantors under the Senior Subordinated Notes, the Guarantees or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Senior Subordinated Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Senior Subordinated 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 obligations of the Issuer and the Guarantors under the Indenture will terminate (other than certain obligations) and will be released upon payment in full of all of the Senior Subordinated Notes. The Issuer may, at its option and at any time, elect to have all of its obligations discharged with respect to the Senior Subordinated Notes and have the Issuer and each Guarantor's obligation discharged with respect to its Guarantee ( *Legal Defeasance* ) and cure all then existing Events of Default except for:

(1) the rights of Holders of Senior Subordinated Notes to receive payments in respect of the principal of, premium, if any, and interest on the Senior Subordinated Notes when such payments are due solely out of the trust created pursuant to the Indenture;

(2) the Issuer's obligations with respect to Senior Subordinated Notes concerning issuing temporary Senior Subordinated Notes, registration of such Senior Subordinated Notes, mutilated, destroyed, lost or

**Table of Contents**

stolen Senior Subordinated 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 Issuer's obligations in connection therewith; and

(4) the Legal Defeasance provisions of the Indenture.

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

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Senior Subordinated Notes:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Senior Subordinated Notes, 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 Senior Subordinated Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Senior Subordinated Notes and the Issuer must specify whether such Senior Subordinated Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(a) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Senior Subordinated 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 shall confirm that, subject to customary assumptions and exclusions, the Holders of the Senior Subordinated Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, 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 Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Senior Subordinated Notes 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 such 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 (other than that resulting from borrowing funds to be applied to make such deposit and 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 the Senior Credit Facilities, the Senior Notes or the indenture pursuant to which the Senior Notes were issued or

any other material agreement or instrument (other than the Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

## **Table of Contents**

(6) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

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

(8) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (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 Indenture will be discharged and will cease to be of further effect as to all Senior Subordinated Notes, when either:

(1) all Senior Subordinated Notes theretofore authenticated and delivered, except lost, stolen or destroyed Senior Subordinated Notes which have been replaced or paid and Senior Subordinated Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(2) (a) all Senior Subordinated Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Senior Subordinated Notes, 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 the Senior Subordinated Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(b) no Default (other than that resulting from borrowing funds to be applied to make such deposit) with respect to the Indenture or the Senior Subordinated Notes 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 the Senior Credit Facilities, the indenture governing the Senior Notes or any other material agreement or instrument (other than the Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(c) the Issuer has paid or caused to be paid all sums payable by it under the Indenture; and

(d) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Senior Subordinated Notes at maturity or the redemption date, as the case may be.

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

## **Amendment, Supplement and Waiver**

Except as provided in the next two succeeding paragraphs, the Indenture, any Guarantee and the Senior Subordinated Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the Senior Subordinated Notes then outstanding, including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Senior Subordinated Notes, and any existing Default or compliance with any provision of the Indenture or the Senior Subordinated Notes issued thereunder may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Senior Subordinated

**Table of Contents**

Notes, other than Senior Subordinated Notes beneficially owned by the Issuer or its Affiliates (including consents obtained in connection with a purchase of or tender offer or exchange offer for the Senior Subordinated Notes).

The Indenture provides that, without the consent of each affected Holder of Senior Subordinated Notes, an amendment or waiver may not, with respect to any Senior Subordinated Notes held by a non-consenting Holder:

- (1) reduce the principal amount of such Senior Subordinated Notes whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the principal of or change the fixed final maturity of any such Senior Subordinated Note or alter or waive the provisions with respect to the redemption of such Senior Subordinated 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 Senior Subordinated Note;
- (4) waive a Default in the payment of principal of or premium, if any, or interest on the Senior Subordinated Notes, except a rescission of acceleration of the Senior Subordinated Notes by the Holders of at least a majority in aggregate principal amount of the Senior Subordinated Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in the Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;
- (5) make any Senior Subordinated Note payable in money other than that stated therein;
- (6) make any change in the provisions of the 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 Senior Subordinated 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 Senior Subordinated 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 Senior Subordinated Notes;
- (9) make any change in the subordination provisions thereof that would adversely affect the Holders; or
- (10) except as expressly permitted by the Indenture, modify the Guarantees of any Significant Subsidiary in any manner adverse to the Holders of the Senior Subordinated Notes.

Notwithstanding the foregoing, the Issuer, any Guarantor (with respect to a Guarantee or the Indenture to which it is a party) and the Trustee may amend or supplement the Indenture and any Guarantee or Senior Subordinated Notes without the consent of any Holder;

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to provide for uncertificated Senior Subordinated Notes of such series in addition to or in place of certificated Senior Subordinated Notes;
- (3) to comply with the covenant relating to mergers, consolidations and sales of assets;
- (4) to provide the assumption of the Issuer's or any Guarantor's obligations to the Holders;

(5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder;

(6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;

(7) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;



## **Table of Contents**

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

(9) 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;

(10) to add a Guarantor under the Indenture;

(11) to conform the text of the Indenture, Guarantees or the Senior Subordinated Notes to any provision of this Description of Senior Subordinated Notes to the extent that such provision in this Description of Senior Subordinated Notes was intended to be a verbatim recitation of a provision of the Indenture, Guarantee or Senior Subordinated Notes; or

(12) making any amendment to the provisions of the Indenture relating to the transfer and legending of Senior Subordinated Notes as permitted by the Indenture, including, without limitation to facilitate the issuance and administration of the Senior Subordinated Notes; *provided, however*, that (i) compliance with the Indenture as so amended would not result in Senior Subordinated Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Senior Subordinated Notes.

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

## **Notices**

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 Indenture contains certain limitations on the rights of the Trustee thereunder, should it become a creditor of the Issuer, 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 is permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue or resign.

The Indenture provides that the Holders of a majority in principal amount of the outstanding Senior Subordinated Notes 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 Indenture provides 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 in the conduct of his own affairs. Subject to such provisions, the Trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder of the Senior Subordinated Notes, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

## **Governing Law**

The Indenture, the Senior Subordinated Notes and any Guarantee are 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 Indenture. For purposes of the 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.

**Table of Contents**

*Acquired Indebtedness* means, with respect to any specified Person,

- (1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, including 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.

*Acquisition* means the transactions contemplated by the Transaction Agreement.

*Additional Interest* means all additional interest then owing pursuant to the Registration Rights Agreement.

*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, with respect to any Senior Subordinated Note on any Redemption Date, the greater of:

- (1) 1.0% of the principal amount of such Senior Subordinated Note; and
- (2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Senior Note at August 15, 2009 (such redemption price being set forth in the table appearing above under the caption *Optional Redemption* ), plus (ii) all required interest payments due on such Senior Note through August 15, 2009 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Senior Note.

*Asset Sale* means:

- (1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction) of the Issuer or any of its Restricted Subsidiaries (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 transactions;

in each case, other than:

- (a) any disposition of Cash Equivalents or Investment Grade Securities or obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business;
- (b) the disposition of all or substantially all of the assets of the Issuer in a manner permitted pursuant to the provisions described above under *Certain Covenants Merger, Consolidation or Sale of All or Substantially All Assets* or any disposition that constitutes a Change of Control pursuant to the 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 \$50 million;

**Table of Contents**

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

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

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

(h) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(i) foreclosures on assets;

(j) sales of accounts receivable, or participations therein, in connection with any Receivables Facility; and

(k) any financing transaction with respect to property built or acquired by the Issuer or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations permitted by the Indenture.

*Business Day* means each day which is not a Legal Holiday.

*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 or membership interests (whether general or limited); 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.

*Capitalized Software Expenditures* shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

*Cash Equivalents* means:

(1) United States dollars;

(2) (a) euro, or any national currency of any participating member state of the EMU; or

(b) 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;

(3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. 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;

(4) 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

**Table of Contents**

overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than \$500 million in the case of U.S. banks and \$100 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at least P-1 by Moody's or at least A-1 by S&P and in each case maturing within 24 months after the date of creation thereof;

(7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 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, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 24 months or less from the date of acquisition;

(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 24 months or less from the date of acquisition and;

(11) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

*Change of Control* means the occurrence of any of the following:

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder; or

(2) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Issuer.

*Consolidated Depreciation and Amortization Expense* means with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees and Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated

basis and otherwise determined in accordance with GAAP.



**Table of Contents**

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

- (1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (v) any expense resulting from the discounting of the Senior Secured Notes in connection with the application of purchase accounting in connection with the Transaction, (w) any Additional Interest and any additional interest with respect to the Senior Notes, (x) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (y) any expensing of bridge, commitment and other financing fees and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Receivables Facility); plus
- (2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; less
- (3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

*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, without duplication,

- (1) any after-tax effect of extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including relating to the Transaction to the extent incurred on or prior to June 30, 2006), severance, relocation costs and curtailments or modifications to pension and post-retirement employee benefit plans 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 after-tax effect of income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,
- (4) any after-tax effect of 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 Issuer, 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 Issuer 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 (3)(a) of the first paragraph of Certain Covenants Limitation on Restricted Payments, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded if 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

**Table of Contents**

agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, *provided* that Consolidated Net Income of the Issuer 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 Issuer or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) effects of adjustments (including the effects of such adjustments pushed down to the Issuer and its Restricted Subsidiaries) in the property and equipment, software and other intangible assets, deferred revenue and debt line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting in relation to the Transaction or any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(8) any after-tax effect of income (loss) from the early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(9) any impairment charge or asset write-off, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(10) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights shall be excluded,

(11) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded, and

(12) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transaction in accordance with GAAP shall be excluded.

Notwithstanding the foregoing, for the purpose of the covenant described under **Certain Covenants - Limitation on Restricted Payments** only (other than clause (3)(d) thereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Issuer and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Issuer and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Issuer or any of its Restricted Subsidiaries, 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 (3)(d) 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

**Table of Contents**

(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, with respect to the Issuer or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, 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 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 permitted to be borrowed thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under *Certain Covenants* *Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock* ) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

*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 Non-cash Consideration* means the fair market value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Issuer, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

*Designated Preferred Stock* means Preferred Stock of the Issuer or any parent corporation thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer or the applicable parent corporation thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of the first paragraph of the *Certain Covenants* *Limitation on Restricted Payments* covenant.

*Designated Senior Indebtedness* means:

- (1) any Indebtedness outstanding under the Senior Credit Facilities; and
- (2) any other Senior Indebtedness permitted under the Indenture, the principal amount of which is \$50 million or more and that has been designated by the Issuer as *Designated Senior Indebtedness*.

*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 solely 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 solely 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 Senior Subordinated Notes or the date the Senior Subordinated Notes are no longer outstanding; *provided, however*, that if such Capital Stock is issued to any plan for the benefit of employees of the Issuer 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 Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

**Table of Contents**

*EBITDA* means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period

(1) increased (without duplication) by:

(a) provision for taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as the Pennsylvania capital tax) and foreign withholding taxes of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) Fixed Charges of such Person for such period (including (x) net losses or Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities, in each case, to the extent included in Fixed Charges) to the extent the same was deducted (and not added back) in calculating such Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by the Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Senior Subordinated Notes and the Credit Facilities and (ii) any amendment or other modification of the Senior Subordinated Notes, and, in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) the amount of any restructuring charge or reserve deducted (and not added back) in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions after the Issue Date and costs related to the closure and/or consolidation of facilities; *plus*

(f) any other non-cash charges, including any write offs or write downs, reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(g) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(h) the amount of management, monitoring, consulting and advisory fees and related expenses paid in such period to the Investors to the extent otherwise permitted under Certain Covenants Transactions with Affiliates ; *plus*

(i) the amount of net cost savings projected by the Issuer in good faith to be realized as a result of specified actions taken during such period (calculated on a *pro forma* basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that (x) such cost savings are reasonably identifiable and factually supportable, (y) such actions are taken within 36 months after the Issue Date and (z) the aggregate amount of cost savings added pursuant to this clause (i) shall not exceed \$100 million for any four consecutive quarter period (which adjustments may be incremental to *pro forma* adjustments made pursuant to the second paragraph of the definition of Fixed Charge Coverage Ratio ); *plus*

(j) the amount of loss on sale of receivables and related assets to the Receivables Subsidiary in connection with a Receivables Facility; *plus*

240

---



**Table of Contents**

(k) any costs or expense incurred by the Issuer or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Issuer or net cash proceeds of an issuance of Equity Interest of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (3) of the first paragraph under **Certain Covenants** **Limitation on Restricted Payments** ;

(2) decreased by (without duplication) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period, and

(3) increased or decreased by (without duplication):

(a) any net gain or loss resulting in such period from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133; *plus* or *minus*, as applicable,

(b) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk).

*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 stock or Preferred Stock of the Issuer or any of its direct or indirect parent companies (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Issuer's or any direct or indirect parent company's common stock registered on Form S-8;

(2) issuances to any Subsidiary of the Issuer; and

(3) any such public or private sale that constitutes an Excluded Contribution.

*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 SEC promulgated thereunder.

*Excluded Contribution* means net cash proceeds, marketable securities or Qualified Proceeds received by the Issuer from

(1) contributions to its common equity capital, and

(2) the sale (other than to a Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer,

in each case designated as Excluded Contributions pursuant to an officer's certificate executed by the principal financial officer of the Issuer on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be, which are excluded from the calculation set forth in clause (3) of the first paragraph under Certain Covenants - Limitation on Restricted Payments.

*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 Issuer or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) 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

**Table of Contents**

but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the *Fixed Charge Coverage Ratio Calculation Date* ), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, 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, mergers, consolidations and disposed operations (as determined in accordance with GAAP) that have been made by the Issuer or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, 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 merged with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, 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, 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 Issuer. 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 Fixed Charge Coverage Ratio 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 Issuer 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 except as set forth in the first paragraph of this definition. 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 Issuer may designate.

*Fixed Charges* means, with respect to any Person for any period, the sum of:

- (1) Consolidated Interest Expense of such Person for such period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

*Foreign Subsidiary* means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

*GAAP* means generally accepted accounting principles in the United States which are in effect on the Issue Date.

*Government Securities* means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

**Table of Contents**

(2) 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 letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

*Guarantee* means the guarantee by any Guarantor of the Issuer's Obligations under the Indenture.

*Guarantor* means, each Restricted Subsidiary that Guarantees the Senior Subordinated Notes in accordance with the terms of the Indenture.

*Hedging Obligations* means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate or currency risks either generally or under specific contingencies.

*Holder* means the Person in whose name a Senior Subordinated Note is registered on the registrar's books.

*Indebtedness* means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) 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

(d) 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;

(2) 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 obligations of the type referred to in clause (1) of a third Person (whether or not such items would

appear upon the balance sheet of the such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

**Table of Contents**

*provided, however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or (b) obligations under or in respect of Receivables Facilities.

*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 Issuer, qualified to perform the task for which it has been engaged.

*Initial Purchasers* means Deutsche Bank Securities Inc., Citigroup Global Markets Inc., J.P. Morgan Securities Inc., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, Banc of America Securities LLC, RBC Capital Markets Corporation and BNY Capital Markets, Inc.

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

*Investment Grade Securities* means:

- (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;
- (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and
- (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

*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 and similar advances to officers 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 Issuer 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 Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Issuer 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 Issuer shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to:

- (a) the Issuer Investment in such Subsidiary at the time of such redesignation; less
- (b) the portion (proportionate to the Issuer 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 Issuer.

*Investors* means Silver Lake Partners, Bain Capital Partners, The Blackstone Group, Goldman Sachs Capital Partners, Kohlberg Kravis Roberts & Co. L.P., Providence Equity Partners, Inc., Texas Pacific Group and each of their respective Affiliates but not including, however, any portfolio companies of any of the foregoing.

*Issue Date* means August 11, 2005.



**Table of Contents**

*Issuer* has the meaning set forth in the first paragraph under *General* ; *provided* that when used in the context of determining the fair market value of an asset or liability under the Indenture, *Issuer* shall be deemed to mean the board of directors of the Issuer when the fair market value is equal to or in excess of \$250 million (unless otherwise expressly stated).

*Legal Holiday* means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York.

*Lien* means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority 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.

*Moody's* means Moody's Investors Service, Inc. and any successor to its rating agency business.

*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 Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including 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 Senior Indebtedness required (other than required by clause (1) of the second paragraph of *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 Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including 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 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, the Chief Executive Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Issuer.

*Officer's Certificate* means a certificate signed on behalf of the Issuer by an Officer of the Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, that meets the requirements set forth in the Indenture.

*Opinion of Counsel* means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer or the Trustee.

*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 Issuer or any of its Restricted Subsidiaries and another Person; *provided*, that any cash or Cash Equivalents received must be applied in accordance with the Repurchase at the Option of Holders Asset Sales covenant.

**Table of Contents**

*Permitted Holders* means each of the Investors and members of management of the Issuer (or its direct parent) who are holders of Equity Interests of the Issuer (or any of its direct or indirect parent companies) on the Issue Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided*, that, in the case of such group and without giving effect to the existence of such group or any other group, such Investors and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies.

*Permitted Investments* means:

- (1) any Investment in the Issuer or any of its Restricted Subsidiaries;
- (2) any Investment in cash and Cash Equivalents or Investment Grade Securities;
- (3) any Investment by the Issuer or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary; or
  - (b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary, and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;
- (4) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities 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;
- (5) any Investment existing on the Issue Date;
- (6) any Investment acquired by the Issuer or any of its Restricted Subsidiaries:
  - (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or
  - (b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (7) Hedging Obligations permitted under clause (10) of the covenant described in Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock
- (8) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed 2.5% 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);
- (9) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Issuer, or any of its direct or indirect parent companies; *provided, however*, that such Equity Interests will not increase the

amount available for Restricted Payments under clause (3) of the first paragraph under the covenant described in  
Certain Covenants Limitation on Restricted Payments ;

(10) guarantees of Indebtedness permitted under the covenant described in Certain Covenants Limitation on  
Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock ;

(11) 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

**Table of Contents**

Covenants Transactions with Affiliates (except transactions described in clauses (2), (5) and (9) of such paragraph);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;

(13) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) 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 or marketable securities), not to exceed 3.5% 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);

(14) Investments relating to a Receivables Subsidiary that, in the good faith determination of the Issuer are necessary or advisable to effect any Receivables Facility;

(15) advances to, or guarantees of Indebtedness of, employees not in excess of \$15 million outstanding at any one time, in the aggregate; and

(16) loans and advances 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 or consistent with past practices or to fund such Person's purchase of Equity Interests of the Issuer or any direct or indirect parent company thereof.

*Permitted Junior Securities* means:

(1) Equity Interests in the Issuer, any Guarantor or any direct or indirect parent of the Issuer; or

(2) unsecured debt securities that are subordinated to all Senior Indebtedness (and any debt securities issued in exchange for Senior Indebtedness) to substantially the same extent as, or to a greater extent than, the Senior Subordinated Notes and the related Guarantees are subordinated to Senior Indebtedness under the Indenture;

*provided* that the term *Permitted Junior Securities* shall not include any securities distributed pursuant to a plan of reorganization if the Indebtedness under the Senior Credit Facilities is treated as part of the same class as the Senior Subordinated Notes for purposes of such plan of reorganization; *provided further* that to the extent that any Senior Indebtedness of the Issuer or the Guarantors outstanding on the date of consummation of any such plan of reorganization is not paid in full in cash on such date, the holders of any such Senior Indebtedness not so paid in full in cash have consented to the terms of such plan of reorganization.

*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 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, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, 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 if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(3) Liens for taxes, assessments or other governmental charges 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 diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

**Table of Contents**

- (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, easements or reservations of, or rights of others for, licenses, rights-of-way, 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 securing Indebtedness permitted to be incurred pursuant to clause (4), (12)(b), (18) or (19) of the second paragraph under **Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock** ; *provided* that Liens securing Indebtedness permitted to be incurred pursuant to clause (18) extend only to the assets of Foreign Subsidiaries and Liens securing Indebtedness permitted to be incurred pursuant to clause (19) are solely on acquired property or the assets of the acquired entity, as the case may be;
- (7) Liens existing on the Issue Date;
- (8) 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 of its Restricted Subsidiaries;
- (9) Liens on property at the time the Issuer or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries; *provided, however*, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition; *provided, further, however*, that the Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;
- (10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer 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** ;
- (11) Liens securing Hedging Obligations so long as related Indebtedness is, and is permitted to be under the Indenture, secured by a Lien on the same property securing such Hedging Obligations;
- (12) 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;
- (13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries and do not secure any Indebtedness;
- (14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;
- (15) Liens in favor of the Issuer or any Guarantor;

(16) Liens on equipment of the Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuer's clients;

(17) Liens on accounts receivable and related assets incurred in connection with a Receivables Facility;

(18) 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



**Table of Contents**

secured by any Lien referred to in the foregoing clauses (6), (7), (8) and (9); *provided, however*, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6), (7), (8) and (9) at the time the original Lien became a Permitted Lien under the Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;

(19) deposits made in the ordinary course of business to secure liability to insurance carriers;

(20) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed \$50 million at any one time outstanding;

(21) Liens securing judgments 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 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;

(22) 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;

(23) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code 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;

(24) Liens deemed to exist in connection with Investments in repurchase agreements permitted under *Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock* ; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(25) 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; and

(26) 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 Issuer or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business.

For purposes of this definition, the term *Indebtedness* shall be deemed to include interest on such Indebtedness.

*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.

*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 Issuer in good faith.

**Table of Contents**

*Rating Agencies* means Moody's and S&P or if Moody's or S&P or both shall not make a rating on the Senior Subordinated Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer which shall be substituted for Moody's or S&P or both, as the case may be.

*Receivables Facility* means any of one or more receivables financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the Obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Issuer or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) pursuant to which the Issuer or any of its Restricted Subsidiaries sells its accounts receivable to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

*Receivables Fees* means distributions or payments made directly or by means of discounts with respect to any accounts receivable 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 Receivables Facility.

*Receivables Subsidiary* means any Subsidiary formed for the purpose of, and that solely engages only in one or more Receivables Facilities and other activities reasonably related thereto.

*Registration Rights Agreement* means the Registration Rights Agreement with respect to the Senior Subordinated Notes dated as of the Issue Date, among Solar Capital Corp., SunGard, the Guarantors and the Initial Purchasers.

*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 Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer 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.

*Representative* means any trustee, agent or representative (if any) for an issue of Senior Indebtedness of the Issuer.

*Restricted Investment* means an Investment other than a Permitted Investment.

*Restricted Subsidiary* means, at any time, any direct or indirect Subsidiary of the Issuer (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 & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

*Sale and Lease-Back Transaction* means any arrangement providing for the leasing by the Issuer or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing.

*SEC* means the U.S. Securities and Exchange Commission.

*Secured Indebtedness* means any Indebtedness of the Issuer or any of its Restricted Subsidiaries secured by a Lien.

*Securities Act* means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

*Senior Credit Facilities* means the Credit Facility under the Credit Agreement entered into as of the Issue Date by and among SunGard Holdco LLC, the Issuer, the lenders party thereto in their capacities as lenders thereunder and JPMorgan Chase Bank, N.A., as Administrative Agent, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments,

**Table of Contents**

supplements, modifications, extensions, renewals, restatements, refundings or refinancings 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 (*provided* that such increase in borrowings is permitted under Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock above).

*Senior Indebtedness* means:

(1) all Indebtedness of the Issuer or any Guarantor outstanding under the Senior Credit Facilities or Senior Notes and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Issuer or any Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts (whether existing on the Issue Date or thereafter created or incurred) and all obligations of the Issuer or any Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(2) all Hedging Obligations (and guarantees thereof) owing to a Lender (as defined in the Senior Credit Facilities) or any Affiliate of such Lender (or any Person that was a Lender or an Affiliate of such Lender at the time the applicable agreement giving rise to such Hedging Obligation was entered into), *provided* that such Hedging Obligations are permitted to be incurred under the terms of the Indenture;

(3) any other Indebtedness of the Issuer or any Guarantor permitted to be incurred under the terms of the Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is on a parity with or subordinated in right of payment to the Senior Subordinated Notes or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clauses (1), (2) and (3);

*provided, however*, that Senior Indebtedness shall not include:

(a) any obligation of such Person to the Issuer or any of its Subsidiaries;

(b) any liability for federal, state, local or other taxes owed or owing by such Person;

(c) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or

(e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of the Indenture; *provided, however* that such Indebtedness shall be deemed not to have been incurred in violation of the Indenture for purposes of this clause if such Indebtedness consists of Designated Senior Indebtedness, and the holder(s) of such Indebtedness of their agent or representative (a) had no actual knowledge at the time of incurrence that the incurrence of such Indebtedness violated the Indenture and (b) shall have receive a certificate from an officer of the Issuer to the effect that the incurrence of such Indebtedness does not violate the provisions of the Indenture.

*Senior Notes* means the \$1,600,000,000 aggregate principal amount of the Issuer's 9 1/8% senior notes due 2013 issued on the Issue Date.

*Senior Subordinated Indebtedness* means:

(1) with respect to the Issuer, Indebtedness which ranks equal in right of payment to the Senior Subordinated Notes issued by the Issuer; and

**Table of Contents**

(2) with respect to any Guarantor, Indebtedness which ranks equal in right of payment to the Guarantee of such entity of Senior Subordinated Notes.

*Senior Secured Notes* means the \$250 million aggregate principal amount of 3.75% senior notes due 2009 and \$250 million aggregate principal amount of 4.875% senior notes due 2014, each of SunGard and outstanding on the Issue Date.

*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 Issue Date.

*Similar Business* means any business conducted or proposed to be conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

*Sponsor Management Agreement* means the management agreement between certain of the management companies associated with the Investors and SunGard.

*Subordinated Indebtedness* means, with respect to the Senior Subordinated Notes,

(1) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Senior Subordinated Notes, and

(2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Senior Subordinated Notes.

*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 more than 50% 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 or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) more than 50% 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 Issuer and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of the Issuer or such other Person as may be expressly stated.

*Transaction* means the transactions contemplated by the Transaction Agreement, the issuance of the Senior Notes and the Senior Subordinated Notes, the granting of Liens on the Senior Secured Notes, fundings under any Receivables

Facility and borrowings under the Senior Credit Facilities as in effect on the Issue Date.

*Transaction Agreement* means the Agreement and Plan of Merger, dated as of March 27, 2005 between Solar Capital Corp. and SunGard as the same may be amended prior to the Issue Date.

*Treasury Rate* means, as of any Redemption Date, 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 August 15, 2009;



**Table of Contents**

*provided, however*, that if the period from the Redemption Date to August 15, 2009 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.

*Trust Indenture Act* means the Trust Indenture Act of 1939, as amended (15 U.S.C §§ 77aaa-777bbbb).

*Unrestricted Subsidiary* means:

(1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary of the Issuer (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 Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that

(1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Issuer;

(2) such designation complies with the covenants described under Certain Covenants Limitation on Restricted Payments ; and

(3) each of:

(a) the Subsidiary to be so designated; and

(b) 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 Issuer or any Restricted Subsidiary.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

(1) the Issuer could incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test described in the first paragraph 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 Issuer its Restricted Subsidiaries would be greater than such ratio for the Issuer 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 Issuer shall be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Issuer or any committee thereof giving effect to such designation

and an Officer's 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.

**Table of Contents**

*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 Subsidiary* of any Person means a Subsidiary of such Person, 100% of the outstanding Equity 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.

**CERTAIN UNITED STATES FEDERAL  
INCOME AND ESTATE TAX CONSEQUENCES**

The following is a summary of certain United States federal income and, in the case of Non-United States Holders (as defined below), estate tax consequences of the ownership of notes as of the date hereof.

Except where noted, this summary deals only with notes that are held as capital assets, and does not represent a detailed description of the United States federal income tax consequences applicable to you if you are subject to special treatment under the United States federal income tax laws, including if you are:

a dealer in securities or currencies;

a financial institution;

a regulated investment company;

a real estate investment trust;

a tax-exempt organization;

an insurance company;

a person holding the notes as part of a hedging, integrated, conversion or constructive sale transaction or a straddle;

a trader in securities that has elected the mark-to-market method of accounting for your securities;

a person liable for alternative minimum tax;

a partnership or other pass-through entity for United States federal income tax purposes;

a United States Holder (as defined below) whose functional currency is not the U.S. dollar;

a controlled foreign corporation ;

a passive foreign investment company ; or

a United States expatriate.

This summary is based upon provisions of the Internal Revenue Code of 1986, as amended (the Code ), and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in United States federal income and estate tax consequences different from those summarized below.

If a partnership holds notes, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding notes, you should consult your tax advisors.

This summary does not represent a detailed description of the United States federal income and estate tax consequences to you in light of your particular circumstances and does not address the effects of any state,

## **Table of Contents**

local or non-United States tax laws. **If you are considering the purchase of notes, you should consult your own tax advisors concerning the particular United States federal income and estate tax consequences to you of the ownership of the notes, as well as the consequences to you arising under the laws of any other taxing jurisdiction.**

### **Consequences to United States Holders**

The following is a summary of certain United States federal income tax consequences that will apply to you if you are a United States Holder of notes.

Certain consequences to Non-United States Holders of notes, which are beneficial owners of notes (other than partnerships) who are not United States Holders, are described under Consequences to Non-United States Holders below.

United States Holder means a beneficial owner of a note that is for United States federal income tax purposes:

an individual citizen or resident of the United States;

a corporation (or any other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

an estate the income of which is subject to United States federal income taxation regardless of its source; or

a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

### ***Payments of Interest***

Interest on a note will generally be taxable to you as ordinary income at the time it is paid or accrued in accordance with your method of accounting for tax purposes.

### ***Market Discount***

If you purchase a note for an amount that is less than its stated redemption price at maturity, the amount of the difference will be treated as market discount for United States federal income tax purposes, unless that difference is less than a specified de minimus amount. Under the market discount rules, you will be required to treat any principal payment on, or any gain on the sale, exchange, retirement or other disposition of, a note as ordinary income to the extent of the market discount that you have not previously included in income and are treated as having accrued on the note at the time of its payment or disposition.

In addition, you may be required to defer, until the maturity of the note or its earlier disposition in a taxable transaction, the deduction of all or a portion of the interest expense on any indebtedness attributable to the note. You may elect, on a note-by-note basis, to deduct the deferred interest expense in a tax year prior to the year of disposition. You should consult your own tax advisors before making this election.

Any market discount will be considered to accrue ratably during the period from the date of acquisition to the maturity date of the note, unless you elect to accrue on a constant interest method. You may elect to include market discount in income currently as it accrues, on either a ratably or constant interest method, in which case the rule described above

regarding deferral of interest deductions will not apply.

***Amortizable Bond Premium***

If you purchase a note for an amount in excess of its stated redemption price at maturity, you will be considered to have purchased the note at a premium . You generally may elect to amortize the premium over

## **Table of Contents**

the remaining term of the note on a constant yield method as an offset to interest when includible in income under your regular accounting method. If you do not elect to amortize bond premium, that premium will decrease the gain or increase the loss you would otherwise recognize on disposition of the note.

### ***Sale, Exchange and Retirement of Notes***

Your adjusted tax basis in a note will, in general, be your cost for that note, increased by any market discount that you previously included in income, and reduced by any amortized premium. Upon the sale, exchange, retirement or other disposition of a note, you will recognize gain or loss equal to the difference between the amount you realize upon the sale, exchange, retirement or other disposition (less an amount equal to any accrued but unpaid interest, which will be taxable as interest income to the extent not previously included in income) and the adjusted tax basis of the note. Except as described above with respect to market discount, that gain or loss will be capital gain or loss. Capital gains of individuals derived in respect of capital assets held for more than one year are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations.

### **Consequences to Non-United States Holders**

The following is a summary of certain United States federal income and estate tax consequences that will apply to you if you are a Non-United States Holder of notes.

#### ***United States Federal Withholding Tax***

The 30% United States federal withholding tax will not apply to any payment of interest on the notes under the portfolio interest rule, provided that:

interest paid on the notes is not effectively connected with your conduct of a trade or business in the United States;

you do not actually (or constructively) own 10% or more of the total combined voting power of all classes of our voting stock within the meaning of the Code and applicable United States Treasury regulations;

you are not a controlled foreign corporation that is related to us through stock ownership;

you are not a bank whose receipt of interest on the notes is described in section 881(c)(3)(A) of the Code; and

either (a) you provide your name and address on an Internal Revenue Service ( IRS ) Form W-8BEN (or other applicable form), and certify, under penalties of perjury, that you are not a United States person as defined under the Code or (b) you hold your notes through certain foreign intermediaries and satisfy the certification requirements of applicable United States Treasury regulations.

Special certification rules apply to Non-United States Holders that are pass-through entities rather than corporations or individuals.

If you cannot satisfy the requirements described above, payments of interest made to you will be subject to the 30% United States federal withholding tax, unless you provide us with a properly executed:

IRS Form W-8BEN (or other applicable form) claiming an exemption from or reduction in withholding under the benefit of an applicable income tax treaty; or

IRS Form W-8ECI (or other applicable form) stating that interest paid on the notes is not subject to withholding tax because it is effectively connected with your conduct of a trade or business in the United States (as discussed below under United States Federal Income Tax ).

The 30% United States federal withholding tax generally will not apply to payment of principal or any gain that you realize on the sale, exchange, redemption, retirement or other disposition of a note.



## **Table of Contents**

### ***United States Federal Income Tax***

If you are engaged in a trade or business in the United States and interest or premium on the notes is effectively connected with the conduct of that trade or business (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment), then you will be subject to United States federal income tax on that interest or premium on a net income basis (although you will be exempt from the 30% United States federal withholding tax, provided the certification requirements discussed above in United States Federal Withholding Tax are satisfied) generally in the same manner as if you were a United States person as defined under the Code. In addition, if you are a foreign corporation, you may be subject to a branch profits tax equal to 30% (or lower applicable income tax treaty rate) of such interest or premium, subject to adjustments.

Any gain realized on the disposition of a note generally will not be subject to United States federal income tax unless:

the gain is effectively connected with your conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment); or

you are an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met.

### ***United States Federal Estate Tax***

Your estate will not be subject to United States federal estate tax on notes beneficially owned by you at the time of your death, provided that any payment to you on the notes would be eligible for exemption from the 30% United States federal withholding tax under the portfolio interest rule described above under United States Federal Withholding Tax without regard to the statement requirement described in the fifth bullet point of that section.

## **Information Reporting and Backup Withholding**

### ***United States Holders***

In general, information reporting requirements will apply to certain payments of principal, interest and premium paid on notes and to the proceeds of sale of a note paid to you (unless you are an exempt recipient such as a corporation). A backup withholding tax may apply to such payments if you fail to provide a taxpayer identification number or a certification of exempt status, or if you fail to report in full dividend and interest income.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your United States federal income tax liability provided the required information is furnished in a timely manner to the IRS.

### ***Non-United States Holders***

Generally, we must report to the IRS and to you the amount of interest paid to you and the amount of tax, if any, withheld with respect to those payments. Copies of the information returns reporting such interest payments and any withholding may also be made available to the tax authorities in the country in which you reside under the provisions of an applicable income tax treaty.

In general, you will not be subject to backup withholding with respect to payments on the notes that we make to you provided that we do not have actual knowledge or reason to know that you are a United States person as defined under the Code, and we have received from you the statement described above in the fifth bullet point under Consequences to Non-United States Holders United States Federal Withholding Tax.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale (including retirement or redemption) of our notes within the United States or conducted

## **Table of Contents**

through certain United States-related financial intermediaries, unless you certify under penalties of perjury that you are not a United States person as defined under the Code (and the payor does not have actual knowledge or reason to know that you are a United States person as defined under the Code) or you otherwise establish an exemption.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your United States federal income tax liability provided the required information is furnished in a timely manner to the IRS.

## **CERTAIN ERISA CONSIDERATIONS**

The following is a summary of certain considerations associated with the purchase and holding of the notes by employee benefit plans that are subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ( ERISA ), plans, individual retirement accounts and other arrangements that are subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the Code ) or provisions under any other federal, state, local, non-U.S. or other laws, rules or regulations that are similar to such provisions of ERISA or the Code (collectively, Similar Laws ), and entities whose underlying assets are considered to include plan assets (within the meaning of ERISA) of any such plan, account or arrangement (each, a Plan ).

### **General Fiduciary Matters**

ERISA and the Code impose certain duties on persons who are fiduciaries of a Plan subject to Title I of ERISA or Section 4975 of the Code (an ERISA Plan ) and prohibit certain transactions involving the assets of an ERISA Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of such an ERISA Plan or the management or disposition of the assets of such an ERISA Plan, or who renders investment advice for a fee or other compensation to such an ERISA Plan, is generally considered to be a fiduciary of the ERISA Plan.

In considering an investment in the notes of a portion of the assets of any Plan, a fiduciary should determine whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA, the Code or any Similar Law relating to a fiduciary's duties to the Plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code and any other applicable Similar Laws.

### **Prohibited Transaction Issues**

Section 406 of ERISA and Section 4975 of the Code prohibit ERISA Plans from engaging in specified transactions involving plan assets with persons or entities who are parties in interest, within the meaning of ERISA, or disqualified persons, within the meaning of Section 4975 of the Code, unless an exemption is available. A party in interest or disqualified person who engaged in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and/or the Code. In addition, the fiduciary of the ERISA Plan that engaged in such a non-exempt prohibited transaction may be subject to penalties and liabilities under ERISA and the Code. The acquisition and/or holding of notes by an ERISA Plan with respect to which we or any of the guarantors are considered a party in interest or disqualified person may constitute or result in a direct or indirect prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code, unless the investment is acquired and is held in accordance with an applicable statutory, class or individual prohibited transaction exemption. In this regard, the United States Department of Labor has issued prohibited transaction class exemptions ( PTCEs ) that may apply to the acquisition and holding of the notes. These class exemptions include, without limitation, PTCE 84-14, respecting transactions determined by independent qualified professional asset managers, PTCE 90-1, respecting insurance company pooled separate accounts, PTCE 91-38, respecting bank collective investment funds, PTCE 95-60, respecting life insurance company general accounts and PTCE 96-23, respecting transactions determined by in-house

asset managers. In addition, Section 408(17) of ERISA and Section 4975(d)(20) of the Code provide relief from the prohibited transaction provisions of ERISA and Section 4975 of the Code for certain transactions, provided that neither the issuer of the securities nor any of its affiliates (directly or indirectly) have or exercise

## **Table of Contents**

any discretionary authority or control or render any investment advice with respect to the assets of any ERISA Plan involved in the transaction and provided further that the ERISA Plan pays no more than adequate consideration in connection with the transaction. There can be no assurance that all of the conditions of any such exemptions will be satisfied.

Because of the foregoing, the notes should not be purchased or held by any person investing plan assets of any Plan, unless such purchase and holding will not constitute a non-exempt prohibited transaction under ERISA and the Code or similar violation of any applicable Similar Laws.

## **Representation**

Accordingly, by acceptance of a note, each purchaser and subsequent transferee will be deemed to have represented and warranted that either (i) no portion of the assets used by such purchaser or transferee to acquire or hold the notes constitutes assets of any Plan or (ii) the purchase and holding of the notes by such purchaser or transferee will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or any similar violation under any applicable Similar Laws.

The foregoing discussion is general in nature and is not intended to be all-inclusive. Due to the complexity of these rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries or other persons considering purchasing the notes (and holding or disposing the notes) on behalf of, or with the assets of, any Plan, consult with their counsel regarding the potential applicability of ERISA, Section 4975 of the Code and any Similar Laws to such transactions and whether an exemption would be applicable to the purchase, holding and disposition of the notes.

## **PLAN OF DISTRIBUTION**

This prospectus is to be used by Goldman, Sachs & Co. in connection with offers and sales of the notes in market-making transactions effected from time to time. Goldman, Sachs & Co. may act as principal or agent in such transactions, including as agent for the counterparty when acting as principal or as agent for both counterparties, and may receive compensation in the form of discounts and commissions, including from both counterparties, when it acts as agents for both. Such sales will be made at prevailing market prices at the time of sale, at prices related thereto or at negotiated prices. We will not receive any of the proceeds from such sales.

Private equity funds managed by Goldman, Sachs & Co. own approximately 11% of our common stock. See Security Ownership of Certain Beneficial Owners. Sanjeev K. Mehra, one of our directors, is a managing director of Goldman, Sachs & Co.'s Principal Investment Area and a member of its Investment Committee. Goldman, Sachs & Co. acted as an initial purchaser in connection with the original issuance and sale of the notes on August 11, 2005 and September 29, 2008 and received customary fees. In addition, Goldman Sachs Credit Partners L.P., an affiliate of Goldman, Sachs & Co., is a lender under our senior secured credit facilities. Goldman, Sachs & Co. or their affiliates have in the past engaged, and may in the future engage, in transactions with and perform services for, including commercial banking, financial advisory and investment banking services, us and our affiliates in the ordinary course of business; and for which they have received customary fees and expenses.

We have been advised by Goldman, Sachs & Co. that, subject to applicable laws and regulations, they currently intend to make a market in the notes. However, Goldman, Sachs & Co. is not obligated to do so, and any such market-making may be interrupted or discontinued at any time without notice.

Pursuant to registration rights agreements entered into between us and Goldman, Sachs & Co., we have agreed to indemnify Goldman, Sachs & Co. against certain liabilities, including liabilities under the Securities Act.



**Table of Contents**

**LEGAL MATTERS**

The validity and enforceability of the notes and the related guarantees have been passed upon for us by Simpson Thacher & Bartlett LLP, New York, New York. An investment vehicle comprised of several partners of Simpson Thacher & Bartlett LLP, members of their families, related persons and others own interests representing less than 1% of the capital commitments of funds affiliated with three of the Sponsors, Blackstone, KKR and Silver Lake.

**EXPERTS**

The financial statements as of December 31, 2009 and 2008 and for each of the three years in the period ended December 31, 2009 included in this Prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

**WHERE YOU CAN FIND MORE INFORMATION**

We and our guarantor subsidiaries have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the notes being offered hereby. This prospectus, which forms a part of the registration statement, does not contain all of the information set forth in the registration statement. For further information with respect to us, our guarantor subsidiaries and the notes, reference is made to the registration statement. Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete. We and our guarantor subsidiaries are subject to the informational requirements of the Exchange Act, and, in accordance therewith, file reports and other information with the SEC. The registration statement, such reports and other information can be inspected and copied at the Public Reference Room of the SEC located at Room 1580, 100 F Street, N.E., Washington D.C. 20549. Copies of such materials, including copies of all or any portion of the registration statement, can be obtained from the Public Reference Room of the SEC at prescribed rates. You can call the SEC at 1-800-SEC-0330 to obtain information on the operation of the Public Reference Room. Such materials may also be accessed electronically by means of the SEC's home page on the Internet (<http://www.sec.gov>).

So long as we and our guarantor subsidiaries are subject to the periodic reporting requirements of the Exchange Act, we and our guarantor subsidiaries are required to furnish the information required to be filed with the SEC to the trustee and the holders of the notes. We and our guarantor subsidiaries have agreed that, even if we and our guarantor subsidiaries are not required under the Exchange Act to furnish such information to the SEC, we will nonetheless continue to furnish information that would be required to be furnished by us and our guarantor subsidiaries by Section 13 of the Exchange Act, including a Management's Discussion and Analysis of Financial Condition and Results of Operations and, with respect to the annual information only, a report thereon by our certified independent accountants to the trustee and the holders of the notes as if we were subject to such periodic reporting requirements.

**Table of Contents**

**SunGard Data Systems Inc.**

**Index to Consolidated Financial Statements**

*Annual Financial Statements*

<u>Report of Independent Registered Public Accounting Firm</u>	F-2
<u>Consolidated Balance Sheets as of December 31, 2008 and 2009</u>	F-3
<u>Consolidated Statements of Operations for the Years Ended December 31, 2007, 2008 and 2009</u>	F-4
<u>Consolidated Statements of Cash Flows for the Years Ended December 31, 2007, 2008 and 2009</u>	F-5
<u>Consolidated Statement of Changes in Stockholder's Equity for the Years Ended December 31, 2007, 2008 and 2009</u>	F-6
<u>Notes to Consolidated Financial Statements</u>	F-7



**Table of Contents**

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholder of SunGard Data Systems Inc.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of changes in stockholder's equity and of cash flows present fairly, in all material respects, the financial position of SunGard Data Systems Inc. and its subsidiaries ( SDS ) at December 31, 2009 and 2008, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of SDS's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

Philadelphia, Pennsylvania  
March 24, 2010

F-2

---

**Table of Contents****SunGard Data Systems Inc.****Consolidated Balance Sheets**

	December 31, 2008	<b>December 31,</b> <b>2009</b>
	<i>(In millions except share and per-share amounts)</i>	
<b>ASSETS</b>		
Current:		
Cash and cash equivalents	\$ 975	\$ 664
Trade receivables, less allowance for doubtful accounts of \$15 and \$49	701	955
Earned but unbilled receivables	81	181
Prepaid expenses and other current assets	122	189
Clearing broker assets	309	332
Retained interest in accounts receivable sold	285	
Deferred income taxes	22	22
Total current assets	2,495	2,343
Property and equipment, less accumulated depreciation of \$689 and \$936	898	925
Software products, less accumulated amortization of \$793 and \$1,091	1,159	1,020
Customer base, less accumulated amortization of \$668 and \$954	2,616	2,294
Other intangible assets, less accumulated amortization of \$29 and \$24	207	195
Trade name, less accumulated amortization of \$4 and \$10	1,075	1,025
Goodwill	7,328	6,178
Total Assets	\$ 15,778	\$ 13,980
<b>LIABILITIES AND STOCKHOLDER S EQUITY</b>		
Current:		
Short-term and current portion of long-term debt	\$ 322	\$ 64
Accounts payable	87	72
Accrued compensation and benefits	314	319
Accrued interest expense	159	146
Other accrued expenses	401	413
Clearing broker liabilities	310	294
Deferred revenue	977	1,040
Total current liabilities	2,570	2,348
Long-term debt	8,553	8,251
Deferred income taxes	1,592	1,314
Total liabilities	12,715	11,913

Commitments and contingencies		
Stockholder's equity:		
Common stock, par value \$.01 per share; 100 shares authorized, issued and outstanding		
Capital in excess of par value	3,731	<b>3,755</b>
Accumulated deficit	(449)	<b>(1,567)</b>
Accumulated other comprehensive income	(219)	<b>(121)</b>
Total stockholder's equity	3,063	<b>2,067</b>
Total Liabilities and Stockholder's Equity	\$ 15,778	<b>\$ 13,980</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Table of Contents****SunGard Data Systems Inc.****Consolidated Statements of Operations**

	Year Ended December 31,		
	2007	2008	2009
	<i>(In millions)</i>		
Revenue:			
Services	\$ 4,364	\$ 5,083	\$ <b>4,961</b>
License and resale fees	396	369	<b>384</b>
Total products and services	4,760	5,452	<b>5,345</b>
Reimbursed expenses	141	144	<b>163</b>
	4,901	5,596	<b>5,508</b>
Costs and expenses:			
Cost of sales and direct operating	2,268	2,744	<b>2,709</b>
Sales, marketing and administration	1,042	1,151	<b>1,112</b>
Product development	271	308	<b>302</b>
Depreciation and amortization	251	278	<b>291</b>
Amortization of acquisition-related intangible assets	438	515	<b>540</b>
Goodwill impairment charge and merger costs		130	<b>1,130</b>
	4,270	5,126	<b>6,084</b>
Income (loss) from operations	631	470	<b>(576)</b>
Interest income	19	18	<b>7</b>
Interest expense and amortization of deferred financing fees	(645)	(599)	<b>(637)</b>
Other income (expense)	(68)	(93)	<b>15</b>
Loss before income taxes	(63)	(204)	<b>(1,191)</b>
Benefit from (provision for) income taxes	3	(38)	<b>73</b>
Net loss	\$ (60)	\$ (242)	\$ <b>(1,118)</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Table of Contents****SunGard Data Systems Inc.****Consolidated Statements of Cash Flows**

	Year Ended December 31,		
	2007	2008	2009
	<i>(In millions)</i>		
<i>Cash flow from operations:</i>			
Net loss	\$ (60)	\$ (242)	\$ (1,118)
Reconciliation of net loss to cash flow from operations:			
Depreciation and amortization	689	793	831
Goodwill impairment charge		128	1,126
Deferred income tax benefit	(120)	(108)	(170)
Stock compensation expense	32	35	33
Amortization of deferred financing costs and debt discount	46	37	42
Other noncash items	14	50	(14)
Accounts receivable and other current assets	(20)	(341)	(63)
Accounts payable and accrued expenses	71	(28)	(56)
Clearing broker assets and liabilities, net	9	36	(39)
Deferred revenue	40	25	67
Cash flow from operations	701	385	639
<i>Investment activities:</i>			
Cash paid for acquired businesses, net of cash acquired	(265)	(721)	(13)
Cash paid for property and equipment and software	(307)	(392)	(327)
Other investing activities	8	4	7
Cash used in investment activities	(564)	(1,109)	(333)
<i>Financing activities:</i>			
Cash received from other borrowings, net of fees	591	1,444	202
Cash used to repay debt	(623)	(119)	(827)
Other financing activities		(22)	(3)
Cash provided by (used in) financing activities	(32)	1,303	(628)
Effect of exchange rate changes on cash	6	(31)	11
Increase (decrease) in cash and cash equivalents	111	548	(311)
Beginning cash and cash equivalents	316	427	975
Ending cash and cash equivalents	\$ 427	\$ 975	\$ 664

*Supplemental information:*

Edgar Filing: SunGard VPM Inc. - Form S-1

Interest paid	\$ 643	\$ 550	\$ 596
Income taxes paid, net of refunds	\$ 62	\$ 134	\$ 135
Acquired businesses:			
Property and equipment	\$ 40	\$ 14	\$
Software products	68	133	10
Customer base	92	215	5
Goodwill	166	613	2
Other intangible assets	11	67	
Deferred income taxes	(49)	(123)	(1)
Purchase price obligations and debt assumed	(41)	(75)	(1)
Net current liabilities assumed	(22)	(123)	(2)
Cash paid for acquired businesses, net of cash acquired of \$22, \$78 and \$1, respectively	\$ 265	\$ 721	\$ 13

The accompanying notes are an integral part of these consolidated financial statements.

F-5

---

Table of Contents**SunGard Data Systems Inc.****Consolidated Statement of Changes in Stockholders Equity**

	Common Stock		Capital in Excess of Par Value	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss) Net Unrealized Gain (Loss) on Foreign Currency Translation	Derivative Instruments	Total
	Number of Shares issued	Par Value					
	<i>(In millions)</i>						
Balances at December 31, 2006		\$	\$ 3,664	\$ (147)	\$ 55	\$ 2	\$ 3,574
Comprehensive loss:							
Net loss				(60)			(60)
Foreign currency translation					35		35
Net unrealized loss on derivative instruments (net of tax benefit of \$15)						(23)	(23)
Total comprehensive loss							(48)
Stock compensation expense			32				32
Other			(2)				(2)
Balances at December 31, 2007			3,694	(207)	90	(21)	3,556
Comprehensive loss:							
Net loss				(242)			(242)
Foreign currency translation					(249)		(249)
Net unrealized loss on derivative instruments (net of tax benefit of \$25)						(39)	(39)
Total comprehensive loss							(530)
Stock compensation expense			35				35
Other			2				2
Balances at December 31, 2008			3,731	(449)	(159)	(60)	3,063
<b>Comprehensive loss:</b>							
<b>Net loss</b>				<b>(1,118)</b>			<b>(1,118)</b>
<b>Foreign currency translation</b>					<b>80</b>		<b>80</b>
<b>Net unrealized gain on derivative instruments (net of tax provision of \$11)</b>						<b>18</b>	<b>18</b>

<b>Total comprehensive loss</b>									<b>(1,020)</b>		
<b>Stock compensation expense</b>			<b>33</b>						<b>33</b>		
<b>Other</b>			<b>(9)</b>						<b>(9)</b>		
<b>Balances at December 31, 2009</b>	<b>\$</b>	<b>\$</b>	<b>3,755</b>	<b>\$</b>	<b>(1,567)</b>	<b>\$</b>	<b>(79)</b>	<b>\$</b>	<b>(42)</b>	<b>\$</b>	<b>2,067</b>

The accompanying notes are an integral part of these consolidated financial statements.



**Table of Contents**

**SunGard Data Systems Inc.**

**Notes to Consolidated Financial Statements**

**1. Basis of Presentation and Summary of Significant Accounting Policies:**

SunGard Data Systems Inc. ( SunGard or the Company ) was acquired on August 11, 2005 (the Transaction ) in a leveraged buy-out by a consortium of private equity investment funds associated with Bain Capital Partners, The Blackstone Group, Goldman Sachs & Co., Kohlberg Kravis Roberts & Co., Providence Equity Partners, Silver Lake and TPG (collectively, the Sponsors ).

SunGard is a wholly owned subsidiary of SunGard Holdco LLC, which is wholly owned by SunGard Holding Corp., which is wholly owned by SunGard Capital Corp. II ( SCCII ), which is a subsidiary of SunGard Capital Corp. ( SCC ). SCC and SCCII are collectively referred to as the Parent Companies. All four of these companies were formed in 2005 for the purpose of facilitating the Transaction and are collectively referred to as the Holding Companies.

The Holding Companies have no other operations beyond those of their ownership of SunGard. SunGard is one of the world's leading software and technology services companies and has four segments: Financial Systems ( FS ), Higher Education ( HE ), Public Sector ( PS ) and Availability Services ( AS ). The consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. All significant intercompany transactions and accounts have been eliminated.

**Estimates**

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make many estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses. The Company evaluates its estimates and judgments on an ongoing basis and revises them when necessary. Actual results may differ from the original or revised estimates.

**Revenue Recognition**

The following criteria must be met in determining whether revenue may be recorded: persuasive evidence of a contract exists; services have been provided; the price is fixed or determinable; and collection is reasonably assured.

The Company generates services revenue from availability services, processing services, software maintenance and rentals, professional services and broker/dealer fees. Services revenue is recorded as the services are provided based on the fair value of each element which is based on the sales price of each element when sold separately. Most AS services revenue consists of fixed monthly fees based upon the specific computer configuration or business process for which the service is being provided, and the related costs are incurred ratably over the contract period. When recovering from an interruption, customers generally are contractually obligated to pay additional fees, which typically cover the incremental costs of supporting customers during recoveries. FS services revenue includes monthly fees, which may include a fixed minimum fee and/or variable fees based on a measure of volume or activity, such as the number of accounts, trades or transactions, users or the number of hours of service.

For fixed-fee professional services contracts, services revenue is recorded based upon proportional performance, measured by the actual number of hours incurred divided by the total estimated number of hours for the project. When contracts include both professional services and software and there are significant program modifications or customization, installation, systems integration or related services, the professional services and license revenue is combined and recorded based upon the estimated percentage of completion, measured in the manner described above.

Changes in the estimated costs or hours to complete the contract and losses, if any, are reflected in the period during which the change or loss becomes known.

F-7

---

## **Table of Contents**

License fees result from contracts that permit the customer to use a SunGard software product at the customer's site. Generally, these contracts are multiple-element arrangements since they usually provide for professional services and ongoing software maintenance. In these instances, license fees are recognized upon the signing of the contract and delivery of the software if the license fee is fixed or determinable, collection is probable, and there is sufficient vendor specific evidence of the fair value of each undelivered element. Revenue is recorded when billed when customer payments are extended beyond normal billing terms, or at acceptance when there is significant acceptance, technology or service risk. Revenue also is recorded over the longest service period in those instances where the software is bundled together with post-delivery services and there is not sufficient evidence of the fair value of each undelivered service element.

Sufficient evidence of fair value is determined by reference to applicable accounting standards and is defined as vendor specific objective evidence ( VSOE ). If there is no VSOE of the fair value of the delivered element (which is usually the software) but there is VSOE of the fair value of each of the undelivered elements (which are usually maintenance and professional services), then the residual method is used to determine the revenue for the delivered element. The revenue for each of the undelivered elements is set at the fair value of those elements using VSOE of the price paid when each of the undelivered elements is sold separately. The revenue remaining after allocation to the undelivered elements (i.e., the residual) is allocated to the delivered element.

VSOE supporting the fair value of maintenance is based on the optional renewal rates for each product and is typically 18% to 20% of the software license fee per year. VSOE supporting the fair value of professional services is based on the standard daily rates charged when those services are sold separately.

In some multiple-element arrangements that include software licenses and services, the services rates are discounted. In these cases, a portion of the software license fee is deferred and recognized as the services are performed based on VSOE of the services.

Unbilled receivables are created when services are performed or software is delivered and revenue is recognized in advance of billings. Deferred revenue is created when billing occurs in advance of performing services or when all revenue recognition criteria have not been met.

## **Cash and Cash Equivalents**

Cash and cash equivalents consist of investments that are readily convertible into cash and have original maturities of three months or less.

## **Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of accounts receivable. The Company sells a significant portion of its products and services to the financial services industry and could be affected by the overall condition of that industry. The Company believes that any credit risk associated with accounts receivable is substantially mitigated by the relatively large number of customer accounts and reasonably short collection terms. Accounts receivable are stated at estimated net realizable value, which approximates fair value. By policy, the Company places its available cash and short-term investments with institutions of high credit-quality and limits the amount of credit exposure to any one issuer.

## **Foreign Currency Translation**

The functional currency of each of the Company's foreign operations is generally the local currency of the country in which the operation is located. All assets and liabilities are translated into U.S. dollars using exchange rates in effect at the balance sheet date. Revenue and expenses are translated using average exchange rates during the period.

Increases and decreases in net assets resulting from foreign currency translation are reflected in stockholder's equity as a component of accumulated other comprehensive income (loss).

## **Table of Contents**

### **Property and Equipment**

Property and equipment are recorded at cost and depreciated on the straight-line method over the estimated useful lives of the assets (three to eight years for equipment and 10 to 40 years for buildings and improvements). Leasehold improvements are amortized ratably over their remaining lease term or useful life, if shorter. Depreciation and amortization of property and equipment was \$219 million in 2007, \$240 million in 2008 and \$245 million in 2009.

### **Software Products**

Software development costs are expensed as incurred and consist primarily of design and development costs of new products and significant enhancements to existing products incurred before the establishment of technological feasibility. Recoverable costs incurred subsequent to technological feasibility of new products and enhancements to existing products as well as costs associated with purchased software and software obtained through business acquisitions are capitalized and amortized over the estimated useful lives of the related products, generally three to 11 years (average life is eight years), using the straight-line method or the ratio of current revenue to current and anticipated revenue from such software, whichever provides the greater amortization. Amortization of all software products, including software acquired in business acquisitions and software purchased for internal use, aggregated \$246 million in 2007, \$267 million in 2008 and \$295 million in 2009. Capitalized development costs were \$26 million in 2007, \$17 million in 2008 and \$16 million in 2009.

### **Purchase Accounting and Intangible Assets**

Purchase accounting requires that all assets and liabilities be recorded at fair value on the acquisition date, including identifiable intangible assets separate from goodwill. Identifiable intangible assets include customer base (which includes customer contracts and relationships), software and trade name. Goodwill represents the excess of cost over the fair value of net assets acquired.

The estimated fair values and useful lives of identifiable intangible assets are based on many factors, including estimates and assumptions of future operating performance and cash flows of the acquired business, the nature of the business acquired, the specific characteristics of the identified intangible assets, and our historical experience and that of the acquired business. The estimates and assumptions used to determine the fair values and useful lives of identified intangible assets could change due to numerous factors, including product demand, market conditions, technological developments, economic conditions and competition. In connection with our determination of fair values for the Transaction and for other significant acquisitions, we engage independent appraisal firms to assist us with the valuation of intangible and certain tangible assets acquired and certain assumed obligations.

### **Customer Base Intangible Assets**

Customer base intangible assets represent customer contracts and relationships obtained as a result of the Transaction and as part of acquired businesses and are amortized using the straight-line method over their estimated useful lives, ranging from three to 19 years (average life is 13 years).

Effective January 1, 2009, the Company shortened the remaining useful lives of certain intangible assets to reflect revisions to estimated customer attrition rates. The impact of this revision was an increase in amortization of acquisition-related intangible assets of approximately \$36 million in 2009.

### **Other Intangible Assets**

Other intangible assets consist primarily of deferred financing costs incurred in connection with debt issued in the Transaction and amendments to our debt and other financing transactions (see Note 5), noncompetition agreements obtained in business acquisitions, long-term accounts receivable, prepayments and long-term investments. Deferred financing costs are amortized over the term of the related debt.

**Table of Contents**

Noncompetition agreements are amortized using the straight-line method over their stated terms, ranging from two to five years.

**Impairment Reviews for Long-Lived Assets**

The Company periodically reviews carrying values and useful lives of long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Factors that could indicate an impairment include significant underperformance of the asset as compared to historical or projected future operating results, or significant negative industry or economic trends. When the Company determines that the carrying value of an asset may not be recoverable, the related estimated future undiscounted cash flows expected to result from the use and eventual disposition of the asset are compared to the carrying value of the asset. If the sum of the estimated future undiscounted cash flows is less than the carrying amount, an impairment charge is recorded based on the difference between the carrying value of the asset and its fair value, which the Company estimates based on discounted expected future cash flows. In determining whether an asset is impaired, the Company makes assumptions regarding recoverability of costs, estimated future cash flows from the asset, intended use of the asset and other relevant factors. If these estimates or their related assumptions change, impairment charges for these assets may be required.

**Future Amortization of Acquisition-Related Intangible Assets**

Based on amounts recorded at December 31, 2009, total expected amortization of all acquisition-related intangible assets in each of the years ended December 31 follows (in millions):

2010	\$ 494
2011	466
2012	416
2013	362
2014	297

**Trade Name and Goodwill**

The trade name intangible asset primarily represents the fair value of the SunGard trade name at August 11, 2005 and is an indefinite-lived asset and therefore is not subject to amortization but is reviewed at least annually for impairment. Other trade names are amortized over their estimated useful lives. Goodwill represents the excess of cost over the fair value of net assets acquired. Generally accepted accounting principles require the Company to perform an impairment test, a two-step test, annually and more frequently when negative conditions or a triggering event arise. The Company completes its annual goodwill impairment test as of July 1. In step one, the estimated fair value of each reporting unit is compared to its carrying value. If there is a deficiency (the estimated fair value is less than the carrying value), a step two test is required. In step two, the amount of any goodwill impairment is calculated by comparing the implied fair value of the reporting unit's goodwill to the carrying value of goodwill, with the resulting impairment reflected in operations. The implied fair value is determined in the same manner as the amount of goodwill recognized in a business combination.

Estimating the fair value of a reporting unit requires various assumptions including the use of projections of future cash flows and discount rates that reflect the risks associated with achieving those cash flows. The assumptions about future cash flows and growth rates are based on management's assessment of a number of factors including the reporting unit's recent performance against budget as well as performance in the market that the reporting unit serves.

Discount rate assumptions are based on an assessment of the risk inherent in those future cash flows. Changes to the underlying businesses could affect the future cash flows, which in turn could affect the fair value of the reporting unit.

Based on an evaluation of 2009 year-end results and a reduction in the revenue growth outlook for the AS business, the Company concluded that AS had experienced a triggering event in its North American reporting unit (AS NA), one of two reporting units identified in the July 1 annual impairment test where the

F-10

---



**Table of Contents**

excess of the estimated fair value over the carrying value was less than 10%. None of the other reporting units experienced a triggering event. The Company first evaluated AS NA's long-lived assets, primarily the customer base and property and equipment, for impairment. In performing the impairment tests for the long-lived assets, the Company estimated the undiscounted cash flows over the remaining useful lives of the customer base and compared the results to the carrying value of the asset groups. There was no impairment of the long-lived assets.

Next, in performing the goodwill impairment test, the Company estimated the fair value of AS NA by a combination of (i) estimation of the discounted cash flows based on projected earnings using a discount factor that reflects the risk inherent in the projected cash flows (the income approach) and (ii) analysis of comparable companies' market multiples (the market approach). The projected cash flows of the business were lower based on management's evaluation of year-end results and lower growth rates than those used in the July 1 impairment test. The projections reflect estimated growth rates in the recovery and managed services businesses within AS NA, the impact of continued investment in products, cost savings initiatives and capital spending assumptions associated with the growth in these businesses. The Company used the same risk-adjusted discount rate in the December 31 test as was used in the July 1 test. As a result, the Company determined that the carrying value of AS NA was in excess of its fair value. In completing the step two test to determine the implied fair value of AS NA's goodwill and therefore the amount of impairment, management first determined the fair value of the tangible and intangible assets and liabilities with the assistance of an external valuation firm. Based on the testing performed, the Company determined that the carrying value of AS NA's goodwill exceeded its implied fair value by \$1.13 billion and recorded a goodwill impairment charge for this amount. The total remaining goodwill balance at December 31, 2009 is \$6.18 billion.

After consideration of the AS NA impairment, the Company has two reporting units, including AS NA, whose goodwill balances total \$1.13 billion at December 31, 2009, where the excess of the estimated fair value over the carrying value of the reporting unit was less than 10%. A one percentage point decrease in the perpetual growth rate or a one percentage point increase in the discount rate would cause these two reporting units to fail the step one test and require a step two analysis, and some or all of this goodwill could be impaired.

As a result of the change in the economic environment in the second half of 2008 and completion of the annual budgeting process for 2009, the Company completed an assessment of the recoverability of its goodwill in December 2008. In completing this review, the Company considered a number of factors, including a comparison of the budgeted revenue and profitability for 2009 to that included in the annual impairment test conducted as of July 1, 2008, and the amount by which the fair value of each reporting unit exceeded its carrying value in the 2008 impairment analysis, as well as qualitative factors such as the overall economy's effect on each reporting unit. Based on that review, the Company concluded that the entire enterprise did not experience a triggering event that would require an impairment analysis of all of the Company's reporting units, but that one of the PS reporting units required a step two test. Based on this step two test, the Company concluded that the decline in expected future cash flows of the PS reporting unit was sufficient to result in an impairment of goodwill of \$128 million.

**Table of Contents**

The following table summarizes changes in goodwill by segment (in millions):

	FS	HE	Cost		Subtotal	Accumulated Impairment			Total
			PS	AS		PS	AS	Subtotal	
Balance at									
December 31, 2007	\$ 2,942	\$ 971	\$ 911	\$ 2,262	\$ 7,086	\$	\$	\$	\$ 7,086
2008 acquisitions	561			67	628				628
Adjustments related to the Transaction and prior year acquisitions	(45)	(6)	(3)	(15)	(69)				(69)
Impairment charges						(128)		(128)	(128)
Effect of foreign currency translation	(27)		(95)	(67)	(189)				(189)
Balance at									
December 31, 2008	3,431	965	813	2,247	7,456	(128)		(128)	7,328
<b>2009 acquisitions</b>	<b>2</b>				<b>2</b>				<b>2</b>
<b>Adjustments related to the Transaction and prior year acquisitions</b>	<b>(9)</b>	<b>(15)</b>	<b>(14)</b>	<b>(53)</b>	<b>(91)</b>				<b>(91)</b>
<b>Impairment charges</b>							<b>(1,126)</b>	<b>(1,126)</b>	<b>(1,126)</b>
<b>Effect of foreign currency translation</b>	<b>33</b>		<b>15</b>	<b>17</b>	<b>65</b>				<b>65</b>
Balance at									
<b>December 31, 2009</b>	<b>\$ 3,457</b>	<b>\$ 950</b>	<b>\$ 814</b>	<b>\$ 2,211</b>	<b>\$ 7,432</b>	<b>\$ (128)</b>	<b>\$ (1,126)</b>	<b>\$ (1,254)</b>	<b>\$ 6,178</b>

The 2009 adjustments related to the Transaction and prior year acquisitions includes a \$114 million adjustment to correct the income tax rate used to calculate the deferred tax liabilities associated with the intangible assets at the Transaction date. The adjustment was not material to prior periods.

**Stock Compensation**

Stock-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as expense over the appropriate service period. Fair value for stock options is computed using the Black-Scholes pricing model. Determining the fair value of stock-based awards requires considerable judgment, including estimating the expected term of stock options, expected volatility of the Company's stock price, and the number of awards expected to be forfeited. In addition, for stock-based awards where vesting is dependent upon achieving certain operating performance goals, the Company estimates the likelihood of achieving the performance goals. Differences between actual results and these estimates could have a material effect on the consolidated financial results. A deferred income tax asset is recorded over the vesting period as stock compensation expense is recorded. The Company's ability to use the deferred tax asset is ultimately based on the actual value of the stock-based award upon exercise. If the actual value is lower than the fair value determined on the date of grant, there could be an income tax expense for the portion of the deferred tax asset that cannot be used, which could have a material effect on the consolidated financial results.

## **Income Taxes**

The Company recognizes deferred income tax assets and liabilities based upon the expected future tax consequences of events that have been included in the financial statements or tax returns. Deferred income tax assets and liabilities are calculated based on the difference between the financial and tax bases of assets and liabilities using the currently enacted income tax rates in effect during the years in which the differences are expected to reverse. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized. Deferred tax assets for which no valuation allowance is recorded may not be realized upon changes in facts and circumstances. Tax benefits related to uncertain tax positions taken or expected to be taken on a tax return are recorded when such benefits meet a more likely than not threshold. Otherwise, these tax benefits are recorded when a tax position has been effectively settled, which means that the appropriate taxing authority has completed their examination even though the statute of limitations remains open, or the statute of limitation expires. Considerable judgment is required in assessing and estimating these amounts and differences between the actual outcome of these future tax consequences and estimates made could have a material effect on the consolidated financial results.

F-12

---

**Table of Contents****Effect of Recent Accounting Pronouncements**

The Financial Accounting Standards Board issued new revenue recognition guidance for arrangements with multiple deliverables. The new guidance, whose scope excludes software revenue recognition, modifies the fair value requirements for revenue recognition by providing best estimate of selling price in addition to vendor specific objective evidence, or VSOE, and vendor objective evidence, now referred to as third-party evidence, or TPE, for determining the selling price of a deliverable. Since the Company will be able to use an estimate of the selling price for the deliverables in an arrangement, all deliverables will be separate units of accounting, provided (a) a delivered item has value to the customer on a standalone basis, and (b) if the arrangement includes a general right of return relative to the delivered item, delivery or performance of the undelivered item is considered probable and substantially in the control of the Company. As a result of the requirement to use the best estimate of the selling price when VSOE or TPE of the selling price cannot be determined, the residual method is no longer permitted. The new guidance is effective for fiscal years beginning on or after June 15, 2010. The Company is currently evaluating the impact of this revenue guidance, but does not expect the guidance to have a material effect on the consolidated financial statements.

**2. Acquisitions:**

The Company seeks to acquire businesses that broaden its existing product lines and service offerings by adding complementary products and service offerings and by expanding its geographic reach. During 2009, the Company completed three acquisitions in its FS segment. Cash paid, subject to certain adjustments, was \$12 million.

During 2008, the Company completed four acquisitions in its FS segment, including GL TRADE S.A., and two in its AS segment, and, in 2007, the Company completed nine acquisitions in its FS segment and one in each of its AS and PS segments.

At December 31, 2008, the purchase price allocations for certain businesses acquired in 2008 were preliminary and subject to finalization of independent appraisals of acquired software and customer base assets and deferred income taxes.

At December 31, 2009, contingent purchase price obligations that depend upon the operating performance of four acquired businesses total \$57 million, all of which could be due in the next 12 months. The amount paid, if any, will be recorded as an addition to goodwill at the time the actual performance is known and the amounts become due. There were no amounts earned or paid in 2007, and approximately \$1 million was paid during each of 2008 and 2009. There were no amounts payable as of December 31, 2009.

**Pro forma financial information (unaudited)**

The following unaudited pro forma results of operations (in millions) for 2008 assumes that businesses acquired in 2008 and 2009 occurred as of the beginning of 2008 and were reflected in the Company's results from that date. The pro forma effect of the 2009 acquisitions on 2009 was not material. For 2008, in addition to the businesses acquired in 2009, the pro forma results include the 2008 acquisitions, the more significant of which are GL TRADE S.A., Strohl Systems Group, Inc. and Advanced Portfolio Technologies, Inc. For 2007, the pro forma results assumes that businesses acquired in 2007 and 2008 occurred as of the beginning of 2007 and were reflected in the Company's results from that date. Also for 2007, the pro forma results exclude the 2009 acquisitions. This unaudited pro forma information should not be relied upon as necessarily being indicative of the historical results that would have been obtained if the acquisitions had actually occurred at the beginning of each period presented, nor of the results that may be obtained in the future. The pro forma adjustments include the effect of purchase accounting adjustments, interest expense and related tax effects.

	2007	2008
Revenue	\$ 5,299	\$ 5,823
Net loss	(95)	(256)

F-13

---

**Table of Contents****3. Clearing Broker Assets and Liabilities:**

Clearing broker assets and liabilities are comprised of the following (in millions):

	December 31, 2008	December 31, 2009
Segregated customer cash and treasury bills	\$ 148	\$ 153
Securities owned	44	40
Securities borrowed	87	116
Receivables from customers and other	30	23
Clearing broker assets	\$ 309	\$ 332
Payables to customers	\$ 191	\$ 163
Securities loaned	47	95
Customer securities sold short, not yet purchased	3	9
Payable to brokers and dealers	69	27
Clearing broker liabilities	\$ 310	\$ 294

Segregated customer cash and treasury bills are held by the Company on behalf of customers. Clearing broker securities consist of trading and investment securities at fair market values, which are based on quoted market rates. Securities borrowed and loaned are collateralized financing transactions which are cash deposits made to or received from other broker/dealers. Receivables from and payables to customers represent amounts due or payable on cash and margin transactions.

**4. Property and Equipment:**

Property and equipment consisted of the following (in millions):

	December 31, 2008	December 31, 2009
Computer and telecommunications equipment	\$ 681	\$ 817
Leasehold improvements	565	709
Office furniture and equipment	99	120
Buildings and improvements	130	145
Land	22	22
Construction in progress	90	48
	1,587	1,861
Accumulated depreciation and amortization	(689)	(936)



**Table of Contents****5. Debt and Derivative Instruments:**

Debt consisted of the following (in millions):

	December 31, 2008	December 31, 2009
Senior Secured Credit Facility:		
Secured revolving credit facility of 3.08% and % (A)	\$ 500	\$
Term loans, tranche A, effective interest rate of 5.37% and 3.24% (A)	4,249	<b>1,506</b>
Term loans, tranche B, effective interest rate of % and 6.79% (A)		<b>2,717</b>
Incremental term loan, effective interest rate of 6.75% and 6.75% (A)	499	<b>494</b>
<b>Total Senior Secured Credit Facility</b>	<b>5,248</b>	<b>4,717</b>
Senior Notes due 2009 at 3.75% (B)	250	
Senior Notes due 2014 at 4.875%, net of discount of \$20 and \$16 (B)	230	<b>234</b>
Senior Notes due 2013 at 9.125% (C)	1,600	<b>1,600</b>
Senior Subordinated Notes due 2015 at 10.25% (C)	1,000	<b>1,000</b>
Senior Notes due 2015 at 10.625%, net of discount of \$6 and \$5 (C)	494	<b>495</b>
Secured accounts receivable facility, effective interest rate of % and 7.5% (D)		<b>250</b>
Other, primarily acquisition purchase price and capital lease obligations	53	<b>19</b>
	<b>8,875</b>	<b>8,315</b>
Short-term borrowings and current portion of long-term debt	(322)	<b>(64)</b>
<b>Long-term debt</b>	<b>\$ 8,553</b>	<b>\$ 8,251</b>

As a result of the Transaction, the Company is highly leveraged. Below is a summary of our debt instruments.

*(A) Senior Secured Credit Facilities*

SunGard's senior secured credit facilities consist of (1) \$1.43 billion of U.S. dollar-denominated tranche A term loans, \$66 million of pound sterling-denominated tranche A term loans and \$13 million of euro-denominated tranche A term loans, each maturing on February 28, 2014, collectively referred to as the unextended term loans, (2) \$2.48 billion of U.S. dollar-denominated tranche B term loans, \$64 million of pound sterling-denominated tranche B term loans and \$172 million of euro-denominated tranche B term loans, each maturing on February 28, 2016, collectively referred to as the extended term loans, (3) \$494 million of U.S. dollar-denominated incremental term loans maturing on February 28, 2014 and (4) an \$829 million revolving credit facility with \$580 million of commitments terminating on May 11, 2013, referred to as the extended revolving credit loans, and \$249 million of commitments terminating on August 11, 2011, referred to as the unextended revolving credit loans. As of December 31, 2009, \$804 million was available for borrowing under the revolving credit facility after giving effect to certain outstanding letters of credit.

Borrowings under the senior secured credit facilities bear interest at a rate equal to an applicable margin plus, at our option, either (a) a base rate that is the higher of (1) the prime rate of JPMorgan Chase Bank, N.A. and (2) the federal funds rate plus 1/2 of 1% or (b) LIBOR based on the costs of funds for deposits in the currency of such borrowing for



either 30, 60, 90 or 180 days. The applicable margin for borrowings under the revolving credit facility and the term loan facility may change subject to attaining certain leverage ratios. In addition to paying interest on outstanding principal under the senior secured credit facilities, we pay a commitment fee to the lenders under the revolving credit facility in respect of the unutilized commitments. The commitment fee rates with respect to unused commitments terminating in 2011 and unused commitments terminating in 2013 are 0.50% per annum and 0.75% per annum, respectively, and may change subject to attaining certain leverage ratios. As of December 31, 2009, the interest rate for the extended term loans, after

**Table of Contents**

adjusting for interest rate swaps, was 6.79% and for the unextended term loans, after adjusting for interest rate swaps, was 3.24%.

All obligations under the senior secured credit facilities are fully and unconditionally guaranteed by SunGard Holdco LLC and by substantially all domestic, 100% owned subsidiaries, referred to, collectively, as Guarantors.

SunGard is required to repay installments on the loans under the term loan facilities in quarterly principal amounts of 0.25% of their funded total principal amount through the maturity date for each class of term loans, at which time the remaining aggregate principal balance is due. Maturity dates for all our term loan facilities will automatically become May 15, 2013 if the Senior Notes due 2013 are not extended, renewed or refinanced on or prior to May 15, 2013 and, if not already reset, the maturity dates for our tranche B term loan facilities will automatically become May 15, 2015 if the Senior Subordinated Notes are not extended, renewed or refinanced on or prior to May 15, 2015.

The senior secured credit facilities also require SunGard to prepay outstanding term loans, subject to certain exceptions, with excess cash flow and proceeds from certain asset sales, casualty and condemnation events, other borrowings and certain financings under SunGard's accounts receivable securitization program. Any required payments would be applied pro rata to the term loan lenders and to installments of the term loan facilities in direct order of maturity.

The senior secured credit facilities contain a number of covenants that, among other things, restrict, subject to certain exceptions, SunGard's (and most or all of its subsidiaries') ability to incur additional debt or issue preferred stock, pay dividends and distributions on or repurchase capital stock, create liens on assets, enter into sale and leaseback transactions, repay subordinated indebtedness, make investments, loans or advances, make capital expenditures, engage in certain transactions with affiliates, amend certain material agreements, change its lines of business, sell assets and engage in mergers or consolidations. In addition, under the senior secured credit facilities, SunGard is required to satisfy certain total leverage and interest coverage ratios. SunGard was in compliance with all covenants at December 31, 2009.

In February 2007 the Credit Agreement was amended to reduce the effective interest rates on the term loan facility, increase the size of that facility from \$4.0 billion to \$4.4 billion, extend the maturity by one year and change certain other terms. SunGard used the additional borrowings to redeem \$400 million of senior floating rate notes that were due 2013. The related redemption premium of \$19 million and write-off of approximately \$9 million of deferred financing costs were included in other expense.

In September 2008 the Credit Agreement was amended to increase the amount of term loan borrowings by SunGard under the Credit Agreement by \$500 million ( Incremental Term Loan ), and SunGard issued at a \$6 million discount \$500 million aggregate principal amount of 10.625% Senior Notes due 2015, together with the Incremental Term Loan, to fund the acquisition of GL TRADE and repay \$250 million of senior notes due in January 2009. The second amendment to the Credit Agreement in September 2008 changed certain terms applicable to the Incremental Term Loan. Borrowings can be at either a Base Rate or a Eurocurrency Rate. Base Rate borrowings reset daily and bear interest at a minimum of 4.0% plus a spread of 2.75%. Eurocurrency borrowings can be made for periods of 30, 60, 90 or 180 days and bear interest at a minimum of 3.0% plus a spread of 3.75%. The interest rate at December 31, 2009 was 6.75%.

In June 2009 SunGard amended and restated its existing Credit Agreement ( Amended Credit Agreement ) to (a) extend the maturity date of \$2.5 billion of its U.S. dollar-denominated term loans, £40 million of pound sterling-denominated term loans, and 120 million of Euro-denominated term loans from February 2014 to February 2016, (b) reduce existing revolving credit commitments to \$829 million from \$1 billion and extend the termination date of \$580 million

of those commitments to May 2013, and (c) amend certain other provisions including those related to negative and financial covenants.

SunGard uses interest rate swap agreements to manage the amount of its floating rate debt in order to reduce its exposure to variable rate interest payments associated with the senior secured credit facilities. SunGard pays a stream of fixed interest payments for the term of the swap, and in turn, receives variable interest payments based on the one-month LIBOR rate or three-month LIBOR rate, which was 0.23% and

**Table of Contents**

0.25%, respectively, at December 31, 2009. The net receipt or payment from the interest rate swap agreements is included in interest expense. A summary of SunGard's interest rate swaps at December 31, 2009 follows:

Inception	Maturity	Notional Amount (In millions)	Interest Rate Paid	Interest Rate Received (LIBOR)
February 2006	February 2011	\$ 800	5.00%	3-Month
January 2008	February 2011	750	3.17%	3-Month
February 2008	February 2010	750	2.71%	3-Month
January / February 2009	February 2012	1,200	1.78%	1-Month
Total/Weighted Average interest rate		\$ 3,500	3.01%	

In early 2010, SunGard entered into three-year interest rate swaps that expire in May 2013 for an aggregate notional amount of \$500 million under which we pay fixed interest payments (at 1.99%) for the term of the swaps, and in turn receive variable interest payments based on three-month LIBOR.

The interest rate swaps are designated and qualify as cash flow hedges and are included at estimated fair value as an asset or a liability in the consolidated balance sheet based on a discounted cash flow model using applicable market swap rates and certain assumptions. For 2007, 2008 and 2009, SunGard included an unrealized after-tax loss of \$23 million, an unrealized after-tax loss of \$39 million, and an unrealized after-tax gain of \$18 million, respectively, in Other Comprehensive Income (Loss) related to the change in market value on the swaps. The market value of the swaps recorded in Other Comprehensive Income (Loss) may be recognized in the statement of operations if certain terms of the senior secured credit facilities change or if the loan is extinguished. The \$98 million and \$70 million fair value of the swap agreements at December 31, 2008 and 2009, respectively, is included in accrued expenses. The effects of the interest rate swaps are reflected in the effective interest rate for the senior secured credit facilities in the components of debt table above.

The table below summarizes the impact of the effective portion of interest rate swaps on the balance sheets and statements of operations for 2007, 2008 and 2009 (in millions):

	Classification	2007	2008	2009
Gain (loss) recognized in Accumulated Other Comprehensive Loss (OCI)	OCI	\$ (23)	\$ (39)	\$ 18
Gain (loss) reclassified from accumulated OCI into income	Interest expense and amortization of deferred financing fees	6	(32)	(80)

SunGard had no ineffectiveness related to its swap agreements.

SunGard expects to reclassify in the next twelve months approximately \$82 million of expense from accumulated other comprehensive income into earnings related to SunGard's interest rate swaps based on the borrowing rates at December 31, 2009.

*(B) Senior Notes due 2009 and 2014*

On January 15, 2004, SunGard issued \$500 million of senior unsecured notes, of which \$250 million 3.75% notes were due and paid in full in January 2009 and \$250 million 4.875% notes are due 2014, which are subject to certain standard covenants. As a result of the Transaction, these senior notes became collateralized on an equal and ratable basis with loans under the senior secured credit facilities and are guaranteed by all subsidiaries that guarantee the senior notes due 2013 and 2015 and senior subordinated notes due 2015. The senior notes due 2014 are recorded at \$230 million and \$234 million as of December 31, 2008 and 2009, respectively, reflecting the remaining unamortized discount caused by the Transaction. The \$16 million discount at December 31, 2009 will be amortized and included in interest expense over the remaining periods to maturity.

**Table of Contents***(C) Senior Notes due 2013 and 2015 and Senior Subordinated Notes due 2015*

The senior notes due 2013 and 2015 are senior unsecured obligations that rank senior in right of payment to future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior notes, including the senior subordinated notes. The senior notes (i) rank equally in right of payment to all existing and future senior debt and other obligations that are not, by their terms, expressly subordinated in right of payment to the senior notes, (ii) are effectively subordinated in right of payment to all existing and future secured debt to the extent of the value of the assets securing such debt, and (iii) are structurally subordinated to all obligations of each subsidiary that is not a guarantor of the senior notes. All obligations under the senior notes are fully and unconditionally guaranteed, subject to certain exceptions, by substantially all domestic, 100% owned subsidiaries of SunGard.

The senior subordinated notes due 2015 are unsecured senior subordinated obligations that are subordinated in right of payment to the existing and future senior debt, including the senior secured credit facilities, the senior notes due 2009 and 2014 and the senior notes due 2013 and 2015. The senior subordinated notes (i) rank equally in right of payment to all future senior subordinated debt, (ii) are effectively subordinated in right of payment to all existing and future secured debt to the extent of the value of the assets securing such debt, (iii) are structurally subordinated to all obligations of each subsidiary that is not a guarantor of the senior subordinated notes, and (iv) rank senior in right of payment to all future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior subordinated notes.

The senior notes due 2013 and 2015 and senior subordinated notes due 2015 are redeemable in whole or in part, at SunGard's option, at any time at varying redemption prices that generally include premiums, which are defined in the applicable indentures. In addition, upon a change of control, SunGard is required to make an offer to redeem all of the senior notes and senior subordinated notes at a redemption price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest.

The indentures governing the senior notes due 2013 and 2015 and senior subordinated notes due 2015 contain a number of covenants that restrict, subject to certain exceptions, SunGard's ability and the ability of its restricted subsidiaries to incur additional debt or issue certain preferred shares, pay dividends on or make other distributions in respect of its capital stock or make other restricted payments, make certain investments, enter into certain types of transactions with affiliates, create liens securing certain debt without securing the senior notes due 2013 and 2015 or senior subordinated notes due 2015, as applicable, sell certain assets, consolidate, merge, sell or otherwise dispose of all or substantially all of its assets and designate its subsidiaries as unrestricted subsidiaries.

*(D) Accounts Receivable Securitization Program*

In December 2008, SunGard terminated its off-balance sheet accounts receivable securitization program. Under this accounts receivable facility, eligible receivables were sold to third-party conduits through a wholly owned, bankruptcy remote, special purpose entity that was not consolidated for financial reporting purposes. SunGard serviced the receivables and charged a monthly servicing fee at market rates. The third-party conduits were sponsored by certain lenders under SunGard's senior secured credit facilities. Sales of receivables under the facility qualified as sales under applicable accounting rules. Accordingly, at December 31, 2008, these receivables, totaling \$363 million, net of applicable allowances, and the corresponding borrowings totaling \$77 million were excluded from SunGard's consolidated balance sheet. SunGard's retained interest in receivables sold as of December 31, 2008 was \$285 million. The loss on sale of receivables and discount on retained interests were included in other expense and totaled \$29 million for 2007 and \$25 million for 2008. The gain or loss on sale of receivables was determined at the date of transfer based upon the fair value of the assets sold and the interests retained. SunGard estimated fair value based on the present value of expected cash flows.

In March 2009, SunGard entered into a syndicated three-year receivables facility. The facility limit is \$317 million, which consists of a term loan commitment of \$181 million and a revolving commitment of \$136 million. Advances may be borrowed and repaid under the revolving commitment with no impact on the facility limit. The term loan commitment may be repaid at any time at SunGard's option, but will result in a

F-18

---

**Table of Contents**

permanent reduction in the facility limit. At December 31, 2009, \$181 million was drawn against the term loan commitment and \$69 million was drawn against the revolving commitment which represented the full amount available for borrowing based on the terms and conditions of the facility. At December 31, 2009, \$689 million of accounts receivable secure the borrowings under the receivables facility.

Under the receivables facility, SunGard is generally required to pay interest on the amount of each advance at the one month LIBOR rate (with a floor of 3%) plus 4.50% per annum, which at December 31, 2009 was 7.5%. The facility is subject to a fee on the unused portion of 1.00% per annum. The receivables facility contains certain covenants and SunGard is required to satisfy and maintain specified facility performance ratios, financial ratios and other financial condition tests.

**Future Maturities**

At December 31, 2009, annual maturities of long-term debt during the next five years and thereafter are as follows (in millions):

2010	\$ 64
2011	50
2012	300
2013	1,649
2014 <sup>(1)</sup>	2,181
Thereafter <sup>(1)</sup>	4,071

(1) 2014 includes debt discounts of \$16 million.

(2) Thereafter includes debt discounts of \$5 million.

**6. Fair Value Measurements:**

The following table summarizes assets and liabilities measured at fair value on a recurring basis at December 31, 2009 (in millions):

	Fair Value Measures Using			Total
	Level 1	Level 2	Level 3	
<b>Assets</b>				
Cash and cash equivalents    money market funds	\$ 168	\$	\$	\$ 168
Clearing broker assets    treasury bills	151			151
Clearing broker assets    securities owned	40			40
	\$ 359	\$	\$	\$ 359
<b>Liabilities</b>				
	\$ 9	\$	\$	\$ 9



Clearing broker liabilities	customer securities sold short, not yet				
purchased					
Interest rate swap agreements			70		70
		\$ 9	\$ 70	\$	\$ 79

F-19

---

**Table of Contents**

The following table summarizes assets and liabilities measured at fair value on a recurring basis at December 31, 2008 (in millions):

	Fair Value Measures Using			Total
	Level 1	Level 2	Level 3	
<b>Assets</b>				
Cash and cash equivalents money market funds	\$ 589	\$	\$	\$ 589
Clearing broker assets treasury bills	140			140
Clearing broker assets securities owned	44			44
Retained interest in accounts receivable sold			285	285
	\$ 773	\$	\$ 285	\$ 1,058
<b>Liabilities</b>				
Clearing broker liabilities customer securities sold short, not yet purchased	\$ 3	\$	\$	\$ 3
Interest rate swap agreements		98		98
	\$ 3	\$ 98	\$	\$ 101

A Level 1 fair value measure is based upon quoted prices in active markets for identical assets or liabilities. A Level 2 fair value measure is based upon quoted prices for similar assets and liabilities in active markets or inputs that are observable. A Level 3 fair value measure is based upon inputs that are unobservable (for example, cash flow modeling inputs based on assumptions).

Cash and cash equivalents money market funds and Clearing broker assets treasury bills are recognized and measured at fair value in the Company's financial statements. Clearing broker assets and liabilities securities owned and customer securities sold short, not yet purchased are recorded at closing exchange-quoted prices. Fair values of the interest rate swap agreements are calculated using a discounted cash flow model using observable applicable market swap rates and assumptions and are compared to market valuations obtained from brokers. During January 2009, the fair value of retained interest in accounts receivable sold (a Level 3 measurement) decreased to zero due to the termination of the Company's off-balance sheet accounts receivable securitization program.

During 2009, the Company recorded impairment charges on certain of its FS customer base and software assets of \$18 million and \$17 million, respectively, as a result of changes to the cash flow projections of the applicable businesses. These non-recurring fair value measures are classified as Level 3 in the fair value hierarchy and were valued using discounted cash flow models. The valuation inputs included estimates of future cash flows, expectations about possible variations in the amount and timing of cash flows and discount rates based on the risk-adjusted cost of capital.

**Fair Value of Financial Instruments**

The following table presents the carrying amounts and fair values of financial instruments (in millions):

	December 31, 2008		December 31, 2009	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Interest rate swap contracts	\$ (98)	\$ (98)	\$ (70)	\$ (70)
Floating rate debt	5,248	4,437	<b>4,967</b>	<b>4,815</b>
Fixed rate debt	3,627	2,903	<b>3,348</b>	<b>3,507</b>

The fair values of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses, to the extent the underlying liability will be settled in cash, approximate carrying values because of the short-term nature of these instruments. The derivative financial instruments are carried at fair value. The fair value of SunGard's floating rate and fixed rate long-term debt is primarily based on market rates.

**Table of Contents****7. Stock Option and Award Plans and Stock-Based Compensation:**

To provide long-term equity incentives following the Transaction, the SunGard 2005 Management Incentive Plan ( Plan ) was established. As amended in May 2009, the Plan authorizes the issuance of equity subject to awards made under the Plan for up to 70 million shares of Class A common stock and 7 million shares of Class L common stock of SCC and 2.5 million shares of preferred stock of SCCII.

Under the Plan, awards of time-based and performance-based options have been granted to purchase Units in the Parent Companies. Each Unit consists of 1.3 shares of Class A common stock and 0.1444 shares of Class L common stock of SCC and 0.05 shares of preferred stock of SCCII. The shares comprising a Unit are in the same proportion as the shares issued to all stockholders of the Parent Companies. Option Units are exercisable only for whole Units and cannot be separately exercised for the individual classes of stock. Beginning in 2007, hybrid equity awards generally were granted under the Plan, which awards are composed of restricted stock units for Units ( RSUs ) in the Parent Companies and options to purchase Class A common stock in SCC. All awards under the Plan are granted at fair market value on the date of grant.

Time-based options vest over five years as follows: 25% one year after date of grant, and 1/48th of the remaining balance each month thereafter for 48 months. Time-based RSUs vest over five years as follows: 10% one year after date of grant, and 1/48th of the remaining balance each month thereafter for 48 months. Performance-based options and RSUs are earned upon the attainment of certain annual or cumulative earnings goals based on Internal EBITA (defined as income from operations before amortization of acquisition-related intangible assets, stock compensation expense and certain other items) targets for the Company during a specified performance period, generally five or six years. During the third quarter of 2009, the Company amended the terms of unvested performance awards granted prior to 2009 by (i) reducing performance targets for 2009 and 2010, (ii) reducing the number of shares that are earned at the reduced targets, (iii) delaying vesting of earned shares, and, (iv) in the case of RSUs, increasing the length of time for distribution, or release, of vested awards. Excluding the 15 senior executive management award holders, all 290 award holders participated in the amendments. During the fourth quarter of 2009, senior executive management s performance awards were amended consistent with non-senior executive awards and in addition were amended to modify or add, as applicable, vesting on a return-on-equity basis terms. All amended equity awards were revalued at the modification dates at the respective fair market value. There was no expense recognized as a result of the modifications. Time-based and performance-based options can partially or fully vest upon a change of control and certain other termination events, subject to certain conditions, and expire ten years from the date of grant. Once vested, time-based and performance-based RSUs become payable in shares upon the first to occur of a change of control, separation from service without cause, or the date that is five years (ten years for modified performance-based RSUs) after the date of grant.

The total fair value of options that vested for 2007, 2008 and 2009 was \$31 million, \$32 million and \$24 million, respectively. The total fair value of RSUs that vested for the years 2007, 2008 and 2009 was \$1 million, \$3 million and \$10 million, respectively. At December 31, 2008 and 2009, approximately 163,000 and 592,000 RSU Units, respectively, were vested.

The fair value of option Units granted in each year using the Black-Scholes pricing model and related assumptions follow:

	Year Ended December 31,		
	2007	2008	2009

Edgar Filing: SunGard VPM Inc. - Form S-1

Weighted-average fair value on date of grant	\$ 11.47	\$ 7.67	\$ <b>7.64</b>
Assumptions used to calculate fair value:			
Volatility	60%	37%	<b>43%</b>
Risk-free interest rate	4.6%	1.5%	<b>2.1%</b>
Expected term	5.0 years	5.0 years	<b>5.0 years</b>
Dividends	zero	zero	<b>zero</b>

F-21

---

**Table of Contents**

The fair value of Class A options granted in each year using the Black-Scholes pricing model and related assumptions follow:

	2007	Year Ended December 31, 2008	2009
Weighted-average fair value on date of grant	\$ 1.49	\$ 1.73	\$ <b>0.28</b>
Assumptions used to calculate fair value:			
Volatility	79%	84%	<b>81%</b>
Risk-free interest rate	4.1%	2.8%	<b>2.3%</b>
Expected term	5.0 years	5.0 years	<b>5.0 years</b>
Dividends	zero	zero	<b>zero</b>

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model. Since the Company is not publicly traded, the Company utilizes equity valuations based on (a) stock market valuations of public companies in comparable businesses, (b) recent transactions involving comparable companies and (c) any other factors deemed relevant. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. Expected volatilities are based on implied volatilities from market comparisons of certain publicly traded companies and other factors. The expected term of stock options granted is derived from historical experience and expectations and represents the period of time that stock options granted are expected to be outstanding. The requisite service period is generally five years from the date of grant.

For 2007, 2008 and 2009, the Company included non-cash stock compensation expense of \$32 million, \$35 million and \$33 million, respectively, in sales, marketing and administration expenses. At December 31, 2009, there is approximately \$21 million and \$40 million, respectively, of unearned non-cash stock-based compensation related to time-based options and RSUs that the Company expects to record as expense over a weighted average of 1.9 and 3.8 years, respectively. In addition, at December 31, 2009, there is approximately \$67 million and \$45 million, respectively, of unearned non-cash stock-based compensation related to performance-based options and RSUs that the Company could record as expense each over four years depending on the level of achievement of financial performance goals. Included in the performance award amounts above are approximately 745,000 option Units (\$4.4 million), 440,000 class A options (\$0.4 million) and 175,000 RSUs (\$3.3 million) that were earned during 2009, but that will vest monthly during 2010 through 2012. For time-based options and RSUs, compensation expense is recorded on a straight-line basis over the requisite service period of five years. For performance-based options and RSUs, recognition of compensation expense starts when the achievement of financial performance goals becomes probable, which is typically during the fourth fiscal quarter, and is recorded over the remaining service period.

**Table of Contents**

The following table summarizes option/RSU activity:

	Options (In millions)	Units Weighted- Average Price	RSUs (In millions)	Weighted- Average Price	Class A Options (In millions)	Weighted- Average Price
Outstanding at December 31, 2006	37.4	\$ 15.57				
Granted	1.7	20.72	1.1	\$ 21.14	2.7	\$ 2.26
Exercised / released	(1.4)	6.25				
Canceled	(2.5)	18.08				
Outstanding at December 31, 2007	35.2	16.03	1.1	21.14	2.7	2.26
Granted	0.4	22.17	2.8	23.75	7.1	2.56
Exercised / released	(1.4)	9.11				
Canceled	(2.4)	18.16	(0.2)	22.24	(0.4)	2.58
Outstanding at December 31, 2008	31.8	16.24	3.7	23.07	9.4	2.47
<b>Granted</b>	<b>0.4</b>	<b>19.00</b>	<b>1.5</b>	<b>19.10</b>	<b>3.7</b>	<b>0.42</b>
<b>Exercised / released</b>	<b>(1.7)</b>	<b>10.56</b>				
<b>Canceled</b>	<b>(2.5)</b>	<b>18.14</b>	<b>(0.2)</b>	<b>23.36</b>	<b>(0.6)</b>	<b>2.50</b>
<b>Outstanding at December 31, 2009</b>	<b>28.0</b>	<b>16.46</b>	<b>5.0</b>	<b>21.87</b>	<b>12.5</b>	<b>1.86</b>

Shares available for grant under the 2005 plan at December 31, 2009 were approximately 11.2 million shares of Class A common stock and 1.9 million shares of Class L common stock of SunGard Capital Corp. and 0.7 million shares of preferred stock of SunGard Capital Corp. II.

The total intrinsic value of options exercised during the years 2007, 2008 and 2009 was \$20 million, \$20 million and \$16 million, respectively.

Cash proceeds received on behalf of the Parent Companies related to exercises of stock options are generally used to fund repurchases of stock of the Parent Companies from terminated employees.

The following table summarizes information as of December 31, 2009 concerning options for Units and Class A shares that have vested and that are expected to vest in the future:

Exercise Price	Vested and Expected to Vest Weighted-Average			Exercisable Weighted-Average		
	Number of Options Outstanding (In millions)	Remaining Life (Years)	Aggregate Intrinsic Value	Number of Options	Remaining Life (Years)	Aggregate Intrinsic Value

Edgar Filing: SunGard VPM Inc. - Form S-1

			(In millions)	(In millions)		(In millions)
<b>Units</b>						
\$4.50		3.61	3.9	\$ 56	3.61	3.9
18.00	24.51	16.76	5.8	31	12.15	5.7
<b>Class A Shares</b>						
0.28	0.44	1.88	9.6		0.04	9.7
1.41		1.02	8.9		0.29	8.9
2.22	3.06	4.18	8.2		1.72	8.2

**8. Savings Plans:**

The Company and its subsidiaries maintain savings and other defined contribution plans that cover substantially all employees. Certain of these plans generally provide that employee contributions are matched with cash contributions by the Company subject to certain limitations including a limitation on the Company's contributions to 4% of the employee's compensation. Total expense under these plans aggregated \$53 million in 2007, \$58 million in 2008 and \$62 million in 2009.

F-23

---



**Table of Contents****9. Income Taxes:**

The provision (benefit) for income taxes for 2007, 2008 and 2009 consisted of the following (in millions):

	2007	2008	2009
Current:			
Federal	\$ 46	\$ 90	\$ 22
State	15	18	17
Foreign	56	38	58
	117	146	97
Deferred:			
Federal	(99)	(84)	(141)
State	(4)	3	3
Foreign	(17)	(27)	(32)
	(120)	(108)	(170)
	\$ (3)	\$ 38	\$ (73)

Income (loss) before income taxes for 2007, 2008 and 2009 consisted of the following (in millions):

	2007	2008	2009
U.S. operations	\$ (195)	\$ (79)	\$ (1,251)
Foreign operations	132	(125)	60
	\$ (63)	\$ (204)	\$ (1,191)

Differences between income tax expense (benefit) at the U.S. federal statutory income tax rate and the Company's effective income tax rate for 2007, 2008 and 2009 were as follows (in millions):

	2007	2008	2009
Tax at federal statutory rate	\$ (22)	\$ (71)	\$ (417)
State income taxes, net of federal benefit	6	15	13
Foreign taxes, net of U.S. foreign tax credit	12	28	(9) <sup>(1)</sup>
Tax rate changes	(4)		(1)
Goodwill impairment charge		45	343
Nondeductible expenses		4	4
Change in tax positions		17	(1)

Research and development credit				(2)
Other, net	5			(3)
	\$ (3)	\$ 38		\$ (73)
Effective income tax rate	5%	(19)%		6%

(1) Foreign taxes, net in 2009 includes a \$12 million favorable adjustment primarily related to utilization in our 2008 U.S. federal income tax return of foreign tax credit carryforwards that were not expected to be utilized at the time of the 2008 tax provision.

**Table of Contents**

Deferred income taxes are recorded based upon differences between financial statement and tax bases of assets and liabilities. Deferred tax assets and liabilities at December 31, 2008 and 2009 are summarized as follows (in millions):

	December 31, 2008	December 31, 2009
Current:		
Trade receivables and retained interest	\$ 13	\$ 15
Accrued Expenses, net	18	17
Total current deferred income tax asset	31	32
Valuation allowance	(9)	(10)
Net current deferred income tax asset	\$ 22	\$ 22
Long-term:		
Property and equipment	\$ 51	\$ 36
Intangible assets	(1,766)	(1,482)
Net operating loss carryforwards	103	118
Other, net	71	74
Total long-term deferred income tax liability	(1,541)	(1,254)
Valuation allowance	(51)	(60)
Net long-term deferred income tax liability	\$ (1,592)	\$ (1,314)

The net operating loss carryforwards, totaling \$2.2 billion, include: U.S. federal of \$150 million, U.S. state of \$1.8 billion, North and South America of \$8 million and Europe and Asia of \$197 million. These tax loss carryforwards expire between 2010 and 2029 and utilization is limited in certain jurisdictions. The Company recorded the benefit of tax loss carryforwards of \$2 million, \$2 million and \$23 million in 2007, 2008 and 2009, respectively. A valuation allowance for deferred income tax assets associated with certain net operating loss carryforwards has been established.

The long-term deferred tax liability associated with intangible assets includes a 2009 adjustment of \$114 million to correct the income tax rate used to calculate the deferred tax liabilities associated with the intangible assets at the Transaction date. The adjustment was not material to prior periods.

A reconciliation of the beginning and ending amount of unrecognized tax benefits follows (in millions):

	2007	2008	2009
Balance at beginning of year	\$ 28	\$ 20	\$ 38
Reductions for settled audits	(7)		
Additions for tax positions of prior years		17	1
Reductions for tax positions of prior years	(2)		(4)

Additions for tax positions of current year			<b>5</b>
Settlements for tax positions of prior years			<b>(3)</b>
Additions for incremental interest	1	1	<b>1</b>
Balance at end of year	\$ 20	\$ 38	<b>\$ 38</b>

Included in the balance of unrecognized tax benefits at December 31, 2009 is approximately \$3 million (net of federal and state benefit) of accrued interest and penalties. The Company recognizes interest and penalties related to uncertain tax positions in income tax expense.

The Company is currently under audit by the Internal Revenue Service for the calendar years 2003 through 2008 and various state and foreign jurisdiction tax years remain open to examination as well. At any

**Table of Contents**

time some portion of the Company's operations are under audit. Accordingly, certain matters may be resolved within the next 12 months which could result in a change in the liability.

As of December 31, 2009, the Company has not accrued deferred U.S. income taxes on \$290 million of unremitted earnings from non-U.S. subsidiaries as such earnings are reinvested overseas and used for foreign debt service. If all of these earnings were to be repatriated at one time, the incremental U.S. tax is estimated to be \$39 million.

**10. Segment Information:**

The Company has four segments: FS, HE and PS, which together form the Company's Software & Processing Solutions business, and AS. FS primarily serves financial services companies through a broad range of complementary software solutions that process their investment and trading transactions. The principal purpose of most of these systems is to automate the many detailed processes associated with trading securities, managing investment portfolios and accounting for investment assets.

HE primarily provides software, strategic and systems integration consulting, and technology management services to colleges and universities.

PS primarily provides software and processing solutions designed to meet the specialized needs of local, state, federal and central governments, public safety and justice agencies, public schools, utilities, non-profits and other public sector institutions.

AS helps its customers maintain access to the information and computer systems they need to run their businesses by providing them with cost-effective resources to keep their IT systems reliable and secure. AS offers a complete range of availability services, including recovery services, managed services, consulting services and business continuity management software.

The Company evaluates the performance of its segments based on operating results before interest, income taxes, goodwill impairment, amortization of acquisition-related intangible assets, stock compensation and certain other costs. The operating results for each segment follow (in millions):

2007	FS	HE	PS	AS	Total Operating Segments	Corporate and Other Items	Consolidated Total
Revenue	\$ 2,500	\$ 543	\$ 410	\$ 1,448	\$ 4,901	\$	\$ 4,901
Depreciation and amortization	59	8	9	175	251		251
Income from operations	525	143	84	428	1,180	(549) <sup>(1)</sup>	631
Cash paid for property and equipment and software	87	21	10	189	307		307

**Table of Contents**

2008	FS	HE	PS	AS	Total Operating Segments	Corporate and Other Items	Consolidated Total
Revenue	\$ 3,078	\$ 540	\$ 411	\$ 1,567	\$ 5,596	\$	\$ 5,596
Depreciation and amortization	70	10	9	189	278		278
Income from operations	608	130	79	443	1,260	(790) <sup>(1)</sup>	470
Total assets	8,998	2,062	1,362	6,646	19,068	(3,290) <sup>(2)</sup>	15,778
Cash paid for property and equipment and software	91	24	8	269	392		392
2009	FS	HE	PS	AS	Total Operating Segments	Corporate and Other Items	Consolidated Total
<b>Revenue</b>	<b>\$ 3,068</b>	<b>\$ 526</b>	<b>\$ 397</b>	<b>\$ 1,517</b>	<b>\$ 5,508</b>	<b>\$</b>	<b>\$ 5,508</b>
<b>Depreciation and amortization</b>	<b>77</b>	<b>13</b>	<b>9</b>	<b>192</b>	<b>291</b>		<b>291</b>
<b>Income from operations</b>	<b>618</b>	<b>138</b>	<b>77</b>	<b>380</b>	<b>1,213</b>	<b>(1,789)<sup>(1)</sup></b>	<b>(576)</b>
<b>Total assets</b>	<b>8,605</b>	<b>2,086</b>	<b>1,353</b>	<b>5,695</b>	<b>17,739</b>	<b>(3,759)<sup>(2)</sup></b>	<b>13,980</b>
<b>Cash paid for property and equipment and software</b>	<b>82</b>	<b>8</b>	<b>15</b>	<b>222</b>	<b>327</b>		<b>327</b>

(1) Includes corporate administrative expenses, goodwill impairment, stock compensation expense, management fees paid to the Sponsors, merger costs and certain other items, and amortization of acquisition-related intangible assets of \$438 million, \$515 million and \$540 million in the years ended December 31, 2007, 2008 and 2009, respectively.

(2) Includes items that are eliminated in consolidation and deferred income taxes.

Amortization of acquisition-related intangible assets by segment follows (in millions):

	FS	HE	PS	AS	Total Operating Segments	Corporate	Consolidated Total
2007	238 <sup>(1)</sup>	35	40	122	435	3	438
2008	286 <sup>(2)</sup>	34	62 <sup>(2)</sup>	129	511	4	515

<b>2009</b>	<b>303</b> <sup>(3)</sup>	<b>33</b>	<b>32</b>	<b>170</b>	<b>538</b>	<b>2</b>	<b>540</b>
-------------	---------------------------	-----------	-----------	------------	------------	----------	------------

- (1) Includes approximately \$10 million of impairment charges related to software, customer base and goodwill.
- (2) Includes the combined effect of approximately \$67 million of impairment charges related to software and customer base affecting both FS and PS.
- (3) Includes approximately \$35 million of impairment charges related to software and customer base.

F-27

---

**Table of Contents**

The FS segment is organized to align with customer-facing business areas. FS revenue by business area follows (in millions):

	2007	2008	2009
Trading Systems	\$ 459	\$ 806	\$ 787
Wealth Management	533	526	437
Capital Markets	321	333	290
Global Trading		76	280
Brokerage & Clearance	251	264	279
Institutional Asset Management	216	235	211
Corporations	185	198	183
Banks	162	170	168
All other	373	470	433
Total Financial Systems	\$ 2,500	\$ 3,078	\$ 3,068

The Company's revenue by customer location follows (in millions):

	Year Ended December 31,		
	2007	2008	2009
United States	\$ 3,426	\$ 3,952	\$ 3,835
International:			
United Kingdom	635	639	590
Continental Europe	511	609	598
Canada	133	169	158
Asia/Pacific	83	104	188
Other	113	123	139
	1,475	1,644	1,673
	\$ 4,901	\$ 5,596	\$ 5,508

The Company's property and equipment by geographic location follows (in millions):

	December 31, 2008	December 31, 2009
United States	\$ 628	\$ 614



International:			
United Kingdom	166		<b>192</b>
Continental Europe	58		<b>64</b>
Canada	35		<b>44</b>
Asia/Pacific	10		<b>10</b>
Other	1		<b>1</b>
	270		<b>311</b>
		\$ 898	\$ <b>925</b>

#### **11. Related Party Transactions:**

SunGard is required to pay management fees to affiliates of the Sponsors in connection with management consulting services provided to SunGard and the Parent Companies. These services include financial, managerial and operational advice and implementation strategies for improving the operating, marketing and financial performance of SunGard and its subsidiaries. The management fees are equal to 1% of quarterly

**Table of Contents**

Adjusted EBITDA, defined as earnings before interest, taxes, depreciation and amortization, further adjusted to exclude unusual items and other adjustments as defined in the management agreement, and are payable quarterly in arrears. In addition, these affiliates of the Sponsors may be entitled to additional fees in connection with certain financing, acquisition, disposition and change in control transactions. For the years ended December 31, 2007, 2008 and 2009, SunGard recorded \$17 million, \$23 million and \$15 million, respectively, relating to management fees in sales, marketing and administration expenses in the statement of operations, of which \$10 million and \$4 million, respectively, is included in other accrued expenses at December 31, 2008 and 2009, respectively.

Two of the Company's Sponsors, Goldman Sachs & Co. and Kohlberg Kravis Roberts & Co., and/or their respective affiliates served as co-managers in connection with SunGard's 2008 debt offering of \$500 million Senior Notes due 2015 and \$500 million Incremental Term Loan. In connection with serving in such capacity, Goldman Sachs & Co. and Kohlberg Kravis Roberts & Co. were paid \$26 million and \$4 million, respectively, for customary fees and expenses.

In connection with the Transaction, SCC received a \$16 million promissory note from the Company's Chief Executive Officer (CEO) in payment for 1.6 million shares of Class A common stock and 0.2 million shares of Class L common stock and SCCII received a \$6 million promissory note (together with the SCC note, the Notes) from the CEO in payment for 61 thousand shares of preferred stock. In 2007, these notes were fully repaid and cancelled. The Notes bore interest at a floating rate equal to LIBOR plus 2.5% divided by 0.84725 per annum and were payable on the last day of each calendar quarter in arrears.

**12. Commitments, Contingencies and Guarantees:**

The Company leases a substantial portion of its computer equipment and facilities under operating leases. The Company's leases are generally non-cancelable or cancelable only upon payment of cancellation fees. All lease payments are based on the passage of time, but include, in some cases, payments for insurance, maintenance and property taxes. There are no bargain purchase options on operating leases at favorable terms, but most facility leases have one or more renewal options and have either fixed or Consumer Price Index escalation clauses. Certain facility leases include an annual escalation for increases in utilities and property taxes. In addition, certain facility leases are subject to restoration clauses, whereby the facility may need to be restored to its original condition upon termination of the lease. There were \$30 million of restoration liabilities included in accrued expenses at December 31, 2009.

Future minimum rentals under operating leases with initial or remaining non-cancelable lease terms in excess of one year at December 31, 2009 follow (in millions):

2010	\$ 211
2011	181
2012	157
2013	135
2014	118
Thereafter	571
	\$ 1,373

Rent expense aggregated \$208 million in 2007, \$226 million in 2008 and \$242 million in 2009.

At December 31, 2009, the Company had outstanding letters of credit and bid bonds of \$39 million, issued primarily as security for performance under certain customer contracts. In connection with certain previously acquired businesses, up to \$57 million could be paid as additional consideration depending on the future operating results of those businesses (see Note 2).

In the event that the management agreement described in Note 13 is terminated by the Sponsors (or their affiliates) or SunGard and its Parent Companies, the Sponsors (or their affiliates) will receive a lump sum payment equal to the present value of the annual management fees that would have been payable for the

**Table of Contents**

remainder of the term of the management agreement. The initial term of the management agreement is ten years, and it extends annually for one year unless the Sponsors (or their affiliates) or SunGard and its Parent Companies provide notice to the other. The initial ten year term expires August 11, 2015.

The Company is presently a party to certain lawsuits arising in the ordinary course of its business. In the opinion of management, none of its current legal proceedings will be material to the Company's business or financial results. The Company's customer contracts generally include typical indemnification of customers, primarily for intellectual property infringement claims. Liabilities in connection with such obligations have not been material.

**13. Quarterly Financial Data (unaudited):**

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2008				
Revenue	\$ 1,302	\$ 1,357	\$ 1,394	\$ 1,543
Gross profit <sup>(1)</sup>	659	704	666	823
Income (loss) before income taxes	(40)	2	(26)	(140) <sup>(2)</sup>
Net income (loss)	(22)	2	(35)	(187) <sup>(2)</sup>
2009				
Revenue	<b>\$ 1,335</b>	<b>\$ 1,369</b>	<b>\$ 1,337</b>	<b>\$ 1,467</b>
Gross profit <sup>(1)</sup>	<b>644</b>	<b>664</b>	<b>695</b>	<b>796</b>
Income (loss) before income taxes	<b>(43)</b>	<b>(7)</b>	<b>(43)</b>	<b>(1,098)<sup>(4)</sup></b>
Net income (loss)	<b>(34)</b>	<b>(7)</b>	<b>(40)<sup>(3)</sup></b>	<b>(1,037)<sup>(4)</sup></b>

(1) Gross profit equals revenue less cost of sales and direct operating expenses.

(2) Includes pre-tax goodwill impairment charge of \$128 million and an \$8 million charge to correct previously reported loss on sale of receivables in connection with the Company's accounts receivable securitization program, which was terminated in December 2008.

(3) Includes a \$12 million favorable adjustment primarily related to utilization in our 2008 U.S. federal income tax return of foreign tax credit carryforwards that were not expected to be utilized at the time of the 2008 tax provision.

(4) Includes pre-tax goodwill impairment charge of \$1.13 billion.

**14. Supplemental Guarantor Condensed Consolidating Financial Statements:**

On August 11, 2005, in connection with the Transaction, SunGard issued \$3.0 billion aggregate principal amount of senior notes and senior subordinated notes, \$2.6 billion of which was outstanding at December 31, 2009, as described in Note 5. On September 29, 2008, SunGard issued \$500 million aggregate principal amount of senior notes due 2015, all of which was outstanding at December 31, 2009. The senior notes are jointly and severally, fully and unconditionally guaranteed on a senior unsecured basis and the senior subordinated notes are jointly and severally, fully and unconditionally guaranteed on an unsecured senior subordinated basis, in each case, subject to certain exceptions, by substantially all wholly owned, domestic subsidiaries of SunGard (collectively, the Guarantors). Each

of the Guarantors is 100% owned, directly or indirectly, by SunGard. None of the other subsidiaries of SunGard, either direct or indirect, nor any of the Holding Companies, guarantee the senior notes and senior subordinated notes ( Non-Guarantors ). The Guarantors also unconditionally guarantee the senior secured credit facilities, described in Note 5.

**Table of Contents**

The following tables present the financial position, results of operations and cash flows of SunGard (referred to as Parent Company for purposes of this note only), the Guarantor subsidiaries, the Non-Guarantor subsidiaries and Eliminations as of December 31, 2008 and 2009, and for the years ended December 31, 2007, 2008 and 2009 to arrive at the information for SunGard on a consolidated basis. SCC and SCCII are neither parties nor guarantors to the debt issued as described in Note 5.

## Supplemental Condensed Consolidating Balance Sheet

	Parent Company	Guarantor Subsidiaries	December 31, 2008		Consolidated
			Non-Guarantor Subsidiaries (In millions)	Eliminations	
<b>Assets</b>					
<b>Current:</b>					
Cash and cash equivalents	\$ 511	\$ 16	\$ 448	\$	\$ 975
Intercompany balances	(5,192)	5,268	(76)		
Trade receivables, net	(1)	406	377		782
Prepaid expenses, taxes and other current assets	1,680	75	660	(1,677)	738
<b>Total current assets</b>	<b>(3,002)</b>	<b>5,765</b>	<b>1,409</b>	<b>(1,677)</b>	<b>2,495</b>
Property and equipment, net	1	619	278		898
Intangible assets, net	178	4,106	773		5,057
Intercompany balances	967	(720)	(247)		
Goodwill		6,146	1,182		7,328
Investment in subsidiaries	13,686	2,298		(15,984)	
<b>Total Assets</b>	<b>\$ 11,830</b>	<b>\$ 18,214</b>	<b>\$ 3,395</b>	<b>\$ (17,661)</b>	<b>\$ 15,778</b>
<b>Liabilities and Stockholder's Equity</b>					
<b>Current:</b>					
Short-term and current portion of long-term debt	\$ 295	\$ 9	\$ 18	\$	\$ 322
Accounts payable and other current liabilities	319	2,611	995	(1,677)	2,248
<b>Total current liabilities</b>	<b>614</b>	<b>2,620</b>	<b>1,013</b>	<b>(1,677)</b>	<b>2,570</b>
Long-term debt	8,227	9	317		8,553
Intercompany debt	(8)	416	(162)	(246)	
Deferred income taxes	(66)	1,483	175		1,592
<b>Total liabilities</b>	<b>8,767</b>	<b>4,528</b>	<b>1,343</b>	<b>(1,923)</b>	<b>12,715</b>
<b>Total stockholder's equity</b>	<b>3,063</b>	<b>13,686</b>	<b>2,052</b>	<b>(15,738)</b>	<b>3,063</b>
<b>Total Liabilities and Stockholder's Equity</b>	<b>\$ 11,830</b>	<b>\$ 18,214</b>	<b>\$ 3,395</b>	<b>\$ (17,661)</b>	<b>\$ 15,778</b>



**Table of Contents**

## Supplemental Condensed Consolidating Balance Sheet

December 31, 2009

	Parent Company	Guarantor Subsidiaries	Non-Guarantor Subsidiaries (In millions)	Eliminations	Consolidated
Assets					
Current:					
Cash and cash equivalents	\$ 126	\$ (9)	\$ 547	\$	\$ 664
Intercompany balances	(6,563)	5,787	776		
Trade receivables, net		734	402		1,136
Prepaid expenses, taxes and other current assets	2,017	77	417	(1,968)	543
Total current assets	(4,420)	6,589	2,142	(1,968)	2,343
Property and equipment, net	1	603	321		925
Intangible assets, net	164	3,756	614		4,534
Intercompany balances	961	(691)	(270)		
Goodwill		4,895	1,283		6,178
Investment in subsidiaries	13,394	2,490		(15,884)	
Total Assets	\$ 10,100	\$ 17,642	\$ 4,090	\$ (17,852)	\$ 13,980
Liabilities and Stockholder's Equity					
Current:					
Short-term and current portion of long-term debt	\$ 45	\$ 7	\$ 12	\$	\$ 64
Accounts payable and other current liabilities	272	2,901	1,079	(1,968)	2,284
Total current liabilities	317	2,908	1,091	(1,968)	2,348
Long-term debt	7,687	3	561		8,251
Intercompany debt	82	103	(31)	(154)	
Deferred income taxes	(53)	1,234	133		1,314
Total liabilities	8,033	4,248	1,754	(2,122)	11,913
Total stockholder's equity	2,067	13,394	2,336	(15,730)	2,067
Total Liabilities and Stockholder's Equity	\$ 10,100	\$ 17,642	\$ 4,090	\$ (17,852)	\$ 13,980

F-32



**Table of Contents****Supplemental Condensed Consolidating Schedule of Operations**

	Year Ended December 31, 2007				
	Parent Company	Guarantor Subsidiaries	Non-Guarantor Subsidiaries (In millions)	Eliminations	Consolidated
Total revenue	\$	\$ 3,436	\$ 1,610	\$ (145)	\$ 4,901
Costs and expenses:					
Cost of sales and direct operating		1,546	867	(145)	2,268
Sales, marketing and administration	124	546	372		1,042
Product development		173	98		271
Depreciation and amortization		184	67		251
Amortization of acquisition-related intangible assets	4	363	71		438
	128	2,812	1,475	(145)	4,270
Income (loss) from operations	(128)	624	135		631
Net interest income (expense)	(606)	(70)	50		(626)
Other income (expense)	403	59	(43)	(487)	(68)
Income (loss) before income taxes	(331)	613	142	(487)	(63)
Benefit from (provision for) income taxes	271	(181)	(87)		3
Net income (loss)	\$ (60)	\$ 432	\$ 55	\$ (487)	\$ (60)

**Supplemental Condensed Consolidating Schedule of Operations**

	Year Ended December 31, 2008				
	Parent Company	Guarantor Subsidiaries	Non-Guarantor Subsidiaries (In millions)	Eliminations	Consolidated
Total revenue	\$	\$ 3,540	\$ 2,149	\$ (93)	\$ 5,596
Costs and expenses:					
Cost of sales and direct operating		1,558	1,279	(93)	2,744
Sales, marketing and administration	111	583	457		1,151
Product development		183	125		308
Depreciation and amortization		205	73		278
Amortization of acquisition-related intangible assets	4	373	138		515

Edgar Filing: SunGard VPM Inc. - Form S-1

Goodwill impairment charge and merger costs	1	1	128		130
	116	2,903	2,200	(93)	5,126
Income (loss) from operations	(116)	637	(51)		470
Net interest income (expense)	(533)	(18)	(30)		(581)
Other income (expense)	173	(209)	(72)	15	(93)
Income (loss) before income taxes	(476)	410	(153)	15	(204)
Benefit from (provision for) income taxes	234	(212)	(60)		(38)
Net income (loss)	\$ (242)	\$ 198	\$ (213)	\$ 15	\$ (242)

F-33

---

**Table of Contents****Supplemental Condensed Consolidating Schedule of Operations (Successor)**

	Year Ended December 31, 2009				Consolidated
	Parent Company	Guarantor Subsidiaries	Non-Guarantor Subsidiaries (In millions)	Eliminations	
Total revenue	\$	\$ 3,429	\$ 2,182	\$ (103)	\$ 5,508
Costs and expenses:					
Cost of sales and direct operating		1,462	1,350	(103)	2,709
Sales, marketing and administration	98	593	421		1,112
Product development		166	136		302
Depreciation and amortization		214	77		291
Amortization of acquisition-related intangible assets	2	404	134		540
Goodwill impairment charge and merger costs	1	1,126	3		1,130
	101	3,965	2,121	(103)	6,084
Income (loss) from operations	(101)	(536)	61		(576)
Net interest income (expense)	(547)	(48)	(35)		(630)
Other income (expense)	(707)	(21)	11	732	15
Income (loss) before income taxes	(1,355)	(605)	37	732	(1,191)
Benefit from (provision for) income taxes	237	(101)	(63)		73
Net income (loss)	\$ (1,118)	\$ (706)	\$ (26)	\$ 732	\$ (1,118)

F-34

**Table of Contents****Supplemental Condensed Consolidating Schedule of Cash Flows**

	Year Ended December 31, 2007				Consolidated
	Parent Company	Guarantor Subsidiaries	Non-Guarantor Subsidiaries (In millions)	Eliminations	
Cash flow from operations					
Net income (loss)	\$ (60)	\$ 432	\$ 55	\$ (487)	\$ (60)
Non cash adjustments	(368)	403	139	487	661
Changes in operating assets and liabilities	(793)	854	39		100
Cash flow provided by (used in) operations	(1,221)	1,689	233		701
Investment activities					
Intercompany transactions	1,219	(1,222)	3		
Cash paid for acquired businesses, net of cash acquired		(237)	(28)		(265)
Cash paid for property and equipment and software		(211)	(96)		(307)
Other investing activities	2	6			8
Cash provided by (used in) investment activities	1,221	(1,664)	(121)		(564)
Financing activities					
Net repayments of long-term debt	(17)	(4)	(11)		(32)
Cash used in financing activities	(17)	(4)	(11)		(32)
Effect of exchange rate changes on cash			6		6
Increase (decrease) in cash and cash equivalents	(17)	21	107		111
Beginning cash and cash equivalents	56	(19)	279		316
Ending cash and cash equivalents	\$ 39	\$ 2	\$ 386	\$	\$ 427

**Table of Contents****Supplemental Condensed Consolidating Schedule of Cash Flows**

	Year Ended December 31, 2008				
	Parent Company	Guarantor Subsidiaries	Non-Guarantor Subsidiaries (In millions)	Eliminations	Consolidated
Cash flow from operations					
Net income (loss)	\$ (242)	\$ 198	\$ (213)	\$ 15	\$ (242)
Non cash adjustments	(128)	720	358	(15)	935
Changes in operating assets and liabilities	(672)	462	(98)		(308)
Cash flow provided by (used in) operations	(1,042)	1,380	47		385
Investment activities					
Intercompany transactions	141	(439)	298		
Cash paid for acquired businesses, net of cash acquired		(657)	(64)		(721)
Cash paid for property and equipment and software	1	(261)	(132)		(392)
Other investing activities	4	(12)	12		4
Cash provided by (used in) investment activities	146	(1,369)	114		(1,109)
Financing activities					
Net borrowings (repayments) of long-term debt	1,390	3	(68)		1,325
Other financing activities	(22)				(22)
Cash provided by (used in) financing activities	1,368	3	(68)		1,303
Effect of exchange rate changes on cash			(31)		(31)
Increase in cash and cash equivalents	472	14	62		548
Beginning cash and cash equivalents	39	2	386		427
Ending cash and cash equivalents	\$ 511	\$ 16	\$ 448	\$	\$ 975

**Table of Contents****Supplemental Condensed Consolidating Schedule of Cash Flows**

	Year Ended December 31, 2009				Consolidated
	Parent Company	Guarantor Subsidiaries	Non-Guarantor Subsidiaries (In millions)	Eliminations	
Cash flow from operations					
Net income (loss)	\$ (1,118)	\$ (706)	\$ (26)	\$ 732	\$ (1,118)
Non cash adjustments	776	1,646	158	(732)	1,848
Changes in operating assets and liabilities	(334)	(115)	358		(91)
Cash flow provided by (used in) operations	(676)	825	490		639
Investment activities					
Intercompany transactions	1,138	(598)	(540)		
Cash paid for acquired businesses, net of cash acquired		(13)			(13)
Cash paid for property and equipment and software		(231)	(96)		(327)
Other investing activities			7		7
Cash provided by (used in) investment activities	1,138	(842)	(629)		(333)
Financing activities					
Net repayments of long-term debt	(844)	(8)	227		(625)
Other financing activities	(3)				(3)
Cash provided by (used in) financing activities	(847)	(8)	227		(628)
Effect of exchange rate changes on cash			11		11
Increase (decrease) in cash and cash equivalents	(385)	(25)	99		(311)
Beginning cash and cash equivalents	511	16	448		975
Ending cash and cash equivalents	\$ 126	\$ (9)	\$ 547	\$	\$ 664

**Table of Contents**

**SunGard Data Systems Inc.**

**91/8 Senior Notes due 2013**

**105/8 Senior Notes due 2015**

**101/4 Senior Subordinated Notes due 2015**

**PROSPECTUS**

, 2009

---

**Table of Contents**

**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. *Other Expenses of Issuance and Distribution.***

Each of the registration rights agreements relating to the securities of the Registrants being registered hereby provides that SunGard Data Systems Inc. will bear all expenses in connection with the performance of its obligations relating to the market-making activities of Goldman, Sachs & Co. and its affiliates. These expenses include printer expenses and accounting and legal fees in an approximate amount of \$115,000.

**Item 14. *Indemnification of Directors and Officers.***

(a) SunGard Data Systems Inc., Advanced Portfolio Technologies, Inc., GL Trade Overseas, Inc., Online Securities Processing Inc., SRS Development Inc., SunGard Asia Pacific Inc., SunGard Availability Services, Ltd., SunGard Development Corporation, SunGard DIS Inc., SunGard Energy Systems Inc., SunGard Higher Education Inc., SunGard Higher Education Managed Services Inc., SunGard iWORKS P&C (US) Inc., SunGard NetWork Solutions Inc., SunGard SAS Holdings Inc., SunGard Software Inc. and SunGard VeriCenter Inc. are each incorporated under the laws of Delaware.

Section 145 of the Delaware General Corporation Law (the "DGCL") grants each corporation organized thereunder the power to indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of being or having been in any such capacity, if he acted in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders of monetary damages for violations of the director's fiduciary duty of care, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

In accordance with these provisions, the articles of incorporation and/or the bylaws of SunGard Data Systems Inc. and each of SunGard Data Systems Inc.'s guarantors incorporated in Delaware and listed above provide for indemnification of any person who is, was or shall be a director, officer, employee or agent of the corporation, to the full extent permitted by the DGCL, as amended from time to time.

(b) Automated Securities Clearance LLC, SunGard Ambit LLC, Inflow LLC, SIS Europe Holdings LLC, SunGard Business Systems LLC, SunGard Computer Services LLC, SunGard Consulting Services LLC, SunGard CSA LLC, SunGard eProcess Intelligence LLC, SunGard Financial Systems LLC, SunGard Investment Systems LLC, SunGard Investment Ventures LLC, SunGard iWORKS LLC, SunGard Kiodesx LLC, SunGard Reference Data Solutions LLC, SunGard Securities Finance LLC, SunGard Securities Finance International LLC, SunGard Shareholder Systems LLC, SunGard Technology Services LLC and SunGard Workflow Solutions LLC are each limited liability companies organized under the laws of Delaware.



Section 18-108 of the Delaware Limited Liability Company Act empowers a Delaware limited liability company to indemnify and hold harmless any member or manager of the limited liability company from and against any and all claims and demands whatsoever.

In accordance with these provisions, the Limited Liability Company Agreements of Automated Securities Clearance LLC, SunGard Ambit LLC, Inflow LLC, SIS Europe Holdings LLC, SunGard Business Systems LLC, SunGard Computer Services LLC, SunGard Consulting Services LLC, SunGard CSA LLC, SunGard

II-1

---

**Table of Contents**

eProcess Intelligence LLC, SunGard Financial Systems LLC, SunGard Investment Systems LLC, SunGard Investment Ventures LLC, SunGard iWORKS LLC, SunGard Kiodex LLC, SunGard Reference Data Solutions LLC, SunGard Securities Finance LLC, SunGard Securities Finance International LLC, SunGard Shareholder Systems LLC, SunGard Technology Services LLC and SunGard Workflow Solutions LLC state that the company shall indemnify, defend and hold harmless the member and any director, officer, partner, stockholder, controlling person or employee of the member, each member of the board of managers and any person serving at the request of the company from any liability, loss or damage incurred by the indemnified party by reason of any act performed or omitted to be performed by the indemnified party in connection with the business of the company including reasonable attorneys' fees and costs and any amounts expended in the settlement of any such claims of liability, loss or damage; provided however, that if the liability, loss, damage or claim arises out of any action or inaction of an indemnified party, indemnification shall be available only if (a) either (i) the indemnified party, at the time of such action or inaction determined in good faith that its, his or her course of conduct was in, or not opposed to, the best interests of the company or (ii) in the case of inaction by the indemnified party, the indemnified party did not intend its, his or her inaction to be harmful or opposed to the best interests of the company and (b) the action or inaction did not constitute fraud, gross negligence or willful misconduct by the indemnified party.

(c) SunGard AvantGard LLC is a limited liability company organized under the laws of California.

Under Section 17153 of the California Limited Liability Company Act, except for a breach of duty, the articles of organization or written operating agreement of a limited liability company may provide for indemnification of any person, including, without limitation, any manager, member, officer, employee or agent of the limited liability company, against judgments, settlements, penalties, fines or expenses of any kind incurred as a result of acting in that capacity. A limited liability company shall have the power to purchase and maintain insurance on behalf of any manager, member, officer, employee or agent of the limited liability company against any liability asserted against or incurred by the person in that capacity or arising out of the person's status as a manager, member, officer, employee or agent of the limited liability company.

The Limited Liability Company Agreement of SunGard AvantGard LLC states that the company shall indemnify, defend and hold harmless the member and any director, officer, partner, stockholder, controlling person or employee of the member, each member of the board of managers and any person serving at the request of the company from any liability, loss or damage incurred by the indemnified party by reason of any act performed or omitted to be performed by the indemnified party in connection with the business of the company including reasonable attorneys' fees and costs and any amounts expended in the settlement of any such claims of liability, loss or damage; provided however, that if the liability, loss, damage or claim arises out of any action or inaction of an indemnified party, indemnification shall be available only if (a) either (i) the indemnified party, at the time of such action or inaction determined in good faith that its, his or her course of conduct was in, or not opposed to, the best interests of the company or (ii) in the case of inaction by the indemnified party, the indemnified party did not intend its, his or her inaction to be harmful or opposed to the best interests of the company and (b) the action or inaction did not constitute fraud, gross negligence or willful misconduct by the indemnified party.

(d) SunGard Public Sector Inc. is incorporated under the laws of Florida.

Section 607.0850 of the Florida Business Corporation Act, as amended ( FBCA ), grants a corporation organized thereunder the authority to indemnify each of its directors and officers in connection with actions, suits and proceedings brought against such person if he or she acted in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal actions, had no reasonable cause to believe his or her conduct was unlawful. Unless pursuant to a determination by a court, the determination of whether a director, officer or employee has acted in accordance with the applicable standard of conduct must be made by (i) a majority vote of directors who were not parties to the proceeding or a committee

consisting solely of two or more directors not parties to the proceeding, (ii) independent legal counsel selected by a majority vote of the directors who were not parties to the proceeding or by a committee of directors duly designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding (or selected by the full board if a quorum or

**Table of Contents**

committee cannot be obtained), or (iii) the affirmative vote of the majority of the corporation's shareholders who were not parties to the proceeding.

The FBCA further provides that a corporation may make any other or further indemnity by resolution, bylaw, agreement, vote of shareholders or disinterested directors or otherwise, except with respect to certain enumerated acts or omissions of such persons. Florida law prohibits indemnification or advancement of expenses if a judgment or other final adjudication establishes that the actions of a director, officer or employee constitute (i) a violation of criminal law, unless the person had reasonable cause to believe his or her conduct was lawful, (ii) a transaction from which such person derived an improper personal benefit, (iii) willful misconduct or conscious disregard for the best interests of the corporation in the case of a derivative action by a shareholder or (iv) in the case of a director, a circumstance under which a director would be liable for improper distributions under Section 607.0834 of the FBCA. The FBCA does not affect a director's responsibilities under any other law, such as federal securities laws.

The articles of incorporation and/or the by-laws of the corporation provides that the corporation will indemnify any and all persons whom it has the power to indemnify from and against any and all of the expenses, liabilities or other matters referred to in the FBCA.

(e) Exeter Educational Management Systems, Inc. is incorporated under the laws of Massachusetts.

Chapter 156B, Section 67 of the Annotated Laws of Massachusetts (the Massachusetts Business Corporation Act) (MBCA) states that indemnification of directors, officers, employees and other agents of a corporation may be provided by it to whatever extent authorized by the articles of organization or a bylaw adopted by the stockholders or a vote adopted by the holders of a majority of the shares of stock entitled to vote on the election of directors. Except as the articles of organization or bylaws otherwise require, indemnification of any such persons who are not directors of the corporation may be provided by it to the extent authorized by the directors. Such indemnification may include payment by the corporation of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payment if he shall be adjudicated to be not entitled to indemnification.

No indemnification may be provided for any person with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interest of the corporation.

A corporation shall also have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or other agent of the corporation whether or not the corporation would have the power to indemnify him against such liability.

The articles of organization and/or the bylaws of the corporation provide that, to the fullest extent permitted by the MBCA, as amended from time to time, the corporation will indemnify any and all persons whom it has the power to indemnify from and against any and all of the expenses, liabilities or other matters referred to in the MBCA.

The corporation, acting through its board of directors, has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or other agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or other agent of another organization in which it has an interest, against any liability incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability.

(f) SunGard VPM Inc. is incorporated under the laws of New York.

The New York Business Corporation Law ( BCL ), Article 7, Sections 721-726 provide for the indemnification and advancement of expenses to officers and directors. Indemnification and advancement pursuant to the BCL are not exclusive of any other rights an officer or director may be entitled to, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the

**Table of Contents**

result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that the director personally gained a financial profit or other advantage to which he or she was not legally entitled.

A corporation may indemnify an officer or director, in the case of third party actions, against judgments, fines, amounts paid in settlement and reasonable expenses and, in the case of derivative actions, against amounts paid in settlement and reasonable expenses, provided that the director or officer acted in good faith, for a purpose which he or she reasonably believed to be in the best interests of the corporation and, in the case of criminal actions, had no reasonable cause to believe his conduct was unlawful. A corporation may obtain indemnification insurance indemnifying itself and its directors and officers.

The bylaws of the corporation provide that the corporation shall indemnify any person made, or threatened to be made, a party to an action or proceeding, whether civil or criminal, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or if he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(g) SunGard Systems International Inc. is incorporated under the laws of Pennsylvania.

Under Section 1741 of the Pennsylvania Business Corporation Law of 1988 (the "PBCL"), subject to certain limitations, a corporation has the power to indemnify directors, officers and other parties under certain prescribed circumstances against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with a threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, to which any of them is a party or threatened to be made a party by reason of his being a representative of the corporation or serving at the request of the corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, if he 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, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Expenses incurred by parties in defending any action may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the party to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation.

The bylaws of the corporation provides that the corporation may indemnify any person who is or was or shall be a director or officer of the corporation, and may indemnify any person who is or was or shall be an employee or agent of the corporation, to the fullest extent permitted by the PBCL, from time to time.

(h) SunGard Availability Services LP is a limited partnership governed by the laws of Pennsylvania.

Under Section 8508 of the Pennsylvania Revised Uniform Limited Partnership Act, a limited partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever, subject to such standards and restrictions as are set forth in the partnership agreement. Indemnification shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. The certificate of limited partnership or partnership agreement may not provide for indemnification in the case of willful misconduct or recklessness.

Indemnification may be granted for any action taken and may be made whether or not the limited partnership would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the

right of the limited partnership. Expenses incurred by a partner or other person in defending any action or proceeding against which indemnification may be made pursuant to this section may be paid by the limited partnership in advance of the final disposition of such action or proceeding.

The Agreement of Limited Partnership of SunGard Availability Services LP states that the partnership shall indemnify and hold harmless the general partner, any member, manager, officer, director, shareholder,

**Table of Contents**

employee, or agent of the general partner, and any officer of the partnership against any loss or damage (including attorneys' and other professional fees) incurred by the indemnified party on behalf of the partnership or in furtherance of the partnership's interests, without relieving the indemnified party of liability for willful misconduct or recklessness. The satisfaction of any indemnification is limited to the partnership's assets and no partner shall have any liability on account thereof. This indemnification right includes the right to be paid or reimbursed by the indemnified party in advance of the disposition of any proceeding.

**Item 16. Exhibits and Financial Statement Schedules.***(a) Exhibits*

- 3.1 Amended and Restated Certificate of Incorporation of SunGard Data Systems Inc. (incorporated by reference to the Exhibits filed with SunGard Data Systems Inc.'s Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 3.2 Amended and Restated Bylaws of SunGard Data Systems Inc. (incorporated by reference to the Exhibits filed with SunGard Data Systems Inc.'s Annual Report on Form 10-K for the year ended December 31, 2007 (Commission File No. 1-12989)).
- 3.3\*\*\*\* Certificate of Incorporation of Advanced Portfolio Technologies, Inc.
- 3.4\*\*\*\* Bylaws of Advanced Portfolio Technologies, Inc.
- 3.5\* Certificate of Formation of Automated Securities Clearance LLC
- 3.6\* Limited Liability Company Agreement of Automated Securities Clearance LLC
- 3.7\* Articles of Organization of Exeter Educational Management Systems, Inc.
- 3.8\* By-laws of Exeter Educational Management Systems, Inc.
- 3.9 Certificate of Incorporation of GL Trade Overseas, Inc.
- 3.10 By-laws of GL Trade Overseas, Inc.
- 3.11\* Certificate of Formation of Inflow LLC
- 3.12\* Limited Liability Company Agreement of Inflow LLC
- 3.13\* Certificate of Incorporation of Online Securities Processing Inc.
- 3.14\* By-laws of Online Securities Processing Inc.
- 3.15\*\*\*\* Certificate of Formation Conversion of SIS Europe Holdings LLC
- 3.16\*\*\*\* Limited Liability Company Agreement of SIS Europe Holdings LLC
- 3.17\* Certificate of Incorporation of SRS Development Inc.
- 3.18\* By-laws of SRS Development Inc.
- 3.19 Certificate of Merger of SunGard Ambit LLC
- 3.20 Limited Liability Agreement of SunGard Ambit LLC
- 3.21\* Certificate of Incorporation of SunGard Asia Pacific Inc.
- 3.22\* By-laws of SunGard Asia Pacific Inc.
- 3.23\* Certificate of Limited Partnership of SunGard Availability Services LP
- 3.24\* Limited Partnership Agreement of SunGard Availability Services LP
- 3.25\* Certificate of Incorporation of SunGard Availability Services Ltd.
- 3.26\* By-laws of SunGard Availability Services Ltd.
- 3.27\*\*\* Certificate of Formation of SunGard AvantGard LLC
- 3.28\*\*\* Limited Liability Company Agreement of SunGard AvantGard LLC
- 3.29\*\*\*\*\* Certificate of Formation of SunGard Business Systems LLC
- 3.30\*\*\*\*\* Limited Liability Company Agreement of SunGard Business Systems LLC
- 3.31\* Certificate of Formation of SunGard Computer Services LLC
- 3.32\*\*\*\* Limited Liability Company Agreement of SunGard Computer Services LLC
- 3.33\*\*\*\* Certificate of Formation Conversion of SunGard Consulting Services LLC



Edgar Filing: SunGard VPM Inc. - Form S-1

3.34****	Limited Liability Company Agreement of SunGard Consulting Services LLC
3.35*	Certificate of Formation of SunGard CSA LLC
3.36*	Limited Liability Company Agreement of SunGard CSA LLC

**Table of Contents**

3.37*	Certificate of Incorporation of SunGard Development Corporation
3.38*	By-laws of SunGard Development Corporation
3.39*	Certificate of Incorporation of SunGard DIS Inc.
3.40*	By-laws of SunGard DIS Inc.
3.41*	Certificate of Incorporation of SunGard Energy Systems Inc.
3.42*	By-laws of SunGard Energy Systems Inc.
3.43**	Certificate of Formation of SunGard eProcess Intelligence LLC
3.44**	Limited Liability Company Agreement of SunGard eProcess Intelligence LLC
3.45*	Certificate of Formation of SunGard Financial Systems LLC
3.46*	By-laws of SunGard Financial Systems LLC
3.47**	Certificate of Incorporation of SunGard Higher Education Inc.
3.48**	By-laws of SunGard Higher Education Inc.
3.49**	Certificate of Incorporation of SunGard Higher Education Managed Services Inc.
3.50**	By-laws of SunGard Higher Education Managed Services Inc.
3.51*	Certificate of Formation of SunGard Investment Systems LLC
3.52*	Limited Liability Company Agreement of SunGard Investment Systems LLC
3.53*	Certificate of Formation of SunGard Investment Ventures LLC
3.54*	Limited Liability Company Agreement of SunGard Investment Ventures LLC
3.55***	Certificate of Formation of SunGard iWORKS LLC
3.56***	Limited Liability Company Agreement of SunGard iWORKS LLC
3.57****	Certificate of Incorporation of SunGard iWORKS P&C (US) Inc.
3.58***	By-laws of SunGard iWORKS P&C (US) Inc.
3.59	Certificate of Formation-Conversion of SunGard Kiodex LLC
3.60	Limited Liability Company Agreement of SunGard Kiodex LLC
3.61*	Certificate of Incorporation of SunGard NetWork Solutions Inc.
3.62*	By-laws of SunGard NetWork Solutions Inc.
3.63****	Certificate of Incorporation of SunGard Public Sector Inc.
3.64****	By-laws of SunGard Public Sector Inc.
3.65****	Certificate of Formation Conversion of SunGard Reference Data Solutions LLC
3.66****	Limited Liability Company Agreement of SunGard Reference Data Solutions LLC
3.67*	Certificate of Incorporation of SunGard SAS Holdings Inc.
3.68*	By-laws of SunGard SAS Holdings Inc.
3.69*	Certificate of Formation of SunGard Securities Finance LLC
3.70*	Limited Liability Company Agreement of SunGard Securities Finance LLC
3.71***	Certificate of Formation of SunGard Securities Finance International LLC
3.72***	Limited Liability Company Agreement of SunGard Securities Finance International LLC
3.73*	Certificate of Formation of SunGard Shareholder Systems LLC
3.74*	Limited Liability Company Agreement of SunGard Shareholder Systems LLC
3.75*	Certificate of Incorporation of SunGard Software, Inc.
3.76*	By-laws of SunGard Software, Inc.
3.77*****	Certificate of Incorporation of SunGard Systems International Inc.
3.78*	By-laws of SunGard Systems International Inc.
3.79*	Certificate of Formation of SunGard Technology Services LLC
3.80*	Limited Liability Company Agreement of SunGard Technology Services LLC
3.81****	Certificate of Formation of SunGard VeriCenter, Inc.
3.82****	By-Laws of SunGard VeriCenter, Inc.
3.83***	Certificate of Incorporation of SunGard VPM Inc.
3.84***	By-laws of SunGard VPM Inc.



**Table of Contents**

- 3.86\* Limited Liability Company Agreement of SunGard Workflow Solutions LLC
- 4.1 Indenture, dated as of January 15, 2004, between SunGard Data Systems Inc. and The Bank of New York, as trustee (incorporated by reference to the Exhibits filed with SunGard Data Systems Inc. s Annual Report on Form 10-K for the fiscal year ended December 31, 2003 (Commission file No. 1-12989)).
- 4.2 Indenture, dated as of August 11, 2005, among Solar Capital Corp., SunGard Data Systems Inc., Guarantors named therein and The Bank of New York, as Trustee, governing the 9 1/8% Senior Notes and Senior Floating Rate Notes (incorporated by reference to the Exhibits filed with SunGard Data Systems Inc. s Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission file No. 1-12989)).
- 4.3 Indenture, dated as of August 11, 2005, among Solar Capital Corp., SunGard Data Systems Inc., Guarantors named therein and The Bank of New York, as Trustee, governing the 10 1/4% Senior Subordinated Notes (incorporated by reference to the Exhibits filed with SunGard Data Systems Inc. s Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission file No. 1-12989)).
- 4.4 Indenture, dated as of September 29, 2008, among SunGard Data Systems Inc., Guarantors named therein and The Bank of New York Mellon, as Trustee, governing the 10.625% Senior Notes (incorporated by reference to the Exhibits filed with SunGard s Current Report on Form 8-K dated September 29, 2008 and filed October 3, 2008 (Commission File No. 1-12989)).
- 5.1 Opinion of Simpson Thacher & Bartlett LLP
- 5.2 Opinion of Sheppard, Mullin, Richter & Hampton LLP
- 5.3 Opinions of Blank Rome LLP
- 5.4 Opinion of Ropes & Gray LLP
- 10.1 Lease, effective January 1, 2010 and dated November 20, 2009, between SunGard and Callowhill Management, Inc. relating to SunGard s facility at 401 North Broad Street, Philadelphia, Pennsylvania (incorporated by reference to the Exhibits filed with SunGard Capital Corp. (SCC), SunGard Capital Corp. II (SCCII) and SunGard s Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.2 Amended and Restated Lease Agreement, dated November 23, 2009, by and between Russo Family Limited Partnership, L.P. and SunGard relating to SunGard s facility at 777 Central Boulevard, Carlstadt, New Jersey (incorporated by reference to the Exhibits filed with SCC s, SCCII s and SunGard s Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.3 Amended and Restated Lease Agreement, dated November 23, 2009, by and between 760 Washington Avenue, L.L.C. and SunGard relating to SunGard s facility at 760 Washington Avenue, Carlstadt, New Jersey (incorporated by reference to the Exhibits filed with SCC s, SCCII s and SunGard s Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.4 January 2005 Lease Agreement between 410 Commerce L.L.C. and SunGard relating to SunGard s facility at 410 Commerce Boulevard, Carlstadt, New Jersey ( 410 Commerce Boulevard Lease ) (incorporated by reference to the Exhibits filed with SunGard s Annual Report on Form 10-K for the fiscal year ended December 31, 2004 (Commission File No. 1-12989)).
- 10.5 Amendment to 410 Commerce Boulevard Lease, dated November 23, 2009 (incorporated by reference to the Exhibits filed with SCC s, SCCII s and SunGard s Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.6 Amended and Restated Credit Agreement, dated as of June 9, 2009 among SunGard Data Systems Inc. and the Overseas Borrowers party thereto as Borrowers, SunGard Holdco LLC, the Lenders

Edgar Filing: SunGard VPM Inc. - Form S-1

party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer (incorporated by reference to the Exhibit filed on SunGard's Current Report on Form 8-K dated June 9, 2009 and filed June 10, 2009 (Commission File No. 1-12989)

II-7

---

**Table of Contents**

- 10.7 Guarantee Agreement, dated as of August 11, 2005, among SunGard Holdco LLC, SunGard Data Systems Inc., Solar Capital Corp., the Subsidiaries of SunGard Data Systems Inc. identified therein and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.8 Security Agreement, dated as of August 11, 2005, among SunGard Holdco LLC, SunGard Data Systems Inc., Solar Capital Corp., the Subsidiaries of SunGard Data Systems Inc. identified therein and JPMorgan Chase Bank, N.A., as Collateral Agent (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.9 Intellectual Property Security Agreement, dated as of August 11, 2005, among SunGard Holdco LLC, SunGard Data Systems Inc., Solar Capital Corp., the Subsidiaries of SunGard Data Systems Inc. identified therein and JPMorgan Chase Bank, N.A., as Collateral Agent (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.10 Credit and Security Agreement, dated as of March 27, 2009, by and among SunGard AR Financing LLC as the Borrower, the financial institutions signatory thereto from time to time as the Lenders, and General Electric Capital Corporation as a Lender, as the Swing Line Lender and as the Administrative Agent (incorporated by reference to the Exhibits filed with SunGard's Current Report on Form 8-K dated March 27, 2009 and filed on April 2, 2009 (Commission File No. 1-12989)).
- 10.11 Receivables Sale Agreement, dated as of March 27, 2009, by and among each of the persons signatory thereto from time to time as Sellers, SunGard AR Financing LLC as the Buyer, and SunGard Data Systems Inc., as the Seller Agent (incorporated by reference to the Exhibits filed with SunGard's Current Report on Form 8-K dated March 27, 2009 and filed on April 2, 2009 (Commission File No. 1-12989)).
- 10.12 Seller Support Agreement, dated as of March 27, 2009, by SunGard Data Systems Inc., in favor of SunGard AR Financing LLC (incorporated by reference to the Exhibits filed with SunGard's Current Report on Form 8-K dated March 27, 2009 and filed on April 2, 2009 (Commission File No. 1-12989)).
- 10.13<sup>(1)</sup> Form of Change in Control Agreement including the 30-Day Clause between SunGard Data Systems Inc. and certain key executives of SunGard Data Systems Inc., effective December 15, 2004 (incorporated by reference to the Exhibits filed with SunGard's Current Report on Form 8-K dated December 14, 2004 and filed on December 20, 2004).
- 10.14<sup>(1)</sup> Form of Change in Control Agreement not including the 30-Day Clause between SunGard Data Systems Inc. and certain key executives of SunGard Data Systems Inc., effective December 15, 2004 (incorporated by reference to the Exhibits filed with SunGard's Current Report on Form 8-K dated December 14, 2004 and filed on December 20, 2004).
- 10.15<sup>(1)</sup> Form of Executive Employment Agreement, effective as of August 11, 2005, between SunGard Data Systems Inc. and certain executive officers of SunGard Data Systems Inc. (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.16<sup>(1)</sup> Form of Executive Employment Agreement, effective as of August 11, 2005, between SunGard Data Systems Inc. and certain executive officers of SunGard Data Systems Inc. located in California, the United Kingdom and Switzerland (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.17<sup>(1)</sup> Form of Executive Employment Agreement, effective as of August 11, 2005, between SunGard Data Systems Inc. and certain executive officers of SunGard Data Systems Inc. employed by a

Edgar Filing: SunGard VPM Inc. - Form S-1

subsidiary of SunGard Data Systems Inc. (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).

II-8

---

**Table of Contents**

- 10.18<sup>(1)</sup> Form of Executive Employment Agreement, effective as of August 11, 2005, between SunGard Data Systems Inc. and certain executive officers of SunGard Data Systems Inc. located in California, the United Kingdom and Switzerland employed by a subsidiary of SunGard Data Systems Inc. (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.19<sup>(1)</sup> Employment Agreement between Cristóbal Conde and SunGard Data Systems Inc., dated and effective as of August 11, 2005 (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.20<sup>(1)</sup> Employment Agreement between Kathleen Asser Weslock and SunGard Data Systems Inc., dated and effective as of March 16, 2010 (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.21<sup>(1)</sup> Employment Agreement between Karen Mullane and SunGard Data Systems Inc., dated and effective as of December 29 2009 (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.22<sup>(1)</sup> Employment Agreement between Gil Santos and SunGard HTE Inc. (now named SunGard Public Sector Inc.), dated and effective as of November 15, 2007 ( Santos Employment Agreement ) (incorporated by reference to the Exhibits filed with SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (Commission File No. 1-12989)).
- 10.23<sup>(1)</sup> Amendment dated February 27, 2010 to Santos Employment Agreement (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.24<sup>(1)</sup> Employment Agreement between Robert Woods and SunGard Data Systems Inc., effective as of January 1, 2010 (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Current Report on Form 8-K dated December 16, 2009 and filed on December 22, 2009) (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively).
- 10.25<sup>(1)</sup> Agreement between James L. Mann and SunGard Data Systems Inc. dated August 16, 2002 (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (Commission File No. 1-12989)), as amended by Amendment dated as of February 25, 2004 (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2004 (Commission File No. 1-12989)).
- 10.26<sup>(1)</sup> SunGard 2005 Management Incentive Plan as Amended May 12, 2009 (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.27<sup>(1)</sup> SunGard Dividend Rights Plan as Amended September 6, 2007 (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2007 (Commission File No. 1-12989)).
- 10.28<sup>(1)</sup> Forms of Rollover Stock Option Award Agreements (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.29<sup>(1)</sup> Forms of Time-Based Stock Option Award Agreements (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30,



- 2005 (Commission File No. 1-12989)).
- 10.30<sup>(1)</sup> Forms of Performance-Based Stock Option Award Agreements (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.31<sup>(1)</sup> Forms of Time-Based Restricted Stock Unit Award Agreements (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2007 (Commission File No. 1-12989)).
-

**Table of Contents**

- 10.32<sup>(1)</sup> Forms of Performance-Based Restricted Stock Unit Award Agreements (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2007 (Commission File No. 1-12989)).
- 10.33<sup>(1)</sup> Forms of Time-Based Class A Stock Option Award Agreements (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2007 (Commission File No. 1-12989)).
- 10.34<sup>(1)</sup> Forms of Performance-Based Class A Stock Option Award Agreements (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2007 (Commission File No. 1-12989)).
- 10.35<sup>(1)</sup> Form of Amendment to the Performance Based Stock Option Award Agreements (incorporated by reference to the Exhibits filed with Schedule TO of SunGard Capital Corp. and SunGard Capital Corp. II, each filed August 13, 2009 (Commission File Nos. 5-84880 and 5-84881, respectively)).
- 10.36<sup>(1)</sup> Form of Amendment to the Performance-Based Restricted Stock Unit Award Agreements (incorporated by reference to the Exhibits filed with Schedule TO of SunGard Capital Corp. and SunGard Capital Corp. II, each filed August 13, 2009 (Commission File Nos. 5-84880 and 5-84881, respectively)).
- 10.37<sup>(1)</sup> Form of Amendment to the Performance-Based Class A Stock Option Award Agreements (incorporated by reference to the Exhibits filed with Schedule TO of SunGard Capital Corp. and SunGard Capital Corp. II, each filed August 13, 2009 (Commission File Nos. 5-84880 and 5-84881, respectively)).
- 10.38<sup>(1)</sup> Forms of Amendment to Senior Management Performance-Based Stock Option Award Agreements (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Current Report on Form 8-K dated November 30, 2009 and filed on December 3, 2009) (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively).
- 10.39<sup>(1)</sup> Form of Amendment to Senior Management Performance-Based Class A Stock Option Award Agreement (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Current Report on Form 8-K dated November 30, 2009 and filed on December 3, 2009) (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively).
- 10.40<sup>(1)</sup> Form of Amendment to Senior Management Performance-Based Restricted Stock Unit Award Agreement (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Current Report on Form 8-K dated November 30, 2009 and filed on December 3, 2009) (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively).
- 10.41<sup>(1)</sup> Forms of 2009 Senior Management Performance-Based Restricted Stock Unit Award Agreements (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.42<sup>(1)</sup> Forms of 2009 Senior Management Performance-Based Class A Stock Option Award Agreements (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.43<sup>(1)</sup> Form of 2009 Senior Management Time-Based Restricted Stock Unit Award Agreement (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 10.44<sup>(1)</sup> Form of 2009 Senior Management Time-Based Class A Stock Option Award Agreement (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).

- 10.45<sup>(1)</sup> Summary Description of SunGard's Annual Executive Incentive Compensation Program (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).

II-10

---

**Table of Contents**

- 10.46<sup>(1)</sup> Form of Indemnification Agreement entered into by SunGard with certain officers (incorporated by reference to the Exhibits filed with SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 1991 (Commission File No. 0-14232)).
- 10.47<sup>(1)</sup> Form of Indemnification Agreement between SunGard Capital Corporation, SunGard Capital Corporation II, SunGard Holding Corporation, SunGard HoldCo LLC, SunGard Data Systems Inc. and directors and certain executive officers of SunGard Data Systems Inc. (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.48 Stockholders Agreement, dated as of August 10, 2005, by and among SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, Solar Capital Corp. and Certain Stockholders of SunGard Capital Corp. and SunGard Capital Corp. II (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.49 Participation, Registration Rights and Coordination Agreement, dated as of August 10, 2005, by and among SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, Solar Capital Corp. and Certain Persons who will be Stockholders of SunGard Capital Corp. and SunGard Capital Corp. II (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.50 Principal Investor Agreement, dated as of August 10, 2005, by and among SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, Solar Capital Corp. and the Principal Investors ( Principal Investor Agreement ) (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 10.51 Amendment No. 2 to Principal Investor Agreement, dated as of January 31, 2008 (incorporated by reference to the Exhibits filed with SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (Commission File No. 1-12989)).
- 10.52 Management Agreement, dated as of August 11, 2005, by and among SunGard Data Systems Inc., SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, Bain Capital Partners, LLC, Blackstone Communications Advisors I L.L.C., Blackstone Management Partners IV L.L.C., Goldman, Sachs & Co., Kohlberg Kravis Roberts & Co. L.P., Providence Equity Partners V Inc., Silver Lake Management Company, L.L.C. and TPG GenPar IV, L.P. (incorporated by reference to the Exhibits filed with SunGard's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005 (Commission File No. 1-12989)).
- 12.1 Computations of Ratio of Earnings to Fixed Charges (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 21.1 List of Subsidiaries (incorporated by reference to the Exhibits filed with SCC's, SCCII's and SunGard's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (Commission File No. s 0-53653, 0-53654 and 1-12989, respectively)).
- 23.1 Consent of Simpson Thacher & Bartlett LLP (included as part of its opinion filed as Exhibit 5.1 hereto)
- 23.2 Consent of Sheppard, Mullin, Richter & Hampton LLP (included as part of its opinion filed as Exhibit 5.2 hereto)
- 23.3 Consent of Blank Rome LLP (included as part of its opinions filed as Exhibit 5.3 hereto)
- 23.4 Consent of Ropes & Gray LLP (included as part of its opinion filed as Exhibit 5.4 hereto)
- 23.5 Consent of PricewaterhouseCoopers LLP
- 24.1 Powers of Attorney

25.1\* Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of The Bank of New York  
with respect to the Indenture governing the 91/8% Senior Notes  
II-11

---

**Table of Contents**

- 25.2\* Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of The Bank of New York with respect to the Indenture governing the 101/4% Senior Subordinated Notes
- 25.3\*\*\*\*\* Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of The Bank of New York with respect to the Indentures governing the 105/8% Senior Notes due 2015

\* Incorporated by reference to the Registration Statement on Form S-4 of SunGard Data Systems Inc. (File No. 333-133383) filed on April 19, 2006.

\*\* Incorporated by reference to the Amendment No. 1 to the Registration Statement on Form S-1 of SunGard Data Systems Inc. (File No. 333-135538) filed on July 31, 2006.

\*\*\* Incorporated by reference to the Registration Statement on Form S-1 of SunGard Data Systems Inc. (File No. 333-142356) filed on April 25, 2007.

\*\*\*\* Incorporated by reference to the Registration Statement on Form S-1 of SunGard Data System Inc. (File No. 333-150383) filed on April 22, 2008.

\*\*\*\*\* Incorporated by reference to the Amendment No. 1 to the Registration Statement on Form S-1 of SunGard Data Systems Inc. (File No. 333-150383) filed on May 9, 2008.

\*\*\*\*\* Incorporated by reference to the Registration Statement on Form S-1 of SunGard Data Systems Inc. (File No. 333-150383) filed on April 20, 2009.

Filed herewith.

Material redacted and submitted by SunGard Capital Corp., SunGard Capital Corp. II and SunGard Data Systems Inc. separately to the U.S. Securities and Exchange Commission under a request for confidential treatment.

*(b) Financial Statement Schedules*

(1) Management contract or compensatory plan or arrangement

None.

**Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendments thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or

decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

II-12

---

**Table of Contents**

(2) that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) that, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

Each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§ 230.430A of this chapter), shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.





**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD DATA SYSTEMS INC.

By: \*

**Name: Cristóbal Conde**

**Title: President and Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Cristóbal Conde</b>	President, Chief Executive Officer and Director (Principal Executive Officer)	April 26, 2010
* <b>Robert F. Woods</b>	Senior Vice President Finance and Chief Financial Officer (Principal Financial Officer)	April 26, 2010
* <b>Karen M. Mullane</b>	Vice President and Controller (Principal Accounting Officer)	April 26, 2010
* <b>Chinh E. Chu</b>	Director	April 26, 2010
* <b>John Connaughton</b>	Director	April 26, 2010
* <b>James H. Greene</b>	Director	April 26, 2010
* <b>Glenn H. Hutchins</b>	Chairman of the Board of Directors	April 26, 2010

*	Director	April 26, 2010
<b>James L. Mann</b>		
*	Director	April 26, 2010
<b>John Marren</b>		
*	Director	April 26, 2010
<b>Sanjeev Mehra</b>		

**Table of Contents**

**Signature**

**Title**

**Date**

\*

Director

April 26, 2010

**Julie Richardson**

\*By: /s/ Leslie S. Brush

**Leslie S. Brush  
Attorney-in-fact**

II-15

---

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

ADVANCED PORTFOLIO TECHNOLOGIES, INC.

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

AUTOMATED SECURITIES CLEARANCE LLC

**Name:** James E. Ashton III  
**By:** \*  
**Title:** Division Chief Executive Officer

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

EXETER EDUCATIONAL MANAGEMENT SYSTEMS, INC.

By: \*

**Name: Ron M. Lang** **Title: President and Chief Executive Officer,  
Higher Education**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Ron M. Lang</b>	President and Chief Executive Officer, Higher Education and Director (Principal Executive Officer)	April 26, 2010
* <b>John A. Milana</b>	Senior Vice President, Finance and Chief Financial Officer, Higher Education (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: */s/ Leslie S. Brush*

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

GL TRADE OVERSEAS, INC.

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**



**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

INFLOW LLC

By: \*

**Name: Cristóbal Conde** **Title: President & Chief Executive Officer,  
Availability Services**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Cristóbal Conde</b>	President & Chief Executive Officer, Availability Services (Principal Executive Officer)	April 26, 2010
* <b>Michael J. Ruane</b>	Executive Vice President, Finance and Chief Financial Officer, Availability Services and Manager (Principal Financial Officer)	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush  
  
**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

ONLINE SECURITIES PROCESSING INC.

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SIS EUROPE HOLDINGS LLC

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Eric G. Erickson</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SRS DEVELOPMENT INC.

By: \*

Name: **Michael J. Ruane**

Title: **President and Treasurer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Michael J. Ruane</b>	President, Treasurer and Director (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD AMBIT LLC

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD ASIA PACIFIC INC.

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Vice President and Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD AVAILABILITY SERVICES LP

**Name:** **Cristóbal Conde**  
**Availability Services**

By: \*

**Title:** **President & Chief Executive Officer,**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Cristóbal Conde</b>	President & Chief Executive Officer, Availability Services (Principal Executive Officer)	April 26, 2010
* <b>Michael J. Ruane</b>	Senior Vice President, Finance and Chief Financial Officer Availability Services (Principal Financial Officer) and Manager of SunGard Technology Services LLC, the General Partner	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager of the General Partner	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD AVAILABILITY SERVICES LTD.

By: \*

Name: **Cristóbal Conde**

Title: **Chief Executive Officer,  
Availability Services**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<p>* <b>Cristóbal Conde</b></p>	<p>Chief Executive Officer, Availability Services (Principal Executive Officer)</p>	<p>April 26, 2010</p>
<p>* <b>Michael J. Ruane</b></p>	<p>Treasurer (Principal Financial Officer and Principal Accounting Officer) and Director</p>	<p>April 26, 2010</p>
<p>* <b>Victoria E. Silbey</b></p>	<p>Director</p>	<p>April 26, 2010</p>

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**



**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD AVANTGARD LLC

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD BUSINESS SYSTEMS LLC

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD COMPUTER SERVICES LLC

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
<b>James E. Ashton III</b>		
*	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
<b>Max J. Broedlow</b>		
*	Manager	April 26, 2010
<b>Thomas J. McDugall</b>		
*	Manager	April 26, 2010
<b>Karen M. Mullane</b>		
*	Manager	April 26, 2010
<b>Victoria E. Silbey</b>		

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD CONSULTING SERVICES LLC

**Name:** James E. Ashton III  
**By:** \*  
**Title:** Division Chief Executive Officer

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD CSA LLC

By: \*

**Name: Mats Lillienberg**

**Title: President**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
*	President, (Principal Executive Officer)	April 26, 2010
<b>Mats Lillienberg</b>		
*	Treasurer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
<b>Robert F. Woods</b>		
*	Manager	April 26, 2010
<b>Thomas J. McDugall</b>		
*	Manager	April 26, 2010
<b>Karen M. Mullane</b>		
*	Manager	April 26, 2010
<b>Victoria E. Silbey</b>		

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD DEVELOPMENT CORPORATION

By: \*

Name: **Michael J. Ruane**

Title: **President and Treasurer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Michael J. Ruane</b>	President, Treasurer and Director (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD DIS INC.

By: \*

Name: **Robert F. Woods**

Title: **President and Treasurer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Robert F. Woods</b>	President and Treasurer (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD ENERGY SYSTEMS INC.

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**



**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD EPROCESS INTELLIGENCE LLC

**Name: Harold C. Finders** By: \*  
**Title: Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD FINANCIAL SYSTEMS LLC

**Name:** James E. Ashton III  
**By:** \*  
**Title:** Division Chief Financial Officer

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>James E. Ashton III</b>	Division Chief Financial Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD HIGHER EDUCATION INC.

**Name: Ron M. Lang** By: \*  
**Title: President and Chief Executive Officer, Higher Education**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Ron M. Lang</b>	President and Chief Executive Officer, Higher Education and Director (Principal Executive Officer)	April 26, 2010
* <b>John A. Milana</b>	Senior Vice President, Finance and Chief Financial Officer, Higher Education (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD HIGHER EDUCATION MANAGED SERVICES INC.

By: \*

**Name: Ron M. Lang**

**Title: Chief Executive Officer, Higher Education**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Ron M. Lang</b>	Chief Executive Officer, Higher Education and Director (Principal Executive Officer)	April 26, 2010
* <b>John A. Milana</b>	Senior Vice President, Finance and Chief Financial Officer, Higher Education (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD INVESTMENT SYSTEMS LLC

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD INVESTMENT VENTURES LLC

By: \*

**Name: Robert F. Woods**

**Title: President and Treasurer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Robert F. Woods</b>	President and Treasurer (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Eric G. Erickson</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD iWORKS LLC

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max Broedlow</b>	Division Chief Financial Officer, (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD iWORKS P&C (US) INC.

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**



**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD KIODEX LLC

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD NETWORK SOLUTIONS INC.

**Name:** Cristóbal Conde  
**By:** \*  
**Title:** **President & Chief Executive Officer,  
Availability Services**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Cristóbal Conde</b>	President & Chief Executive Officer, Availability Services (Principal Executive Officer)	April 26, 2010
* <b>Michael J. Ruane</b>	Executive Vice President, Finance and Chief Financial Officer, Availability Services and Director (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD PUBLIC SECTOR INC.

By: \*

Name: **Gilbert O. Santos**

Title: **Chief Executive Officer, Public Sector**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Gilbert O. Santos</b>	Chief Executive Officer, Public Sector and Director (Principal Executive Officer)	April 26, 2010
* <b>David D. Gathman</b>	Chief Financial Officer, Public Sector (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD REFERENCE DATA SOLUTIONS LLC

By: \*

**Name: James E. Ashton III**

**Title: Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max J. Broedlow</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD SAS HOLDINGS INC.

By: \*

Name: **Cristóbal Conde**

Title: **President**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Cristóbal Conde</b>	President (Principal Executive Officer)	April 26, 2010
* <b>Michael J. Ruane</b>	Treasurer and Director (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD SECURITIES FINANCE LLC

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD SECURITIES FINANCE  
INTERNATIONAL LLC

By: \*

**Name: Harold C. Finders**

**Title: Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD SHAREHOLDER SYSTEMS LLC

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**



**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD SOFTWARE, INC.

By: \*

**Name: Robert F. Woods**

**Title: President and Treasurer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Robert F. Woods</b>	President and Treasurer (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD SYSTEMS INTERNATIONAL INC.

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
*	Division Chief Executive Officer	April 26, 2010
<b>James E. Ashton III</b>		
*	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
<b>Max J. Broedlow</b>		
*	Director	April 26, 2010
<b>Thomas J. McDugall</b>		
*	Director	April 26, 2010
<b>Karen M. Mullane</b>		
*	Director	April 26, 2010
<b>Victoria E. Silbey</b>		

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD TECHNOLOGY SERVICES LLC

**Name:** Cristóbal Conde  
**By:** \*  
**Title:** President and Chief Executive Officer,  
Availability Services

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Cristóbal Conde</b>	President and Chief Executive Officer, Availability Services (Principal Executive Officer)	April 26, 2010
* <b>Michael J. Ruane</b>	Executive Vice President, Finance and Chief Financial Officer, Availability Services and Manager (Principal Financial Officer)	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD VERICENTER, INC.

By: \*

Name: **Cristóbal Conde**

Title: **President & Chief Executive Officer,  
Availability Services**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>Cristóbal Conde</b>	President & Chief Executive Officer, Availability Services (Principal Executive Officer)	April 26, 2010
* <b>Michael J. Ruane</b>	Executive Vice President, Finance and Chief Financial Officer, Availability Services and Director (Principal Financial Officer)	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD VPM INC.

By: \*

Name: **Harold C. Finders**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Harold C. Finders</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Dean B. Gluyas</b>	Division Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Director	April 26, 2010
* <b>Karen M. Mullane</b>	Director	April 26, 2010
* <b>Victoria E. Silbey</b>	Director	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayne, Commonwealth of Pennsylvania, on April 26, 2010.

SUNGARD WORKFLOW SOLUTIONS LLC

By: \*

Name: **James E. Ashton III**

Title: **Division Chief Executive Officer**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
* <b>James E. Ashton III</b>	Division Chief Executive Officer (Principal Executive Officer)	April 26, 2010
* <b>Max Broedlow</b>	Division Chief Financial Officer, (Principal Financial Officer and Principal Accounting Officer)	April 26, 2010
* <b>Thomas J. McDugall</b>	Manager	April 26, 2010
* <b>Karen M. Mullane</b>	Manager	April 26, 2010
* <b>Victoria E. Silbey</b>	Manager	April 26, 2010

\*By: /s/ Leslie S. Brush

**Leslie S. Brush**  
**Attorney-in-fact**