$600,000,000

Axalta Coating Systems, LLC

% Senior Notes due 2029

Axalta Coating Systems, LLC, a Delaware limited liability company (the "Issuer") is offering $600,000,000 aggregate principal amount of % Senior Notes due 2029 (the "Notes"). The Notes will mature on , 2029. Interest on the Notes will accrue from , 2020 and will be payable on each and , commencing , 2021.

The Issuer may, at its option, redeem some or all of the Notes offered hereby at any time on or after , 2024 at the redemption prices set forth in this offering memorandum, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption. At any time prior to , 2024, the Issuer may, at its option, also redeem up to 40% of the Notes offered hereby using the proceeds of certain equity offerings. In addition, at any time prior to , 2024, the Issuer may, at its option, redeem some or all of the Notes offered hereby at a price equal to 100% of the principal amount, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption, plus a "make-whole" premium. In connection with any offer to purchase the Notes, if holders of no less than 90% of the aggregate principal amount of the Notes validly tender their Notes in such offer, the Issuer or a third party making such offer are entitled to redeem any remaining Notes at the price offered to each holder in such offer. If the Parent Guarantor (as defined herein) or any of its restricted subsidiaries (including the Issuer) sells certain of its assets or if the Parent Guarantor experiences specific kinds of changes in control, the Issuer must offer to purchase all or a portion of the Notes offered hereby.

The Notes offered hereby will initially be guaranteed (the "guarantees") by Axalta Coating Systems Ltd., a Bermuda exempted company limited by shares and the ultimate parent of the Issuer (the "Parent Guarantor"), and each of the Parent Guarantor's existing and future subsidiaries (other than the Issuer) that is a borrower under or that guarantees obligations under the Senior Secured Credit Facilities (as defined herein) (the "subsidiary guarantors" and, together with the Parent Guarantor, the "guarantors"). The Notes and the guarantees will be the Issuer's and the guarantors' senior unsecured obligations and will rank contractually senior in right of payment to all of the Issuer's and guarantors' future subordinated indebtedness and equally in right of payment with all of the Issuer's and guarantors' existing and future senior debt. The Notes will be effectively subordinated to any of the Issuer's and guarantors' existing and future secured debt, including the Senior Secured Credit Facilities, to the extent of the value of the assets securing such debt, and will be structurally subordinated to the liabilities of the Parent Guarantor's non-guarantor subsidiaries.

Investing in the Notes offered hereby involves risks. See "Risk Factors" beginning on page 16.

Price: %
plus accrued interest, if any, from , 2020.

The Notes offered hereby have not been and will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any other jurisdiction. The Issuer is not required to and does not intend to register the Notes for resale under the Securities Act. The Notes offered hereby may be offered only in transactions that are exempt from registration under the Securities Act and applicable state securities laws. The Issuer and the initial purchasers named below are offering the Notes only to persons reasonably believed to be "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) and to non-U.S. persons outside the United States in reliance on Regulation S under the Securities Act and, in the case of persons in the European Economic Area, in accordance with the Prospectus Directive (as defined herein). For further details about eligible offerees and resale restrictions, see "Transfer Restrictions."

The Notes will be issued only in registered form in minimum denominations of $150,000 and integral multiples of $1,000 in excess thereof. There is currently no public market for the Notes. The Notes will not be listed on any securities exchange or automated dealer quotation system.

The initial purchasers expect to deliver the Notes offered hereby to investors only in book-entry form only through the facilities of The Depository Trust Company for the accounts of its participants on or about , 2020, which is the business day following the date of confirmation of orders with respect to the Notes (such settlement cycle being referred to as "T+ "). You should be advised that trading of the Notes may be affected by the T+ settlement. See "Plan of Distribution."

Joint Book-Running Managers

Barclays		**BofA Securities**
Citigroup	**Credit Suisse**	**Deutsche Bank Securities**
Goldman Sachs & Co. LLC	**J.P. Morgan Securities LLC**	**Truist Securities**

Co- Managers

Jefferies	**PNC Capital Markets LLC**	**Janney Montgomery Scott**

Offering Memorandum dated , 2020.

AXALTA COATING SYSTEMS

Built for performance.

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NOTICE TO INVESTORS

You should rely only on the information contained in this document or to which we have referred you. We have not authorized anyone to provide you with information that is different. If you receive any other information, you should not rely on it. This offering memorandum may only be used where it is legal to sell these Notes. The information in this offering memorandum may only be accurate on the date of this offering memorandum. You should not assume that the information contained in this offering memorandum is accurate as of any other date.

The Notes offered hereby will be available in book-entry form only. We expect that the Notes sold pursuant to this offering memorandum will be issued in the form of one or more global certificates, which will be deposited with or on behalf of The Depository Trust Company ("DTC") and registered in its name or in the name of Cede & Co., its nominee. Beneficial interests in the global certificates will be shown on, and transfers of the global certificates will be effected only through, records maintained by DTC and its participants, as applicable. After the initial issuance of the global certificates, notes in certificated form may be issued in exchange for the global certificates only as set forth in the indenture that will govern the Notes offered hereby (the "Indenture"). See "Book-Entry Settlement and Clearance."

This offering memorandum is a confidential document that we are providing only to prospective purchasers of the Notes offered hereby. You should read this offering memorandum before making a decision whether to purchase any Notes. You must not:

- use this offering memorandum for any other purpose;
- make copies of any part of this offering memorandum or give a copy of it to any other person; or
- disclose any information in this offering memorandum to any other person.

The Issuer has prepared this offering memorandum and is solely responsible for its contents. You are responsible for making your own examination of us and your own assessment of the merits and risks of investing in the Notes offered hereby. You may contact us if you need any additional information. By purchasing any Notes offered hereby, you will be deemed to have acknowledged that:

- you have reviewed this offering memorandum;
- you have had an opportunity to request and to review, and you have received, any additional information that you need from us;
- you have not relied upon the initial purchasers or any person affiliated with the initial purchasers in connection with your investigation of the accuracy of such information or your investment decision;
- this offering memorandum relates to an offering that is exempt from registration under the Securities Act and does not comply in important respects with the rules of the Securities and Exchange Commission (the "SEC") that would apply to an offering document relating to a public offering of securities; and
- in connection with your examination of us and the terms of this offering, no person has been authorized to give information or to make any representation concerning us, this offering or the Notes, other than as contained in this offering memorandum.

The Issuer is not providing you with any legal, business, tax or other advice in this offering memorandum. You should consult your own attorney, business advisor and tax advisor for legal, business and tax advice regarding an investment in the Notes. You should contact the initial purchasers with any questions about this offering.

You must comply with all laws and regulations that apply to you in any place in which you buy, offer or sell any Notes offered hereby or possess or distribute this offering memorandum. You must also obtain any consents, permission or approvals that you need in order to purchase, offer or sell any Notes offered hereby under the laws and regulations in force in any jurisdiction to which you are subject or in which you make such purchases, offers or sales. The Issuer and the initial purchasers are not responsible for your compliance with these legal requirements. The Issuer is not making any representation to you regarding the legality of your investment in the Notes under any law or regulation.

The Issuer is offering the Notes in reliance on exemptions from the registration requirements of the Securities Act. These exemptions apply to offers and sales of securities that do not involve a public offering. By purchasing any Notes, you will be deemed to have made certain acknowledgments, representations and agreements as described in the "Transfer Restrictions" section of this offering memorandum. You may be required to bear the financial risks of investing in the Notes for an indefinite period of time.

The Notes have not been recommended by any federal, state or foreign securities authorities, nor have any such authorities determined that this offering memorandum is accurate or complete. Any representation to the contrary is a criminal offense. There are

no registration rights associated with the Notes, and we have no intention to offer notes registered under the Securities Act in exchange for the Notes offered hereby or to file a registration statement with respect to the Notes. The Indenture will not be qualified under the Trust Indenture Act of 1939, as amended.

The Notes are subject to restrictions on resale and transfer and may not be transferred or resold except as permitted under the Securities Act and applicable state securities laws pursuant to registration or exemption therefrom. Please refer to the sections in this offering memorandum entitled "Offering Memorandum Summary—The Offering," "Plan of Distribution" and "Transfer Restrictions."

The initial purchasers make no representation or warranty, express or implied, as to the accuracy or completeness of the information contained in this offering memorandum. Nothing contained in this offering memorandum is, or shall be relied upon as, a promise or representation by the initial purchasers as to the past or future. The initial purchasers assume no responsibility for the accuracy or completeness of any such information.

By purchasing the Notes, you will be deemed to acknowledge that none of the Issuer, the guarantors or the initial purchasers, or any person representing any of them, has made any representation to you with respect to the Issuer, the Parent Guarantor or its subsidiaries or the offer or sale of the Notes, other than the information contained in this offering memorandum, which offering memorandum has been delivered to you and upon which you are relying in making your investment decision with respect to the Notes offered hereby.

MIFID II product governance / Professional investors and ECPs only target market

Solely for the purposes of the manufacturer's product approval process, the target market assessment in respect of the Notes has led to the conclusion that: (i) the target market for the Notes is eligible counterparties and professional clients only, each as defined in Directive 2014/65/EU (as amended, "MiFID II"); and (ii) all channels for distribution of the Notes to eligible counterparties and professional clients are appropriate. Any person subsequently offering, selling or recommending the Notes (a "distributor") should take into consideration the manufacturers' target market assessment; however, a distributor subject to MiFID II is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the manufacturers' target market assessment) and determining appropriate distribution channels.

Prohibition of sales to EEA and UK retail investors

The Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (the "EEA") or in the United Kingdom (the "UK"). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of MiFID II; or (ii) a customer within the meaning of Directive (EU) 2016/97 (the "Insurance Distribution Directive"), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II. Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended, the "PRIIPs Regulation") for offering or selling the Notes or otherwise making them available to retail investors in the EEA or in the UK has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA or in the UK may be unlawful under the PRIIPs Regulation.

Notice to United Kingdom Investors

This offering memorandum is for distribution only to persons who (i) have professional experience in matters relating to investments and who qualify as investment professionals within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the "Financial Promotion Order"), (ii) are persons falling within Article 49(2)(a) to (d) ("high net worth companies, unincorporated associations, etc.") of the Financial Promotion Order, (iii) are outside the United Kingdom or (iv) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000, as amended (the "FSMA")) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as "relevant persons"). This offering memorandum is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this offering memorandum relates is available only to relevant persons and will be engaged in only with relevant persons.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Many statements made in this offering memorandum and in the documents incorporated by reference herein that are not statements of historical fact, including statements about our beliefs and expectations, are "forward-looking statements" within the meaning of U.S. federal securities laws and should be evaluated as such. Forward-looking statements include information concerning possible or assumed future results of operations, including descriptions of our business plan, strategies and capital structure. These

statements often include words such as “anticipate,” “expect,” “suggests,” “plan,” “believe,” “intend,” “estimates,” “targets,” “projects,” “should,” “could,” “would,” “may,” “will,” “forecast” and other similar expressions. These forward-looking statements are contained throughout this offering memorandum, including the sections entitled “Offering Memorandum Summary,” “Risk Factors” and “Capitalization,” and throughout the documents incorporated by reference herein. We base these forward-looking statements or projections on our current expectations, plans and assumptions that we have made in light of our experience in the industry, as well as our perceptions of historical trends, current conditions, expected future developments and other factors we believe are appropriate under the circumstances and at such time. As you read and consider this offering memorandum, you should understand that these statements are not guarantees of performance or results. The forward-looking statements and projections are subject to and involve risks, uncertainties and assumptions, including, but not limited to, the risks and uncertainties described in this section as well as the section entitled “Risk Factors” in this offering memorandum and in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2019 and our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2020, each of which is incorporated by reference herein, and you should not place undue reliance on these forward-looking statements or projections. Although we believe that these forward-looking statements and projections are based on reasonable assumptions at the time they are made, you should be aware that many factors could affect our actual financial results or results of operations and could cause actual results to differ materially from those expressed in the forward-looking statements and projections. Factors that may materially affect such forward-looking statements and projections include:

- adverse developments in economic conditions as a result of the global coronavirus pandemic (“COVID-19”) or otherwise;
- the duration and spread of the COVID-19 outbreak, its severity, actions taken to contain the virus, including government actions to mitigate the economic impact of the outbreak, how quickly and to what extent normal economic and operating conditions can resume and how quickly and to what extent our customers and counterparties can recover from the negative impacts of the outbreak; and the effects and unpredictability of recurring containment and mitigation actions;
- volatility in the capital, credit and commodities markets;
- our inability to successfully execute on our growth strategy and our cost savings initiatives, including restructurings;
- increased competition;
- reduced demand for some of our products as a result of improved safety features on vehicles, insurance company influence, new business models or new methods of travel;
- risks of the loss or change in purchasing levels of any of our significant customers or the consolidation of MSOs, distributors and/or body shops;
- our reliance on our distributor network and third-party delivery services for the distribution and export of certain of our products;
- credit risk exposure from our customers;
- price increases or interruptions in our supply of raw materials;
- failure to develop and market new products and manage product life cycles;
- business disruptions, security threats and security breaches, including security risks to our information technology systems;
- risks associated with our outsourcing strategies;
- risks associated with our non-U.S. operations;
- currency-related risks;
- terrorist acts, conflicts, wars, natural disasters, pandemics, and other health crises that may materially adversely affect our business, financial condition and results of operations;
- risks associated with the United Kingdom’s withdrawal from the European Union;
- failure to comply with the anti-corruption laws of the United States and various international jurisdictions;
- failure to comply with anti-terrorism laws and regulations and applicable trade embargoes;
- risks associated with protecting data privacy;
- significant environmental liabilities and costs as a result of our current and past operations or products, including operations or products related to our business prior to the Parent Guarantor’s acquisition of DuPont Performance Coatings;
- transporting certain materials that are inherently hazardous due to their toxic nature;

- litigation and other commitments and contingencies;
- ability to recruit and retain the experienced and skilled personnel we need to compete;
- unexpected liabilities under any pension plans applicable to our employees;
- work stoppages, union negotiations, labor disputes and other matters associated with our labor force;
- our ability to protect and enforce intellectual property rights;
- intellectual property infringement suits against us by third parties;
- our ability to realize the anticipated benefits of any acquisitions and divestitures;
- our joint ventures' ability to operate according to our business strategy should our joint venture partners fail to fulfill their obligations;
- risk that the insurance we maintain may not fully cover all potential exposures;
- risks associated with changes in tax rates, laws or regulations, or the interpretation or application of tax laws and regulations, including unexpected impacts of the new U.S. Tax Cuts and Jobs Act of 2017, which may differ with further regulatory guidance and changes in our current interpretations and assumptions;
- our substantial indebtedness;
- limitations on our ability to obtain additional capital on commercially reasonable terms;
- any statements of belief and any statements of assumptions underlying any of the foregoing;
- other factors disclosed in this offering memorandum or incorporated by reference herein; and
- other factors beyond our control.

These cautionary statements should not be construed by you to be exhaustive and are made only as of the date of this offering memorandum. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

USE OF NON-U.S. GAAP FINANCIAL MEASURES

EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA

To supplement our financial information presented in this offering memorandum and in the documents incorporated by reference herein that are presented in accordance with generally accepted accounting principles in the United States ("U.S. GAAP"), we use the following non-U.S. GAAP financial measures to clarify and enhance an understanding of past performance: EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA. We believe that the presentation of these financial measures enhances an investor's understanding of our financial performance. We further believe that these financial measures are useful financial metrics to assess our operating performance from period-to-period by excluding certain items that we believe are not representative of our core business. Management uses these non-U.S. GAAP financial measures in the analysis of our financial and operating performance because they assist in the evaluation of underlying trends in our business. We use certain of these financial measures for business planning purposes and in measuring our performance relative to that of our competitors.

EBIT consists of net income before interest expense, net, and provision (benefit) for income taxes. EBITDA consists of net income before interest expense, net, provision (benefit) for income taxes, depreciation and amortization. Adjusted EBIT and Adjusted EBITDA consist of EBIT and EBITDA, respectively, adjusted for (i) certain non-cash items included within net income, (ii) certain items we do not believe are indicative of ongoing operating performance or (iii) certain non-recurring, unusual or infrequent items that have not occurred within the last two years or we believe are not reasonably likely to recur within the next two years. We believe that making such adjustments provides investors meaningful information to understand our operating results and ability to analyze financial and business trends on a period-to-period basis.

We believe these financial measures are commonly used by investors to evaluate our performance and that of our competitors. However, our use of the terms EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA may vary from that of others in our industry. These financial measures should not be considered as alternatives to income before income taxes, net income, earnings per share or any other performance measures derived in accordance with U.S. GAAP as measures of operating performance.

EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA have important limitations as analytical tools and should be considered in conjunction with, and not as substitutes for, our results as reported under U.S. GAAP. Some of these limitations are:

- EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA:
  - do not reflect the significant interest expense on our debt, including the Senior Secured Credit Facilities and the Existing Notes (as defined herein); and
  - eliminate the impact of income taxes on our results of operations;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA and Adjusted EBITDA do not reflect any expenditures for such replacements; and
- other companies in our industry may calculate EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA differently than we do, limiting their usefulness as comparative measures.

Because of these limitations, EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA should not be considered as measures of discretionary cash available to us to invest in the growth of our business. We compensate for these limitations by using EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA along with other comparative tools, together with U.S. GAAP measurements, to assist in the evaluation of operating performance. Such U.S. GAAP measurements include income before income taxes, net income, earnings per share and other performance measures.

In calculating these financial measures, we make certain adjustments that are based on assumptions and estimates that may prove to have been inaccurate. In addition, in evaluating these financial measures, you should be aware that in the future we may incur expenses similar to those eliminated in this presentation. Our presentation of EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual items.

For an explanation of the components of EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA, see footnotes (2) and (4) in "Offering Memorandum Summary—Summary Historical Financial Information and Other Data."

The SEC has adopted rules to regulate the use in filings with the SEC and in public disclosures of "non-U.S. GAAP financial measures," such as EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA and ratios related thereto. These measures are derived on the basis of methodologies other than in accordance with U.S. GAAP. These rules govern the manner in which non-U.S. GAAP financial measures are publicly presented and require, among other things:

- a presentation with equal or greater prominence of the most comparable financial measure or measures calculated and presented in accordance with U.S. GAAP; and
- a statement disclosing the purposes for which the registrant's management uses the non-U.S. GAAP financial measure.

The rules prohibit, among other things:

- the exclusion of charges or liabilities that require, or will require, cash settlement or would have required cash settlement, absent an ability to settle in another manner, from a non-U.S. GAAP liquidity measure; and
- the adjustment of a non-U.S. GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it has occurred in the past two years or is reasonably likely to recur within the next two years.

The non-U.S. GAAP financial measures presented in this offering memorandum may not comply with the SEC rules governing the presentation of non-U.S. GAAP financial measures. See "Offering Memorandum Summary—Summary Historical Financial Information and Other Data" for a discussion of our use of EBITDA and Adjusted EBITDA in this offering memorandum including the reasons that we believe this information is useful to management and investors, and a reconciliation of EBIT, Adjusted EBIT, EBITDA and Adjusted EBITDA to the most closely comparable financial measure calculated in accordance with U.S. GAAP.

MARKET, INDUSTRY AND OTHER DATA

This offering memorandum and the documents incorporated by reference herein include estimates regarding market and industry data and forecasts, which are based on publicly available information, industry publications and surveys, reports from government agencies, reports by market research firms or other independent sources such as Orr & Boss, Inc., and our own estimates based on our management's knowledge of and experience in the market sectors in which we compete. Although we believe them to be accurate, we have not independently verified market and industry data from third-party sources. This information cannot always be

verified with complete certainty due to the limits on the availability and reliability of raw data, the voluntary nature of the data gathering process, and other limitations and uncertainties inherent in industry research and surveys of market size.

References to EMEA refer to Europe, the Middle East and Africa. References to Latin America include Mexico and references to North America exclude Mexico.

Certain monetary amounts, percentages and other figures included in this offering memorandum or incorporated by reference herein have been subject to rounding adjustments. Accordingly, figures shown as totals in certain tables or charts may not be the arithmetic aggregation of the figures that precede them, and figures expressed as percentages in the text may not total 100% or, as applicable, when aggregated may not be the arithmetic aggregation of the percentages that precede them.

TRADEMARKS

We own or otherwise have rights to the trademarks, service marks, copyrights and trade names, including those mentioned in this offering memorandum or in documents incorporated by reference herein, that are used in conjunction with the marketing and sale of our products and services. This offering memorandum and the documents incorporated by reference herein include trademarks, such as Abcite®, Alesta®, AquaEC®, Audurra™, Centari®, Ceranamel®, Challenger™, Chemophan™, ColorNet®, Corlar®, Cromax®, Cromax Mosaic®, Durapon 70®, Duxone™, Harmonized Coating Technologies®, Hydropon®, Imron®, Imron Elite™, Imron ExcelPro™, Lutophen™, Nap-Gard®, Nason®, Rival®, Spies Hecker®, Standox®, Stollaquid™, Syntopal™, Syrox™, Vermeera® and Voltatex®, which are protected under applicable intellectual property laws and are our property and the property of our subsidiaries. This offering memorandum and the documents incorporated by reference herein may also contain trademarks, service marks, copyrights and trade names of other companies, which are the property of their respective owners. We do not intend our use or display of other companies' trademarks, service marks, copyrights or trade names to imply a relationship with, or endorsement or sponsorship of us by, any other companies. Solely for convenience, our trademarks, service marks and trade names referred to in this offering memorandum, or in documents incorporated by reference in this offering memorandum, may appear without the ® or ™ symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks and trade names.

WHERE YOU CAN FIND MORE INFORMATION; INCORPORATION BY REFERENCE

The Parent Guarantor files annual, quarterly and current reports, proxy statements and other information with the SEC. The SEC maintains a website that contains reports, proxy and information statements and other information about the Parent Guarantor, who file electronically with the SEC. The address of that website is http://www.sec.gov. In addition, the Parent Guarantor posts documents it files with the SEC on its website at www.axalta.com. Except for documents incorporated by reference into this offering memorandum as described below, no information in, or that can be accessed through, such website is incorporated by reference into this offering memorandum, and no such information should be considered as part of this offering memorandum.

We are incorporating by reference the documents listed below and any future filings the Parent Guarantor makes with the SEC under Sections 13(a), 13(e), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the date of this offering memorandum until the completion of this offering. We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed "filed" with the SEC or any information furnished pursuant to Item 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K. The documents incorporated by reference contain important information about our business and finances. The information incorporated by reference into this offering memorandum is deemed to be part of this offering memorandum, except for any information superseded by information in, or incorporated by reference into, this offering memorandum.

Accordingly, we incorporate by reference (in each case, other than any interactive data in eXtensible Business Reporting Language):

- the Parent Guarantor's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as filed with the SEC on February 19, 2020;
- the information responsive to Item 10 and Item 13 in Part III of Form 10-K for the fiscal year ended December 31, 2019 provided in the Parent Guarantor's Definitive Proxy Statement pursuant to Section 14(a) of the Exchange Act, as filed with the SEC on March 20, 2020, as supplemented on April 8, 2020 and April 13, 2020;
- the Parent Guarantor's Quarterly Report on Form 10-Q for the quarterly periods ended March 31, 2020, June 30, 2020 and September 30, 2020, as filed with the SEC on May 6, 2020, July 29, 2020 and October 26, 2020, respectively; and

- the Parent Guarantor's Current Reports on Form 8-K, as filed with the SEC on April 27, 2020, May 1, 2020, June 1, 2020, June 15, 2020, July 7, 2020, August 25, 2020 and September 23, 2020.

We will provide, without charge, to each person to whom this offering memorandum is delivered, upon written or oral request, a copy of any and all of the documents that have been or may be incorporated by reference in this offering memorandum. Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference into this offering memorandum. You should direct requests for documents to:

Axalta Coating Systems Ltd.
Two Commerce Square
2001 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
Telephone number: (855) 547-1461

BASIS OF PRESENTATION

Unless the context otherwise requires (and except as otherwise defined in "Description of Notes" for purposes of that section only), references in this offering memorandum to:

- the term "Credit Agreement" refers to the credit agreement governing our Senior Secured Credit Facilities;
- the terms "Euro" and "€" refer to the currency of the Eurozone;
- the term "Existing 2024 Dollar Notes" refers to the Issuer's 4.875% Senior Notes due 2024 issued on August 16, 2016;
- the term "Existing 2024 Dollar Notes Discharge" refers to the anticipated satisfaction and discharge of the Existing 2024 Dollar Notes in connection with the Refinancing Transactions;
- the term "Existing 2024 Euro Notes" refers to the Issuer's 4.250% Senior Notes due 2024 issued on August 16, 2016;
- the term "Existing 2024 Euro Notes Discharge" refers to the anticipated satisfaction and discharge of the Existing 2024 Euro Notes in connection with the Refinancing Transactions;
- the term "Existing 2025 Euro Notes" refers to Axalta Coating Systems Dutch Holding B B.V.'s 3.75% Senior Notes due 2025 issued on September 27, 2016;
- the term "Existing 2027 Dollar Notes" refers to the Issuer's and Axalta Coating Systems Dutch Holding B B.V.'s 4.750% Senior Notes due 2027 issued on June 15, 2020;
- the term "Existing Notes" refers, collectively, to the Existing 2024 Dollar Notes, the Existing 2024 Euro Notes, the Existing 2025 Euro Notes and the Existing 2027 Dollar Notes;
- the term "guarantees" refers to the guarantees of the Notes offered hereby by the guarantors;
- the term "guarantors" refers to the Parent Guarantor and the subsidiary guarantors;
- the term "Indenture" refers to the indenture that will govern the Notes offered hereby;
- the term "initial purchasers" refers to the firms listed as such under the heading "Plan of Distribution";
- the term "Issuer" refers to Axalta Coating Systems, LLC, a Delaware limited liability company, and not to any of its subsidiaries;
- the term "LTM Period" refers to the twelve-month period ended September 30, 2020;
- the term "Notes" refers to the notes offered hereby;
- the term "Parent Guarantor" refers to Axalta Coating Systems Ltd., a Bermuda exempted company limited by shares and the ultimate parent of the Issuer, and not to any of its subsidiaries;
- the term "Redeemed Notes" refers, collectively, to the Existing 2024 Dollar Notes and the Existing 2024 Euro Notes;
- the term "Refinancing Transactions" refers to (i) the issuance of the Notes offered hereby, (ii) the redemption of all of the outstanding Existing 2024 Dollar Notes and the Existing 2024 Dollar Notes Discharge, (iii) the redemption of all of the outstanding Existing 2024 Euro Notes and the Existing 2024 Euro Notes Discharge and (iv) the payment of fees and expenses related to the foregoing;
- the term "Remaining Notes" refers, collectively, to the Existing 2025 Euro Notes and the Existing 2027 Dollar Notes;
- the term "Senior Secured Credit Facilities" refers to (i) our senior secured revolving credit facility providing for commitments, as of September 30, 2020, of $400.0 million (the "Revolving Credit Facility") and (ii) our senior secured term loan facility in an aggregate principal amount outstanding, as of September 30, 2020, of $2,069.3 million (the

"Term Loan Facility"). We currently expect that we will seek an amendment to the Credit Agreement in order to increase the available commitments under the Revolving Credit Facility to $550.0 million (see "Offering Memorandum Summary—Recent Developments");

- the term "subsidiary guarantees" refers to the guarantees of the Notes offered hereby by the subsidiary guarantors;
- the term "subsidiary guarantors" refers to each of the Parent Guarantor's existing and future subsidiaries, other than the Issuer, that is a borrower under or that guarantees obligations under the Senior Secured Credit Facilities
- the term "Trustee" refers to Wilmington Trust, National Association, in its capacity as trustee under the Indenture;
- the terms "U.S." or "United States" refer to the United States of America;
- the terms "U.S. dollar," "dollar" and "$" refer to the currency of the United States; and
- the terms "we," "us," "our," "its" and "our company" refer to the Parent Guarantor and its consolidated subsidiaries.

OFFERING MEMORANDUM SUMMARY

The following summary highlights certain information contained elsewhere in this offering memorandum and is qualified in its entirety by the more detailed information and combined financial statements included elsewhere or incorporated by reference herein. Because this is a summary, it is not complete and may not contain all of the information that may be important to you in making a decision to invest in the Notes offered hereby. Before making an investment decision, you should carefully read the entire offering memorandum, including "Risk Factors," "Special Note Regarding Forward-Looking Statements" and the information (including, without limitation, financial information and the notes thereto) incorporated by reference herein. Axalta Coating Systems, LLC is the issuer of the Notes and is an indirect, wholly owned subsidiary of the Parent Guarantor. The financial information and notes referenced above are those of the Parent Guarantor.

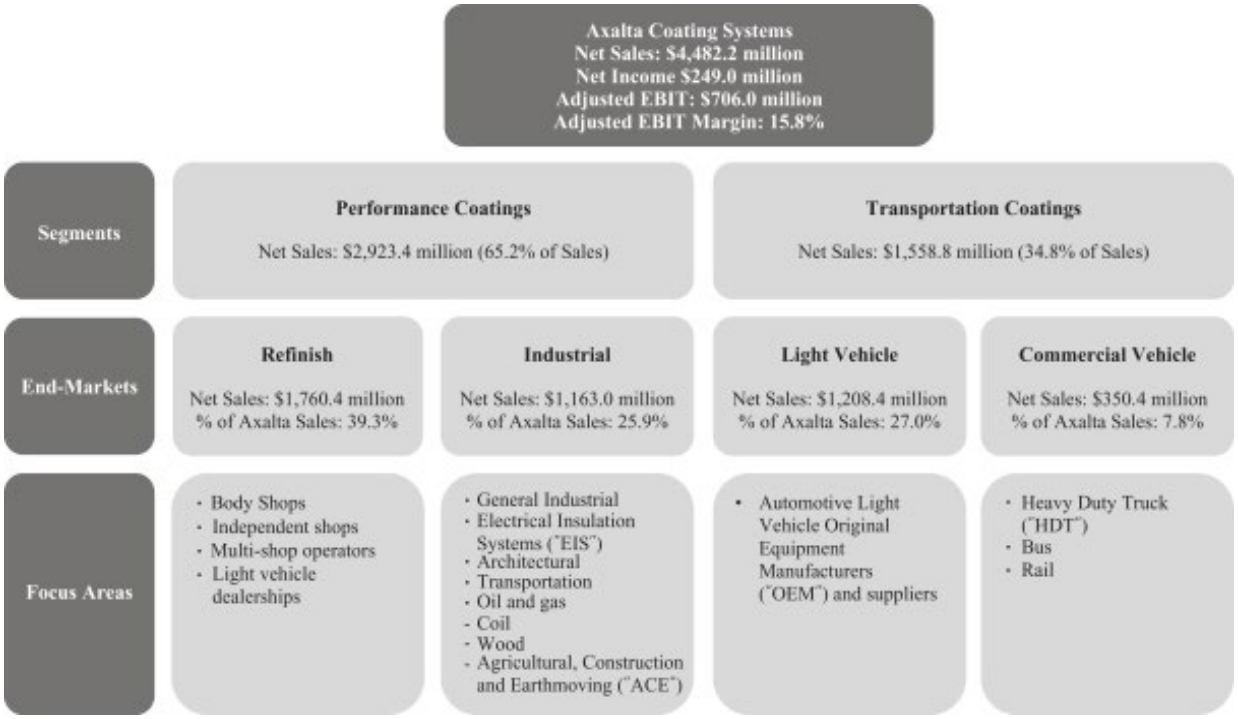
COMPANY OVERVIEW

We are a leading global manufacturer, marketer and distributor of high performance coatings systems. We have over a 150-year heritage in the coatings industry and are known for manufacturing high-quality products with well-recognized brands supported by market-leading technology and customer service. Over the course of our history we have remained at the forefront of our industry by continually developing innovative coatings technologies designed to enhance the performance and appearance of our customers' products, while improving their productivity and profitability.

Our diverse global footprint of 46 manufacturing facilities, four technology centers, 53 customer training centers and approximately 13,000 people allows us to meet the needs of customers in over 130 countries. We serve our customer base through an extensive sales force and technical support organization, as well as through approximately 4,000 independent, locally-based distributors. Our scale and strong local presence are critical to our success, allowing us to leverage our technology portfolio and customer relationships globally while meeting customer demands locally.

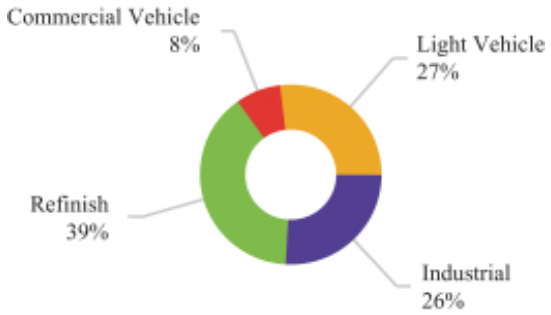
We operate our business in two operating segments, Performance Coatings and Transportation Coatings, serving four end-markets globally as highlighted below.

Note: The table below reflects amounts for the year ended December 31, 2019. Adjusted EBIT Margin is calculated as Adjusted EBIT divided by Net sales.

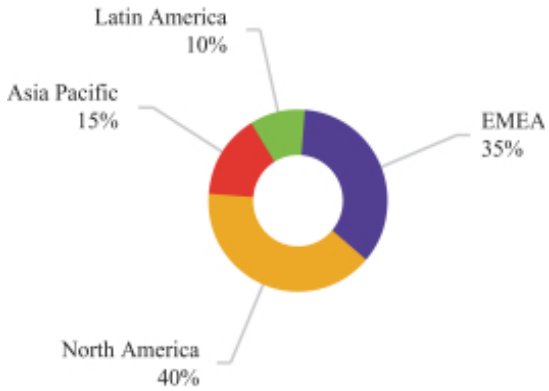


Net sales for our four end-markets and four regions for the year ended December 31, 2019 are highlighted below:

Net Sales by End Market



Net Sales by Geography



Note: Latin America includes Mexico. EMEA represents Europe, Middle East and Africa.

Performance Coatings

Through our Performance Coatings segment, we provide high-quality liquid and powder coatings solutions to a fragmented and local customer base, as well as a number of regional and global customers. We are one of only a few suppliers with the technology to provide precise color matching and highly durable coatings systems. The end-markets within this segment are refinish and industrial.

Refinish

Sales in the refinish end-market are driven by the number of vehicle collisions, owners' propensity to repair their vehicles, the number of miles vehicle owners drive and the size of the car parc. Although refinish coatings typically represent only a small portion of the overall vehicle repair cost, they are critical to the vehicle owner's satisfaction given their impact on appearance. As a result, body shop operators are most focused on coatings brands with a strong track record of performance and reliability. Body shops look for suppliers and brands with productivity enhancements, regulatory compliance, consistent quality, the presence of ongoing technical support and exact color match technologies. Color matching is a critical component of coatings supplier selection, since inexact matching adversely impacts vehicle appearance, and if repainting is required due to a poor match, it can significantly impact the speed and volume of repairs at a given shop.

We develop, market and supply a complete portfolio of innovative coatings systems and color matching technologies to facilitate faster automotive collision repairs relative to competing technologies. Our color matching technology provides Axalta-specific formulations that enable body shops to accurately match thousands of vehicle colors, regardless of vehicle brand, color, age or supplier of the original paint during production. It would be time consuming and costly for a new entrant to create such an extensive color inventory.

Industrial

The industrial end-market is comprised of liquid and powder coatings used in a broad array of end-market applications. Within the industrial end-market, we focus on the following:

- General Industrial: coatings for a wide and diverse array of applications, including HVAC, shelving, appliances and electrical storage components, metal furniture, industrial components, sports equipment and playground equipment as well as ACE, fencing, valves and specialized coatings used for coating the interior of metal drums and packaging and coatings for the exterior of glass bottles.
- Electrical Insulation Systems: coatings to insulate copper wire used in motors and transformers and coatings to insulate sheets forming magnetic circuits of motors and transformers, computer elements and other electrical components.
- Architectural: exterior powder and liquid coatings typically used in the construction of extrusions for commercial structures, residential windows, doors and cladding.
- Transportation: liquid and powder coatings for vehicle components, chassis and wheels to protect against corrosion, provide increased durability and impart appropriate aesthetics.

- Oil & Gas: liquid and powder products to coat tanks, pipelines, valves and fittings protecting against chemicals, corrosion and extreme temperatures in the oil & gas industry.
- Coil: coatings utilized in various applications such as metal building roof and wall panels, residential and commercial steel roofing, gutters, appliances, lighting, garage and entry doors, HVAC, office furniture and truck trailers.
- Wood: coatings utilized in OEM and aftermarket industrial wood markets, including building products, cabinets, flooring and furniture.

Demand in this end-market is driven by a wide variety of macroeconomic factors, such as growth in GDP, new residential and commercial construction, automotive production and industrial production. There has also been an increase in demand for products that enhance environmental sustainability, corrosion resistance, productivity and color aesthetics. These global trends are affected by regional and industry specific trends. Customers select industrial coatings based on protection, durability and appearance.

Transportation Coatings

Through our Transportation Coatings segment, we provide advanced coatings technologies to original equipment manufacturers ("OEMs") of light and commercial vehicles. These increasingly global customers require a high level of technical support coupled with productive, environmentally responsible coatings systems that can be applied with a high degree of precision, consistency and speed. The end-markets within this segment are light vehicle and commercial vehicle, as described below.

Light Vehicle

Demand for light vehicle products is driven by the production of light vehicles in a particular region. Light vehicle OEMs select coatings providers on the basis of their global ability to deliver advanced technological solutions that improve exterior appearance and durability and provide long-term corrosion protection. These customers also look for suppliers that can enhance process efficiency to improve productivity and provide superior technical service support. Rigorous environmental and durability testing as well as obtaining engineering approvals are also key criteria used by global light vehicle OEMs when selecting coatings providers. Globally integrated suppliers are important because they offer products with consistent standards across regions and are able to deliver high-quality products in sufficient quantity while meeting OEM service requirements. Our global scale, people expertise, innovative technology platforms, and customer focus, position us to be a global partner and solutions provider to the most discerning and demanding light vehicle OEMs. We are one of the few coatings producers that can provide OEMs with global product specifications, standardized color development, compatibility with an ever-increasing number of substrates, increasingly complex colors and environmentally responsible coatings while continuing to simplify and reduce steps in the coating application process.

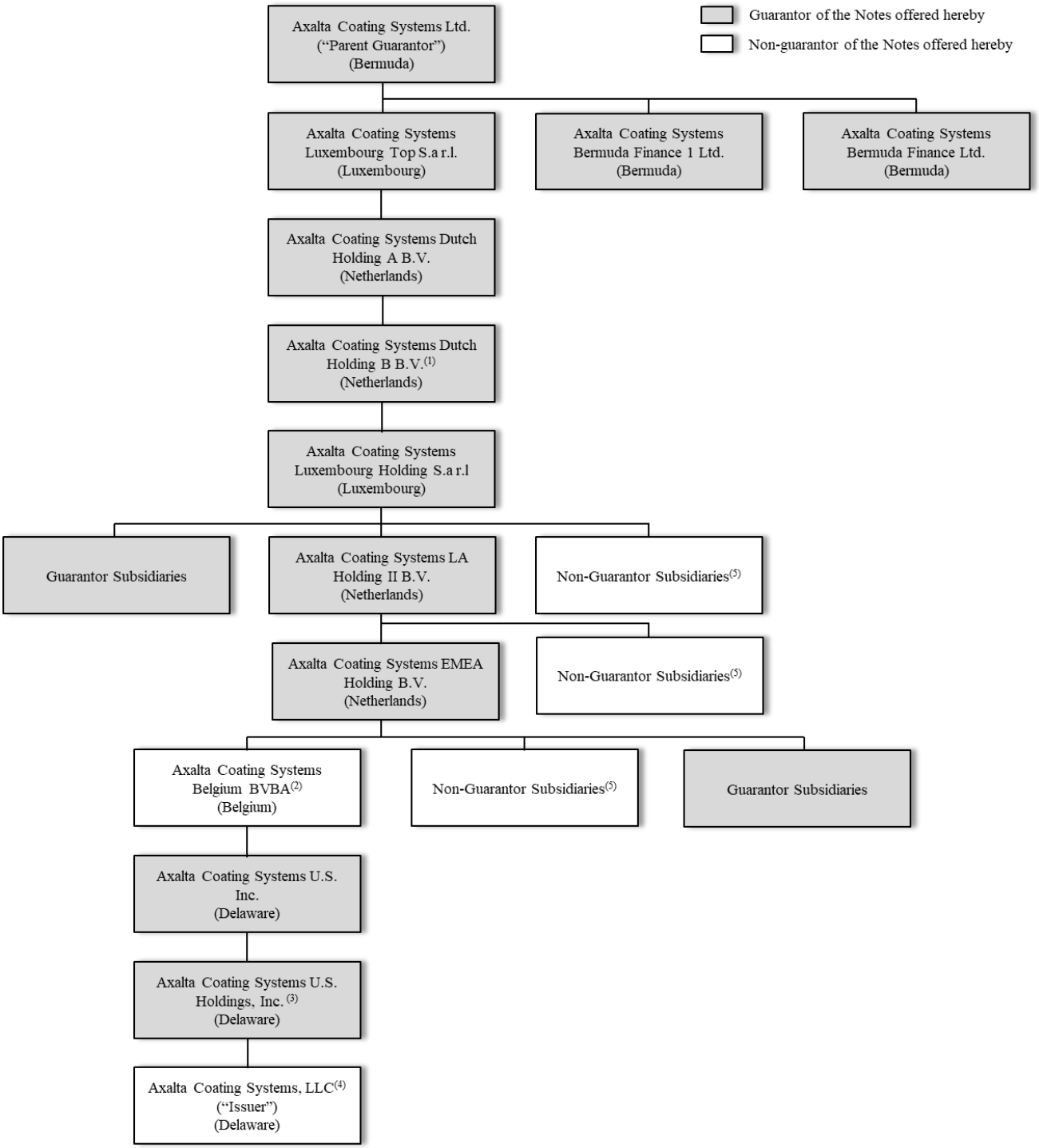
Commercial Vehicle

Sales in the commercial vehicle end-market are generated from a variety of applications, including non-automotive transportation (e.g., HDT, bus and rail), motorcycles, marine and aviation, as well as related markets such as trailers, recreational vehicles and personal sport vehicles. This end-market is primarily driven by global commercial vehicle production, which is influenced by overall economic activity, government infrastructure spending, equipment replacement cycles and evolving environmental standards.

Commercial vehicle OEMs select coatings providers on the basis of their ability to consistently deliver advanced technological solutions that improve exterior appearance, protection and durability and provide extensive color libraries and matching capabilities at the lowest total cost-in-use, while meeting stringent environmental requirements. Particularly for HDT applications, truck owners demand a greater variety of custom colors and advanced product technologies to enable custom designs. Our strong market position and growth are driven by our ability to provide customers with our market-leading brand, Imron, as well as leveraging our global product lines, regional knowledge and service. Additionally, to capture further growth we are launching a new suite of products to meet our customers' evolving needs.

CORPORATE STRUCTURE

The following chart summarizes our corporate structure and principal indebtedness after giving effect to the Refinancing Transactions. This chart is provided for illustrative purposes only and does not represent all legal entities affiliated with, or all obligations of, the Issuer:



(1) Axalta Coating Systems Dutch Holding B B.V. is a co-borrower under the Senior Secured Credit Facilities, the issuer of the Existing 2025 Euro Notes and a co-issuer of the Existing 2027 Dollar Notes.

(2) Axalta Coating Systems Belgium BVBA does not guarantee the Senior Secured Credit Facilities or the Existing Notes and will not guarantee the Notes offered hereby.

(3) Axalta Coating Systems U.S. Holdings, Inc. is a co-borrower under the Senior Secured Credit Facilities and a guarantor of the Remaining Notes and will guarantee the Notes offered hereby.

(4) The Issuer is a co-issuer of the Existing 2027 Dollar Notes and a guarantor of the Senior Secured Credit Facilities and the Existing 2025 Euro Notes and will be the issuer of the Notes offered hereby.

(5) See "Risk Factors—Risks Related to the Notes Offered Hereby—The Notes offered hereby will be structurally subordinated to all obligations of our existing and future subsidiaries that are not required to be and do not become guarantors of the Notes offered hereby" and "Description of Other Indebtedness." For the LTM Period, our non-guarantor subsidiaries represented approximately 31% of our net sales and approximately 36% of our Adjusted EBITDA. As of September 30, 2020, our non-guarantor subsidiaries represented approximately 20% of our total assets (including trade receivables but excluding intercompany receivables) and had approximately $436 million of total indebtedness and liabilities (including trade payables but excluding intercompany payables).

REFINANCING TRANSACTIONS

We intend to use the proceeds from this offering, together with cash on hand, to fund the Existing 2024 Dollar Notes Discharge and the Existing 2024 Euro Notes Discharge by irrevocably depositing with the trustee for the Redeemed Notes funds for the benefit of the holders of the applicable Redeemed Notes as will be sufficient to redeem the entire outstanding amount of Existing 2024 Dollar Notes and the Existing 2024 Euro Notes and to pay related transaction fees and expenses. As of September 30, 2020, there was $500.0 million aggregate principal amount of the Existing 2024 Dollar Notes outstanding and $391.4 million aggregate principal amount of the Existing 2024 Euro Notes outstanding. The Existing 2024 Dollar Notes may be called for redemption at our option at a redemption price of 102.438% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to but excluding the redemption date. The Existing 2024 Euro Notes may be called for redemption at our option at a redemption price of 102.125% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to but excluding the redemption date. In connection with this offering, we will issue a notice of redemption to holders of the Redeemed Notes. The redemption of the Redeemed Notes will be conditioned upon the closing of this offering.

We refer to (i) the issuance of the Notes offered hereby, (ii) the redemption of all of the outstanding Existing 2024 Dollar Notes and the Existing 2024 Dollar Notes Discharge, (iii) the redemption of all of the outstanding Existing 2024 Euro Notes and the Existing 2024 Euro Notes Discharge and (iv) the payment of fees and expenses related to the foregoing collectively as the "Refinancing Transactions."

RECENT DEVELOPMENTS

We currently expect that we will seek an amendment to the Credit Agreement in order to increase the available commitments under the Revolving Credit Facility to $550.0 million. However, we cannot assure you that we will enter into this amendment on such terms (including the size of the increase in commitments, which may be higher or lower than our expectation) or at all. Further, the offering of the Notes offered hereby is not conditioned on the execution of such amendment. References in this offering memorandum to the amount of available borrowing capacity under the Revolving Credit Facility after giving effect to the Refinancing Transactions do not give effect to this potential increase in commitments.

COMPANY INFORMATION

Axalta Coating Systems, LLC is a Delaware limited liability company. Our website address is www.axalta.com. Information on, or accessible through, such website is not part of this offering memorandum, nor is such content incorporated by reference herein. You should rely only on the information contained in or incorporated by reference into this offering memorandum when making a decision as to whether to invest in the Notes offered hereby.

THE OFFERING

The Notes will be governed by an indenture to be entered into by the Issuer, the guarantors and Wilmington Trust, National Association, as trustee. The following summary contains basic information about the Notes offered hereby and is not intended to be complete. For a more complete understanding of the Notes offered hereby and the guarantees, please refer to the section entitled "Description of Notes" in this offering memorandum. In this summary, the terms "we," "us" and "our" each refer to the Parent Guarantor and its consolidated subsidiaries, unless the context otherwise requires; provided, however, that references to "we," "us" and "our" pertaining to references to rights and obligations under the Notes offered hereby, the Existing Notes and the Senior Secured Credit Facilities do not include the Parent Guarantor's non-guarantor subsidiaries. Descriptions in this offering memorandum of provisions of the indenture that will govern the Notes offered hereby are summaries of such provisions and are qualified herein by reference to such indenture.

Issuer ..... Axalta Coating Systems, LLC

Securities Offered ..... $600,000,000 aggregate principal amount of % Senior Notes due 2029.

Maturity Date ..... The Notes will mature on , 2029.

Interest ..... Interest on the Notes offered hereby will be payable semi-annually on and of each year, commencing , 2021. Interest will accrue from and including , 2020.

Guarantees ..... The Notes offered hereby, subject to local law limitations, will initially be jointly and severally guaranteed on a senior unsecured basis by each of our existing and future direct and indirect subsidiaries that guarantees the Senior Secured Credit Facilities. Under certain circumstances, the guarantors may be released from their guarantees without the consent of the holders of the Notes. See "Limitations on Validity and Enforceability of the Guarantees" and "Description of Notes—Guarantees."

For the LTM Period, our non-guarantor subsidiaries:

- represented approximately 31% of our net sales; and
- represented approximately 36% of our Adjusted EBITDA.

As of September 30, 2020, our non-guarantor subsidiaries:

- represented approximately 20% of our total assets (including trade receivables but excluding intercompany receivables); and
- had approximately $436 million of total indebtedness and liabilities (including trade payables but excluding intercompany payables).

See "Risk Factors—Risks Related to the Notes Offered Hereby—The Notes offered hereby will be structurally subordinated to all obligations of our existing and future subsidiaries that are not required to be and do not become guarantors of the Notes offered hereby" and "Risk Factors—Risks Related to the Notes Offered Hereby—Many of the covenants contained in the Indenture will not be applicable, and the subsidiary guarantees of the Notes will be released, during any period when the Notes offered hereby are rated investment grade by any two of Fitch, Moody's and S&P and no default or event of default has occurred and is continuing."

Ranking..... The Notes and the guarantees will be the Issuer's and the guarantors' senior unsecured obligations and will:

- rank contractually senior in right of payment to all of the Issuer's and the guarantors' future subordinated indebtedness;
- rank equally in right of payment with all of the Issuer's and guarantors' existing and future senior debt;
- be effectively subordinated to any of the Issuer's and guarantors' existing and future secured debt, including the Senior Secured Credit Facilities, to the extent of the value of the assets securing such indebtedness; and
- be structurally subordinated to all of the existing and future indebtedness and liabilities (including trade payables) of each of our subsidiaries that does not guarantee the Notes offered hereby.

As of September 30, 2020, on an as adjusted basis after giving effect to the Refinancing Transactions:

- we would have had approximately $2,069.3 million of senior secured indebtedness, consisting of secured indebtedness under the Senior Secured Credit Facilities, to which the Notes offered hereby would have been effectively subordinated to the extent of the value of the assets securing such debt;
- we would have had an additional $400.0 million of borrowing capacity under the Revolving Credit Facility (without giving effect to $34.0 million of outstanding letters of credit) to which the Notes offered hereby would have been effectively subordinated, if borrowed, to the extent of the value of the assets securing such debt;
- we would have had the option to raise incremental term loans or increase the Revolving Credit Facility commitments by an amount up to $700.0 million, plus an unlimited amount subject to a maximum first lien leverage requirement described in the Credit Agreement, subject to certain conditions, to which the Notes offered hereby would be effectively subordinated if borrowed; and
- our non-guarantor subsidiaries would have had approximately $436 million of total indebtedness and liabilities (including trade payables but excluding intercompany payables), all of which would have been structurally senior to the Notes offered hereby.

See "Risk Factors—Risks Related to the Notes Offered Hereby—The Notes offered hereby will be structurally subordinated to all obligations of our existing and future subsidiaries that are not required to be and do not become guarantors of the Notes offered hereby."

Optional Redemption..... The Issuer may, at its option, redeem some or all of the Notes offered hereby at any time on or after , 2024 at the redemption prices set forth in this offering memorandum, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption. See "Description of Notes—Optional Redemption."

At any time prior to , 2024, the Issuer may, at its option, redeem some or all of the Notes offered hereby at a price equal to 100% of the principal amount, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption, plus a "make-whole" premium.

At any time prior to , 2024, the Issuer may, at its option, also redeem up to 40% of the outstanding principal amount of the Notes using the proceeds of certain equity offerings at a redemption price of % of the principal amount of the Notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

In connection with any offer to purchase all of the Notes (including a Change of Control Offer and any tender offer), if holders of no less than 90% of the aggregate principal amount of Notes of such series validly tender their Notes in such offer, the Issuer is entitled to redeem any remaining Notes of such series at the price offered to each holder in such offer.

Change of Control Offer ..... Upon the occurrence of a Change of Control Triggering Event (as defined in the section entitled "Description of Notes"), you will have the right, as holders of the Notes offered hereby, to cause the Issuer to repurchase some or all of your Notes offered hereby at 101% of their face amount, plus accrued and unpaid interest to, but not including, the repurchase date. A Change of Control Triggering Event will not be deemed to have occurred unless, in connection with the applicable change of control, the rating assigned to the Notes by any two of Fitch, Moody's and S&P is downgraded from the rating in effect immediately prior to the announcement of such change of control or withdrawn within 60 days of such change of control. See "Description of Notes—Change of Control." The Issuer may not be able to pay you the required price for the Notes that you present to us at the time of a change of control, because:

- the Issuer may not have enough funds at that time; or
- the terms of the Senior Secured Credit Facilities may prevent the Issuer from making such payment.

See "Risk Factors—Risks Related to the Notes Offered Hereby—We may not be able to repurchase the Notes offered hereby upon a change of control."

Asset Disposition Offer ..... If the Issuer, the Parent Guarantor or our restricted subsidiaries sell assets, under certain circumstances, the Issuer will be required to use the net proceeds to make an offer to purchase the Notes offered hereby at an offer price in cash in an amount equal to 100% of the principal amount of the Notes offered hereby plus accrued and unpaid interest to, but not including, the repurchase date. See "Description of Notes—Certain Covenants—Asset Sales."

Covenants ..... The Issuer will issue the Notes under the Indenture, which will, among other things, limit the ability of the Issuer, the Parent Guarantor and our restricted subsidiaries to:

- incur additional indebtedness and guarantee indebtedness;
- pay dividends or make other distributions in respect of, or repurchase or redeem, our capital stock;
- prepay, redeem or repurchase certain debt;
- make loans and investments;
- sell assets;
- incur liens;
- enter into agreements containing prohibitions affecting our subsidiaries' ability to pay dividends;
- enter into transactions with affiliates; and
- consolidate, merge or sell all or substantially all of our assets.

These covenants will be subject to a number of important exceptions and qualifications. For more details, see "Description of Notes."

Certain covenants will cease to apply to the Notes for so long as the Notes have investment grade ratings from any two of Fitch Ratings, Moody's Investors Service, Inc. and Standard and Poor's Rating Services.

Transfer Restrictions ..... The Issuer does not intend to issue registered notes under the Securities Act or any state or other securities laws in exchange for the Notes to be privately placed in this offering and the absence of registration rights may adversely impact the transferability of the Notes offered hereby. For more information, see "Transfer Restrictions."

Absence of Public Market for the Notes ..... The Notes are a new issue of securities and there is currently no established trading market for the Notes. The Issuer does not intend to apply for a listing of the Notes on any securities exchange or automated dealer quotation system. Accordingly, there can be no assurance as to the development or liquidity of any market for the Notes.

The initial purchasers have advised the Issuer that they currently intend to make a market in the Notes. However, they are not obligated to do so, and any market making with respect to the Notes may be discontinued without notice.

U.S. Federal Income Tax Consequences ..... The Notes offered hereby may be issued with original issue discount ("OID") for U.S. federal income tax purposes. If the Notes offered hereby are issued with OID, U.S. holders will be required to include OID in gross income on a constant yield to maturity basis in advance of the receipt of cash payment thereof and regardless of such holders' method of accounting for U.S. federal income tax purposes. See "Certain U.S. Federal Income Tax Considerations."

Use of Proceeds..... We intend to use the net proceeds of this offering, after deducting the initial purchasers' discount and estimated offering expenses payable by us relating to this offering, together with cash on hand, to fund the Existing 2024 Dollar Notes Discharge and the Existing 2024 Euro Notes Discharge by irrevocably depositing with the trustee for the Redeemed Notes funds for the benefit of the holders of the applicable Redeemed Notes as will be sufficient to redeem the entire outstanding amount of Existing 2024 Dollar Notes and the Existing 2024 Euro Notes and to pay related transaction fees and expenses. See "Use of Proceeds."

Risk Factors.....	Investing in the Notes offered hereby involves substantial risks. You should carefully consider all of the information in this offering memorandum. In particular, for a discussion of some specific factors that you should consider before buying the Notes offered hereby, see "Risk Factors."
Governing Law.....	The Indenture and the Notes will be governed by the laws of the State of New York.

SUMMARY HISTORICAL FINANCIAL INFORMATION AND OTHER DATA

The following table sets forth our summary historical financial information for the periods and dates indicated. The balance sheet data as of December 31, 2019 and 2018 and the statements of operations data for the years ended December 31, 2019, 2018 and 2017 have been derived from our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2019, which is incorporated by reference in this offering memorandum. The balance sheet data as of September 30, 2020 and the statement of operations data for the nine months ended September 30, 2020 and 2019 have been derived from our unaudited condensed consolidated financial statements included in our Quarterly Report on Form 10-Q for the three months ended September 30, 2020, which is incorporated by reference in this offering memorandum. The balance sheet data as of September 30, 2019 have been derived from our unaudited condensed consolidated financial statements included in our Quarterly Report on Form 10-Q for the three months ended September 30, 2019, which is not incorporated by reference in this offering memorandum.

We have also presented summary unaudited consolidated financial data for the LTM Period, which is not a presentation in accordance with U.S. GAAP. This data has been calculated by subtracting the unaudited statements of operations and cash flow data for the nine-month period ended September 30, 2019 from the audited statements of operations and cash flow data for the year ended December 31, 2019 and then adding the unaudited statements of operations and cash flow data for the nine-month period ended September 30, 2020. We have presented this financial data because we believe it provides our investors with useful information to assess our recent performance.

Our historical financial data are not necessarily indicative of our future performance. You should read the information contained in this table in conjunction with the section titled "Capitalization" in this offering memorandum and the sections titled "Selected Financial Information" in our Annual Report on Form 10-K for the year ended December 31, 2019 and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended December 31, 2019 and our Quarterly Report on Form 10-Q for the three months ended September 30, 2020 and our consolidated financial statements and related notes incorporated by reference in this offering memorandum.

	Year ended December 31,			Nine months ended September 30,		LTM Period
($ in millions)	2019	2018	2017	2020	2019	
		(audited)			(unaudited)	
Statements of Operations Data:						
Net sales	$ 4,482.2	$ 4,696.0	$ 4,377.0	$ 2,663.1	$ 3,383.8	$ 3,761.5
Cost of goods sold	2,917.9	3,106.3	2,780.5	1,780.1	2,207.1	2,490.9
Selling, general and administrative expenses	822.1	876.4	934.7	516.1	617.2	721.0
Other operating charges	70.7	82.7	131.6	98.9	41.4	128.2
Research and development expenses	70.2	73.1	65.3	41.2	53.5	57.9
Amortization of acquired intangibles	113.1	115.4	101.2	84.5	85.1	112.5
Income from operations	488.2	442.1	363.7	142.3	379.5	251.0
Interest expense, net	162.6	159.6	147.0	112.4	122.5	152.5
Other (income) expense, net	(4.4)	15.0	27.1	0.9	(3.8)	0.3
Income before taxes	330.0	267.5	189.6	29.0	260.8	98.2
Provision (benefit) for income taxes	77.4	54.2	141.9	(22.7)	50.4	4.3
Net income	252.6	213.3	47.7	51.7	210.4	93.9
Less: Net income (loss) attributable to non-controlling interests	3.6	6.2	11.0	(0.2)	3.1	0.3
Net income attributable to controlling interests	$ 249.0	$ 207.1	$ 36.7	$ 51.9	$ 207.3	$ 93.6

($ in millions)	As of December 31, 2019	As of December 31, 2018	As of September 30, 2020	As of September 30, 2019
	(audited)		(unaudited)	
Balance Sheet Data:				
Cash and cash equivalents	$ 1,017.5	$ 693.6	$ 1,341.3	$ 767.2
Working capital[(1)]	1,500.5	1,269.0	1,785.1	1,398.2
Total assets	6,818.0	6,675.7	7,036.5	6,690.0
Indebtedness	3,834.1	3,864.0	4,059.6	3,814.7
Total liabilities	5,408.4	5,365.2	5,651.8	5,350.3
Total shareholders' equity	1,409.6	1,310.5	1,384.7	1,339.7

($ in millions)	Year ended December 31, 2019	Year ended December 31, 2018	Year ended December 31, 2017	Nine months ended September 30, 2020	Nine months ended September 30, 2019	LTM Period
		(audited)		(unaudited)		
Cash Flow Data:						
Cash flows from (used in):						
Operating activities	$ 573.1	$ 496.1	$ 540.0	$ 230.9	$ 289.8	$ 514.2
Investing activities	(93.9)	(189.2)	(689.6)	(39.3)	(59.0)	(74.2)
Financing activities	(158.4)	(368.2)	367.3	136.8	(145.0)	123.4
Other Financial and Operating Data:						
Capital expenditures	(112.5)	(143.4)	(125.0)	(56.2)	(73.9)	(94.8)
Depreciation and amortization	353.0	369.1	347.5	243.6	267.3	329.3
EBIT[(2)]	492.6	427.1	336.6	141.4	383.3	250.7
Adjusted EBIT[(2)]	706.0	674.5	647.0	331.5	532.5	505.0
Adjusted EBIT margin[(2)(3)]	15.8%	14.4%	14.8%	12.4%	15.7%	13.4%
EBITDA[(4)]	845.6	796.2	684.1	385.0	650.6	580.0
Adjusted EBITDA[(4)]	938.9	937.2	885.2	507.6	706.4	740.1
Adjusted EBITDA margin[(4)(5)]	20.9%	20.0%	20.2%	19.1%	20.9%	19.7%

(1) Working capital is defined as current assets less current liabilities.

(2) EBIT consists of net income before interest expense, net, and provision (benefit) for income taxes. Adjusted EBIT consists of EBIT adjusted for debt extinguishment and refinancing-related costs, termination benefits and other employee related costs, strategic review and retention costs, offering and transactional costs, losses on divestiture, impairment and deconsolidation, special pension events, accelerated depreciation, indemnity (income) losses, change in fair value of equity investments, costs associated with step-up value of inventory from business combinations and incremental step-up depreciation and amortization expense relating to our acquisition of DuPont Performance Coatings. We believe that making such adjustments provides investors meaningful information to understand our operating results and ability to analyze financial and business trends on a period-to-period basis. We believe these financial measures are commonly used by investors to evaluate our performance and that of our competitors. However, our use of the terms EBIT and Adjusted EBIT may vary from that of others in our industry. These financial measures should not be considered as alternatives to income before income taxes, net income, earnings per share or any other performance measures derived in accordance with U.S. GAAP as measures of operating performance.

EBIT and Adjusted EBIT and the related ratio data are not calculated or presented in accordance with U.S. GAAP and other companies in our industry may calculate EBIT and Adjusted EBIT differently than we do. As a result, these financial measures have limitations as analytical and comparative tools and you should not consider these items in isolation, or as a substitute for analysis of our results as reported under U.S. GAAP. EBIT and Adjusted EBIT should not be considered as measures of discretionary cash available to us to invest in the growth of our business. In calculating these financial measures, we make certain adjustments that are based on assumptions and estimates that may prove to have been inaccurate. In addition, in evaluating these financial measures, you should be aware that in the future we may incur expenses similar to those eliminated in this presentation. Our presentation of EBIT and Adjusted EBIT should not be construed as an inference that our future results will be unaffected by unusual items. For additional information regarding EBITDA and Adjusted EBITDA and our use and presentation of those measures and the related risks, see "Use of Non-U.S. GAAP Financial Measures."

The following table reconciles income from operations to EBIT and Adjusted EBIT for the periods presented:

($ in millions)	Year ended December 31,			Nine months ended September 30,		LTM Period
	2019	2018	2017	2020	2019	
Income from operations	$ 488.2	$ 442.1	$ 363.7	$ 142.3	$ 379.5	$ 251.0
Other (income) expense, net	(4.4)	15.0	27.1	0.9	(3.8)	0.3
EBIT	492.6	427.1	336.6	141.4	383.3	250.7
Debt extinguishment and refinancing-related costs[(a)]	0.2	9.5	13.4	2.4	0.2	2.4
Termination benefits and other employee related costs[(b)]	35.2	81.7	35.2	70.4	33.3	72.3
Strategic review and retention costs[(c)]	13.4	—	—	25.1	3.8	34.7
Offering and transactional costs[(d)]	1.0	1.0	26.1	0.3	0.9	0.4
Losses on divestiture, impairment and deconsolidation[(e)]	21.1	—	77.9	3.5	3.4	21.2
Pension special event[(f)]	(0.9)	—	1.2	(2.5)	—	(3.4)
Accelerated depreciation[(g)]	24.3	10.3	6.0	8.9	18.2	15.0
Indemnity (income) losses[(h)]	(0.4)	4.3	(0.1)	0.3	(0.2)	0.1
Change in fair value of equity investments[(i)]	—	0.5	—	—	—	—
Step-up inventory[(j)]	—	—	3.8	—	—	—
Step-up depreciation and amortization[(k)]	119.5	140.1	146.9	81.7	89.6	111.6
Adjusted EBIT	$ 706.0	$ 674.5	$ 647.0	$ 331.5	$ 532.5	$ 505.0

(a) Represents expenses and associated changes to estimates related to the prepayment, restructuring, and refinancing of our indebtedness, which are not considered indicative of our ongoing operating performance.

(b) Represents expenses and associated changes to estimates related to employee termination benefits and other employee-related costs. Employee termination benefits are associated with Axalta Way cost-saving initiatives. These amounts are not considered indicative of our ongoing operating performance.

(c) Represents costs for legal, tax and other advisory fees pertaining to our recently concluded comprehensive review of strategic alternatives, as well as retention awards for certain employees that will be earned over a period of 18-24 months. These amounts are not considered indicative of our ongoing operating performance.

(d) Represents acquisition and divestiture-related expenses, all of which are not considered indicative of our ongoing operating performance.

(e) Represents the impacts recognized on the sale of our interest in a joint venture business, deconsolidation of a subsidiary, and the impairments of certain manufacturing facilities which are not considered indicative of our ongoing operating performance. The amount for the year ended December 31, 2017 includes $7.6 million of impairments recorded to other (income) expense, net.

(f) Represents certain defined benefit pension costs associated with special events, including pension curtailments, settlements and special termination benefits, which we do not consider indicative of our ongoing operating performance.

(g) Represents incremental depreciation expense resulting from truncated useful lives of the assets impacted by our manufacturing footprint assessments, which we do not consider indicative of our ongoing operating performance.

(h) Represents indemnity (income) losses associated with our acquisition of the DuPont Performance Coatings business, which we do not consider indicative of our ongoing operating performance.

(i) Represents mark to market impacts of our equity investments, which we do not consider to be indicative of our ongoing operating performance.

(j) Represents costs for non-cash fair value inventory adjustments associated with our business combinations, which we do not consider indicative of ongoing operating performance.

(k) Represents the incremental step-up depreciation and amortization expense associated with our acquisition of DuPont Performance Coatings. We believe this will assist investors in performing meaningful comparisons of past, present and future operating results and better highlight the results of our ongoing operating performance.

(3) Adjusted EBIT margin is calculated by dividing Adjusted EBIT by net sales

(4) EBITDA consists of net income before interest expense, net, provision (benefit) for income taxes, depreciation and amortization. Adjusted EBITDA consists of EBITDA adjusted for debt extinguishment and refinancing-related costs, termination benefits and other employee related costs, strategic review and retention costs, offering and transactional costs, loss on divestiture and impairment, foreign exchange re-measurement losses, long-term employee benefit plan adjustments, stock-based compensation, dividends in respect of non-controlling interest, transition-related costs, deconsolidation and site closure related impacts and other adjustments. We believe that making such adjustments provides investors meaningful information to understand our operating results and ability to analyze financial and business trends on a period-to-period basis. We believe these financial measures are commonly used by investors to evaluate our performance and that of our competitors. However, our use of the terms EBITDA and Adjusted EBITDA may vary from that of others in our industry. These financial measures should

not be considered as alternatives to income before income taxes, net income, earnings per share or any other performance measures derived in accordance with U.S. GAAP as measures of operating performance.

EBITDA and Adjusted EBITDA and the related ratio data are not calculated or presented in accordance with U.S. GAAP and other companies in our industry may calculate EBITDA and Adjusted EBITDA differently than we do. As a result, these financial measures have limitations as analytical and comparative tools and you should not consider these items in isolation, or as a substitute for analysis of our results as reported under U.S. GAAP. EBITDA and Adjusted EBITDA should not be considered as measures of discretionary cash available to us to invest in the growth of our business. In calculating these financial measures, we make certain adjustments that are based on assumptions and estimates that may prove to have been inaccurate. In addition, in evaluating these financial measures, you should be aware that in the future we may incur expenses similar to those eliminated in this presentation. Our presentation of EBITDA and Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual items. For additional information regarding EBITDA and Adjusted EBITDA and our use and presentation of those measures and the related risks, see "Use of Non-U.S. GAAP Financial Measures."

The following table reconciles net income to EBITDA and Adjusted EBITDA for the periods presented:

	Year ended December 31,			Nine months ended September 30,		LTM Period
($ in millions)	**2019**	**2018**	**2017**	**2020**	**2019**	
Net income	$ 252.6	$ 213.3	$ 47.7	$ 51.7	$ 210.4	$ 93.9
Interest expense, net	162.6	159.6	147.0	112.4	122.5	152.5
Provision (benefit) for income taxes	77.4	54.2	141.9	(22.7)	50.4	4.3
Depreciation and amortization	353.0	369.1	347.5	243.6	267.3	329.3
EBITDA	845.6	796.2	684.1	385.0	650.6	580.0
Debt extinguishment and refinancing-related costs[(a)]	0.2	9.5	13.4	2.4	0.2	2.4
Termination benefits and other employee related costs[(b)]	35.2	81.7	35.3	70.4	33.3	72.3
Strategic review and retention costs[(c)]	13.4	—	—	25.1	3.8	34.7
Offering and transactional costs[(d)]	1.0	1.2	18.4	0.3	0.9	0.4
Losses on divestiture and impairment[(e)]	21.1	—	—	3.5	3.4	21.2
Foreign exchange re-measurement losses[(f)]	8.3	9.2	7.4	7.5	5.3	10.5
Long-term employee benefit plan adjustments[(g)]	0.1	(1.9)	1.4	(2.3)	0.8	(3.0)
Stock-based compensation[(h)]	15.7	37.3	38.5	15.9	9.5	22.1
Dividends in respect of non-controlling interest[(i)]	(1.5)	(1.0)	(3.0)	(0.5)	(1.5)	(0.5)
Transition-related costs[(j)]	—	(0.2)	7.7	—	—	—
Deconsolidation and site closure related impacts[(k)]	—	—	78.5	—	—	—
Other adjustments[(l)]	(0.2)	5.2	3.6	0.3	0.1	—
Adjusted EBITDA	$ 938.9	$ 937.2	$ 885.2	$ 507.6	$ 706.4	$ 740.1

(a) Represents expenses and associated changes to estimates related to the prepayment, restructuring, and refinancing of our indebtedness, which are not considered indicative of our ongoing operating performance.

(b) Represents expenses and associated changes to estimates related to employee termination benefits and other employee-related costs. Employee termination benefits are associated with Axalta Way cost-saving initiatives. These amounts are not considered indicative of our ongoing operating performance.

(c) Represents costs for legal, tax and other advisory fees pertaining to our recently concluded comprehensive review of strategic alternatives, as well as retention awards for certain employees that will be earned over a period of 18-24 months. These amounts are not considered indicative of our ongoing operating performance.

(d) Represents acquisition and divestiture-related expenses, all of which are not considered indicative of our ongoing operating performance.

(e) Represents expenses and associated changes to estimates related to the sale of our interest in a joint venture business and other impairments, which are not considered indicative of our ongoing operating performance.

(f) Eliminates foreign exchange losses resulting from the remeasurement of assets and liabilities denominated in foreign currencies, net of the impacts of our foreign currency instruments used to hedge our balance sheet exposures.

(g) Eliminates the non-cash, non-service cost components of long-term employee benefit costs.

(h) Represents non-cash impacts associated with stock-based compensation.

(i) Represents the payment of dividends to our joint venture partners by our consolidated entities that are not 100% owned, which are reflected to show the cash operating performance of these entities on our financial statements.

(j) Represents integration costs and associated changes to estimates related to the 2017 acquisition of the Industrial Wood business that was a carve-out business from Valspar. We do not consider these items to be indicative of our ongoing operating performance.

(k) During the year ended December 31, 2017, we recorded a loss in conjunction with the deconsolidation of our Venezuelan subsidiary of $70.9 million. Additionally, during the year ended December 31, 2017, we recorded non-cash impairment charges related to certain manufacturing facilities previously announced for closure of $7.6 million. We do not consider these to be indicative of our ongoing operating performance.

(l) Represents certain non-operational or non-cash gains and losses unrelated to our core business and which we do not consider indicative of ongoing operations, including indemnity (income) losses associated with the acquisition by us of the DuPont Performance Coatings business, gains and losses from the sale and disposal of property, plant and equipment, gains and losses from the remaining foreign currency derivative instruments and from non-cash fair value inventory adjustments associated with our business combinations.

(5) Adjusted EBITDA margin is calculated by dividing Adjusted EBITDA by net sales.

RISK FACTORS

Any investment in the Notes offered hereby involves a high degree of risk. You should carefully consider the risks described below and all of the information contained in this offering memorandum and the section titled "Risk Factors" in our Annual Report and Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2020, each of which are incorporated by reference herein, before deciding whether to purchase the Notes offered hereby. The risks and uncertainties described below are not the only risks and uncertainties that we face. Additional risks and uncertainties not known to us or that we currently deem immaterial may also impair our business operations. If any of those risks actually occurs, our business, financial condition and results of operations would suffer. The risks discussed below also include forward-looking statements, and our actual results may differ materially from those discussed in these forward-looking statements. See "Special Note Regarding Forward-Looking Statements."

Risks Related to the Notes

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

As a result of our substantial indebtedness, a significant amount of our cash flow will be required to pay interest and principal on our outstanding indebtedness, and we may not generate sufficient cash flow from operations, or have future borrowings available under the Revolving Credit Facility, to enable us to repay our indebtedness, including the Notes offered hereby, or to fund our other liquidity needs. As of September 30, 2020, on an as adjusted basis after giving effect to the Refinancing Transactions, we would have had total indebtedness of $3,770.2 million, including the Notes offered hereby, and we would have had unused commitments under the Revolving Credit Facility available to us of $400.0 million (without giving effect to $34.0 million of outstanding letters of credit).

Our substantial indebtedness could have important consequences to the holders of the Notes offered hereby. For example, it could:

- limit our ability to obtain additional financing to fund future working capital, capital expenditures, acquisitions, general corporate purposes or other purposes;
- require us to devote a substantial portion of our annual cash flow to the payment of interest on our indebtedness;
- expose us to the risk of increased interest rates as, over the term of our debt, the interest cost on a significant portion of our indebtedness is subject to changes in interest rates;
- hinder our ability to adjust rapidly to changing market conditions;
- limit our ability to secure adequate bank financing in the future with reasonable terms and conditions or at all; and
- increase our vulnerability to and limit our flexibility in planning for, or reacting to, a potential downturn in general economic conditions or in one or more of our businesses.

We are more leveraged than some of our competitors, which could adversely affect our business plans. A relatively greater portion of our cash flow than that of our competitors is used to service debt and other financial obligations. This reduces the funds we have available for working capital, capital expenditures, acquisitions and other purposes and may make it more difficult for us to borrow in the future. Similarly, our relatively greater leverage increases our vulnerability to, and limits our flexibility in planning for, adverse economic and industry conditions and creates other competitive disadvantages compared with other companies with relatively less leverage.

In addition, the indentures governing the Remaining Notes and the Credit Agreement contain, and the Indenture will contain, affirmative and negative covenants that limit our and certain of our subsidiaries' ability to engage in activities that may be in our long-term best interests. Our failure to comply with those covenants could result in an event of default that, if not cured or waived, could result in the acceleration of all of our debts.

To service all of our indebtedness, including the Notes offered hereby, we will require a significant amount of cash and our ability to generate cash depends on many factors beyond our control.

Our ability to make cash payments on and to refinance our indebtedness, including the Notes offered hereby, and to fund planned capital expenditures will depend on our ability to generate significant operating cash flow in the future. This, to a significant extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control.

Our business may not generate sufficient cash flow from operations and future borrowings may not be available under the Senior Secured Credit Facilities in an amount sufficient to enable us to pay our indebtedness, or to fund our other liquidity needs. In

such circumstances, we may need to refinance all or a portion of our indebtedness, including the Senior Secured Credit Facilities, the Remaining Notes and the Notes offered hereby, on or before their respective maturities. We may not be able to refinance any of our indebtedness on commercially reasonable terms or at all. If we cannot service our indebtedness, we may have to take actions such as selling assets, seeking additional equity or reducing or delaying capital expenditures, strategic acquisitions, investments and alliances. Such actions, if necessary, may not be effected on commercially reasonable terms or at all. Our indebtedness will restrict our ability to sell assets and limit the use of the proceeds from such sales.

If we are unable to generate sufficient cash flow or 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 in the instruments governing our indebtedness, we could be in default under the terms of the agreements governing such indebtedness. 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 the Revolving Credit Facility 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 the Senior Secured Credit Facilities to avoid being in default. If we breach our covenants under the 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 the Senior Secured Credit Facilities, the lenders could exercise their rights, as described above, and we could be forced into bankruptcy or liquidation.

Despite our current level of indebtedness and restrictive covenants, we and our subsidiaries may incur additional indebtedness or we may pay dividends in the future. This could further exacerbate the risks associated with our substantial financial leverage.

We and our subsidiaries may incur significant additional indebtedness under the agreements governing our indebtedness. Although the indentures governing the Remaining Notes and the Credit Agreement contain, and the Indenture will contain, restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of thresholds, qualifications and exceptions, and the additional indebtedness incurred in compliance with these restrictions could be substantial. Additionally, these restrictions also will not prevent us from incurring obligations that, although preferential to our common shares in terms of payment, do not constitute indebtedness. As of September 30, 2020, the Revolving Credit Facility provided for unused commitments of $400.0 million (without giving effect to $34.0 million of our outstanding letters of credit issued under the Revolving Credit Facility). Additionally, the Senior Secured Credit Facilities may be increased by an amount up to $700.0 million, plus an unlimited amount subject to a maximum first lien leverage requirement described in the Credit Agreement, subject to certain conditions. All of those borrowings would be secured indebtedness. If new debt is added to our current debt levels, the related risks that we and the guarantors now face would increase. Additionally, the indentures governing the Remaining Notes and the Credit Agreement permit, and the Indenture will permit, us to pay dividends or make other restricted payments in the future. For example, the "builder" capacity to make restricted payments based on our consolidated net income (as such term is defined in such indentures or the Credit Agreement, as applicable) is approximately $1.4 billion and $1.0 billion under the indentures governing the Remaining Notes and the Credit Agreement, respectively, as of September 30, 2020. Any dividends or other restricted payments will reduce our cash available to service our indebtedness and the related risks that we and the guarantors now face would increase. See "Description of Other Indebtedness" and "Description of Notes."

The terms of the indentures governing the Remaining Notes and the Credit Agreement restrict, and the Indenture will restrict, our current and future operations, particularly our ability to respond to changes or to take certain actions, which could harm our long-term interests.

The indentures governing the Remaining Notes and the Credit Agreement contain, and the Indenture will contain, a number of restrictive covenants that impose significant operating and financial restrictions on us and limit our ability to engage in acts that may be in our long-term best interest, including restrictions on our ability to:

- incur additional indebtedness and guarantee indebtedness;
- pay dividends or make other distributions in respect of, or repurchase or redeem, capital stock;
- prepay, redeem or repurchase certain indebtedness;
- make loans and investments;
- sell or otherwise dispose of assets;
- incur liens;
- enter into transactions with affiliates;
- alter the businesses we conduct;
- designate any of our subsidiaries as unrestricted subsidiaries;

- enter into agreements restricting our subsidiaries' ability to pay dividends; and
- consolidate, merge or sell all or substantially all of our assets.

As a result of all of these restrictions, we may be:

- limited in how we conduct our business;
- unable to raise additional debt or equity financing to operate during general economic or business downturns; or
- unable to compete effectively or to take advantage of new business opportunities.

These restrictions might hinder our ability to grow in accordance with our strategy.

In addition, the financial covenant in the Credit Agreement requires us to maintain a first lien net leverage ratio that does not exceed 5.50:1.00 at the end of any quarter when the outstanding revolving loans, swingline loans and letter of credit obligations (excluding (i) up to $20 million of non-cash collateralized letters of credit and (ii) all letters of credit that are cash collateralized to at least 103% of their maximum stated amount) exceed more than 30% of the Revolving Credit Facility at such date. The financial covenant is only applicable to the Revolving Credit Facility. Our ability to meet the financial covenant could be affected by events beyond our control.

A breach of the covenants under the indentures governing the Remaining Notes, the Indenture or the Credit Agreement could result in an event of default under the applicable indebtedness. Such a default, if not cured or waived, may allow the creditors to accelerate the related debt and may result in the acceleration of any other debt that is subject to an applicable cross-acceleration or cross-default provision. In addition, an event of default under the Credit Agreement would permit the lenders under the Senior Secured Credit Facilities to terminate all commitments to extend further credit under the facilities. Furthermore, if we were unable to repay the amounts due and payable under the Senior Secured Credit Facilities, those lenders could proceed against the collateral granted to them to secure that indebtedness. In the event our lenders or noteholders accelerate the repayment of our borrowings, we and our subsidiaries may not have sufficient assets to repay that indebtedness.

Our variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.

Borrowings under the Senior Secured Credit Facilities accrue interest at variable rates of interest and expose us to interest rate risk. Interest rates are currently at historically low levels. If interest rates increase, our debt service obligations on the variable rate indebtedness will increase even though the amount borrowed may remain the same, and our net income and cash flows, including cash available for servicing our other indebtedness, will correspondingly decrease. Assuming all revolving loans are fully drawn (and to the extent that EURIBOR and LIBOR are in excess of the 0.00% floor rate of the Senior Secured Credit Facilities), each one-eighth percent change in interest rates would result in a $1.6 million change in annual interest expense on the indebtedness under the Senior Secured Credit Facilities after considering the impact of our hedging positions currently in place. We are currently party to interest rate swaps that involve the exchange of floating for fixed rate interest payments in order to reduce interest rate volatility. We have also entered into interest rate caps that similarly hedge variable interest rate exposure on our Term Loan Facility, $250 million of which expire at the end of 2021. With our existing derivative contracts, we currently hedge approximately 89% of our variable interest rate exposure. However, it is possible that we will not maintain these interest rate swaps with respect to any of our variable rate indebtedness. Alternatively, any swaps we enter into may not fully or effectively mitigate our interest rate risk.

The Notes offered hereby will be structurally subordinated to all obligations of our existing and future subsidiaries that are not required to be and do not become guarantors of the Notes offered hereby.

The Notes offered hereby will be guaranteed by the Parent Guarantor and each of our existing and subsequently acquired or organized subsidiaries that is a borrower under or that guarantees the Senior Secured Credit Facilities. Our subsidiaries that do not guarantee the Notes offered hereby will have no obligation, contingent or otherwise, to pay amounts due under the Notes offered hereby or to make any funds available to pay those amounts, whether by dividend, distribution, loan or other payment. The Notes offered hereby will be structurally subordinated to all indebtedness and other obligations of any non-guarantor subsidiary such that in the event of insolvency, liquidation, reorganization, dissolution or other winding up of any subsidiary that is not a guarantor, all of that subsidiary's creditors (including trade creditors) would be entitled to payment in full out of that subsidiary's assets before we would be entitled to any payment from that subsidiary.

In addition, subject to some limitations, the indentures governing the Remaining Notes and the Credit Agreement permit, and the Indenture will permit, these subsidiaries to incur additional indebtedness and will not contain any limitation on the amount of other liabilities, such as trade payables, that may be incurred by these subsidiaries.

For the LTM Period, our non-guarantor subsidiaries represented approximately 31% of our net sales and approximately 36% of our Adjusted EBITDA. As of September 30, 2020, our non-guarantor subsidiaries represented approximately 20% of our total assets (including trade receivables but excluding intercompany receivables) and had approximately $436 million of total indebtedness and liabilities (including trade payables but excluding intercompany payables).

In addition, our subsidiaries that provide, or will provide, guarantees of the Notes offered hereby will be automatically released from those guarantees upon the occurrence of certain events, including the following:

- the designation of that subsidiary as an unrestricted subsidiary;
- the release or discharge of any guarantee or indebtedness that resulted in the creation of the guarantee of the Notes offered hereby by such subsidiary guarantor, including the guarantee of the Senior Secured Credit Facilities; or
- the sale or other disposition, including the sale of substantially all of the assets, of that subsidiary guarantor.

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

The lenders under the Senior Secured Credit Facilities have the discretion to release the guarantors under the Senior Secured Credit Facilities in a variety of circumstances, which will cause those guarantors to be released from their guarantees of the Notes offered hereby.

While any obligations under the Senior Secured Credit Facilities remain outstanding, any guarantee of the Notes offered hereby may be released without action by, or consent of, any holder of the Notes offered hereby or the Trustee, at the discretion of lenders under the Senior Secured Credit Facilities, if such guarantor is no longer a borrower or guarantor of obligations under the Senior Secured Credit Facilities. See "Description of Notes—Guarantees." The lenders under the Senior Secured Credit Facilities 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 offered hereby, and the indebtedness and other liabilities, including trade payables, whether secured or unsecured, of those subsidiaries will effectively be senior to claims of holders of the Notes offered hereby.

The Notes offered hereby will be effectively subordinated to our and our guarantors' indebtedness under the Senior Secured Credit Facilities and any of our and our guarantors' other secured indebtedness to the extent of the value of the assets securing that indebtedness.

The Notes offered hereby will not be secured by any of our or our guarantors' assets. As a result, the Notes and the guarantees thereof will be effectively subordinated to our and our guarantors' indebtedness under the Senior Secured Credit Facilities with respect to the assets that secure that indebtedness. As of September 30, 2020, we had $2,069.3 million of senior secured indebtedness and the Revolving Credit Facility would have provided for unused commitments of $400.0 million (without giving effect to $34.0 million of outstanding letters of credit). In addition, we may incur additional secured debt in the future. The consequence of this effective subordination is that upon a default in payment on, or the acceleration of, any of our secured indebtedness, or in the event of bankruptcy, insolvency, liquidation, dissolution or reorganization of our company or the guarantors, the proceeds from the sale of assets securing our secured indebtedness will be available to repay obligations on the Notes offered hereby only after all obligations under the Senior Secured Credit Facilities and any other secured debt has been paid in full. As a result, the holders of the Notes offered hereby may receive less, ratably, than the holders of secured debt in the event of our or our guarantors' bankruptcy, insolvency, liquidation, dissolution or reorganization.

We may not be able to repurchase the Notes offered hereby upon a change of control.

Upon the occurrence of a Change of Control Triggering Event, the Issuer will be required to offer to repurchase all outstanding Notes offered hereby at 101% of their principal amount, plus accrued and unpaid interest to the purchase date. Such change of control event may also require an offer to purchase all of our outstanding Remaining Notes pursuant to the indentures governing such notes. Additionally, under the Senior Secured Credit Facilities, certain change of control events (as defined therein) constitute an event of default that permits the lenders to accelerate the maturity of borrowings under the credit agreement and terminate their commitments to lend. The source of funds for any purchase of the Notes offered hereby and the Remaining Notes and repayment of borrowings under the Senior Secured Credit Facilities would be our available cash or cash generated from our subsidiaries' operations or other sources, including borrowings, sales of assets or sales of equity. The Issuer may not be able to repurchase the Notes offered hereby upon a Change of Control Triggering Event because it may not have sufficient financial resources to purchase all of the debt securities that are tendered upon a Change of Control Triggering Event and repay our other indebtedness that will become due at such time. We may require additional financing from third parties to fund any such purchases, and we may be unable to obtain financing on

satisfactory terms or at all. Further, the Issuer's ability to repurchase the Notes offered hereby may be limited by law. In order to avoid the obligations to repurchase the Notes offered hereby and events of default and potential breaches of the credit agreement governing the Senior Secured Credit Facilities, we may have to avoid certain change of control transactions that would otherwise be beneficial to us.

In addition, some important corporate events, such as a leveraged recapitalization or a sale of our company to a public company that does not have a majority shareholder, may not, under the Indenture and the instruments governing our other indebtedness, constitute a "change of control" that would require us to repurchase the Notes offered hereby, even though those corporate events could increase the level of our indebtedness or otherwise adversely affect our capital structure, credit ratings or the value of the Notes offered hereby. The occurrence of certain events that might otherwise constitute a "change of control" will not give rise to a Change of Control Triggering Event unless, in connection with the applicable change of control, the rating assigned to the Notes by any two of Fitch, Moody's and S&P is downgraded from the rating in effect immediately prior to the announcement of such change of control or withdrawn within 60 days of such change of control. See "Description of Notes—Change of Control."

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

The definition of change of control in the Indenture includes a phrase relating to the sale of "all or substantially all" of our assets. There is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, the ability of a holder of the Notes offered hereby to require us to repurchase its Notes offered hereby as a result of a sale of less than all our assets to another person may be uncertain.

Fraudulent transfer laws, and similar laws in applicable foreign jurisdictions, may permit a court to void the Notes offered hereby and/or the guarantees and, if that occurs, you may not receive any payments on the Notes offered hereby.

Fraudulent transfer and conveyance laws, and similar laws in applicable foreign jurisdictions, may apply to the issuance of the Notes offered hereby and/or the incurrence of the guarantees of the Notes offered hereby. Under bankruptcy laws and fraudulent transfer or conveyance laws, which may vary from state to state and jurisdiction to jurisdiction, and other similar laws in applicable foreign jurisdictions, the Notes offered hereby or the guarantees thereof could be voided as a fraudulent transfer or conveyance if we or any of the guarantors, as applicable, (a) issued the Notes offered hereby and/or incurred the guarantees with the intent of hindering, delaying or defrauding creditors or (b) received less than reasonably equivalent value or fair consideration in return for either issuing the Notes offered hereby and/or incurring the guarantees and, in the case of (b) 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 offered hereby or the incurrence of the guarantees;
- the issuance of the Notes offered hereby or the incurrence of the guarantees left us or any of the guarantors, as applicable, with an unreasonably small amount of capital or assets 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 the guarantor's ability to pay as they mature; or
- we or any of the guarantors were a defendant in an action for money damages, or had a judgment for money damages docketed against us or the guarantor if, in either case, the judgment is unsatisfied after final judgment.

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

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

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

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

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

Insolvency laws of jurisdictions outside the United States may not be as favorable to you as the U.S. bankruptcy laws and may preclude holders of the Notes offered hereby from recovering payments due under the Notes offered hereby.

Certain of the guarantors of the Notes offered hereby are incorporated or organized in Australia, Bermuda, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, South Africa, Sweden, Switzerland and the United Kingdom, and are parties to certain key agreements affecting your rights as holders of the Notes offered hereby and your ability to recover under the Notes offered hereby. The insolvency laws of these jurisdictions may not be as favorable to your interests as creditors as the laws of the United States or other jurisdictions with which you may be familiar, including in the areas of rights of creditors, priority of governmental and other creditors, ability to obtain post-petition interest and the duration of the proceeding.

See "Limitation on Validity and Enforceability of the Guarantees" for a description of the insolvency laws in Australia, Bermuda, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, South Africa, Sweden, Switzerland, the United Kingdom and the United States, which could limit the enforceability of the guarantees.

In the event that any one or more of the guarantors, any future guarantors, if any, or any other of our subsidiaries experienced financial difficulty, it is not possible to predict with certainty in which jurisdiction or jurisdictions insolvency or similar proceedings would be commenced, or the outcome of such proceedings. Guarantees provided by entities organized in jurisdictions not discussed in this offering memorandum are also subject to material limitations pursuant to their terms, by statute or otherwise. Any enforcement of the guarantees after bankruptcy or an insolvency event in such other jurisdictions will be subject to the insolvency laws of the relevant entity's jurisdiction of organization or other jurisdictions. The insolvency and other laws of each of these jurisdictions may be materially different from, or in conflict with, each other, including in the areas of rights of creditors, the ability to void preferential transfer, priority of governmental and other creditors, ability to obtain post-petition interest and duration of the proceeding. The application of these laws, or any conflict among them, could call into question whether any particular jurisdiction's laws should apply, adversely affect the ability of holders of the Notes offered hereby to enforce their rights under the guarantees in these jurisdictions and limit any amounts that holders of the Notes may receive.

Enforcing your rights as a holder of the Notes offered hereby or under the guarantees across multiple jurisdictions may be difficult.

The Notes offered hereby will be issued by a U.S. entity and will be guaranteed by certain of our subsidiaries that are organized under the laws of Australia, Bermuda, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, South Africa, Sweden, Switzerland, the United Kingdom and the United States. In the event of bankruptcy, insolvency or a similar event, proceedings could be initiated in any of these jurisdictions or in the jurisdiction of incorporation or organization of a future guarantor. Your rights under the Notes offered hereby and the guarantees will therefore be subject to the laws of multiple jurisdictions, and you may not be able to enforce effectively your rights in multiple bankruptcy, insolvency and other similar proceedings. Moreover, such multi-jurisdictional proceedings are typically complex and costly for creditors and often result in substantial uncertainty and delay in the enforcement of creditors' rights. In addition, the bankruptcy, insolvency, foreign exchange, administration and other laws of the various jurisdictions may be materially different from or in conflict with one another and those of the United States, including in respect of creditor's rights, priority of creditors, the ability to obtain post-petition interest and the duration of the insolvency proceeding. The consequences of the multiple jurisdictions involved could trigger disputes over which jurisdiction's law should apply, which could adversely affect your ability to enforce your rights and to collect payment in full under the Notes offered hereby and the guarantees. See "Limitations on Validity and Enforceability of the Guarantees."

You may be unable to enforce judgments obtained in the United States and foreign courts against us, certain of the guarantors or our or their respective directors and executive officers.

Certain of the guarantors and certain of their respective directors and executive officers are, and will continue to be, non-residents of the United States, and most of the assets of these companies are located outside of the United States. As a consequence, you may not be able to effect service of process on guarantors located outside the United States or the non-United States resident directors and officers in the United States or to enforce in other jurisdictions any judgments of United States courts in any civil liabilities proceedings under the U.S. federal securities laws. Moreover, any judgment obtained in the United States against the non-resident directors, the executive officers or such guarantors, including judgments with respect to the payment of principal, premium, if any, and interest on the Notes offered hereby, may not be collectible in the United States. There is also uncertainty about the enforceability in the courts of certain jurisdictions, including judgments obtained in the United States against certain of the guarantors, whether or not predicated upon the federal securities laws of the United States. See "Service of Process and Enforcement of Civil Liabilities."

The guarantee to be granted by the South African guarantor may not be in place on the issue date.

Under the South African exchange control regulations and the rulings promulgated thereunder, our South African subsidiary will be required to obtain the approval of the Financial Surveillance Department of the South African Reserve Bank ("SARB") in order to grant a guarantee of the Notes. Such guarantee may not be issued until such approval has been obtained in accordance with the policies and procedures of the SARB and applicable law and the guarantee may be subject to certain limitations determined by the SARB. As a result, such South African subsidiary is unlikely to guarantee the Notes until after the issue date. If there is a default under the terms of the Notes prior to the date that such South African subsidiary has provided its guarantee, the Notes may not be guaranteed by all anticipated guarantors. In addition, from the issue date until the date that such South African subsidiary has provided its guarantee, the Notes will be structurally subordinated to the obligations of such South African subsidiary. See "Limitations on Validity and Enforceability of the Guarantees—South Africa."

Because each guarantor's liability under its guarantee may be reduced to zero or avoided or released under certain circumstances, you may not receive any payments from some or all of the guarantors.

It is anticipated that the Notes offered hereby will have the benefit of the guarantees of the Parent Guarantor and certain of its subsidiaries. However, the guarantees will be limited to the maximum amount that the guarantors are permitted to guarantee under applicable law. As a result, a guarantor's liability under a guarantee could be reduced to zero depending on the amount of other obligations of such entity. See "Limitations on Validity and Enforceability of the Guarantees." Further, under certain circumstances, a court under applicable fraudulent conveyance and transfer statutes or other applicable laws could void the obligations under a guarantee or subordinate the guarantee to other obligations of the guarantor provider. See "—Fraudulent transfer laws, and similar laws in applicable foreign jurisdictions, may permit a court to void the Notes offered hereby and/or the guarantees and, if that occurs, you may not receive any payment on the Notes offered hereby." In addition, you will lose the benefit of a particular guarantee if it is released under certain circumstances described under "Description of Notes—Guarantees."

As a result, an entity's liability under its guarantee could be materially reduced or eliminated depending upon the amounts of its other obligations and upon applicable laws. In particular, in certain jurisdictions, a guarantee granted by a company that is not in the company's corporate interests or where the burden of that guarantee exceeds the benefit to the company may not be valid and enforceable. It is possible that a creditor of an entity or the insolvency administrator in the case of an insolvency of an entity may contest the validity and enforceability of the guarantee and that the applicable court may determine that the guarantee should be limited or voided. In the event that any guarantees are deemed invalid or unenforceable, in whole or in part, or to the extent that agreed limitations on the guarantee interest apply, the Notes would rank *pari passu* with, or be effectively subordinated to, all liabilities of the applicable guarantor, including trade payables of such guarantor.

Holders of the Notes offered hereby will not be entitled to registration rights, and we do not currently intend to register the Notes offered hereby under U.S. federal or state securities laws. There are restrictions on your ability to transfer or resell the Notes offered hereby.

The Notes offered hereby are being offered and sold pursuant to an exemption from registration under the Securities Act and applicable state securities laws, and we do not currently intend to register the Notes offered hereby. The holders of the Notes offered hereby will not be entitled to require us to register the Notes offered hereby for resale or otherwise. Therefore, you may transfer or resell the Notes offered hereby in the United States only in a transaction registered under or exempt from the registration requirements of the Securities Act and applicable state securities laws, and you may be required to bear the risk of your investment for an indefinite period of time. See "Transfer Restrictions."

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

The Notes will be a new issue of securities for which there is no established trading market. We expect the Notes to be eligible for trading by "qualified institutional buyers," as defined in Rule 144A under the Securities Act ("Rule 144A"), but we do not intend to list the Notes on any national securities exchange or include the Notes in any automated dealer quotation system. The initial purchasers have advised us that they intend to make a market in the Notes, as permitted by applicable laws and regulations. However, the initial purchasers are not obligated to make a market in the Notes and, if commenced, may discontinue their market-making activities at any time without notice.

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

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

A lowering or withdrawal of the ratings assigned to our debt securities by rating agencies may increase our future borrowing costs and reduce our access to capital.

Our debt currently has a non-investment grade rating, and any rating assigned could be lowered or withdrawn entirely by a rating agency if, in that rating agency's judgment, future circumstances relating to the basis of the rating, such as adverse changes in our business, warrant. Consequently, real or anticipated changes in our credit ratings will generally affect the market value of the Notes offered hereby. Credit ratings are not recommendations to purchase, hold or sell the Notes offered hereby. Additionally, credit ratings may not reflect the potential effect of risks relating to the structure or marketing of the Notes offered hereby. Any downgrade of our secured debt by either S&P or Moody's may increase the interest rate on the Senior Secured Credit Facilities or result in higher borrowing costs.

Any future lowering of our ratings likely would make it more difficult or more expensive for us to obtain additional debt financing. If any credit rating initially assigned to the Notes offered hereby is subsequently lowered or withdrawn for any reason, you may not be able to resell your Notes offered hereby without a substantial discount.

Many of the covenants contained in the Indenture will not be applicable, and the subsidiary guarantees of the Notes will be released, during any period when the Notes offered hereby are rated investment grade by any two of Fitch, Moody's and S&P and no default or event of default has occurred and is continuing.

Many of the covenants to be contained in the Indenture will not apply to us, and the subsidiary guarantees of the Notes will be released, during any period when the Notes offered hereby are rated investment grade by any two of Fitch, Moody's and S&P and no default or event of default (other than any default that would not constitute a default following the suspension of such covenants) has occurred and is continuing under the Indenture (any such period, a "Suspension Period"). The applicable covenants to which such suspension will apply restrict, among other things, our ability to pay dividends, incur debt and to enter into certain other transactions. We cannot assure you that the Notes offered hereby will ever be rated investment grade, or that if they are rated investment grade, that the Notes offered hereby will maintain such ratings. However, suspension of these covenants would allow us to engage in certain actions that would not have been permitted while these covenants were in force, and the effects of any such actions that we take while these covenants are not in force will be permitted to remain in place even if the Notes offered hereby are subsequently downgraded below investment grade and the covenants are reinstated. Any lowering, suspension or withdrawal of such ratings may have an adverse effect on the market price or marketability of the Notes offered hereby.

The guarantees provided by certain subsidiaries of the Parent Guarantor in respect of the Senior Secured Credit Facilities and the Existing 2025 Euro Notes will not be released during a Suspension Period. As a result, during any Suspension Period, the Issuer's obligations under the Notes will be structurally subordinated to the obligations of such subsidiaries of the Parent Guarantor, including such subsidiaries' obligations under the Senior Secured Credit Facilities and the Existing 2025 Euro Notes.

The Notes offered hereby may be issued with OID for U.S. federal income tax purposes.

The Notes offered hereby may be issued with OID for U.S. federal income tax purposes. If the Notes offered hereby are issued with OID, U.S. holders will be required to include amounts representing such OID in gross income on a constant yield to maturity

basis in advance of the receipt of cash payment thereof and regardless of such holders' method of accounting for U.S. federal income tax purposes. See "Certain U.S. Federal Income Tax Considerations."

If the Notes offered hereby are issued with OID and bankruptcy petition were filed by or against us, holders of the Notes offered hereby may receive a lesser amount for their claim than they would have been entitled to receive under the indenture governing the Notes offered hereby.

If a bankruptcy petition were filed by or against us under the U.S. Bankruptcy Code after the issuance of the Notes offered hereby, the claim by any holder of the Notes offered hereby for the principal amount of the Notes may be limited to an amount equal to the sum of the original issue price for the outstanding Note offered hereby and that portion of the OID that does not constitute "unmatured interest" for purposes of the U.S. Bankruptcy Code. Any OID that was not amortized as of the date of the bankruptcy filing would constitute unmatured interest. Accordingly, a holder of the Notes offered hereby under these circumstances may receive a lesser amount than they would be entitled to receive under the terms of the indenture governing the Notes offered hereby, even if sufficient funds are available.

USE OF PROCEEDS

We intend to use the net proceeds of this offering, together with cash on hand, (i) to fund the Existing 2024 Dollar Notes Discharge and the Existing 2024 Euro Notes Discharge by irrevocably depositing with the trustee for the Redeemed Notes funds for the benefit of the holders of the applicable Redeemed Notes as will be sufficient to redeem the entire outstanding amount of Existing 2024 Dollar Notes at a redemption price of 102.438% of the aggregate principal amount thereof and to redeem the entire outstanding amount of Existing 2024 Euro Notes at a redemption price of 102.125% of the aggregate principal amount thereof, in each case, plus accrued and unpaid interest thereon, if any, to, but excluding, the date on which we will redeem the applicable outstanding Redeemed Notes and (ii) to pay related transaction fees and expenses.

The proceeds will be used outside Switzerland unless use in Switzerland is permitted under the Swiss taxation laws in force from time to time without payments in respect of the Notes becoming subject to withholding or deduction for Swiss withholding tax as a consequence of such use of proceeds in Switzerland.

Certain of the initial purchasers or their affiliates may hold a portion of the Redeemed Notes and may accordingly receive a portion of the proceeds of this offering. See “Plan of Distribution.”

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of September 30, 2020 on:

- an actual basis; and
- an as adjusted basis to give effect to the Refinancing Transactions as if they had occurred on September 30, 2020.

This table should be read in conjunction with the information presented under the captions "Offering Memorandum Summary—Summary Historical Financial Information and Other Data" and "Use of Proceeds" in this offering memorandum, the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section in our Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and our consolidated financial statements and related notes included or incorporated by reference in this offering memorandum.

($ in millions)	As of September 30, 2020	
	Actual	As Adjusted
	(Unaudited)	
Cash and cash equivalents[1]	$ 1,341.3	$ 1,025.3
Debt:		
Revolving Credit Facility[2]	—	—
Term Loan Facility, net[3]	2,053.5	2,053.5
Existing 2024 Dollar Notes, net[4]	493.2	—
Existing 2024 Euro Notes, net[4]	387.2	—
Existing 2025 Euro Notes, net[4]	519.7	519.7
Existing 2027 Dollar Notes, net[4]	492.0	492.0
Notes offered hereby, net[4][5]	—	591.0
Other Indebtedness, net[4][6]	114.0	114.0
Total debt	4,059.6	3,770.2
Total shareholders' equity[1][7]	1,384.7	1,358.1
Total capitalization	$ 5,444.3	$ 5,128.3

(1) Adjusted amount reflects the redemption of the Existing 2024 Dollar Notes at a redemption price of 102.438% of the aggregate principal amount thereof and the redemption of the Existing 2024 Euro Notes at a redemption price of 102.125% of the aggregate principal amount thereof aggregating to $20.5 million ($15.6 million net of tax).

(2) Our Revolving Credit Facility provides for commitments of $400.0 million. As of September 30, 2020, we had unused commitments under the Revolving Credit Facility available to us of $366.0 million, after giving effect to $34.0 million of letters of credit issued thereunder. See "Description of Other Indebtedness."

(3) Our Term Loan Facility consists of a term loan facility in an aggregate principal amount of $2,430.0 million. As of September 30, 2020, we had $2,069.3 million in aggregate principal amount outstanding under our Term Loan Facility, not including OID and deferred financing costs. See "Description of Other Indebtedness."

(4) Amounts presented net of any OID and deferred financing costs.

(5) Assumes $9.0 million of deferred financing costs related to this offering.

(6) Includes indebtedness to fund short-term operational requirements.

(7) Adjusted amount reflects the write-off of $11 million of debt issuance costs associated with the Existing 2024 Dollar Notes and Existing 2024 Euro Notes.

DESCRIPTION OF OTHER INDEBTEDNESS

Senior Secured Credit Facilities

Capitalized terms used but not defined in this "Description of Other Indebtedness" have the meanings provided in the Credit Agreement. The Senior Secured Credit Facilities are secured by substantially all assets of the guarantors. The Term Loan Facility matures on June 1, 2024 and the Revolving Credit Facility will mature on the earlier of (i) March 2, 2024, (ii) the date of termination of all commitments under the Revolving Credit Facility or (iii) the date that is 91 days prior to the maturity of the Term Loan Facility. Principal is paid quarterly on the Term Loan Facility based on 1% *per annum* of the original principal amount with the unpaid balance due at maturity.

The interest rate applicable on any outstanding borrowings under the Revolving Credit Facility is subject to the Adjusted Eurocurrency Rate plus a margin of 1.50% *per annum* for loans based on the Adjusted Eurocurrency Rate and the Base Rate plus a margin of 0.50% *per annum* for loans based on the Base Rate with, in each case, a 0.25% *per annum* increase when its First Lien Net Leverage Ratio is greater than or equal to 1.25:1.00 but less than or equal to 2.25:1.00 and another 0.25% *per annum* increase when its First Lien Net Leverage Ratio is greater than 2.25:1.00.

The interest rates applicable to outstanding borrowings under the Term Loan Facility are (i) for Base Rate Loans, the Base Rate plus 0.75% *per annum* and, (ii) for Eurocurrency Rate Loans, the Adjusted Eurocurrency Rate plus 1.75% *per annum*, in each case, subject to a 0.00% floor. Interest on Base Rate Loans is payable quarterly and interest on Eurocurrency Rate Loans is payable at the end of each eurocurrency Interest Period, unless such Interest Period is longer than three months, in which case such interest shall be payable every three months.

Under circumstances described in the Credit Agreement, we may increase available revolving or term facility borrowings by up to $700.0 million, plus an additional amount subject to our not exceeding a Maximum First Lien Leverage Requirement described in the Credit Agreement.

Any indebtedness under the Senior Secured Credit Facilities may be voluntarily prepaid, in whole or in part, in minimum amounts. Such indebtedness is subject to mandatory prepayments amounting to the proceeds of asset sales over $75.0 million annually, proceeds from certain debt issuances not otherwise permitted under the Credit Agreement and 50% (subject to a step-down to 25.0% or 0% if the First Lien Net Leverage Ratio falls below 4.25:1 or 3.50:1, respectively) of Excess Cash Flow.

On January 16, 2020, we voluntarily prepaid $300.0 million of the outstanding principal on the Term Loan Facility.

We are subject to customary negative covenants as well as a financial covenant that requires that we maintain a First Lien Net Leverage Ratio of no greater than 5.50:1.00. This financial covenant is applicable only when greater than 30% of the Revolving Credit Facility (including letters of credit in excess of $20 million unless cash collateralized to at least 103%) is outstanding at the end of the fiscal quarter. As of September 30, 2020, the financial covenant was not applicable. Further, the Senior Secured Credit Facilities include, among other things, customary restrictions, subject to certain exceptions, on our ability to incur certain indebtedness, grant certain liens, make certain investments, declare or pay certain dividends or repurchase shares of the Parent Guarantor's common stock. As of September 30, 2020, we were in compliance with all covenants under the Senior Secured Credit Facilities.

As of September 30, 2020, there were no borrowings under the Revolving Credit Facility and letters of credit issued thereunder totaled $34.0 million, which reduced the availability under the Revolving Credit Facility to $366.0 million.

Existing 2025 Euro Notes

On September 27, 2016, Axalta Coating Systems Dutch Holding B B.V. ("Dutch Holding") issued €450.0 million aggregate principal amount of Existing 2025 Euro Notes and related guarantees thereof. The Existing 2025 Euro Notes are unconditionally guaranteed on a senior unsecured basis by the guarantors (other than Dutch Holding) and the Issuer (the "2025 Note Guarantors").

The indenture governing the Existing 2025 Euro Notes contains covenants that restrict the ability of the Parent Guarantor and its restricted subsidiaries to, among other things, incur or guarantee additional indebtedness, prepay, redeem or repurchase certain debt, make certain payments, including payment of dividends, or repurchase equity interests of the Parent Guarantor and its restricted subsidiaries, sell assets, make loans or acquisitions or capital contributions and certain investments, incur liens, enter into transactions with affiliates and consolidate, merge or sell all or substantially all of its assets.

The Existing 2025 Euro Notes mature on January 15, 2025 and bear interest at a rate of 3.75% *per annum*, payable semi-annually on January 15 and July 15 of each year.

Dutch Holding currently has the option to redeem the Existing 2025 Euro Notes, in whole or in part, at any time or from time to time, at the following redemption prices (expressed as percentages of principal amount) if redeemed during the 12-month period commencing on January 15 of the years set forth below:

Year	Redemption Price for Existing 2025 Euro Notes
2020	102.813%
2021	101.875%
2022	100.938%
2023 and thereafter	100.000%

Upon the occurrence of certain events constituting a change of control, holders of the Existing 2025 Euro Notes have the right to require Dutch Holding to repurchase all or any part of the Existing 2025 Notes at a purchase price equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. Dutch Holding or a third party has the right to redeem all of the Existing 2025 Euro Notes at such purchase price following the consummation of certain events constituting a change of control if at least 90.0% of the Existing 2025 Euro Notes outstanding prior to such date of purchase are purchased pursuant to a change of control offer with respect to such change of control.

The indebtedness evidenced by the Existing 2025 Euro Notes and related guarantees is senior unsecured indebtedness of Dutch Holding and the 2025 Note Guarantors, is senior in right of payment to all future subordinated indebtedness of Dutch Holding and the 2025 Note Guarantors and is equal in right of payment to all existing and future senior indebtedness of Dutch Holding and the 2025 Note Guarantors, including the Notes offered hereby.

Existing 2027 Dollar Notes

On June 15, 2020, the Issuer and Dutch Holding (together, the "2027 Note Issuers") issued $500.0 million aggregate principal amount of Existing 2027 Dollar Notes and related guarantees thereof. The Existing 2027 Dollar Notes are unconditionally guaranteed on a senior unsecured basis by the guarantors, other than Dutch Holding (the "2027 Note Guarantors").

The indenture governing the Existing 2027 Euro Notes contains covenants that restrict the ability of the Parent Guarantor and its restricted subsidiaries to, among other things, incur or guarantee additional indebtedness, prepay, redeem or repurchase certain debt, make certain payments, including payment of dividends, or repurchase equity interests of the Parent Guarantor and its restricted subsidiaries, sell assets, make loans or acquisitions or capital contributions and certain investments, incur liens, enter into transactions with affiliates and consolidate, merge or sell all or substantially all of its assets.

The Existing 2027 Euro Notes mature on June 15, 2027 and bear interest at a rate of 4.750% *per annum*, payable semi-annually on June 15 and December 15 of each year.

Commencing June 15, 2023, the 2027 Note Issuers have the option to redeem the Existing 2027 Dollar Notes, in whole or in part, at any time or from time to time, at the following redemption prices (expressed as percentages of principal amount) if redeemed during the 12-month period commencing on June 15 of the years set forth below:

Year	Redemption Price for Existing 2027 Dollar Notes
2023	102.375%
2024	101.188%
2025 and thereafter	100.000%

Upon the occurrence of certain events constituting a change of control, holders of the Existing 2027 Dollar Notes have the right to require the 2027 Note Issuers to repurchase all or any part of the Existing 2027 Dollar Notes at a purchase price equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. The 2027 Note Issuers or a third party has the right to redeem all of the Existing 2027 Dollar Notes at such purchase price following the consummation of certain events constituting a change of control if at least 90.0% of the Existing 2027 Dollar Notes outstanding prior to such date of purchase are purchased pursuant to a change of control offer with respect to such change of control.

The indebtedness evidenced by the Existing 2027 Dollar Notes and related guarantees is senior unsecured indebtedness of the 2027 Note Issuers and the 2027 Note Guarantors, is senior in right of payment to all future subordinated indebtedness of the 2027 Notes Issuers and the 2027 Note Guarantors and is equal in right of payment to all existing and future senior indebtedness of the 2027 Note Issuers and the 2027 Note Guarantors, including the Notes offered hereby.

DESCRIPTION OF NOTES

General

In this description, (1) the terms "we," "us" and "our" each refer to Axalta Coating Systems Ltd., a Bermuda exempted limited liability company and the indirect parent of the Issuer (the "*Parent Guarantor*"), and its consolidated Subsidiaries, unless the context otherwise requires, (2) the term "Issuer" refers to Axalta Coating Systems, LLC, a limited liability company organized under the laws of the State of Delaware and a wholly owned indirect subsidiary of the Parent Guarantor, and not to any of its Subsidiaries or Affiliates, and (3) the term "Parent Guarantor" in this description refers only to the Parent Guarantor and not to any of its Subsidiaries or Affiliates; provided that after any New Parent Guarantor Designation Effective Date is provided pursuant to a New Parent Guarantor Designation, "Parent Guarantor" shall refer to the Successor Parent Guarantor that is designated as such in the New Parent Guarantor Designation.

For purposes of this description, the % Senior Unsecured Notes due 2029 are referred to as the "*Notes*." The Notes are to be issued under an indenture (the "*Indenture*"), to be dated as of the Issue Date, among the Issuer, the Guarantors and Wilmington Trust, National Association, as trustee (the "*Trustee*"). Copies of the Indenture (and any supplemental indenture) may be obtained from the Issuer upon request after the Issue Date.

The following summary of certain provisions of the Indenture and the Notes does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Indenture and the Notes. Capitalized terms used in this "Description of Notes" section and not otherwise defined have the meanings set forth in the section "—Certain Definitions."

The Issuer will issue Notes with an initial aggregate principal amount of $600.0 million. The Issuer may issue additional debt securities under the Indenture in one or more series ("*Additional Notes*") from time to time after this offering without notice to or the consent of holders of Notes. Any offering of Additional Notes would be subject to the covenant described below under "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock." The Notes issued on the Issue Date and any Additional Notes subsequently issued under the Indenture will vote as a single class (except as otherwise described under "—Amendments and Waivers"). The Indenture will permit the Issuer to designate the maturity date, interest rate and optional redemption provisions applicable to each series of Additional Notes, which may differ from the maturity date, interest rate and optional redemption provisions applicable to the Notes issued on the Issue Date. Additional Notes that differ with respect to maturity date, interest rate or optional redemption provisions from the Notes issued on the Issue Date will constitute a different series of notes from the Notes issued on the Issue Date. Additional Notes that have the same maturity date, interest rate and optional redemption provisions as the Notes issued on the Issue Date will be treated as the same series as the Notes issued on the Issue Date unless otherwise designated by the Issuer. The Issuer similarly will be entitled to vary the application of certain other provisions to any series of Additional Notes. A separate CUSIP or ISIN would be issued for any Additional Notes, unless the Notes issued on the Issue Date and such Additional Notes are treated as "fungible" for U.S. federal income tax purposes. Except as otherwise specified herein, all references to the "Notes" include any Additional Notes that are actually issued.

The registered holder of a Note will be treated as the owner of it for all purposes. Only registered holders will have rights under the Indenture.

The Notes will be issued only in fully registered form, without coupons, in minimum denominations of $150,000 and any integral multiple of $1,000 in excess thereof.

The net proceeds of the offering of the Notes sold on the Issue Date, together with cash on hand, will be used (i) to redeem all of the outstanding Existing 2024 Notes and (ii) to pay related transaction fees and expenses, as set forth in this Offering Memorandum under "Use of Proceeds."

Ranking

The Notes will be the senior unsecured obligations of the Issuer and will:

- be senior in right of payment to any existing and future Subordinated Indebtedness of the Issuer;
- without giving effect to collateral arrangements, be *pari passu* in right of payment with all existing and future senior Indebtedness of the Issuer (including Indebtedness under the Senior Credit Agreement and the Existing Notes);
- be effectively subordinated to any existing and future Secured Indebtedness of the Issuer (including Indebtedness under the Senior Credit Agreement) to the extent of the value of the assets securing such Indebtedness;

- be structurally subordinated to all existing and future indebtedness and other liabilities of all Non-Guarantor Subsidiaries; and

- be initially fully and unconditionally guaranteed on a senior unsecured basis by each Restricted Subsidiary of the Parent Guarantor (other than the Issuer) that borrows under or guarantees any obligation under the Senior Credit Agreement.

At September 30, 2020, on a *pro forma* basis after giving effect to the issuance of the Notes and the use of proceeds therefrom, we would have had total indebtedness of approximately $3,770.2 million, including the Notes, of which approximately $2,069.3 million would have been Secured Indebtedness, including the Indebtedness under the Senior Credit Agreement. In addition, we would have had an additional $400.0 million of borrowing capacity under the revolving portion of the Senior Credit Agreement (without giving effect to $34.0 million of outstanding letters of credit issued under the revolving credit facility, all of which, if drawn, would be Secured Indebtedness). In addition, under the Senior Credit Agreement we have the option to raise incremental term loans (or incremental notes in lieu of incremental term loans) or increase the revolving credit facility by an amount equal to (x) $700.0 million plus (y) an unlimited amount so long as on a pro forma basis our maximum first lien leverage requirement (as such term is used in the Senior Credit Agreement) is satisfied, subject to certain conditions. All of those borrowings could also be secured indebtedness. See "Description of Other Indebtedness."

Unless a Subsidiary is a Guarantor, claims of creditors of such Subsidiaries (including trade creditors) and claims of preferred stockholders (if any) of such Subsidiaries generally will have priority with respect to the assets and earnings of such Subsidiaries over the claims of creditors of the Issuer, including holders of the Notes. The Notes, therefore, will be structurally subordinated to claims of creditors (including trade creditors) and preferred stockholders (if any) of Non-Guarantor Subsidiaries. Although the Indenture will contain limitations on the amount of additional Indebtedness that the Parent Guarantor and its Restricted Subsidiaries may Incur, such limitations are subject to a number of significant exceptions.

Guarantees

Each of the Parent Guarantor and its existing and future Restricted Subsidiaries (other than a Receivables Subsidiary, any CFC, any CFC Holdco and the Issuer) that is a borrower under or a guarantor of Indebtedness under the Senior Credit Agreement will jointly and severally, irrevocably, fully and unconditionally guarantee on a senior unsecured basis the performance and punctual payment when due, whether at Stated Maturity, by acceleration or otherwise, of all Obligations of the Issuer under the Indenture and the Notes (including interest that, but for the filing of a petition in bankruptcy with respect to the Issuer, would have accrued on any Obligation, whether or not a claim is allowed against the Issuer for such interest in the related bankruptcy proceeding) to the holders and the Trustee, whether for payment of principal of, premium, if any, or interest on the Notes, expenses, indemnification or otherwise (all such obligations guaranteed by such Guarantors being herein called the "*Guaranteed Obligations*").

Each Guarantee of a Guarantor will be a senior unsecured obligation of such Guarantor and will:

- be senior in right of payment to any existing and future Subordinated Indebtedness of such Guarantor;

- without giving effect to collateral arrangements, be *pari passu* in right of payment with all existing and future senior Indebtedness of such Guarantor (including its guarantee of the Indebtedness under the Senior Credit Agreement and the Existing Notes);

- be effectively subordinated to all existing and future Secured Indebtedness of such Guarantor (including such Guarantor's guarantee of Indebtedness under the Senior Credit Agreement) to the extent of the value of the assets securing such Indebtedness; and

- be structurally subordinated to all existing and future indebtedness and other liabilities of any of such Guarantor's Non-Guarantor Subsidiaries.

Each Guarantee will be limited as necessary to reflect limitations under local law in the applicable jurisdiction and defenses generally available to guarantors in such jurisdiction (including those relating to fraudulent conveyance, fraudulent transfer, voidable preference, financial assistance, corporate purpose, corporate benefit, capital maintenance and similar laws, regulations and defenses affecting the rights of creditors generally) or other considerations under applicable law. See "Limitations on Validity and Enforceability of the Guarantees." This includes limiting Guarantees to an amount not to exceed the maximum amount that can be guaranteed by the applicable Guarantor without rendering the Indenture or the Guarantee, as it relates to such Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. However, such limitations may not be effective under local law. See "Limitations on Validity and Enforceability of the Guarantees"

and "Risk Factors—Risks Related to the Notes—Fraudulent transfer laws, and similar laws in applicable foreign jurisdictions, may permit a court to void the Notes and/or the guarantees and, if that occurs, you may not receive any payments on the Notes offered hereby." On or after the Issue Date, the Parent Guarantor will cause each Restricted Subsidiary (unless such Subsidiary is a Receivables Subsidiary, any CFC, any CFC Holdco, the Issuer or a Subsidiary that is already a Guarantor) that Incurs or guarantees Indebtedness of the Parent Guarantor or any of its Restricted Subsidiaries under the Senior Credit Agreement or the Existing Notes Indentures to execute and deliver to the Trustee a supplemental indenture to the Indenture pursuant to which such Restricted Subsidiary will guarantee performance and payment of the Notes on the same senior unsecured basis. See "—Certain Covenants—Future Guarantors."

Each Guarantee will be a continuing guarantee and, subject to the next succeeding paragraph, shall:

(1) remain in full force and effect until payment in full of all the Guaranteed Obligations;

(2) be binding upon each such Guarantor and its successors and assigns; and

(3) inure to the benefit of and be enforceable by the Trustee, the holders and their successors, transferees and assigns.

A Guarantee of a Guarantor will be automatically and unconditionally released and discharged upon:

(a) the sale, exchange, disposition or other transfer (including through merger, consolidation or dissolution) of (x) the Capital Stock of such Guarantor, if after such transaction the Guarantor is no longer a Restricted Subsidiary, or (y) all or substantially all the assets of such Guarantor if such sale, exchange, disposition or other transfer (including through merger, consolidation or dissolution) is made in compliance with the Indenture;

(b) the designation of such Guarantor as an Unrestricted Subsidiary in accordance with the provisions set forth under "—Certain Covenants—Limitation on Restricted Payments" and the definition of "Unrestricted Subsidiary";

(c) in the case of any Restricted Subsidiary that after the Issue Date is required to guarantee the Notes pursuant to the covenant described under "—Certain Covenants—Future Guarantors," the release or discharge of the guarantee by such Restricted Subsidiary of Indebtedness of the Issuer or any Restricted Subsidiary or the repayment of the Indebtedness or Disqualified Stock, in each case, that resulted in the obligation to guarantee the Notes, except if a release or discharge is by or as a result of payment in connection with the enforcement of remedies under such other guarantee;

(d) the Issuer's exercise of its legal defeasance option or covenant defeasance option as described under "—Defeasance," or if the Issuer's Obligations under the Indenture are satisfied and discharged (including through redemption or repurchase of all the Notes or otherwise) in accordance with the terms of the Indenture;

(e) with respect to a Guarantee granted by a Subsidiary of the Parent Guarantor, the release or discharge of the Guarantee by, or direct obligation of, such Guarantor of the Obligations under the Senior Credit Agreement, except a discharge or release by or as a result of payment in connection with the enforcement of remedies under such guarantee or direct obligation; or

(f) with respect to a Guarantee granted by a Subsidiary of the Parent Guarantor, the Notes having an Investment Grade Rating from two of the Rating Agencies.

A Guarantee also will be automatically released upon the applicable Subsidiary ceasing to be a Subsidiary as a result of any foreclosure of any pledge or security interest securing the Senior Credit Agreement or other exercise of remedies in respect thereof.

Each of the Parent Guarantor's Subsidiaries that is, or becomes, a guarantor of the Issuer's Obligations under the Senior Credit Agreement (other than a Receivables Subsidiary, any CFC, any CFC Holdco and a Subsidiary that is already a Guarantor or obligor) will become a Guarantor. For the 12-month period ended September 30, 2020, our Non-Guarantor Subsidiaries represented approximately 31% of our net sales and approximately 36% of our Adjusted EBITDA, and as of September 30, 2020, our Non-Guarantor Subsidiaries represented approximately 20% of our total assets (including trade receivables but excluding intercompany receivables) and had approximately $436 million of our total liabilities (including trade payables but excluding intercompany payables).

Terms of the Notes

The Notes will be senior unsecured obligations of the Issuer and will mature on , 2029. Each Note will bear interest at the rate per annum shown on the front cover of this Offering Memorandum from , 2020, or from the most recent date to which interest has been paid or provided for, payable semi-annually to holders of record at the close of business on the or immediately preceding the interest payment date on and of each year, commencing , 2021. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Paying Agent and Registrar for the Notes

The Issuer will maintain a paying agent and registrar for the Notes in the United States (the "*Paying Agent*"). The Trustee will initially act as the Paying Agent. The Issuer may change the paying agent or registrar under the Indenture without prior notice to the holders of the Notes, and the Parent Guarantor or any of its Subsidiaries may act as paying agent or registrar.

Upon written request from the Issuer, the registrar shall provide the Issuer with a copy of the register to enable the Issuer to maintain a register of the Notes at its registered offices.

Optional Redemption

On and after , 2024, the Issuer may redeem the Notes, at its option, in whole at any time or in part from time to time, upon notice as described under "—Selection and Notice," at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest, if any, to (but not including) the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the redemption date), if redeemed during the 12-month period commencing on of the years set forth below:

Period	Redemption Price
2024	%
2025	%
2026 and thereafter	100.000%

In addition, at any time prior to , 2024, the Issuer may redeem the Notes at its option, in whole at any time or in part from time to time, upon notice as described under "—Selection and Notice," at a redemption price equal to 100.0% of the principal amount of the Notes redeemed *plus* the Applicable Premium as of the date of the redemption notice, and accrued and unpaid interest, if any, to (but not including) 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 falling prior to or on the redemption date).

Notwithstanding the foregoing, at any time and from time to time prior to , 2024, upon notice as described under "—Selection and Notice," the Issuer may redeem up to 40.0% of the aggregate principal amount of the Notes (calculated after giving effect to any issuance of Additional Notes) with an amount up to the net cash proceeds of one or more Equity Offerings, to the extent (in the case of an Equity Offering by a direct or indirect parent of the Parent Guarantor) the net cash proceeds thereof are contributed to the common equity capital of the Parent Guarantor or used to purchase Capital Stock (other than Disqualified Stock) of the Parent Guarantor from it at a redemption price (expressed as a percentage of the principal amount thereof) equal to %, plus accrued and unpaid interest, if any, to (but not including) the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the redemption date); *provided*, *however*, that at least 50.0% of the aggregate principal amount of the Notes (calculated after giving effect to any issuance of Additional Notes) must remain outstanding immediately after each such redemption (except to the extent otherwise repurchased or redeemed (or to be repurchased or redeemed) in accordance with the terms of the Indenture); *provided*, *further*, that for purposes of calculating the principal amount of the Notes able to be redeemed with the net cash proceeds of such Equity Offering or Equity Offerings, such amount shall include only the principal amount of the Notes to be redeemed *plus* the premium on such Notes to be redeemed; *provided, further*, that such redemption shall occur within 180 days after the date on which any such Equity Offering is consummated.

At any time, in connection with any tender offer or other offer to purchase any series of Notes (including pursuant to a Change of Control Offer, Alternate Offer or Asset Sale Offer (each as defined below)), if not less than 90.0% in aggregate principal amount of the outstanding Notes are purchased by the Issuer, or any third party purchasing or acquiring in lieu of the Issuer, the Issuer or such third party will have the right to redeem or purchase, as applicable, all Notes that remain outstanding following such purchase at a price equal to the price paid to holders in such purchase (which may be less than par and shall exclude any early tender premium and any accrued and unpaid interest paid to any holder in such tender offer payment), plus, to the extent not included in the tender offer

payment, accrued and unpaid interest, if any, to (but not including) the date of redemption or purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the date of redemption or purchase).

Any redemption of the Notes may, at the Issuer's discretion, be subject to one or more conditions precedent. The redemption date of any redemption that is subject to satisfaction of one or more conditions precedent may, in the Issuer's discretion and to the extent stated in the applicable redemption notice, be delayed until such time as any or all such conditions shall be satisfied (or waived by the Issuer in its sole discretion), or such redemption may not occur and any notice with respect to such redemption may be modified, extended or rescinded in the event that any or all such conditions shall not have yet been satisfied (or waived by the Issuer in its sole discretion) by the redemption date, or by the redemption date so delayed (which may exceed 60 days from the date of the redemption notice in such case), by providing notice thereof to the holders.

The Issuer or its Affiliates may at any time and from time to time purchase Notes. Any such purchases may be made through open market or privately negotiated transactions with third parties or pursuant to one or more tender or exchange offers or otherwise, upon such terms and at such prices as well as with such consideration as the Issuer or any such Affiliates may determine.

Mandatory Redemption

The Issuer will not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

Selection and Notice

In the case of any partial redemption, selection of the Notes for redemption will be made by the Paying Agent in compliance with the requirements of the principal national securities exchange, if any, on which such Notes are listed (so long as the Paying Agent knows of such listing), or if such Notes are not so listed, on a pro rata basis, by lot or by such other method as the Paying Agent shall deem fair and appropriate (and in such manner as complies with applicable legal requirements and, in the case of global Notes, the procedures of the Depository Trust Company ("*DTC*")) in minimum denominations of $150,000 and in integral multiples of $1,000 in excess thereof; *provided*, that the selection of Notes for redemption shall not result in a holder of Notes with a principal amount of Notes less than the minimum denomination. If any Note is to be purchased or redeemed in part only, the notice of purchase or redemption relating to such Note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed. Subject to the terms and procedures set forth under "Book-Entry Settlement and Clearance," a new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note. On and after the redemption date, interest will cease to accrue on Notes or portions thereof called for redemption so long as the Issuer has deposited or caused to be deposited with the Paying Agent funds sufficient to pay the principal of and premium, if any, plus accrued and unpaid interest, if any, on, the Notes to be redeemed.

Notices of redemption will be delivered at least ten but not more than 60 days before the redemption date to each holder of Notes to be redeemed at its registered address or otherwise in accordance with the procedures of DTC, except that redemption notices may be delivered more than 60 days prior to the redemption date if (a) the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture or (b) in the case of a redemption that is subject to one or more conditions precedent, the date of redemption is extended as permitted under the Indenture.

Change of Control

Upon the occurrence of a Change of Control Triggering Event after the Issue Date, each holder will have the right to require the Issuer to purchase all or any part of such holder's Notes at a purchase price in cash (the "*Change of Control Payment*") equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the purchase date), except to the extent the Issuer has previously elected to redeem Notes as described under "—Optional Redemption".

Prior to or within 30 days following any Change of Control Triggering Event, except to the extent that the Issuer has exercised its right to redeem the Notes as described under "—Optional Redemption," the Issuer shall deliver a notice (a "*Change of Control Offer*") to each holder with a copy to the Trustee, or otherwise in accordance with the procedures of DTC, describing:

(1) that a Change of Control Triggering Event has occurred or, if the Change of Control Offer is being made in advance of a Change of Control Triggering Event, that a Change of Control Triggering Event is expected to occur, and that such holder has, or upon such occurrence will have, the right to require the Issuer to purchase such holder's Notes at a purchase price in cash

equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of holders of record on a record date to receive interest on the relevant interest payment date falling prior to or on the purchase date);

(2) the transaction or transactions that constitute, or are expected to constitute, such Change of Control Triggering Event;

(3) the purchase date (which shall be no earlier than ten days nor later than 60 days (unless delivered in advance of the occurrence of such Change of Control Triggering Event) from the date such notice is delivered) (the "*Change of Control Payment Date*");

(4) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(5) that unless the Issuer defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(6) that holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such 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;

(7) that holders will be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes, *provided* that the Paying Agent receives, not later than the expiration time of the Change of Control Offer, a facsimile transmission or letter setting forth the name of the holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(8) that if a holder (other than a holder of a global note) is tendering for purchase less than all of its Notes, the Issuer will issue new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered and the unpurchased portion of the Notes must be equal to $150,000 or an integral multiple of $1,000 in excess thereof;

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

(10) the other instructions determined by the Issuer, consistent with this covenant, that a holder must follow in order to have its Notes purchased.

While the Notes are in global form and the Issuer makes an offer to purchase all of the Notes pursuant to the Change of Control Offer, a holder of the Notes may exercise its option to elect for the purchase of the Notes to be made through the facilities of DTC in accordance with the rules and regulations thereof.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (i) 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 the Issuer and purchases all Notes validly tendered and not validly withdrawn under such Change of Control Offer, (ii) in connection with or in contemplation of any Change of Control, the Issuer (or any Affiliate of the Issuer) or a third party has made an offer to purchase, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer (an "*Alternate Offer*"), any and all Notes validly tendered at a cash price equal to or higher than the Change of Control Payment and has purchased all Notes validly tendered and not validly withdrawn in accordance with the terms of the Alternate Offer, or (iii) the Issuer has previously issued a notice of a full redemption pursuant to the provisions set forth under the heading "—Optional Redemption."

A Change of Control Offer or an Alternate Offer may be made in advance of a Change of Control Triggering Event, and conditioned upon such Change of Control Triggering Event.

The Issuer will comply, to the extent applicable, with the requirements of Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with provisions of this covenant, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under this paragraph by virtue of such compliance.

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

(1) accept for payment all Notes issued by the Issuer or portions thereof validly tendered and not withdrawn 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 Notes or portions thereof so tendered; and

(3) deliver, or cause to be delivered, to the registrar for cancellation the Notes so accepted together with an Officer's Certificate to the registrar stating that such Notes or portions thereof have been tendered to and purchased by the Issuer.

This Change of Control Triggering Event purchase provision is a result of negotiations between the Issuer and the Initial Purchasers. The Issuer has no present intention to engage in a transaction involving a Change of Control, although it is possible that the Issuer could decide to do so in the future. Subject to the limitations discussed below, the Issuer could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control or a Change of Control Triggering Event under the Indenture, but that could increase the amount of Indebtedness outstanding at such time or otherwise affect the Issuer's 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 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 Notes protection in the event of a highly leveraged transaction.

The Senior Credit Agreement may prohibit or limit, and future credit agreements or other agreements to which the Issuer becomes a party may prohibit or limit, the Issuer from purchasing any Notes as a result of a Change of Control Triggering Event. In the event a Change of Control Triggering Event occurs at a time when the Issuer is prohibited from purchasing the Notes, the Issuer could seek the consent of its lenders or investors to permit the purchase of the Notes or could attempt to refinance the borrowings or securities that contain such prohibition. If the Issuer does not obtain such consent or repay such borrowings or securities, the Issuer will remain prohibited from purchasing the Notes. In such case, the Issuer's failure to purchase tendered Notes after any applicable notice and lapse of time would constitute an Event of Default under the Indenture.

The occurrence of events that would constitute a Change of Control may constitute a default under the Senior Credit Agreement and may require the Issuer and Axalta Coating Systems Dutch Holding B B.V. ("*Dutch Holdings*") to offer to repurchase the Existing 2027 Notes pursuant to the Existing 2027 Notes Indenture and Dutch Holdings to offer to repurchase the Existing 2025 Notes pursuant to the Existing 2025 Notes Indenture. Future Indebtedness of the Issuer may also contain prohibitions on certain events that would constitute a Change of Control or require such Indebtedness to be repurchased upon a Change of Control. If the Issuer experiences a Change of Control that triggers a default under the Senior Credit Agreement, we could seek a waiver of such default or seek to refinance the Senior Credit Agreement. In the event we do not obtain such a waiver or refinance the Senior Credit Agreement, such default could result in amounts outstanding under the Senior Credit Agreement being declared due and payable. Moreover, the exercise by the holders of their right to require the Issuer to repurchase the Notes could cause a default under such senior Indebtedness, even if the Change of Control itself does not, due to the financial effect of such purchase on the Issuer.

The Existing 2027 Notes Indenture requires the Issuer to make an offer to purchase the Existing 2027 Notes and the Existing 2025 Notes Indenture requires Dutch Holdings to make an offer to purchase the Existing 2025 Notes, in each case, upon the occurrence of a Change of Control that is accompanied by certain changes in ratings assigned to the Existing 2027 Notes or the Existing 2025 Notes, as applicable, by each of Moody's and S&P (or any successor ratings agency thereto).

The Issuer's ability to pay cash to the holders following the occurrence of a Change of Control Triggering Event may be limited by the Issuer's then-existing financial resources. We cannot assure you that sufficient funds will be available when necessary to make any required purchases. See "Risk Factors—Risks Related to the Notes—We may not be able to repurchase the Notes offered hereby upon a change of control."

The definition of "Change of Control" includes a phrase relating to the sale, lease or transfer of "all or substantially all" of the assets of the Parent Guarantor and its Subsidiaries, taken as a whole, to any Person. Although there is a body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of Notes to require the Issuer to purchase its Notes as a result of a sale, lease or transfer of less than all of the assets of the Parent Guarantor and its Subsidiaries taken as a whole to another Person or group may be uncertain. See "Risk Factors—Risks Related to the Notes—Holders of the Notes offered hereby may not be able to determine when a change of control giving rise to their right to have the Notes offered hereby repurchased has occurred following a sale of "substantially all" of our assets."

The provisions under the Indenture relating to the Issuer's obligation to make an offer to purchase the Notes as a result of a Change of Control Triggering Event, including the definition of "Change of Control" or "Change of Control Triggering Event," may be waived or modified at any time (including after a Change of Control Triggering Event) with the written consent of the holders of a majority in principal amount of the Notes then outstanding.

Certain Covenants

Set forth below are summaries of certain covenants contained in the Indenture. If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from at least two Rating Agencies and (ii) no Default (other than any Default that would not constitute a Default following a Covenant Suspension Event (as defined below)) 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*"), (x) the Guarantees will be automatically and unconditionally released and discharged as described under "—Guarantees" and (y) the Parent Guarantor and its Restricted Subsidiaries will not be subject to the following covenants or provisions (collectively, the "*Suspended Covenants*"):

(1) "—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock";

(2) "—Limitation on Restricted Payments";

(3) "—Dividend and Other Payment Restrictions Affecting Subsidiaries";

(4) "—Asset Sales";

(5) "—Transactions with Affiliates";

(6) upon the making of the election described under the second paragraph under "—Liens," the first paragraph under "—Liens;"

(7) "—Future Guarantors"; and

(8) clause (4) of the first paragraph of "—Merger, Consolidation, Amalgamation or Sale of All or Substantially All Assets."

In the event that the Parent Guarantor and its Restricted Subsidiaries are not subject to the Suspended Covenants under the Indenture for any period of time as a result of the foregoing, and on any subsequent date (the "*Reversion Date*") due to the withdrawal of an Investment Grade Rating or the downgrade of the rating assigned to the Notes below an Investment Grade Rating, the Notes no longer have an Investment Grade Rating from two of the Rating Agencies, then the Parent Guarantor and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under the Indenture with respect to future events.

The period of time between the occurrence of a Covenant Suspension Event and the Reversion Date is referred to in this description as the "*Suspension Period*." Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds (as defined below) from Net Cash Proceeds shall be reset at zero. With respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments made will be calculated as though the covenant described under "—Limitation on Restricted Payments" had been in effect prior to, but not during, the Suspension Period. No Subsidiary may be designated as an Unrestricted Subsidiary during the Suspension Period, unless such designation would have complied with the covenant described under "—Limitation on Restricted Payments" as if such covenant were in effect during such period. In addition, all Indebtedness Incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified to have been Incurred or issued pursuant to clause (c)(i) of the definition of "Permitted Debt." In addition, (i) for purposes of the covenant described under "—Transactions with Affiliates," all agreements and arrangements entered into by the Parent Guarantor and any Restricted Subsidiary with an Affiliate of the Parent Guarantor during the Suspension Period prior to such Reversion Date will be deemed to have been entered pursuant to clause (5) of the second paragraph of "—Transactions with Affiliates," (ii) for purposes of the covenant described under "—Dividend and Other Payment Restrictions Affecting Subsidiaries," all contracts entered into during the Suspension Period prior to such Reversion Date that contain any of the restrictions contemplated by such covenant will be deemed to have been entered pursuant to clause (1) of the second paragraph of "—Dividend and Other Payment Restrictions Affecting Subsidiaries" and (iii) for purposes of the covenant described under "—Liens," any Lien incurred during the Suspension Period prior to such Reversion Date will be deemed to have been entered into pursuant to clause (7) of the definition of Permitted Liens.

In addition, during the Suspension Period, the Guarantees granted by Subsidiaries of the Parent Guarantor will be automatically released and the obligation to grant further Guarantees will be suspended. Upon the Reversion Date, the obligation to grant Guarantees pursuant to the covenant described under "—Future Guarantors" will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was Incurred for purposes of the covenant described under "—Future Guarantors").

During the Suspension Period, any reference in the definitions of "Permitted Liens" or "Unrestricted Subsidiary" to the covenant described under "—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" or any provision thereof shall be construed as if such covenant had remained in effect since the Issue Date and during the Suspension Period.

Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of any failure to comply with the Suspended Covenants during any Suspension Period and the Parent Guarantor and any Subsidiary of the Parent Guarantor will be permitted, without causing a Default or Event of Default or breach of any of the Suspended Covenants (notwithstanding the reinstatement thereof) under the Indenture, to honor, comply with or otherwise perform any contractual commitments or obligations entered into during a Suspension Period following a Reversion Date and to consummate the transactions contemplated thereby; *provided* that, to the extent any such commitment or obligation results in the making of a Restricted Payment, such Restricted Payment shall be made under clause (c) of the first paragraph or the second paragraph of the covenant described under "—Limitation on Restricted Payments" and if not permitted by any of such provisions, such Restricted Payment shall be deemed permitted under clause (c) of the first paragraph of the covenant described under "—Limitation on Restricted Payments" and shall be deducted for purposes of calculating the amount pursuant to such clause (c) such that the amount available under such clause (c) immediately following such Restricted Payment shall be zero.

We cannot assure you that the Notes will ever achieve or maintain an Investment Grade Rating.

The Issuer shall provide an Officer's Certificate to the Trustee indicating the occurrence of any Covenant Suspension Event or Reversion Date. The Trustee will have no obligation to (i) independently determine or verify if such events have occurred, (ii) make any determination regarding the impact of actions taken during the Suspension Period on the Parent Guarantor and its Restricted Subsidiaries' future compliance with their covenants or (iii) notify the holders of any Covenant Suspension Event or Reversion Date.

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

The Indenture will provide that the Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock, and the Parent Guarantor will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; *provided*, *however*, that the Parent Guarantor and any Restricted Subsidiary may Incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock and any Restricted Subsidiary may issue shares of Preferred Stock, in each case if either (1) the Fixed Charge Coverage Ratio for the Parent Guarantor and its Restricted Subsidiaries, calculated as of the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued, would have been 2.00 to 1.00 or greater or (2) the Consolidated Total Net Debt Ratio for the Parent Guarantor and its Restricted Subsidiaries, calculated as of the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued, would have been less than or equal to 5.5 to 1.00 (such Indebtedness, Disqualified Stock or Preferred Stock Incurred or issued pursuant to subclauses (1) or (2), "*Ratio Debt*"); *provided*, *further*, that the aggregate amount of Indebtedness (including Acquired Indebtedness) that may be Incurred and Disqualified Stock or Preferred Stock that may be issued pursuant to the foregoing by Non-Guarantor Subsidiaries shall not exceed the greater of (x) $330.0 million and (y) 5.25% of Consolidated Total Assets, at any one time outstanding, on a Pro Forma Basis (including pro forma application of the proceeds therefrom).

The foregoing limitations will not apply to (collectively, "*Permitted Debt*"):

(a) the Incurrence or issuance by the Parent Guarantor or its Restricted Subsidiaries of Indebtedness or Disqualified Stock or the issuance by its Restricted Subsidiaries of Preferred Stock under any Credit Agreement, the guarantees thereof 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 outstanding principal amount or liquidation preference, as applicable, not to exceed (A) $3,750.0 million at any one time outstanding (with any amounts Incurred pursuant to subclause (B) hereof reducing the amount permitted to be Incurred under this subclause (A), with the exception of the greater of (i) $200.0 million and (ii) 25.0% of Consolidated EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding such date, calculated on a Pro Forma Basis) and (B) an unlimited amount so long as the Consolidated Senior Secured Net Debt Ratio does not exceed 4.25 to 1.00 (with any Indebtedness up to the greater of (i) $200.0 million and (ii) 25.0% of Consolidated EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding such date, calculated on a Pro Forma Basis, Incurred under subclause (A) hereof on the date of determination (in the same transaction or series of transactions)

of the Consolidated Senior Secured Net Debt Ratio not being included in the calculation of the Consolidated Senior Secured Net Debt Ratio under this subclause (B) on such date but not, for the avoidance of doubt, excluded from any such calculation made on any such subsequent date); *provided* that solely for the purpose of calculating the Consolidated Senior Secured Net Debt Ratio under this clause (a), any outstanding Indebtedness Incurred under this clause (a) that is unsecured shall nevertheless be deemed to be secured by a Lien;

(b) the Incurrence by the Issuer and the Guarantors of Indebtedness represented by the Notes (not including any Additional Notes) and the Guarantees thereof, as applicable;

(c) (i) Indebtedness and Disqualified Stock of the Parent Guarantor and its Restricted Subsidiaries and Preferred Stock of its Restricted Subsidiaries existing on the Issue Date (other than Indebtedness described in clause (a) or (b) above) and (ii) the Existing Notes and the guarantees thereof;

(d) Indebtedness (including, without limitation, Financing Lease Obligations and mortgage financings as purchase money obligations) Incurred by the Parent Guarantor or any of its Restricted Subsidiaries, Disqualified Stock issued by the Parent Guarantor or any of its Restricted Subsidiaries and Preferred Stock issued by any of its Restricted Subsidiaries to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) and Indebtedness, Disqualified Stock or Preferred Stock arising from the conversion of the obligations of the Parent Guarantor or any Restricted Subsidiary under or pursuant to any "synthetic lease" transactions to on-balance sheet Indebtedness of the Parent Guarantor or such Restricted Subsidiary, in an aggregate principal amount or liquidation preference, including all Indebtedness Incurred and Disqualified Stock or Preferred Stock issued to renew, refund, refinance, replace, defease or discharge any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (d), not to exceed the greater of (x) $330.0 million and (y) 5.25% of Consolidated Total Assets, at any one time outstanding, *plus*, in the case of any refinancing of any Indebtedness, Disqualified Stock or Preferred Stock permitted under this clause (d) or any portion thereof, any Refinancing Expenses; *provided* that Financing Lease Obligations Incurred by the Parent Guarantor or any Restricted Subsidiary pursuant to this clause (d) in connection with a Sale/Leaseback Transaction shall not be subject to the foregoing limitation so long as the proceeds of such Sale/Leaseback Transaction are used by the Parent Guarantor or such Restricted Subsidiary to permanently repay any Secured Indebtedness of the Issuer or any of the Guarantors (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock Incurred pursuant to this clause (d) shall cease to be deemed Incurred or outstanding pursuant to this clause (d) but shall be deemed Incurred and outstanding as Ratio Debt from and after the first date on which the Parent Guarantor or such Restricted Subsidiary, as the case may be, could have Incurred such Indebtedness, Disqualified Stock or Preferred Stock as Ratio Debt (to the extent the Parent Guarantor or such Restricted Subsidiary is able to Incur any Liens related thereto as Permitted Liens after such reclassification));

(e) Indebtedness Incurred by the Parent Guarantor or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit or bank guarantees or similar instruments issued in the ordinary course of business, including, without limitation, (i) letters of credit or performance or surety bonds in respect of workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance and (ii) guarantees of Indebtedness Incurred by customers in connection with the purchase or other acquisition of equipment or supplies in the ordinary course of business;

(f) the Incurrence of Indebtedness arising from agreements of the Parent Guarantor or its Restricted Subsidiaries providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, Incurred in connection with the acquisition or disposition of any business, assets or a Subsidiary of the Parent Guarantor in accordance with the terms of the Indenture, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(g) Indebtedness or Disqualified Stock of the Parent Guarantor to a Restricted Subsidiary; *provided* that (x) such Indebtedness or Disqualified Stock owing to a Non-Guarantor Subsidiary shall be subordinated in right of payment to the Issuer's Obligations with respect to the Indenture and (y) any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Parent Guarantor or another Restricted Subsidiary) shall be deemed, in each case, to be an Incurrence of such Indebtedness or an issuance of such Disqualified Stock not permitted by this clause (g);

(h) shares of Preferred Stock of a Restricted Subsidiary issued to the Parent Guarantor or another Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any Restricted

Subsidiary that holds such shares of Preferred Stock of another Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Parent Guarantor or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (h);

(i) Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary owing to the Parent Guarantor or another Restricted Subsidiary; *provided* that (x) if the Issuer or a Guarantor Incurs such Indebtedness, Disqualified Stock or Preferred Stock owing to a Non-Guarantor Subsidiary, such Indebtedness, Disqualified Stock or Preferred Stock is subordinated in right of payment to the Issuer's Obligations with respect to the Indenture or the Guarantee of such Guarantor, as applicable and (y) any subsequent issuance or transfer of any Capital Stock or any other event that results in any Restricted Subsidiary lending such Indebtedness, Disqualified Stock or Preferred Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness, Disqualified Stock or Preferred Stock (except to the Parent Guarantor or another Restricted Subsidiary) shall be deemed, in each case, to be an Incurrence of such Indebtedness, Disqualified Stock or Preferred Stock not permitted by this clause (i);

(j) Swap Contracts or Cash Management Services not Incurred for speculative purposes;

(k) obligations (including reimbursement obligations with respect to letters of credit or bank guarantees or similar instruments) in respect of customs, self-insurance, performance, bid, appeal and surety bonds and completion guarantees and similar obligations provided by the Parent Guarantor or any Restricted Subsidiary;

(l) Indebtedness or Disqualified Stock of the Parent Guarantor or any of its Restricted Subsidiaries and Preferred Stock of any of its Restricted Subsidiaries in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and Incurred pursuant to this clause (l), does not exceed the greater of (x) $425.0 million and (y) 6.50% of Consolidated Total Assets, at any one time outstanding, *plus*, in the case of any refinancing of any Indebtedness, Disqualified Stock or Preferred Stock permitted under this clause (l) or any portion thereof, any Refinancing Expenses (it being understood that any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (l) shall cease to be deemed Incurred, issued or outstanding pursuant to this clause (l) but shall be deemed Incurred or issued and outstanding as Ratio Debt from and after the first date on which the Parent Guarantor or such Restricted Subsidiary, as the case may be, could have Incurred such Indebtedness or issued such Disqualified Stock or Preferred Stock as Ratio Debt (to the extent any Liens related thereto are Permitted Liens after such reclassification));

(m) any guarantee by the Parent Guarantor or a Restricted Subsidiary of Indebtedness or other obligations of the Parent Guarantor or any of its Restricted Subsidiaries so long as the Incurrence of such Indebtedness, Disqualified Stock, Preferred Stock or other obligations by the Parent Guarantor or such Restricted Subsidiary is permitted under the terms of the Indenture;

(n) the Incurrence by the Parent Guarantor or any of its Restricted Subsidiaries of Indebtedness or Disqualified Stock or the issuance of Preferred Stock of a Restricted Subsidiary that serves to refund, refinance, replace, redeem, repurchase, retire or defease, and is in an aggregate principal amount (or if issued with original issue discount an aggregate issue price) that is equal to or less than, Indebtedness Incurred or Disqualified Stock or Preferred Stock issued as Ratio Debt or permitted under clause (b), (c), this clause (n), (o) or (r) of this paragraph or subclause (y) of any of clauses (d), (l), (t), (cc) or (dd) of this paragraph or any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued to so refund, replace, refinance, redeem, repurchase, retire or defease such Indebtedness, Disqualified Stock or Preferred Stock issued to pay Refinancing Expenses in connection therewith (subject to the following proviso, "*Refinancing Indebtedness*"); *provided* that any amounts incurred under this clause (n) as Refinancing Indebtedness of Indebtedness originally Incurred pursuant to subclause (y) of any of such foregoing clauses shall reduce the amount available under such subclause (y) so long as such Refinancing Indebtedness remains outstanding; *provided, further, however,* that:

(1) with respect to Refinancing Indebtedness in respect of amounts originally Incurred under clauses (b) and (c) above, such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred that is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded, refinanced, replaced, redeemed, repurchased or retired;

(2) to the extent that such Refinancing Indebtedness refinances (i) Subordinated Indebtedness, such Refinancing Indebtedness is Subordinated Indebtedness or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock, respectively; and

(3) such Refinancing Indebtedness shall not include (x) Indebtedness, Disqualified Stock or Preferred Stock of a Non-Guarantor Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a

Guarantor, or (y) Indebtedness or Disqualified Stock of the Parent Guarantor or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

provided that subclause (1) will not apply to any refunding or refinancing of any Secured Indebtedness;

(o) Indebtedness, Disqualified Stock or Preferred Stock (i) of the Parent Guarantor or any of its Restricted Subsidiaries Incurred or assumed in anticipation of, or in connection with, an acquisition of any assets (including Capital Stock), business or Person and (ii) of any Person that is acquired by the Parent Guarantor or any of its Restricted Subsidiaries or merged into or consolidated or amalgamated with the Parent Guarantor or a Restricted Subsidiary in accordance with the terms of the Indenture; *provided*, *however*, that after giving effect to such acquisition, merger, consolidation or amalgamation and the Incurrence of such Indebtedness, Disqualified Stock or Preferred Stock, either:

(1) the Parent Guarantor would be permitted to Incur at least $1.00 of additional Indebtedness as Ratio Debt; or

(2) either (x) the Fixed Charge Coverage Ratio of the Parent Guarantor is equal to or greater than immediately prior to such acquisition, merger, consolidation or amalgamation or (y) the Consolidated Total Net Debt Ratio of the Parent Guarantor is equal to or less than immediately prior to such acquisition, merger, consolidation or amalgamation;

(p) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(q) Indebtedness of the Parent Guarantor or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to any credit facility permitted hereunder, so long as such letter of credit has not been terminated and is in a principal amount not in excess of the stated amount of such letter of credit or bank guarantee;

(r) Contribution Indebtedness;

(s) Indebtedness of the Parent Guarantor or any Restricted Subsidiary consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(t) Indebtedness, Disqualified Stock or Preferred Stock of Non-Guarantor Subsidiaries in an aggregate principal amount not to exceed the greater of (x) $425.0 million and (y) 6.50% of Consolidated Total Assets, at any one time outstanding, *plus*, in the case of any refinancing of any Indebtedness, Disqualified Stock or Preferred Stock permitted under this clause (t) or any portion thereof, any Refinancing Expenses (it being understood that any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (t) shall cease to be deemed Incurred, issued or outstanding pursuant to this clause (t) but shall be deemed Incurred or issued and outstanding as Ratio Debt from and after the first date on which such Non-Guarantor Subsidiary could have Incurred such Indebtedness or issued such Disqualified Stock or Preferred Stock as Ratio Debt (to the extent any Liens related thereto are Permitted Liens after such reclassification));

(u) Indebtedness, Disqualified Stock or Preferred Stock of a joint venture to the Parent Guarantor or a Restricted Subsidiary and to the other holders of Equity Interests of, or participants in, such joint venture, so long as the percentage of the aggregate amount of such Indebtedness, Disqualified Stock or Preferred Stock of such joint venture owed to such holders of its Equity Interests or participants of such joint venture does not exceed the percentage of the aggregate outstanding amount of the Equity Interests of such joint venture held by such holders or such participant's participation in such joint venture;

(v) Indebtedness Incurred by a Receivables Subsidiary in a Qualified Receivables Financing that is not recourse to the Parent Guarantor or any Restricted Subsidiary other than a Receivables Subsidiary (except for Standard Securitization Undertakings);

(w) Indebtedness owed on a short-term basis to banks and other financial institutions in the ordinary course of business of the Parent Guarantor and the Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements, including cash management, cash pooling arrangements and related activities to manage cash balances of the Parent Guarantor and its Subsidiaries and joint ventures including treasury, depository, overdraft, credit, purchasing or debit card, electronic funds transfer and other cash management arrangements and Indebtedness in respect of netting services, overdraft protection, credit card programs, automatic clearinghouse arrangements and similar arrangements;

(x) Indebtedness consisting of Indebtedness issued by the Parent Guarantor or any Restricted Subsidiary to future, current or former officers, directors, managers, employees, consultants and independent contractors thereof or any direct or indirect parent thereof, their respective estates, heirs, family members or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor to the extent permitted under "—Limitation on Restricted Payments";

(y) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(z) Indebtedness Incurred by the Parent Guarantor or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case Incurred or undertaken in the ordinary course of business;

(aa) Indebtedness Incurred or Disqualified Stock issued by the Parent Guarantor or any Restricted Subsidiary or Preferred Stock issued by any of its Restricted Subsidiaries to the extent that the net proceeds thereof are deposited into escrow or with the Trustee to satisfy and discharge the Notes in accordance with the Indenture within 120 days of such Incurrence;

(bb) (i) guarantees Incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners and (ii) Indebtedness Incurred by the Parent Guarantor or a Restricted Subsidiary as a result of leases entered into by the Parent Guarantor or such Restricted Subsidiary or any direct or indirect parent of the Parent Guarantor in the ordinary course of business;

(cc) the incurrence by the Parent Guarantor or any Restricted Subsidiary of Indebtedness Incurred or Disqualified Stock or Preferred Stock issued on behalf of, or representing guarantees of Indebtedness Incurred or Disqualified Stock or Preferred Stock issued by, joint ventures; *provided* that the aggregate principal amount of Indebtedness Incurred or guaranteed or Disqualified Stock or Preferred Stock issued or guaranteed pursuant to this clause (cc) does not exceed the greater of (x) $175.0 million and (y) 2.50% of Consolidated Total Assets, at any one time outstanding, *plus*, in the case of any refinancing of any Indebtedness, Disqualified Stock or Preferred Stock permitted under this clause (cc) or any portion thereof, any Refinancing Expenses (it being understood that any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (cc) shall cease to be deemed Incurred, issued or outstanding pursuant to this clause (cc) but shall be deemed Incurred or issued and outstanding as Ratio Debt from and after the first date on which the Parent Guarantor or such Restricted Subsidiary could have Incurred or guaranteed such Indebtedness or issued or guaranteed such Disqualified Stock or Preferred Stock as Ratio Debt (to the extent any Liens related thereto are Permitted Liens after such reclassification));

(dd) Indebtedness, Disqualified Stock or Preferred Stock of the Parent Guarantor or a Restricted Subsidiary Incurred to finance or assumed in connection with an acquisition of any assets (including Capital Stock), business or Person in an aggregate principal amount or liquidation preference that does not exceed the greater of (x) $275.0 million and (y) 4.25% of Consolidated Total Assets, at any one time outstanding, *plus*, in the case of any refinancing of any Indebtedness, Disqualified Stock or Preferred Stock permitted under this clause (dd) or any portion thereof, any Refinancing Expenses (it being understood that any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (dd) shall cease to be deemed Incurred, issued or outstanding pursuant to this clause (dd) but shall be deemed Incurred or issued and outstanding as Ratio Debt from and after the first date on which the Parent Guarantor or such Restricted Subsidiary, as the case may be, could have Incurred such Indebtedness or issued such Disqualified Stock or Preferred Stock as Ratio Debt (to the extent any Liens related thereto are Permitted Liens after such reclassification));

(ee) Indebtedness, Disqualified Stock or Preferred Stock consisting of obligations of the Parent Guarantor or any Restricted Subsidiary under deferred compensation or other similar arrangements incurred by such Person in connection with any Permitted Investment;

(ff) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that they are permitted to remain unfunded under applicable law;

(gg) Indebtedness arising as a result of (the establishment of) a Dutch law fiscal unity for corporate income tax or turnover tax purposes (*fiscale eenheid*) of which any Restricted Subsidiary is a member; and

(hh) Indebtedness pursuant to a declaration of joint and several liability used for the purpose of Section 2:403 of the Dutch Civil Code (and any residual liability under such declaration arising pursuant to section 2:404(2) of the Dutch Civil Code).

For purposes of determining compliance with this covenant, 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 Debt or is entitled to be Incurred or issued as Ratio Debt, the Parent Guarantor shall, in its sole discretion, at the time of Incurrence or issuance, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) in any manner that complies with this covenant, *provided* that all Indebtedness under the Senior Credit Agreement Incurred on or prior to the Issue Date shall be deemed to have been Incurred pursuant to clause (a)(A) of the definition of "Permitted Debt" and the Parent Guarantor shall not be permitted to reclassify all or any portion of Indebtedness Incurred on or prior to the Issue Date pursuant to clause (a) of the definition of "Permitted Debt." Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or Preferred Stock in the form of additional shares of Disqualified Stock or Preferred Stock of the same class, the accretion of liquidation preference and increases in the amount of Indebtedness, Disqualified Stock or Preferred Stock outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock for purposes of this covenant. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this covenant.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness or the issuance of Disqualified Stock or Preferred Stock, the U.S. dollar-equivalent principal amount of Indebtedness, Disqualified Stock or Preferred Stock 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 or first Incurred (whichever yields the lower U.S. dollar-equivalent), in the case of revolving credit debt, or such Disqualified Stock or Preferred Stock was issued; *provided* that if such Indebtedness, Disqualified Stock or Preferred Stock is Incurred to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, 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, Disqualified Stock or Preferred Stock, as the case may be, being refinanced (plus any Refinancing Expenses in connection therewith).

The principal amount of any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, if Incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing.

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

Limitation on Restricted Payments

The Indenture will provide that the Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any payment or distribution on account of the Parent Guarantor's or any of its Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Parent Guarantor (other than (A) dividends or distributions by the Parent Guarantor payable solely in Equity Interests (other than Disqualified Stock) of the Parent Guarantor; 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 Restricted Subsidiary, the Parent Guarantor or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(2) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, including in connection with any merger, amalgamation or consolidation;

(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness of the Issuer or any Guarantor (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness of the Issuer or any Guarantor in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (B) Indebtedness permitted under clause (g), (h) or (i) of the definition of "Permitted Debt"); or

(4) make any Restricted Investment;

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

(a) in the case of a Restricted Payment described in clauses (1), (2) or (3) above, no Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(b) immediately after giving effect to such transaction on a pro forma basis, the Parent Guarantor could Incur $1.00 of Ratio Debt; and

(c) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent Guarantor and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clause (1) 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,

(1) an amount (which may not be less than zero) equal to 50.0% of the Consolidated Net Income of the Parent Guarantor for the period (taken as one accounting period) beginning on January 1, 2013 to the end of the Parent Guarantor's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case that such Consolidated Net Income for such period is a deficit, minus 100.0% of such deficit, *plus*

(2) 100.0% of the aggregate net proceeds, including cash and the Fair Market Value of assets other than cash, received by the Parent Guarantor after the Issue Date from the issue or sale of Equity Interests of the Parent Guarantor (other than Excluded Equity), including such Equity Interests issued upon exercise of warrants or options, *plus*

(3) 100.0% of the aggregate amount of contributions to the capital of the Parent Guarantor received in cash and the Fair Market Value of assets (other than cash) after the Issue Date (other than Excluded Equity), *plus*

(4) the principal amount of any Indebtedness, or the liquidation preference or Maximum Fixed Repurchase Price, as the case may be, of any Disqualified Stock, in each case, of the Parent Guarantor or any Restricted Subsidiary thereof issued after the Issue Date (other than Indebtedness or Disqualified Stock issued to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent Guarantor or any Restricted Subsidiary (other than to the extent such employee stock ownership plan or trust has been funded by the Parent Guarantor or any Restricted Subsidiary)) that, in each case, has been converted into or exchanged for Equity Interests in the Parent Guarantor or any direct or indirect parent of the Parent Guarantor (other than Excluded Equity), *plus*

(5) 100.0% of the aggregate amount received by the Parent Guarantor or any Restricted Subsidiary in cash and the Fair Market Value of assets (other than cash) received by the Parent Guarantor or any Restricted Subsidiary from:

(A) the sale or other disposition (other than to the Parent Guarantor or a Restricted Subsidiary of the Parent Guarantor) of Restricted Investments made by the Parent Guarantor and its Restricted Subsidiaries and from repurchases and redemptions of such Restricted Investments from the Parent Guarantor and its Restricted Subsidiaries by any Person (other than the Parent Guarantor or any of its Restricted Subsidiaries) and from repayments of loans or advances that constituted Restricted Investments,

(B) the sale (other than to the Parent Guarantor or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent Guarantor or any Restricted Subsidiary (other than to the extent such employee stock ownership plan or trust has been funded by the Parent Guarantor or any Restricted Subsidiary)) of the Capital Stock of an Unrestricted Subsidiary,

(C) any distribution or dividend from an Unrestricted Subsidiary, or

(D) any returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a dollar-denominated or ratio-based basket (to the extent in excess of the original amount of such Investment) and without duplication of any returns, profits, distributions or similar amounts included in the calculation of such basket, *plus*

(6) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Parent Guarantor or a Restricted Subsidiary, in each case after the Issue Date, the Fair Market Value of the Investment of the Parent Guarantor in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), other than in each case to the extent that the designation of such Subsidiary as an Unrestricted Subsidiary was made pursuant to clause (10) of the next succeeding paragraph or constituted a Permitted Investment, *plus*

(7) the aggregate amount of Retained Declined Proceeds since the Issue Date.

The foregoing provisions will not prohibit:

(1) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of the Indenture;

(2)(a) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("*Retired Capital Stock*") of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, or Subordinated Indebtedness of the Issuer or any Guarantor, in exchange for, or out of the proceeds of the issuance or sale of, Equity Interests of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor or contributions to the equity capital of the Parent Guarantor (other than Excluded Equity) (collectively, including any such contributions, "*Refunding Capital Stock*");

(b) the declaration and payment of accrued dividends on the Retired Capital Stock out of the proceeds of the issuance or sale (other than to a Restricted Subsidiary of the Parent Guarantor or to an employee stock ownership plan or any trust established by the Parent Guarantor or any of its Restricted Subsidiaries) of Refunding Capital Stock; and

(c) if immediately prior to the retirement of the Retired Capital Stock, the declaration and payment of dividends thereon was permitted under clause (6) of this paragraph and has not been made as of such time (the "*Unpaid Amount*"), 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 the Parent Guarantor or any direct or indirect parent of the Parent Guarantor) in an aggregate amount no greater than the Unpaid Amount;

(3) the prepayment, redemption, defeasance, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Issuer or any Guarantor made by exchange for, or out of the proceeds of the Incurrence of, Refinancing Indebtedness thereof;

(4) the purchase, retirement, redemption or other acquisition (or Restricted Payments to the Parent Guarantor or any direct or indirect parent of the Parent Guarantor to finance any such purchase, retirement, redemption or other acquisition) for value of Equity Interests (including related stock appreciation rights or similar securities) of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor held directly or indirectly by any future, present or former employee, officer, director, manager, consultant or independent contractor of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor or any Subsidiary of the Parent Guarantor or their estates, heirs, family members, former spouses or permitted transferees (including for all purposes of this clause (4), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, former spouses or permitted transferees) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; *provided*, *however*, that the aggregate amounts paid under this clause (4) shall not exceed the greater of (x) $50.0 million and (y) 1.0% of Consolidated Total Assets in any calendar year (with unused amounts in any calendar year being permitted to be carried

over for succeeding calendar years); *provided*, *further*, *however*, that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds received by the Parent Guarantor from the issuance or sale of Equity Interests (other than Disqualified Stock) of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor (to the extent contributed to the Parent Guarantor), in each case, to any future, present or former employees, officers, directors, managers, consultants or independent contractors of the Parent Guarantor or its Restricted Subsidiaries or any direct or indirect parent of the Parent Guarantor that occurs on or after the Issue Date; *provided* that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend will not increase the amount available for Restricted Payments under clause (c) of the immediately preceding paragraph; *plus*

(b) the cash proceeds of key man life insurance policies received by the Parent Guarantor or any of its Restricted Subsidiaries or any direct or indirect parent of the Parent Guarantor (to the extent contributed to the Parent Guarantor) after the Issue Date; *plus*

(c) the amount of any cash bonuses otherwise payable to employees, officers, directors, managers, consultants or independent contractors of the Parent Guarantor or any of its Restricted Subsidiaries or any direct or indirect parent of the Parent Guarantor that are foregone in return for the receipt of Equity Interests; *less*

(d) the amount of cash proceeds described in subclause (a), (b) or (c) of this clause (4) previously used to make Restricted Payments pursuant to this clause (4); *provided* that the Parent Guarantor may elect to apply all or any portion of the aggregate increase contemplated by subclauses (a), (b) and (c) above in any calendar year; *provided*, *further*, that cancellation of Indebtedness owing to the Parent Guarantor, any direct or indirect parent of the Parent Guarantor or any Restricted Subsidiary from any future, current or former officer, director, employee, manager, consultant or independent contractor (or any permitted transferees thereof) of the Parent Guarantor or any of its Restricted Subsidiaries or any direct or indirect parent of the Parent Guarantor, in connection with a repurchase of Equity Interests of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor from such Persons will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provisions of the Indenture;

(5) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Parent Guarantor or any of its Restricted Subsidiaries and any class or series of Preferred Stock of any Restricted Subsidiaries issued or Incurred in accordance with the covenant described under "—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock";

(6) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) and the declaration and payment of dividends to the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, 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 the Parent Guarantor or any direct or indirect parent of the Parent Guarantor issued after the Issue Date; *provided*, *however*, that (A)(i) the Fixed Charge Coverage Ratio of the Parent Guarantor is 2.00 to 1.00 or greater or (ii) the Consolidated Total Net Debt Ratio for the Parent Guarantor and its Restricted Subsidiaries, calculated as of the date of issuance of such Designated Preferred Stock, would have been less than or equal to 5.5 to 1.00 and (B) the aggregate amount of dividends declared and paid pursuant to this clause (6) does not exceed the net cash proceeds actually received by the Parent Guarantor from the sale (or the contribution of the net cash proceeds from the sale) of Designated Preferred Stock;

(7) [Reserved];

(8) the declaration and payment of dividends on, or the purchase or other acquisition or retirement for value of, the Parent Guarantor's common stock (or the payment of dividends to any direct or indirect parent of the Parent Guarantor to fund the payment by any direct or indirect parent of the Parent Guarantor of dividends on, or to fund such entity's purchase or other acquisition or retirement for value of, such entity's common stock) of up to the sum of (A) 6.0% per annum of the net cash proceeds received by the Parent Guarantor from any public offering of common stock or contributed to the Parent Guarantor by any direct or indirect parent of the Parent Guarantor from any public offering of common stock, other than public offerings with respect to the Parent Guarantor's common stock registered on Form S-4 or S-8 or successor form thereto and other than any public sale constituting Excluded Contributions and (B) an aggregate amount per annum not to exceed 7.0% of the Market Capitalization;

(9) Restricted Payments that are made with Excluded Contributions;

(10) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (10) not to exceed the greater of (x) $400.0 million and (y) 6.00% of Consolidated Total Assets;

(11) the payment, purchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Indebtedness, Disqualified Stock or Preferred Stock of the Parent Guarantor and its Restricted Subsidiaries pursuant to provisions similar to those described under "—Change of Control" and "—Asset Sales"; *provided* that, prior to such payment, purchase, redemption, defeasance or other acquisition or retirement for value, the Issuer (or a third party to the extent permitted by the Indenture) has made any Change of Control Offer, Alternate Offer or Asset Sale Offer, as the case may be, with respect to the Notes, and has repurchased, redeemed, defeased, acquired or retired all Notes validly tendered and not validly withdrawn in connection with such Change of Control Offer, Alternate Offer or Asset Sale Offer, as the case may be;

(12) for so long as the Parent Guarantor or any of its Subsidiaries are members of a group filing a consolidated, combined, affiliated or unitary income (or franchise in lieu of income) tax return with any direct or indirect parent of the Parent Guarantor, Restricted Payments to such direct or indirect parent of the Parent Guarantor in amounts required for or such parent entity to pay federal, national, foreign, state and local income taxes (and franchise taxes) imposed on such entity to the extent such income taxes (and franchise taxes) are attributable to the income of the Parent Guarantor and its Subsidiaries; *provided*, *however*, that the amount of such payments in respect of any tax year does not, in the aggregate, exceed the amount that the Parent Guarantor and its Subsidiaries that are members of such consolidated, combined, affiliated or unitary group would have been required to pay in respect of federal, national, foreign, state and local income and/or franchise taxes (as the case may be) in respect of such year if the Parent Guarantor and its Subsidiaries paid such income (and franchise) taxes directly on a separate company basis or as a stand-alone consolidated, combined, affiliated or unitary income (or franchise in lieu of income) tax group (reduced by any such taxes paid directly by the Parent Guarantor or any of its Subsidiaries);

(13) the declaration and payment of dividends, other distributions or other amounts to, or the making of loans to any direct or indirect parent of the Parent Guarantor, in the amount required for such entity to, if applicable:

(a) pay amounts equal to the amounts required for any direct or indirect parent of the Parent Guarantor to pay fees and expenses (including Related Taxes), customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors, managers, consultants or independent contractors of such direct or indirect parent of the Parent Guarantor, if applicable, and general corporate operating (including, without limitation, expenses related to auditing and other accounting matters) and overhead costs and expenses of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, if applicable, in each case to the extent such fees, expenses, salaries, bonuses, benefits and indemnities are attributable to the ownership or operation of the Parent Guarantor and its Subsidiaries;

(b) pay, if applicable, amounts equal to amounts required for any direct or indirect parent of the Parent Guarantor to pay interest and/or principal on Indebtedness the proceeds of which have been contributed to the Parent Guarantor (other than as Excluded Equity) and that has been guaranteed by, and is otherwise considered Indebtedness of, the Parent Guarantor or any Restricted Subsidiary Incurred in accordance with the covenant described under "—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" (except to the extent any such payments have otherwise been made by any such Guarantor);

(c) pay fees and expenses incurred by any other direct or indirect parent of the Parent Guarantor related to (i) the maintenance of such parent entity of its corporate or other entity existence and performance of its obligations under the Indenture and similar obligations under the Senior Credit Agreement and the Existing Indentures, (ii) any unsuccessful equity or debt offering of such parent entity (or any equity or debt offering from which such parent entity does not receive any proceeds) and (iii) any equity or debt issuance, incurrence or offering, any disposition or acquisition or any investment transaction by the Parent Guarantor or any of its Restricted Subsidiaries (or any acquisition of or investment in any business, assets or property that will be contributed to the Parent Guarantor or any of its Restricted Subsidiaries as part of the same or a related transaction) permitted by the Indenture;

(d) [Reserved];

(e) pay franchise and excise taxes and other fees, taxes and expenses required to maintain its organizational existence;

(f) make payments for the benefit of the Parent Guarantor or any of its Restricted Subsidiaries to the extent such payments could have been made by the Parent Guarantor or any of its Restricted Subsidiaries because such payments

(x) would not otherwise be Restricted Payments and (y) would be permitted by the covenant described under "—Transactions with Affiliates"; and

(g) make Restricted Payments to any direct or indirect parent of the Parent Guarantor to finance, or to any direct or indirect parent of the Parent Guarantor for the purpose of paying to any other direct or indirect parent of the Parent Guarantor to finance, any Investment that, if consummated by the Parent Guarantor or any Restricted Subsidiary, would be a Permitted Investment; *provided* that (a) such Restricted Payment is made substantially concurrently with the closing of such Investment and (b) promptly following the closing thereof, such direct or indirect parent of the Parent Guarantor causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Parent Guarantor or any Restricted Subsidiary or (ii) the merger, consolidation or amalgamation (to the extent permitted by the covenant described under "—Merger, Consolidation, Amalgamation or Sale of All or Substantially All Assets") of the Person formed or acquired into the Parent Guarantor or any Restricted Subsidiary in order to consummate such acquisition or Investment, in each case, in accordance with the requirements of the covenant described under "—Future Guarantors";

(14)(i) 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, (ii) payments made or expected to be made by the Parent Guarantor or any Restricted Subsidiary in respect of withholding or similar taxes payable or expected to be payable by any future, present or former director, officer, employee, manager, consultant or independent contractor of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor or any Subsidiary of the Parent Guarantor (or their respective Affiliates, estates or immediate family members) in connection with the exercise of stock options or the grant, vesting or delivery of Equity Interests and (iii) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor or any Subsidiary of the Parent Guarantor in connection with such Person's purchase of Equity Interests of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor; *provided* that no cash is actually advanced pursuant to this subclause (iii) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(15) purchases of receivables pursuant to a Receivables Repurchase Obligation in connection with a Qualified Receivables Financing and the payment or distribution of Receivables Fees;

(16) payments or distributions to satisfy dissenters' rights, pursuant to or in connection with a consolidation, merger, amalgamation or transfer of assets that complies with the provisions of the Indenture;

(17) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Parent Guarantor or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are cash and/or Cash Equivalents);

(18) the payment of cash in lieu of the issuance of fractional shares of Equity Interests in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of or upon exercise, conversion or exchange of Equity Interests, warrants, options or other securities exercisable or convertible into, Equity Interests of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor;

(19) Investments in Unrestricted Subsidiaries having an aggregate Fair Market Value, taken together with all other Investments made pursuant to this clause (19) 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, Cash Equivalents or marketable securities, not to exceed the greater of (x) $400.0 million and (y) 6.00% of Consolidated Total (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(20) any additional Restricted Payment made with any Leverage Excess Proceeds;

(21) any additional Restricted Payment so long as immediately after giving effect to the making of such Restricted Payment, the Parent Guarantor's Consolidated Total Net Debt Ratio does not exceed 3.00 to 1.00; and

(22) any Restricted Payment that is intended to prevent any Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code.

provided, *however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clause (10) or clause (21), no Event of Default shall have occurred and be continuing or would occur as a consequence thereof. For purposes of clauses (12) and (13) above, taxes and Related Taxes shall include all interest and penalties with respect thereto and all additions thereto.

As of the Issue Date, all of the Parent Guarantor's Subsidiaries will be Restricted Subsidiaries. The Parent Guarantor will not permit (i) any Unrestricted Subsidiary to become a Restricted Subsidiary, or (ii) any Restricted Subsidiary to become an Unrestricted Subsidiary, in each case except pursuant to the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Parent Guarantor and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments or Permitted Investments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation will only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time 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.

For purposes of the covenant described above, if any Investment or Restricted Payment (or a portion thereof) would be permitted pursuant to one or more provisions described above and/or one or more of the exceptions contained in the definition of "Permitted Investments," the Parent Guarantor may divide and classify such Investment or Restricted Payment (or a portion thereof) in any manner that complies with this covenant and may later divide and reclassify any such Investment or Restricted Payment so long as the Investment or Restricted Payment (as so divided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.

As set forth in clause (c) of the first paragraph of this covenant, our ability to make Restricted Payments depends in part on a calculation based on the Consolidated Net Income of the Parent Guarantor since January 1, 2013. As of September 30, 2020, we estimate that clause (c) of the first paragraph of this covenant provides us with Restricted Payments capacity thereunder of approximately $1.0 billion. However, we estimate that such capacity under our Senior Credit Agreement is approximately $1.4 billion as of September 30, 2020.

Dividend and Other Payment Restrictions Affecting Subsidiaries

The Indenture will provide that the Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries (other than the Issuer or the 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 Restricted Subsidiary (other than the Issuer or the Guarantors) to:

(a) (i) pay dividends or make any other distributions to the Parent Guarantor or any of its Restricted Subsidiaries on its Capital Stock; or (ii) pay any Indebtedness owed to the Parent Guarantor or any of its Restricted Subsidiaries;

(b) make loans or advances to the Parent Guarantor or any of its Restricted Subsidiaries; or

(c) sell, lease or transfer any of its properties or assets to the Parent Guarantor or any of its Restricted Subsidiaries.

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

(1) contractual encumbrances or restrictions of the Parent Guarantor or any of its Restricted Subsidiaries in effect on the Issue Date, including (i) pursuant to the Senior Credit Agreement and the other documents relating to the Senior Credit Agreement, (ii) the Existing Indentures, the Existing Notes, the guarantees thereof and other documents relating to the Existing Indentures, the Existing Notes and the related guarantees and other documents relating to the Existing Notes Indentures and (iii) related Swap Contracts;

(2) the Indenture, the Notes, the Guarantees and other documents relating to the Indenture;

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

(4) any agreement or other instrument of a Person acquired by or merged, amalgamated or consolidated with or into the Parent Guarantor or any Restricted Subsidiary that was in existence at the time of such acquisition (or at the time it merges with or into the Parent Guarantor or any Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in each case, not created in contemplation thereof)), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired or designated; *provided* that in connection with a merger, amalgamation or consolidation under this clause (4), if a Person other than the Parent Guarantor or such Restricted Subsidiary is the successor company with respect to such merger, amalgamation or consolidation, any agreement or instrument of such Person or any Subsidiary of such Person, shall be deemed acquired or assumed, as the case may be, by the Parent Guarantor or such Restricted Subsidiary, as the case may be, at the time of such merger, amalgamation or consolidation;

(5) customary encumbrances or restrictions contained in contracts or agreements for the sale of assets applicable to such assets pending consummation of such sale, including customary restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Restricted Subsidiary;

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

(7) customary provisions in operating or other similar agreements, asset sale agreements and stock sale agreements entered into in connection with the entering into of such transaction, which limitation is applicable only to the assets that are the subject of those agreements;

(8) purchase money obligations for property acquired and Financing Lease Obligations, to the extent such obligations impose restrictions of the nature discussed in clause (c) in the first paragraph of this covenant on the property so acquired;

(9) customary provisions contained in leases, sub-leases, licenses, sublicenses, contracts and other similar agreements to the extent such obligations impose restrictions of the type described in clause (c) in the first paragraph of this covenant on the property subject to such lease;

(10) any encumbrance or restriction effected in connection with a Qualified Receivables Financing that, in the good faith determination of the Designating Party, is necessary or advisable to effect such Qualified Receivables Financing;

(11) other Indebtedness, Disqualified Stock or Preferred Stock of the Parent Guarantor or any Restricted Subsidiary that is Incurred subsequent to the Issue Date pursuant to the covenant described under "—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock"; *provided* that (i) such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuer's ability to make anticipated principal or interest payments on the Notes (as determined by the Parent Guarantor or a direct or indirect parent of the Parent Guarantor in good faith) or (ii) such encumbrances and restrictions contained in any agreement or instrument taken as a whole are not materially less favorable to the holders of the Notes than the encumbrances and restrictions contained in the Indenture, the Existing Indentures or the Senior Credit Agreement (as determined by the Parent Guarantor in good faith);

(12) any encumbrance or restriction contained in 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" to the extent limiting the right of the debtor to dispose of the assets securing such Indebtedness;

(13) any encumbrance or restriction arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, (x) detract from the value of the property or assets of the Parent Guarantor or any Restricted Subsidiary in any manner material to the Parent Guarantor or any Restricted Subsidiary or (y) materially affect the Issuer's ability to make future principal or interest payments on the Notes, in each case, as determined by the Parent Guarantor in good faith;

(14) customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to the applicable joint venture; and

(15) any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) in the first paragraph of this covenant imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in the immediately preceding clauses (1) through (14); *provided* that such encumbrances and restrictions contained in any such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing are, in the good faith judgment of the Parent Guarantor, not materially more restrictive, taken as a whole, than the encumbrances and restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this covenant, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Parent Guarantor or a Restricted Subsidiary to other Indebtedness Incurred by the Parent Guarantor or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

Asset Sales

The Indenture will provide that the Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, cause or make an Asset Sale, unless:

(1) the Parent Guarantor or any of its Restricted Subsidiaries, as the case may be, receives consideration (including by way of relief from, or by any other person assuming responsibility for, any liabilities, contingent or otherwise) at the time of such Asset Sale at least equal to the Fair Market Value (as determined at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75.0% of the consideration therefor received by the Parent Guarantor or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents or Replacement Assets; *provided* that the amount of:

(a) any liabilities (as shown on the Parent Guarantor's or such Restricted Subsidiary's most recent balance sheet or in the notes thereto for which internal financial statements are available immediately preceding such date or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Parent Guarantor's or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet in the good faith determination of the Parent Guarantor) of the Parent Guarantor or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Notes) that are extinguished in connection with the transactions relating to such Asset Sale, or that are assumed by the transferee of any such assets or Equity Interests, in each case, pursuant to an agreement that releases or indemnifies the Parent Guarantor or such Restricted Subsidiary, as the case may be, from further liability;

(b) any notes or other obligations or other securities or assets received by the Parent Guarantor or such Restricted Subsidiary from such transferee that are converted by the Parent Guarantor or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days of the receipt thereof; and

(c) any Designated Non-cash Consideration received by the Parent Guarantor or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this subclause (c) that is at that time outstanding, not to exceed the greater of (x) $175.0 million and (y) 2.50% of Consolidated Total Assets, calculated at the time of the receipt of such Designated Non-cash Consideration (or, at the Issuer's option, at the time of contractually agreeing to such Asset Sale) (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 each be deemed to be Cash Equivalents for the purposes of this clause (2).

Within 545 days after the Parent Guarantor's or any Restricted Subsidiary's receipt of the Net Cash Proceeds of any Asset Sale, the Parent Guarantor or such Restricted Subsidiary may apply an amount equal to the Net Cash Proceeds from such Asset Sale, at its option:

(1) to reduce Obligations under the Senior Credit Agreement and in the case of revolving loans, to correspondingly reduce commitments with respect thereto;

(2) to reduce Obligations under Indebtedness (other than Subordinated Indebtedness) that is secured by a Lien, which Lien is permitted by the Indenture and, in the case of revolving loans, to correspondingly reduce commitments with respect thereto;

(3) to reduce Obligations under (x) Pari Passu Indebtedness of the Issuer or the Guarantors (including the Existing Notes); *provided* that if the Issuer or any Guarantor shall so reduce such Obligations under Pari Passu Indebtedness, the Issuer will (A) reduce Obligations under the Notes as provided under "—Optional Redemption" or through open-market purchases or in privately negotiated transactions, in each case at market prices (which may be below par), ratably with such Pari Passu Indebtedness or (B) make an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all holders to purchase at a purchase price equal to 100.0% of the principal amount thereof, plus accrued and unpaid interest, if any, the principal amount of Notes that would otherwise be redeemed under subclause (A) above), or (y) Indebtedness of a Non-Guarantor Subsidiary, in each case, other than Indebtedness owed to the Parent Guarantor or another Restricted Subsidiary (and, in the case of revolving loans, to correspondingly reduce commitments with respect thereto);

(4) to make an investment in any one or more businesses, assets (other than working capital assets), or property or capital expenditures, in each case used or useful in a Similar Business;

(5) to make an investment in any one or more businesses, properties (other than working capital assets) or assets (other than working capital assets) that replace the businesses, properties and/or assets that are the subject of such Asset Sale; or

(6) any combination of the foregoing;

provided that the Parent Guarantor and its Restricted Subsidiaries will be deemed to have complied with the provisions described in clause (4) or (5) of this paragraph if and to the extent that, within 545 days after the Asset Sale that generated the Net Cash Proceeds, the Parent Guarantor or such Restricted Subsidiary, as applicable, has entered into and not abandoned or rejected a binding agreement to make an investment in compliance with the provision described in clauses (4) and (5) of this paragraph, and that investment is thereafter completed within 180 days after the end of such 545-day period.

Notwithstanding the foregoing, to the extent that any of or all the Net Cash Proceeds of any Asset Sales by a Foreign Subsidiary (a "*Foreign Disposition*") (i) are (x) prohibited or delayed by applicable local law or (y) restricted by applicable organizational documents from being repatriated to the United States or the Netherlands or (ii) would have a material adverse Tax consequence (taking into account any foreign tax credit or other net benefit actually realized in connection with such repatriation that would not otherwise be realized), as determined by the Issuer in its sole discretion, the portion of such Net Cash Proceeds so affected will not be required to be applied in compliance with this covenant, and such amounts may be retained by the applicable Foreign Subsidiary; *provided* that if at any time within 18 months following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law or the applicable organizational document (the Issuer hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to take all actions reasonably required by the applicable local law or the applicable organizational document to permit such repatriation), an amount equal to such amount of Net Cash Proceeds so permitted to be repatriated, to the extent they constitute Applicable Proceeds, will be promptly applied (net of any taxes, costs or expenses that would be payable or reserved against if such amounts were actually repatriated whether or not they are repatriated) in compliance with this covenant. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default. For the avoidance of doubt, nothing in the Indenture shall be construed to require the Parent Guarantor or any Subsidiary to repatriate cash or to apply any Net Cash Proceeds described in clause (i) above in compliance with this covenant in the event that such repatriation is not permitted under the applicable local law or the applicable organizational document within 18 months following the date on which the respective payment would otherwise have been required.

Pending the final application of any such amount of Net Cash Proceeds, the Parent Guarantor or such Restricted Subsidiary may temporarily reduce Indebtedness under a revolving credit facility, if any, or otherwise invest or utilize such Net Cash Proceeds in any manner not prohibited by the Indenture. The Indenture will provide that, to the extent that the Parent Guarantor does not invest or apply an amount equal to the Applicable Proceeds as provided and within the time period set forth in the second paragraph of this covenant, the Applicable Proceeds less amounts so invested or applied will be deemed to constitute "*Excess Proceeds*"; *provided* that any amount of proceeds offered to holders pursuant to clause (3)(x) of the second paragraph of this covenant or pursuant to an Asset Sale Offer made at any time after the Asset Sale shall be deemed to have been applied as required and shall not be deemed to be Excess Proceeds without regard to the extent to which such offer is accepted by the holders. When the aggregate amount of Excess Proceeds exceeds $100.0 million, the Issuer shall make an offer (an "*Asset Sale Offer*") to all holders of Notes and, if required by the terms of any Pari Passu Indebtedness, to all holders of such Pari Passu Indebtedness, to purchase the maximum principal amount of such Notes and Pari Passu Indebtedness, as appropriate, on a pro rata basis, that may be purchased out of the Excess Proceeds at an offer price, in the case of the Notes, in cash in an amount equal to 100.0% of the principal amount thereof (or in the event such other Indebtedness was issued with original issue discount, 100.0% of the accreted value thereof), plus accrued and unpaid interest, if any (or such lesser price with respect to Pari Passu Indebtedness, if any, as may be provided by the terms of such other Indebtedness), to (but not including) the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture and the agreement governing such Pari Passu Indebtedness. The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that such Excess Proceeds exceed $100.0 million by transmitting electronically or by mailing to the holders the notice required pursuant to the terms of the Indenture, with a copy to the Trustee or otherwise in accordance with the procedures of DTC. The Issuer may satisfy the foregoing obligations with respect to such Excess Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Excess Proceeds at any time prior to the expiration of the application period or by electing to make an Asset Sale Offer with respect to such Excess Proceeds before the aggregate amount of Excess Proceeds exceeds $100.0 million.

To the extent that the aggregate amount of Notes and any other Pari Passu Indebtedness tendered or otherwise surrendered in connection with an Asset Sale Offer made with Excess Proceeds is less than the amount offered in an Asset Sale Offer, the Issuer may use any remaining Excess Proceeds (any such amount, "*Retained Declined Proceeds*") for any purpose not otherwise prohibited by the

Indenture. If the aggregate principal amount of Notes and Pari Passu Indebtedness tendered or otherwise surrendered by holders thereof exceeds the amount offered in an Asset Sale Offer, the Trustee shall select the Notes (and the Issuer or its agents shall select such Pari Passu Indebtedness) to be purchased in the manner described below. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. To the extent the Excess Proceeds exceed the outstanding aggregate principal amount of the Notes (and, if required by the terms thereof, all Pari Passu Indebtedness), the Issuer need only make an Asset Sale Offer up to the outstanding aggregate principal amount of Notes (and any such Pari Passu Indebtedness), and any additional Excess Proceeds shall not be subject to this covenant and shall be permitted to be used for any purpose in the Issuer's discretion.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the purchase of the 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 provisions under the Indenture relative to the Issuer's obligation to make an offer to repurchase the Notes as a result of an Asset Sale may be waived or modified at any time with the written consent of the holders of a majority in principal amount of the Notes then outstanding.

The Senior Credit Agreement prohibits or limits, and future credit agreements or other agreements to which the Issuer becomes a party may prohibit or limit, the Issuer from purchasing any Notes pursuant to an Asset Sale Offer. In the event the Issuer is prohibited from purchasing the Notes, the Issuer or one of its Affiliates could seek the consent of their lenders or investors to the purchase of the Notes or attempt to refinance the borrowings that contain such prohibition. If the Issuer or one of its Affiliates does not obtain such consent or repay such borrowings, it will remain prohibited from purchasing the Notes. In such case, the Issuer's failure to purchase tendered Notes would constitute an Event of Default under the Indenture.

If more Notes are tendered pursuant to an Asset Sale Offer than the Issuer is required to purchase, selection of such Notes for purchase will be made in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed (so long as the Paying Agent knows of such listing) or if such Notes are not listed, on a pro rata basis based on the total amount of Notes and Pari Passu Indebtedness tendered in connection with an Asset Sale Offer (with adjustments so that only Notes in denominations of the minimum denomination of $150,000 or integral multiples of $1,000 in excess thereof shall be purchased) by lot or by such other method as the Paying Agent shall deem fair and appropriate (and in such manner as complies with applicable legal requirements and the procedures of DTC); *provided* that the selection of Notes for purchase shall not result in a holder with a principal amount of Notes less than the minimum denomination of $150,000. No Note will be repurchased in part if less than the minimum denomination of such Note would be left outstanding.

Notices of an Asset Sale Offer shall be sent by first class mail, postage prepaid, or sent electronically, at least ten days but not more than 60 days before the purchase date to each holder of Notes at such holder's registered address or otherwise in accordance with DTC procedures. If any Note is to be purchased in part only, any notice of purchase that relates to such Note shall state the portion of the principal amount thereof that has been or is to be purchased.

A new Note in principal amount equal to the unpurchased portion of any Note (other than a global note) purchased in part will be issued in the name of the holder thereof upon cancellation of the Note. On and after the purchase date, unless the Issuer defaults in payment of the purchase price, interest shall cease to accrue on Notes or portions thereof purchased.

In the event of an Asset Sale in accordance with the provisions of the Indenture as a result of which the Issuer is no longer a Restricted Subsidiary of the Parent Guarantor, upon completion of such Asset Sale, an entity that is organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia shall become an obligor of the Notes.

Transactions with Affiliates

The Indenture will provide that the Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, 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 or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Parent Guarantor involving aggregate consideration in excess of $50.0 million (each of the foregoing, an "*Affiliate Transaction*"), unless:

(a) such Affiliate Transaction is on terms that are not materially less favorable to the Parent Guarantor or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Parent Guarantor or such

Restricted Subsidiary with an unrelated Person on an arm's-length basis (as determined in good faith by the senior management or the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor); and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $75.0 million, the Issuer delivers to the Trustee a resolution adopted in good faith by the majority of the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, approving such Affiliate Transaction, together with an Officer's Certificate certifying that the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor determined or resolved that such Affiliate Transaction complies with clause (a) above.

The foregoing provisions will not apply to the following:

(1) (a) transactions between or among the Parent Guarantor and/or any of its Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction) and (b) any merger, amalgamation or consolidation of the Parent Guarantor or any other direct or indirect parent of the Parent Guarantor; *provided* that such parent entity shall have no material liabilities and no material assets (other than cash, Cash Equivalents and the Capital Stock of the Parent Guarantor) and such merger, amalgamation or consolidation is otherwise in compliance with the terms of the Indenture and effected for a bona fide business purpose;

(2) (a) Restricted Payments permitted by the Indenture and (b) Permitted Investments;

(3) transactions in which the Parent Guarantor 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 Parent Guarantor or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (a) of the preceding paragraph;

(4) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to employees, officers, directors, managers, consultants or independent contractors for bona fide business purposes or in the ordinary course of business;

(5) any agreement or arrangement as in effect as of the Issue Date or as thereafter amended, supplemented or replaced (so long as such amendment, supplement or replacement agreement is not materially disadvantageous to the holders of the Notes when taken as a whole as compared to the original agreement or arrangement as in effect on the Issue Date (as determined in good faith by the senior management or the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor)) or any transaction or payments contemplated thereby;

(6) [Reserved];

(7) the existence of, or the performance by the Parent Guarantor or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders or similar agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date or similar transactions, arrangements or agreements which it may enter into thereafter; *provided*, *however*, that the existence of, or the performance by the Parent Guarantor or any of its Restricted Subsidiaries of its obligations under, any future amendment to any such existing transaction, arrangement or agreement or under any similar transaction, arrangement or agreement entered into after the Issue Date shall only be permitted by this clause (7) to the extent that the terms of any such existing transaction, arrangement or agreement, together with all amendments thereto, taken as a whole, or new transaction, arrangement or agreement are not otherwise disadvantageous to the holders of the Notes, in any material respect when taken as a whole as compared with the original transaction, arrangement or agreement as in effect on the Issue Date (as determined in good faith by the senior management or the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor);

(8) 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 Parent Guarantor and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(9) any transaction effected as part of a Qualified Receivables Financing;

(10) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Parent Guarantor;

(11) [Reserved];

(12) any contribution to the capital of the Parent Guarantor (other than Disqualified Stock) or any investments by a direct or indirect parent of the Parent Guarantor in Equity Interests (other than Disqualified Stock of the Parent Guarantor) of the Parent Guarantor (and payment of reasonable out-of-pocket expenses incurred by a direct or indirect parent of the Parent Guarantor in connection therewith);

(13) any transaction with a Person (other than an Unrestricted Subsidiary) that would constitute an Affiliate Transaction solely because the Parent Guarantor or a Restricted Subsidiary owns an Equity Interest in or otherwise controls such Person; *provided* that no Affiliate of the Parent Guarantor or any of its Subsidiaries (other than the Parent Guarantor or a Restricted Subsidiary) shall have a beneficial interest or otherwise participate in such Person;

(14) transactions between the Parent Guarantor or any of its Restricted Subsidiaries and any Person that would constitute an Affiliate Transaction solely because such Person is a director, or such Person has a director who is also a director, of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor; *provided*, *however*, that such director abstains from voting as a director of the Parent Guarantor or such direct or indirect parent of the Parent Guarantor, as the case may be, on any matter involving such other Person;

(15) the entering into of any tax sharing agreement or arrangement and any payments permitted by clause (12), (13)(a) or (13)(e) of the second paragraph of the covenant described under "—Limitation on Restricted Payments";

(16) [Reserved];

(17) pledges of Equity Interests of Unrestricted Subsidiaries;

(18) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor in good faith;

(19) (i) any employment, consulting, service or termination agreement, or customary indemnification arrangements, entered into by the Parent Guarantor or any of its Restricted Subsidiaries with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Parent Guarantor or any of its Restricted Subsidiaries (or of any direct or indirect parent of the Parent Guarantor to the extent such agreements or arrangements are in respect of services performed for the Parent Guarantor or any of the Restricted Subsidiaries), (ii) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Parent Guarantor or any of its Restricted Subsidiaries or of any direct or indirect parent of the Parent Guarantor and (iii) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers officers, directors, employees, managers, consultants and independent contractors of the Parent Guarantor or any of its Restricted Subsidiaries or any direct or indirect parent of the Parent Guarantor (including amounts paid pursuant to any management equity plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, stock option or similar plans and any successor plan thereto and any supplemental executive retirement benefit plans or arrangements), in each case in the ordinary course of business or as otherwise approved in good faith by the Board of Directors of the Issuer or any direct or indirect parent of the Parent Guarantor or of a Restricted Subsidiary, as appropriate;

(20) investments by Affiliates in Indebtedness or preferred Equity Interests of the Parent Guarantor or any of its Subsidiaries, so long as non-Affiliates were also offered the opportunity to invest in such Indebtedness or preferred Equity Interests, and transactions with Affiliates solely in their capacity as holders of Indebtedness or preferred Equity Interests of the Parent Guarantor or any of its Subsidiaries, so long as such transaction is with all holders of such class (and there are such non-Affiliate holders) and such Affiliates are treated no more favorably than all other holders of such class generally;

(21) the existence of, or the performance by the Parent Guarantor or any of its Restricted Subsidiaries of their obligations under the terms of, any registration rights agreement to which they are, or to which any direct or indirect parent of the Parent Guarantor is, a party or become a party in the future;

(22) investments by a direct or indirect parent of the Parent Guarantor in debt securities of the Parent Guarantor or debt securities or Preferred Stock of any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by a direct or indirect parent of the Parent Guarantor in connection therewith);

(23) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

(24) any lease entered into between the Parent Guarantor or any Restricted Subsidiary, as lessee, and any Affiliate of the Parent Guarantor, as lessor, in the ordinary course of business;

(25) (i) intellectual property licenses in the ordinary course of business and (ii) intercompany intellectual property licenses and research and development agreements;

(26) [Reserved]; and

(27) intercompany transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Parent Guarantor and its Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth herein.

Liens

The Indenture will provide that prior to a Covenant Suspension Event, following any Reversion Date and during any Suspension Period when there is no election by the Issuer pursuant to the next succeeding paragraph, the Parent Guarantor will not, and will not permit the Issuer or any other Guarantor to, directly or indirectly, create, Incur or assume any Lien securing Indebtedness (other than Permitted Liens) on any asset or property (or the proceeds thereof) of the Issuer or such Guarantor, unless (1) in the case of Liens securing Subordinated Indebtedness, the Notes and any applicable Guarantee are secured by a Lien on such property or assets (and the proceeds thereof) that is senior in priority to such Liens; or (2) in all other cases, the Notes and the applicable Guarantee are secured by a Lien on such property or assets (and the proceeds thereof) equally and ratably with or prior to such Liens.

Following a Covenant Suspension Event, the Issuer may elect by written notice to the Trustee to be subject to an alternative covenant with respect to the limitation on Liens in lieu of the preceding paragraph (the date such notice is delivered, the "*Election Date*"). Under this alternative covenant, from and after an Election Date and until a Reversion Date, Parent Guarantor will not, and will not permit any of the Parent Guarantor's Principal Property Subsidiaries to, directly or indirectly, create or Incur any Lien securing Indebtedness upon any (1) Restricted Property or (2) shares of Capital Stock or evidences of Indebtedness for borrowed money issued by any Principal Property Subsidiary, whether owned at the Issue Date or thereafter acquired, without making effective provision, and the Parent Guarantor in such case will make or cause to be made effective provision, whereby the Notes and the applicable Guarantees shall be secured by such Lien equally and ratably with any and all other Indebtedness or obligations thereby secured, so long as such Indebtedness or obligations shall be so secured; *provided*, however, that the foregoing shall not apply to any of the following:

(1) Liens that exist on the date of the Covenant Suspension Event;

(2) Liens on property, shares of Capital Stock or evidences of Indebtedness of any corporation existing at the time such corporation becomes a Guarantor;

(3) Liens in favor of the Issuer or any Guarantor;

(4) Liens in favor of governmental bodies to secure progress, advance or other payments pursuant to contract or statute or Indebtedness incurred to finance all or a part of construction of or improvements to property subject to such Liens;

(5) Liens (i) on property, shares of Capital Stock or evidences of Indebtedness for borrowed money existing at the time of acquisition thereof (including acquisition through merger, amalgamation or consolidation), and construction and improvement Liens that are entered into within one year from the date of such construction or improvement; *provided* that in the case of construction or improvement the Lien shall not apply to any property theretofore owned by the Issuer or any Guarantor except substantially unimproved real property on which the property so constructed or the improvement is located and (ii) for the acquisition of any real property, which Liens are created within 180 days after the completion of such acquisition to secure or provide for the payment of the purchase price of the real property acquired; provided that with respect to clauses (i) and (ii), any such Liens do not extend to any other property of the Issuer or any of the Guarantors (whether such property is then owned or thereafter acquired);

(6) mechanics', landlords' and similar Liens arising in the ordinary course of business in respect of obligations not due or being contested in good faith;

(7) Liens for taxes, assessments, or governmental charges or levies that are not delinquent or are being contested in good faith;

(8) Liens arising from any legal proceedings that are being contested in good faith;

(9) any Liens that (i) are incidental to the ordinary conduct of its business or the ownership of its properties and assets, including Liens incurred in connection with workmen's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts, (ii) were not incurred in connection with the borrowing of money or the obtaining of advances or credit and (iii) do not in the aggregate materially detract from the value of the property of the Issuer or any Guarantor or materially impair the use thereof in the operation of its business; and

(10) Liens for the sole purpose of extending, renewing or replacing in whole or in part any of the foregoing.

Notwithstanding the provisions of the immediately preceding paragraph, during any Suspension Period, if the Election Date has occurred, the Parent Guarantor or any of the Parent Guarantor's Restricted Property Subsidiaries may, without equally and ratably securing the Notes and the Guarantees, create or assume Liens that would otherwise be subject to the foregoing restrictions if at the time of such creation or assumption, and after giving effect thereto, Exempted Indebtedness does not exceed 10% of Consolidated Net Tangible Assets.

Any Lien that is granted to secure the Notes or the applicable Guarantee pursuant to the preceding paragraphs shall be automatically and unconditionally released and discharged at the same time as the release of the Lien that gave rise to the obligation to secure the Notes or the applicable Guarantee under the preceding paragraphs (other than a release as a result of the enforcement of remedies in respect of such Lien or the Obligations secured by such Lien).

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "*Increased Amount*" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference, any fees, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses incurred in connection therewith and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

Reports and Other Information

The Indenture will provide that so long as any Notes are outstanding, the Parent Guarantor will provide to the Trustee and, upon request, to holders of the Notes a copy of all of the information and reports referred to below:

(1) within 90 days after the end of each fiscal year (or such longer period as may be permitted by the SEC if the Parent Guarantor were then subject to SEC reporting requirements as a non-accelerated filer), annual audited financial statements for such fiscal year including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" with respect to the periods presented and a report on the annual financial statements by the Parent Guarantor's independent registered public accounting firm (all of the foregoing financial information to be prepared on a basis substantially consistent with the corresponding financial information included in this Offering Memorandum),

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (or such longer period as may be permitted by the SEC if the Parent Guarantor were then subject to SEC reporting requirements as a non-accelerated filer), unaudited financial statements for the interim period as of, and for the period ending on, the end of such fiscal quarter including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" (all of the foregoing financial information to be prepared on a basis substantially consistent with the corresponding financial information included in this Offering Memorandum), and

(3) within the time period specified for filing current reports on Form 8-K by the SEC, current reports that would be required to be filed with the SEC on Form 8-K if the Parent Guarantor were required to file such reports for any of the following events: (a) significant acquisitions or dispositions, (b) the bankruptcy of the Parent Guarantor or a Significant Subsidiary, (c) the acceleration of any Indebtedness of the Parent Guarantor or any Restricted Subsidiary having a principal amount in excess of

$100.0 million, (d) a change in the Parent Guarantor's certifying independent auditor, (e) the appointment or departure of the Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, Chief Operating Officer or President (or persons fulfilling similar duties) of the Parent Guarantor, (f) resignation of a director of the Parent Guarantor on disagreeable terms, (g) change in fiscal year, (h) non-reliance on previously issued financial statements or audit reports, (i) change of control transactions, (j) entry into or termination of material agreements, (k) entry into material financial obligations and (l) historical financial statements of an acquired business (relating to transactions required to be reported pursuant to Item 2.01 of Form 8-K) to the extent and in the form available to the Parent Guarantor (as determined by the Parent Guarantor in good faith) if the Parent Guarantor were a domestic reporting company under the Exchange Act; *provided* that no such current report will be required to be furnished if the Parent Guarantor determines in its good faith judgment that such event is not material to holders of the Notes or to the business, assets, operations, financial position or prospects of the Parent Guarantor and its Restricted Subsidiaries, taken as a whole, or if the Parent Guarantor determines in its good faith judgment that such disclosure would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of the Parent Guarantor and its Restricted Subsidiaries, taken as a whole; *provided*, *further*, that such non-disclosure shall be limited only to those specific provisions that would cause material competitive harm and not the occurrence of the event itself;

provided, further, *however*, that in addition to providing such information to the Trustee and, upon request, holders of the Notes, Parent Guarantor will, to the extent the requirements set forth in the last paragraph of this covenant are satisfied, make available to the holders of the Notes, bona fide prospective investors in the Notes, bona fide market makers in the Notes affiliated with any Initial Purchaser and bona fide securities analysts (to the extent providing analysis of investment in the Notes) such information by (i) posting to the website of the Parent Guarantor, any direct or indirect parent of the Parent Guarantor or any Restricted Subsidiary or on a non-public, password-protected website maintained by the Parent Guarantor, any direct or indirect parent of the Parent Guarantor, any Restricted Subsidiary or a third party, in each case, within 15 days after the time the Parent Guarantor would be required to provide such information pursuant to clause (1), (2) or (3) above, as applicable, or (ii) otherwise providing substantially comparable availability of such reports (as determined by the Parent Guarantor in good faith) (it being understood that, without limitation, making such reports available on Bloomberg or another comparable private electronic information service shall constitute substantially comparable availability).

Notwithstanding the foregoing, (a) the Parent Guarantor will not be required to furnish any information, certificates or reports required by (i) Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (ii) Regulation G or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein, (b) the information and reports referred to in clauses (1), (2) and (3) in the first paragraph of this covenant will not be required to contain the separate financial statements or other information contemplated by Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X, (c) to the extent pro forma financial information is required to be provided by the Parent Guarantor, the Parent Guarantor may provide only pro forma revenues, net income, income before extraordinary items and the cumulative effect of accounting changes, EBITDA, Adjusted EBITDA, senior secured debt, total debt and capital expenditures (or equivalent financial information) in lieu thereof, (d) the information and reports referred to in clauses (1), (2) and (3) in the first paragraph of this covenant shall not be required to present compensation or beneficial ownership information and (e) the information and reports referred to in clauses (1), (2) and (3) in the first paragraph of this covenant shall not be required to include any exhibits required by Item 15 of Form 10-K, Item 6 of Form 10-Q or Item 9.01 of Form 8-K.

For so long as any of the Parent Guarantor's Subsidiaries has been designated as an Unrestricted Subsidiary, then substantially concurrently with the provision of the quarterly and annual financial information required by the first paragraph of this covenant, the Parent Guarantor will provide the holders of the Notes with the percentage of the Adjusted EBITDA (presented on a basis substantially consistent with the presentation of Adjusted EBITDA in the Offering Memorandum) that the Unrestricted Subsidiaries contribute to such Adjusted EBITDA for the Parent Guarantor and its Subsidiaries for the applicable period; *provided*, however, that no such information shall be required to be provided to the extent the Parent Guarantor determines in its reasonable judgment that any such Unrestricted Subsidiaries are not material to the operations or performance of the Parent Guarantor and its Subsidiaries as a whole. Such information need not be provided in the financial report itself and may be separately provided to holders of the Notes via a non-public, password protected website maintained by the Parent Guarantor, any direct or indirect parent of the Parent Guarantor, any Restricted Subsidiary or a third party in accordance with the penultimate paragraph of this covenant.

In addition, to the extent not satisfied by the foregoing, the Parent Guarantor will agree that, for so long as any Notes are outstanding, the Parent Guarantor will furnish to holders of the Notes, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision).

Notwithstanding the foregoing, the financial statements, information, auditors' reports and other documents required to be provided as described above, may be, rather than those of the Parent Guarantor, those of (a) any predecessor or successor of the Parent Guarantor or any entity meeting the requirements of clause (b) of this paragraph or (b) any direct or indirect parent of the Parent Guarantor; *provided* that, if the financial information so furnished relates to such direct or indirect parent of the Parent Guarantor, and, in the reasonable judgment of the Parent Guarantor, there are material differences between the financial information of the Parent

Guarantor and such direct or indirect parent of the Parent Guarantor, the same is accompanied by consolidating information, which may be posted to the website of the Parent Guarantor, any direct or indirect parent of the Parent Guarantor or any Restricted Subsidiary or on a non-public, password-protected website maintained by the Parent Guarantor, any direct or indirect parent of the Parent Guarantor, any Restricted Subsidiary or a third party, that explains in reasonable detail the material differences between the information relating to such parent entity (as the case may be), on the one hand, and the information relating to the Parent Guarantor and its Restricted Subsidiaries on a standalone basis, on the other hand. For the avoidance of doubt, the consolidating information referred to in the proviso in the preceding sentence need not be audited or reviewed.

The Parent Guarantor will be deemed to have satisfied the information and reporting requirements of the first paragraph of this covenant if the Parent Guarantor or any direct or indirect parent of the Parent Guarantor (a) has filed reports or registration statements containing such information (including, to the extent required, the information required pursuant to the first sentence of the immediately preceding paragraph, which, for the avoidance of doubt, need not be filed with the SEC via EDGAR to the extent it is otherwise provided to holders of the Notes pursuant to this covenant) with the SEC via the EDGAR (or successor) filing system within the applicable time periods after giving effect to any extensions permitted by the SEC and that are publicly available or (b) if the Parent Guarantor or any direct or indirect parent of the Parent Guarantor is no longer subject to the reporting requirements provided by the Securities and Exchange Act of 1934, with respect to the holders of the Notes only, the Parent Guarantor or such parent entity has made such reports available electronically (including by posting to a non-public, password-protected website as provided above) pursuant to this covenant. Delivery of such information and reports to the Trustee is for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive or actual notice of any information contained therein or determinable from the information contained therein, including our compliance with any of our covenants under the Indenture (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate). The Trustee shall have no liability or responsibility for the filing, timeliness or content of such documents or reports.

So long as Notes are outstanding the Parent Guarantor will also:

(a) promptly after furnishing to the Trustee the annual and quarterly reports required by clauses (1) and (2) of the first paragraph of this covenant, hold a conference call to discuss such reports and the results of operations for the relevant reporting period (which conference call, for the avoidance of doubt, may be held prior to such time that the annual or quarterly information and reports required by the first paragraph of this covenant are furnished to Holders); and

(b) announce by press release or post to the website of the Parent Guarantor, any direct or indirect parent of the Parent Guarantor or any Restricted Subsidiary or on a non-public, password-protected website maintained by the Parent Guarantor, any direct or indirect parent of the Parent Guarantor, any Restricted Subsidiary or a third party, which may require a confidentiality acknowledgment (but not restrict the recipients of such information from trading securities of the Parent Guarantor or its respective affiliates), prior to the date of the conference call required to be held in accordance with clause (a) of this paragraph, the time and date of such conference call and either all information necessary to access the call or informing holders of Notes, bona fide prospective investors in the Notes, bona fide market makers in the Notes affiliated with any Initial Purchaser and bona fide securities analysts (to the extent providing analysis of an investment in the Notes) how they can obtain such information, including, without limitation, the applicable password or other login information;

provided that, for the avoidance of doubt, the Parent Guarantor will be deemed to have satisfied the requirements of clause (a) of this paragraph if the Parent Guarantor or any direct or indirect parent of the Issuer holds a public earnings call to discuss such reports and the results of operations for the relevant reporting period.

Any person who requests or accesses such financial information or seeks to participate in any conference calls required by this covenant will be required to provide its email address, employer name and other information reasonably requested by the Issuer and represent to the Issuer (to the Issuer's reasonable good faith satisfaction) that:

(1) it is a holder of the Notes, a beneficial owner of the Notes, a bona fide prospective investor in the Notes, a bona fide market maker in the Notes affiliated with any Initial Purchaser or a bona fide securities analyst providing an analysis of investment in the Notes;

(2) it will not use the information in violation of applicable securities laws or regulations;

(3) it will keep such provided information confidential and will not communicate the information to any Person; and

(4) it (a) will not use such information in any manner intended to compete with the business of the Parent Guarantor and its Subsidiaries and (b) is not a Person (which includes such Person's Affiliates) that (i) is principally engaged in a Similar Business or (ii) derives a significant portion of its revenues from operating or owning a Similar Business.

To the extent any such information is not provided within the time periods specified above and such information is subsequently provided, the Parent Guarantor will be deemed to have satisfied its obligations with respect thereto at such time and any Default or Event of Default with respect thereto shall be deemed to have been cured.

Future Guarantors

If, after the Issue Date, (a) any Restricted Subsidiary of the Parent Guarantor (including any newly formed, newly acquired or newly redesignated Restricted Subsidiary, but excluding any Receivables Subsidiary, any CFC, any CFC Holdco and the Issuer) that is not then the Issuer or a Guarantor guarantees or Incurs any Indebtedness under any Credit Agreement or (b) the Issuer otherwise elects to have any Restricted Subsidiary of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor become a Guarantor, then, in each such case, the Parent Guarantor shall cause such Restricted Subsidiary to execute and deliver, or such direct or indirect parent of the Parent Guarantor shall execute and deliver, to the Trustee a supplemental indenture pursuant to which such Restricted Subsidiary or direct or indirect parent of the Parent Guarantor shall become a Guarantor under the Indenture governing the Notes providing for a Guarantee by such Restricted Subsidiary or direct or indirect parent of the Parent Guarantor on the same terms and conditions as those set forth in the Indenture and applicable to the other Guarantors; *provided* that, in the case of clause (a), such supplemental indenture shall be executed and delivered to the Trustee within 20 Business Days of the date that such Indebtedness under such Credit Agreement has been guaranteed or Incurred by such Restricted Subsidiary.

Each Guarantee will be limited as necessary to reflect limitations under local law in the applicable jurisdiction and defenses generally available to guarantors in such jurisdiction (including those relating to fraudulent conveyance, fraudulent transfer, voidable preference, financial assistance, corporate purpose, corporate benefit, capital maintenance and similar laws, regulations and defenses affecting the rights of creditors generally) or other considerations under applicable law. This includes limiting Guarantees to an amount not to exceed the maximum amount that can be guaranteed by that Restricted Subsidiary without rendering the Guarantee, as it relates to such Restricted Subsidiary, voidable under applicable law. However, such limitations may not be effective under local law.

Each Guarantee shall be released upon the terms and in accordance with the provisions of the Indenture described under "— Guarantees."

Merger, Consolidation or Sale of All or Substantially All Assets

The Indenture will provide that neither the Parent Guarantor nor the Issuer may consolidate, merge or amalgamate with or into or wind up into (whether or not the Parent Guarantor or the Issuer is the surviving Person), 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 (other than the merger, amalgamation or consolidation of the Issuer into the Parent Guarantor or any other Guarantor, or of the Parent Guarantor into the Issuer or any other Guarantor; *provided* that to the extent the Issuer merges into the Parent Guarantor or any other Guarantor, after such merger, an entity that is organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia shall become an obligor of the Notes) unless:

(1) with respect to the Issuer, it is the surviving Person or the Person formed by or surviving any such consolidation, merger, amalgamation or winding up (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, or, if such entity is not organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, an obligor of the Notes is organized or existing under such laws;

(2) with respect to the Parent Guarantor, it is the surviving Person or the Person formed by or surviving any such consolidation, merger, amalgamation or winding up (if other than the Parent Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, limited liability company or trust, or non-U.S. analog thereof, organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, any member of the European Union (as it is constituted on the Issue Date) or the United Kingdom, or Bermuda;

(3) [Reserved];

(4) the Person formed by or surviving any such consolidation, merger, amalgamation or winding up (if other than the Parent Guarantor or the Issuer, as applicable) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (such Person or, as described in the foregoing clauses (1) and (2), the Parent Guarantor or the Issuer, the "*Successor Company*") expressly assumes all the obligations of the Parent Guarantor or the Issuer, as applicable, under the Indenture and the Notes pursuant to supplemental indentures or other documents or instruments;

(5) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

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

(a) the Parent Guarantor (or a Successor Company to the Parent Guarantor, if applicable) would be permitted to Incur at least $1.00 of additional Indebtedness as Ratio Debt; or

(b) either (i) the Fixed Charge Coverage Ratio for the Parent Guarantor (or a Successor Company to the Parent Guarantor, if applicable) and its Restricted Subsidiaries would be equal to or greater than such ratio for the Parent Guarantor and its Restricted Subsidiaries immediately prior to such transaction immediately prior to such transaction or (ii) the Consolidated Total Net Debt Ratio for the Parent Guarantor (or a Successor Company to the Parent Guarantor, if applicable) and its Restricted Subsidiaries would be equal to or less than such ratio for the Parent Guarantor and its Restricted Subsidiaries immediately prior to such transaction;

(7) each Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's Obligations under the Indenture and the Notes; and

(8) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation, winding up, sale, assignment, transfer, lease, conveyance or other disposition, as the case may be, and such supplemental indentures (if any) comply with the Indenture.

The Successor Company (if other than the Parent Guarantor or the Issuer) will succeed to, and be substituted for, the Parent Guarantor or the Issuer, as the case may be, under the Indenture and the Notes, and (if the Successor Company is other than the Parent Guarantor or the Issuer) the Issuer or the Parent Guarantor, as applicable, will automatically be released and discharged from its obligations under the Indenture and the Notes. For the avoidance of doubt, (a) the Parent Guarantor or the Issuer may consolidate or amalgamate with, merge into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to the Issuer or any Guarantor, (b) the Parent Guarantor or the Issuer may merge, consolidate or amalgamate with an Affiliate of the Parent Guarantor or the Issuer, as the case may be, incorporated or organized solely for the purpose of reincorporating or reorganizing the Parent Guarantor or the Issuer in another state of the United States, the District of Columbia or any territory of the United States or any member of the European Union (as it is constituted on the Issue Date) or the United Kingdom, so long as the principal amount of Indebtedness of the Parent Guarantor and its Restricted Subsidiaries is not increased thereby (unless such increase is permitted by the Indenture), (c) the Parent Guarantor or the Issuer, as the case may be, may convert into a corporation, limited liability company or trust, or non-U.S. analog thereof, organized or existing under the laws of the jurisdiction of organization of the Parent Guarantor or the Issuer, as the case may be, or the laws of the United States, any state or territory thereof or the District of Columbia; *provided* that, in the case of each of clauses (a), (b) or (c), if the resulting entity is not organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, an obligor of the Notes remains in existence or is organized or existing under such laws, (d) the Issuer or any Guarantor may change its name, (e) any Restricted Subsidiary may merge, amalgamate or consolidate with the Parent Guarantor or the Issuer; *provided* that the Parent Guarantor or the Issuer is the Successor Company in such merger, amalgamation or consolidation, and (f) a Designating Party may designate any Guarantor (including any Person that becomes a Guarantor pursuant to the covenant described under "—Future Guarantors") to be "Parent Guarantor" under the Indenture pursuant to a New Parent Guarantor Designation.

The Indenture will further provide that subject to certain provisions in the Indenture governing release of a Guarantee upon the sale or disposition of a Restricted Subsidiary that is a Guarantor, each Guarantor will not, and the Parent Guarantor will not permit any Guarantor to, consolidate, merge or amalgamate with or into or wind up into (whether or not such 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 Person or the Person formed by or surviving any such consolidation, merger, amalgamation or winding up (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership, limited partnership or, limited liability company or trust, or non-U.S. analog thereof, organized or existing under (i) the laws of the jurisdiction of organization of any Guarantor, (ii) the laws of the United States, any state or territory thereof or the District of Columbia or (iii) the laws of another jurisdiction so long as, in the case of clause (iii), the Guarantee provided by such surviving Guarantor is substantially equivalent to the Guarantee provided under the laws of the jurisdiction of organization of another Guarantor (such Guarantor or such Person, as the case may be, being herein called the "*Successor Guarantor*");

(b) the Successor Guarantor (if other than such Guarantor) expressly assumes all the obligations of such Guarantor under the Indenture and such Guarantor's Guarantee pursuant to a supplemental indenture or other documents or instruments;

(c) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Guarantor or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Guarantor or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing; and

(d) the Successor Guarantor (if other than such Guarantor) shall have delivered or caused to be delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation, winding up, sale, assignment, transfer, lease, conveyance or other disposition, as the case may be, and such supplemental indenture (if any) comply with the Indenture; or

(2) such sale or disposition or consolidation, amalgamation or merger is made in compliance with the covenant described under "—Asset Sales."

Subject to certain limitations described in the Indenture, the Successor Guarantor will succeed to, and be substituted for, such Guarantor under the Indenture and such Guarantor's Guarantee, and such Guarantor will automatically be released and discharged from its obligations under the Indenture and such Guarantor's Guarantee. Notwithstanding the foregoing, (1) a Guarantor may merge, consolidate or amalgamate with an Affiliate of the Parent Guarantor incorporated or organized solely for the purpose of reincorporating or reorganizing such Guarantor in the United States, any state or territory thereof or the District of Columbia or any member of the European Union on the Issue Date or the United Kingdom, so long as the principal amount of Indebtedness of the Parent Guarantor and the Restricted Subsidiaries is not increased thereby (unless such increase is permitted by the Indenture), (2) a Guarantor may (a) consolidate, merge or amalgamate with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets to, the Issuer or a Guarantor or (b) dissolve if such Guarantor sells, assigns, transfers, leases, conveys or otherwise disposes of all or substantially all of its properties and assets to another Person in compliance with "—Asset Sales" and after giving effect to such sale, assignment, transfer, lease, conveyance or disposition has no or a de minimis amount of assets, (3) a Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust, or non-U.S. analog thereof, organized or existing under the laws of the jurisdiction of organization of such Guarantor or the laws of the United States, any state or territory thereof or the District of Columbia or any member of the European Union on the Issue Date or the United Kingdom, (4) a Guarantor may change its name and (5) any Restricted Subsidiary may merge, amalgamate or consolidate with or into any Guarantor; *provided*, in the case of this clause (5), that the surviving Person (i) is a corporation, partnership, limited partnership or limited liability company or trust, or non-U.S. analog thereof, organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, any member of the European Union or the United Kingdom or the jurisdiction of organization of such Restricted Subsidiary or Guarantor and (ii) is or becomes a Guarantor upon consummation of such merger, amalgamation or consolidation.

For purposes of this covenant, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Parent Guarantor, which properties and assets, if held by the Parent Guarantor instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Parent Guarantor on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Parent Guarantor.

Although there is a 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 "all or substantially all" of the property or assets of a Person.

Defaults

An Event of Default will be defined in the Indenture as:

(1) a default in any payment of interest on any Note when due, continued for 30 days;

(2) a default in the payment of principal or premium, if any, of any Note when due at its Stated Maturity, upon optional redemption (in the case of optional redemption, to the extent such Event of Default arises from the failure to pay the redemption price that is then due and is not subject to any conditions in connection with such optional redemption that have not been satisfied), upon required purchase, upon acceleration or otherwise;

(3) the failure by the Parent Guarantor or any Restricted Subsidiary to comply for 60 days after receipt of written notice referred to below with any of its obligations, covenants or agreements (other than a default referred to in clause (1) or (2) above) contained in the Notes or the Indenture; *provided* that in the case of a failure to comply with the Indenture provisions described under "—Certain Covenants—Reports and Other Information," such period of continuance of such default or breach shall be 180 days;

(4) the failure by the Parent Guarantor or any Restricted Subsidiary to pay the principal amount of any Indebtedness for borrowed money (other than Indebtedness for borrowed money owing to the Parent Guarantor or a Restricted Subsidiary) within any applicable grace period after final maturity or the acceleration of any such Indebtedness by the holders thereof because of a default, in each case, if the total amount of such Indebtedness unpaid at final maturity or acceleration exceeds $100.0 million or its foreign currency equivalent;

(5) certain events of bankruptcy or insolvency of the Parent Guarantor or a Significant Subsidiary;

(6) failure by the Parent Guarantor or any Significant Subsidiary to pay final and non-appealable judgments aggregating in excess of $100.0 million or its foreign currency equivalent (net of any amounts which are covered by enforceable insurance policies issued by solvent insurance companies), which judgments are not discharged, waived or stayed for a period of 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 that is not promptly stayed; or

(7) the Guarantee of a Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms thereof or of the Indenture), or any Guarantor that is a Significant Subsidiary denies in writing that it has any further liability under its Guarantee or gives written notice to such effect (other than by reason of the termination or discharge of the Indenture or the release of any such Guarantee in accordance with the Indenture) and such Default continues for ten days.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

However, a default under clause (3) of the first paragraph above will not constitute an Event of Default until the Trustee or the holders of at least 30.0% in principal amount of outstanding Notes notify the Issuer in writing of the default and such default is not cured within the time specified in clause (3) of the first paragraph above after receipt of such notice.

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy or insolvency of the Parent Guarantor or the Issuer) occurs and is continuing, the Trustee or the holders of at least 30.0% in principal amount of outstanding Notes by written notice to the Issuer may declare the principal of, premium, if any, and accrued but unpaid interest, on all Notes to be due and payable. Upon such a declaration, such principal and interest will be due and payable immediately. If an Event of Default relating to certain events of bankruptcy or insolvency of the Parent Guarantor or the Issuer occurs, the principal of, premium, if any, and interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any holders. Under certain circumstances, the holders of a majority in principal amount of outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

The holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the holders of all of the Notes, waive, rescind or cancel any declaration of an existing or past Default or Event of Default and its consequences under the Indenture if such waiver, rescission or cancellation would not conflict with any judgment or decree, except a continuing Default or Event of Default in the payment of interest or premium on, or the principal of, the Notes (other than such nonpayment of principal or interest that has become due as a result of such acceleration). Upon any such waiver, such Default shall

cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

In the event of any Event of Default specified in clause (4) of the first paragraph above, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the holders of the Notes, if prior to 20 days after such Event of Default arose, the Issuer delivers an Officer's Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the requisite amount of holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has otherwise been cured.

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 unless such holders have offered to the Trustee indemnity or security satisfactory to it 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 may pursue any remedy with respect to the Indenture or the Notes unless:

(1) such holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) holders of at least 30.0% of the aggregate principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;

(3) such holders have offered the Trustee security or indemnity satisfactory to it in respect of any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

(5) the holders of a majority in principal amount of the outstanding Notes have not given the Trustee a written direction inconsistent with such request within such 60-day period.

Subject to certain restrictions, the holders of a majority in principal amount of outstanding 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 or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee will be entitled to security or indemnification satisfactory to it in its sole discretion against all losses, liabilities and expenses that may be caused by taking or not taking such action, and shall be entitled to rely on, and not liable for any action taken or omitted pursuant to, the advice of legal counsel acceptable to the Trustee. The Trustee may act through attorneys or agents but will not be liable or responsible for the acts or omissions of any such attorney or agent appointed with due care.

The Indenture will provide that if a Default occurs and is continuing and is actually known to the Trustee, the Trustee must deliver to each holder of the Notes notice of the Default within 90 days after it is known to the Trustee (unless such Default is cured or waived prior to delivery thereof). The Trustee shall not be deemed to have any knowledge of any Default or Event of Default unless and until a responsible officer of the Trustee has actual knowledge thereof. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any Note, the Trustee may withhold notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of the holders of the Notes. In addition, the Issuer is required to deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate regarding compliance with the Indenture. Upon any Officer of the Parent Guarantor or the Issuer becoming aware of any Default or Event of Default, the Issuer also is required to deliver to the Trustee, within 30 days after such Officer becoming aware of such Default or Event of Default (unless such Default or Event of Default has been cured or waived within such 30-day (or 180-day if with respect to a Default under "—Certain Covenants—Reports and Other Information") time period), an Officer's Certificate specifying such Default or Event of Default and what action the Issuer is taking or propose to take with respect thereto.

Amendments and Waivers

Subject to certain exceptions, the Indenture, the Notes and the Guarantees may be amended or supplemented with the consent of the holders of at least a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for the Notes) and any existing or past Default or Event of Default or compliance with any provisions of such documents may be waived with the consent of the holders of a majority in principal

amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes); *provided* that (x) if any such amendment or waiver will only affect one series of Notes (or less than all series of Notes) then outstanding under the Indenture, then only the consent of the holders of a majority in principal amount of the Notes of such series then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, such series of the Notes) shall be required, and (y) if any such amendment or waiver by its terms will affect a series of Notes in a manner that is different and materially adverse relative to the manner in which such amendment or waiver affects other series of Notes, then the consent of the holders of a majority in principal amount of the Notes of such series then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, such series of the Notes) shall be required. However, without the consent of each holder of a Note affected (including, for the avoidance of doubt, any Notes held by Affiliates), no amendment, supplement or waiver may (with respect to any Notes held by a non-consenting holder):

(1) reduce the percentage of the aggregate principal amount of Notes whose holders must consent to an amendment, supplement or waiver;

(2) reduce the rate of or extend the time for payment of interest on any Note;

(3) reduce the principal of or change the Stated Maturity of any Note;

(4) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration;

(5) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed as described under "—Optional Redemption" (other than any change to the notice periods with respect to such redemption);

(6) make any Note payable in money other than that stated in such Note;

(7) impair the right of any holder to institute suit for the enforcement of any payment on or with respect to such holder's Notes;

(8) make any change in the amendment or waiver provisions of the Indenture that require each holder's consent as described in clauses (1) through (7) of this sentence;

(9) 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 Notes; or

(10) make the Notes or any Guarantee subordinated in right of payment to any other obligations.

A Note does not cease to be outstanding because the Issuer or any Affiliate of the Issuer holds the Note; *provided* that in determining whether the holders of the requisite majority of outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Issuer or any Affiliate of the Issuer shall be disregarded and deemed not to be outstanding.

Without the consent of any holder, 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, the Notes and the Guarantees:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency identified in an Officer's Certificate delivered to the Trustee;

(2) to conform the text of the Indenture (including any supplemental indenture or other instrument pursuant to which Additional Notes are issued), the Guarantees or the Notes to this "Description of Notes" or, with respect to any Additional Notes and any supplemental indenture or other instrument pursuant to which such Additional Notes are issued, to the "Description of Notes" relating to the issuance of such Additional Notes solely to the extent that such "Description of Notes" provides for terms of such Additional Notes that differ from the terms of the initial Notes, as contemplated by "—General" above;

(3) to comply with the covenant relating to mergers, amalgamations, consolidations and sales of assets,

(4) to provide for the assumption by a successor Person of the obligations of the Issuer or any Guarantor under the Indenture and the Notes or Guarantee, as the case may be;

(5) to provide for uncertificated Notes in addition to or in place of certificated Notes; *provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(6) (A) to add or release Guarantees in accordance with the terms of the Indenture with respect to the Notes, (B) to add additional co-issuers of the Notes to the extent it does not result in adverse tax consequences to the holders or otherwise as expressly contemplated by the Indenture or (C) to designate a Guarantor as "Parent Guarantor" under the Indenture pursuant to a New Parent Guarantor Designation;

(7) to secure the Notes;

(8) to add to the covenants of the Parent Guarantor or the Issuer for the benefit of the holders or to surrender any right or power conferred upon the Issuer or any Guarantor;

(9) to make any change that does not adversely affect the rights of any holder in any material respect upon delivery to the Trustee of an Officer's Certificate certifying the absence of such adverse effect;

(10) to comply with any requirement of the SEC in connection with any qualification of the Indenture under the TIA;

(11) to make any amendment to the provisions of the Indenture relating to the transfer and legending of the Notes as permitted by the Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; *provided*, *however*, that (i) compliance with the Indenture as so amended would not result in 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 Notes;

(12) to evidence and provide for the acceptance of appointment by a successor Trustee; *provided* that the successor Trustee is otherwise qualified and eligible to act as such under the terms of the Indenture; or

(13) to provide for or confirm the issuance of Additional Notes in accordance with the Indenture.

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. For the avoidance of doubt, no amendment to, or deletion of, any of the covenants described under "—Certain Covenants" or "—Change of Control" shall be deemed to impair or affect any rights of holders of the Notes to institute suit for the enforcement of any payment on or with respect to, or to receive payment of principal of, or premium, if any, or interest on, the Notes. The Trustee shall be a party to any amendment or supplement, except where such amendment affects its rights, obligations, immunities or indemnities, in which cases the Trustee may, but shall not be obligated to, act as a party to such amendment.

No Personal Liability of Managers, Directors, Officers, Employees and Stockholders

No manager, managing director, director, officer, employee, incorporator or holder of any equity interests in the Parent Guarantor or any Subsidiary or any direct or indirect parent of the Parent Guarantor, as such, will have any liability for any obligations of the Issuer or any Guarantor under the Notes or the Indenture or any Guarantee or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of Notes by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The 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.

Transfer and Exchange

A noteholder may transfer or exchange Notes in accordance with the Indenture. Upon any transfer or exchange, the registrar and the Trustee may require a noteholder, among other things, to furnish appropriate endorsements or transfer documents and the Issuer may require a noteholder to pay any taxes required by law or permitted by the Indenture. The registrar will not be required to transfer or exchange any Note selected for redemption (except in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or to transfer or exchange any Note for a period of 15 days prior to a selection of Notes to be redeemed or tendered and not

withdrawn in connection with a Change of Control Offer, Alternate Offer or an Asset Sale Offer. The Notes will be issued in registered form and the registered holder of a Note will be treated as the owner of such Note for all purposes.

Satisfaction and Discharge

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

(1) either (a) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust) have been delivered to the registrar for cancellation or (b) all of the Notes not previously delivered to the registrar for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year or (iii) have been called for redemption or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of a full redemption by the Paying Agent in the name, and at the expense, of the Issuer, and the Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the Paying Agent money or U.S. Government Obligations in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the registrar for cancellation, for principal of, premium, if any, and interest on the Notes to the date of maturity or redemption, as the case may be, together with irrevocable instructions from the Issuer directing the Paying Agent to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(2) the Issuer and/or the Guarantors have paid all other sums payable under the Indenture; and

(3) the Parent Guarantor has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

Defeasance

The Issuer at any time may terminate all its obligations under the Notes and the Indenture and have each Guarantor's obligation discharged with respect to its Guarantee ("*legal defeasance*") and cure all then-existing Events of Default, except for certain obligations, including those respecting the defeasance trust (as defined below) and obligations to register the transfer or exchange of the Notes, to replace mutilated, destroyed, lost or stolen Notes and to maintain a Paying Agent in respect of the Notes. The Issuer at any time may terminate its obligations and those of each Guarantor under certain covenants that are described in the Indenture, including the covenants described under "—Certain Covenants," the operation of the cross acceleration provision, the bankruptcy provisions with respect to Significant Subsidiaries, the judgment default provision described under "Defaults" and the undertakings and covenants contained under "—Change of Control" and "—Certain Covenants—Merger, Consolidation, Amalgamation or Sale of All or Substantially All Assets" (other than clauses (1), (2) and (6) of the first paragraph and clause (1)(d) of the third paragraph thereof) ("*covenant defeasance*"). If the Issuer exercises its legal defeasance option or its covenant defeasance option, each Guarantor will be released from all of its obligations with respect to its Guarantee.

The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Issuer exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect thereto. If the Issuer exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in clause (3) (with respect to any Default by the Parent Guarantor or any of its Restricted Subsidiaries with any of their obligations under the covenants described under "—Certain Covenants"), (4), (5) (with respect only to Significant Subsidiaries (other than the Issuer)), (6) (with respect only to Significant Subsidiaries (other than the Issuer)) or (7) under "—Defaults."

In order to exercise either defeasance option, the Issuer must irrevocably deposit or cause to be deposited (the "*defeasance trust*") with the Paying Agent money or U.S. Government Obligations (sufficient in the opinion of a nationally recognized certified public accounting firm) for the payment of principal, premium (if any) and interest on the applicable issue of Notes to redemption or maturity, as the case may be; *provided* that if such redemption is made pursuant to the provisions described in the second paragraph under "—Optional Redemption," then: (x) the amount of money or U.S. Government Obligations that the Issuer must irrevocably deposit or cause to be deposited will be determined using an assumed Applicable Premium calculated as of the date of such deposit, as calculated by the Issuer in good faith, and (y) the Issuer must irrevocably deposit or cause to be deposited additional money in trust on the redemption date as necessary to pay the Applicable Premium as determined on such date; *provided*, *further*, that the Issuer must comply with certain other conditions, including delivery to the Trustee of an Opinion of Counsel to the effect that holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if

such deposit and defeasance had not occurred (and, in the case of legal defeasance only, such Opinion of Counsel must be based on a ruling of the Internal Revenue Service or change in applicable U.S. federal income tax law).

Measuring Compliance

With respect to any (x) Investment or acquisition, merger, amalgamation or similar transaction that has been definitively agreed to or publicly announced, (y) repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock with respect to which a notice of prepayment (or similar notice), which may be conditional, has been delivered and (z) Restricted Payment that has been declared, in each case for purposes of determining:

(1) whether any Indebtedness (including Acquired Indebtedness), Disqualified Stock or Preferred Stock that is being Incurred in connection with such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment is permitted to be Incurred in compliance with the covenant described under the caption "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock";

(2) whether any Lien being incurred in connection with such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or to secure any such Indebtedness is permitted to be incurred in accordance with the covenant described under the caption "—Certain Covenants—Liens" or the definition of "Permitted Liens";

(3) whether any other transaction undertaken or proposed to be undertaken in connection with such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment complies with the covenants or agreements contained in the Indenture or the Notes;

(4) any calculation of the ratios, baskets or financial metrics, including Fixed Charge Coverage Ratio, Consolidated Total Net Debt Ratio, Consolidated Senior Secured Net Debt Ratio, Consolidated Net Income, Consolidated EBITDA, Consolidated Net Tangible Assets, Consolidated Total Assets and/or Pro Forma Cost Savings and whether a Default or Event of Default exists in connection with the foregoing; and

(5) whether any condition precedent to the Incurrence of Indebtedness (including Acquired Indebtedness), Disqualified Stock, Preferred Stock or Liens, in each case that is being Incurred in connection with such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment is satisfied,

at the option of the Parent Guarantor, any of its Restricted Subsidiaries, any direct or indirect parent of the Parent Guarantor or any successor entity of any of the foregoing (the "*Testing Party*"), the date that the definitive agreement for such Investment, acquisition, merger, amalgamation or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock is entered into or the date of any notice, which may be conditional, of such repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock is given to the holders thereof, or the date of declaration of a Restricted Payment (the "*Transaction Commitment Date*"), may be used as the applicable date of determination, as the case may be, in each case with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of "Pro Forma Basis" or "Consolidated EBITDA." For the avoidance of doubt, if the Testing Party elects to use the Transaction Commitment Date as the applicable date of determination in accordance with the foregoing, (a) any fluctuation or change in the Fixed Charge Coverage Ratio, Consolidated Total Net Debt Ratio, Consolidated Senior Secured Net Debt Ratio, Consolidated Net Income, Consolidated EBITDA, Consolidated Net Tangible Assets, Consolidated Total Assets and/or Pro Forma Cost Savings of the Parent Guarantor from the Transaction Commitment Date to the date of consummation of such transaction, will not be taken into account for purposes of determining whether any Indebtedness or Lien that is being incurred in connection with such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment or in connection with compliance by the Parent Guarantor or any of the Restricted Subsidiaries with any other provision of the Indenture or the Notes or any other transaction undertaken in connection with such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment is permitted to be Incurred, (b) if financial statements for one or more subsequent fiscal quarters shall have become available, the Testing Party may elect, in its sole discretion, to re-determine all such baskets, ratios and financial metrics on the basis of such financial statements, in which case such date of redetermination shall thereafter be deemed to be the applicable Transaction Commitment Date for purposes of such baskets, ratios and financial metrics, (c) if any ratios or financial metrics improve or baskets increase as a result of such fluctuations, such improved ratios, financial metrics or baskets may be utilized, (d) until such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness,

Disqualified Stock or Preferred Stock or Restricted Payment is consummated, such definitive agreements are terminated or such notice is rescinded, such Investment or acquisition or other transaction and all transactions proposed to be undertaken in connection therewith (including the incurrence of Indebtedness and Liens) will be given pro forma effect when determining compliance of other transactions (including the incurrence of Indebtedness and Liens unrelated to such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment) that are consummated after the Transaction Commitment Date and on or prior to the date of consummation of such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment and any such transactions (including any incurrence of Indebtedness and the use of proceeds thereof and Liens) will be deemed to have occurred on the Transaction Commitment Date and outstanding thereafter for purposes of calculating any baskets or ratios under the Indenture after such date and before the date of consummation of such Investment, acquisition, merger, amalgamation or similar transaction, repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock or Restricted Payment and (e) Consolidated Interest Expense and Fixed Charges for purposes of the Fixed Charge Coverage Ratio will be calculated using an assumed interest rate based on the indicative interest margin (without giving effect to any step-ups) contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by Parent Guarantor in good faith. In addition, the Indenture will provide that compliance with any requirement relating to the absence of a Default or Event of Default may be determined as of the Transaction Commitment Date and not as of any later date as would otherwise be required under the Indenture, except as contemplated by clause (b) of the immediately preceding sentence.

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 Parent Guarantor.

To the extent the date of delivery of any document required to be delivered pursuant to any provision of the Indenture falls on a day that is not a Business Day, the applicable date of delivery shall be deemed to be the next succeeding Business Day.

For purposes of determining the maturity date of any Indebtedness, customary bridge loans subject to customary conditions that would be extended as, converted into or required to be exchanged for permanent refinancing either automatically or subject to customary conditions (including no payment or bankruptcy event of default) shall be deemed to have the maturity date as so extended, converted or exchanged.

For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any returns or distributions of capital or repayment of principal actually received in cash by such Person with respect thereto.

Notwithstanding anything to the contrary herein, so long as an action was taken (or not taken) in reliance upon a basket or ratio that was calculated or determined in good faith by a responsible financial or accounting officer of the Parent Guarantor based upon financial information available to such officer at such time and such action (or inaction) was permitted hereunder at the time of such calculation or determination, any subsequent restatement, modification or adjustments made to such financial information (including any restatement, modification or adjustment that would have caused such basket or ratio to be exceeded as a result of such action or inaction) shall not result in any Default or Event of Default.

Notwithstanding anything to the contrary herein, in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued, any Lien is incurred, any Investment or Restricted Payment is made or other transaction is undertaken in reliance on a ratio basket based on the Fixed Charge Coverage Ratio, Consolidated Senior Secured Net Debt Ratio or Consolidated Total Net Debt Ratio, such ratio(s) shall be calculated with respect to such incurrence, issuance or other transaction without giving effect to amounts being utilized under any other basket (other than another ratio basket based on the Fixed Charge Coverage Ratio, Consolidated Senior Secured Net Debt Ratio or Consolidated Total Net Debt Ratio) on the same date, and each item of Indebtedness, Disqualified Stock or Preferred Stock that is incurred or issued, each Lien incurred, each Investment or Restricted Payment made and each other transaction undertaken will be deemed to have been incurred, issued, made or taken first, to the extent available, pursuant to the relevant Fixed Charge Coverage Ratio, Consolidated Senior Secured Net Debt Ratio or Consolidated Total Net Debt Ratio test.

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; notices personally delivered will be deemed given at the

time delivered by hand; notices given by facsimile or email will be deemed given when receipt is acknowledged; notices given by overnight air courier guaranteeing next day delivery will be deemed given the next Business Day after timely delivery to the courier; and notices given to DTC shall be sufficiently given if given according to the applicable procedures of DTC.

Concerning the Trustee

Wilmington Trust, National Association is the Trustee under the Indenture and has been appointed by the Issuer as registrar and paying agent with regard to the Notes.

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 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 such person's own affairs. 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 Notes, unless such holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense, and no permissive right of the Trustee to take any action under the Indenture will be construed as a duty to exercise such right. The Trustee will not be required to expend or risk its own funds in the performance of its duties under the Indenture, and will further not be liable for any special, indirect, punitive, or consequential damages.

Governing Law

The Indenture will provide that it and the Notes and the Guarantees will be governed by, and construed in accordance with, the laws of the State of New York.

Enforceability of Judgments

Since some assets of the Issuer and Guarantors are outside the United States, any judgment obtained in the United States against the Issuer or certain Guarantors, including judgments with respect to the payment of principal, premium, if any, interest, redemption price and any purchase price with respect to the Notes, may not be collectible within the United States. See "Limitations on Validity and Enforceability of the Guarantees."

Consent to Jurisdiction and Service

In relation to any legal action or proceedings arising out of or in connection with the Indenture and the Notes and the Guarantees, the Parent Guarantor and each Guarantor that is organized under laws other than the United States or a state thereof will in the Indenture (1) irrevocably submit to the jurisdiction of the federal and state courts in the Borough of Manhattan in the City, County and State of New York, United States, (2) consent that any such action or proceeding may be brought in such courts and waive any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agree not to plead or claim the same, (3) designate and appoint the Issuer as its authorized agent upon which process may be served in any such action or proceeding that may be instituted in any such court and (4) agree that service of any process, summons, notice or document by U.S. registered mail addressed to the Issuer, with written notice of said service to such Person at the address of the Issuer set forth in the Indenture shall be effective service of process for any such action or proceeding brought in any such court.

Currency Indemnity

The U.S. dollar is the sole currency (the "*Required Currency*") of account and payment for all sums payable by the Issuer or any Guarantor under or in connection with the Notes, the Indenture and the Guarantees, including damages. Any amount with respect to the Notes, Indenture or Guarantees received or recovered in a currency other than the Required Currency, whether as a result of, or the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer or any Guarantor or otherwise by any noteholder or by the Trustee, in respect of any sum expressed to be due to it from the Issuer or any Guarantor will only constitute a discharge to the Issuer or any Guarantor to the extent of the Required Currency amount which the recipient is able to

purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

If that Required Currency amount is less than the Required Currency amount expressed to be due to the recipient or the Trustee under the Notes, the Issuer and each Guarantor will indemnify such recipient and/or the Trustee against any loss sustained by it as a result. In any event, the Issuer and each Guarantor will indemnify the recipient against the cost of making any such purchase. For the purposes of this currency indemnity provision, it will be *prima facie* evidence of the matter stated therein, for the holder of a Note or the Trustee to certify in a manner satisfactory to the Issuer (indicating the sources of information used) the loss it incurred in making any such purchase. These indemnities constitute a separate and independent obligation from the Issuer's and each Guarantor's other obligations, will give rise to a separate and independent cause of action, will apply irrespective of any waiver granted by any holder of a Note or the Trustee (other than a waiver of the indemnities set out herein) and will continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under any Note or to the Trustee. For the purposes of determining the amount in a currency other than the Required Currency, such amount shall be determined using the Exchange Rate then in effect.

"*Exchange Rate*" means, on any day, the rate at which the currency other than the Required Currency may be exchanged into the Required Currency at approximately 11:00 a.m., New York City time, on such date on the Bloomberg Key Cross Currency Rates Page for the relevant currency. In the event that such rate does not appear on any Bloomberg Key Cross Currency Rate Page, the Exchange Rate shall be determined by the Issuer in good faith.

Certain Definitions

"*Acquired Indebtedness*" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged, amalgamated or consolidated with or into or becomes a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is Incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of such specified Person, and

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

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means 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 Note on any applicable redemption date, as calculated by the Issuer, the greater of:

(1) 1.0% of the then outstanding principal amount of the Note; and

(2) the excess, if any, of

(a) the present value at such redemption date of (i) the redemption price of the Note at , 2024 (such redemption price being set forth in the applicable table appearing above under "—Optional Redemption") *plus* (ii) all required interest payments due on the Note through , 2024 (excluding accrued but unpaid interest to (but not including) the redemption date), computed using a discount rate equal to the Treasury Rate plus 50 basis points; over

(b) the then outstanding principal amount of the Note.

"*Applicable Proceeds*" means 100.0% of the Net Cash Proceeds from an Asset Sale; *provided* that so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Applicable Proceeds shall be reduced to (1) 50.0% of the Net Cash Proceeds from an Asset Sale if, on a Pro Forma Basis after giving effect to such Asset Sale and the use of proceeds therefrom, the Consolidated Senior Secured Net Debt Ratio would be less than or equal to 3.50 to 1.00 but greater than 3.00 to 1.00 or (2) 0% if, on a Pro Forma Basis after giving effect to such Asset Sale and the use of proceeds therefrom, the Consolidated Senior Secured Net Debt Ratio would be less than or equal to 3.00 to 1.00.

"*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/Leaseback Transaction) of the Parent Guarantor or any Restricted Subsidiary, or

(2) the issuance or sale of Equity Interests (other than preferred stock of Restricted Subsidiaries issued in compliance with the covenant described under "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" and directors' qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary of the Parent Guarantor (other than to the Parent Guarantor or another Restricted Subsidiary) (whether in a single transaction or a series of related transactions),

(each of the foregoing referred to in this definition as a "*disposition*"). Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(a) a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the Parent Guarantor and its Restricted Subsidiaries (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);

(b) the sale, conveyance, lease or other disposition of all or substantially all of the assets of the Parent Guarantor in compliance with the provisions described under "—Certain Covenants—Merger, Consolidation, Amalgamation or Sale of All or Substantially All Assets" or any disposition that constitutes a Change of Control;

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

(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary, in a single transaction or series of related transactions, with an aggregate Fair Market Value of less than or equal to the $75.0 million;

(e) any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Restricted Subsidiary to the Parent Guarantor or by the Parent Guarantor or a Restricted Subsidiary to another Restricted Subsidiary;

(f) the creation of any Lien permitted under the Indenture;

(g) any issuance, sale, pledge or other disposition of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(h) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

(i) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(j) a sale or transfer of accounts receivable, or participations therein, and related assets of the type specified in the definition of "Receivables Financing" to a Receivables Subsidiary in a Qualified Receivables Financing or in factoring or similar transactions;

(k) a transfer of accounts receivable and related assets of the type specified in the definition of "Receivables Financing" (or a fractional undivided interest therein) by a Receivables Subsidiary in a Qualified Receivables Financing;

(l) any exchange of assets for Related Business Assets (including a combination of Related Business Assets and a *de minimis* amount of cash or Cash Equivalents) of comparable or greater market value, as determined in good faith by the Parent Guarantor;

(m)(i) non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles and (ii) exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the ordinary course of business of the Parent Guarantor and the Restricted Subsidiaries of the Parent Guarantor;

(n) any Sale/Leaseback Transaction with respect to property constructed or acquired by the Parent Guarantor or any of its Restricted Subsidiaries after the Issue Date within twelve months of the construction or acquisition of such property, as applicable;

(o) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the Parent Guarantor or any Restricted Subsidiary of the Parent Guarantor, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

(p) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events and (except for purposes of calculating Net Cash Proceeds of any Asset Sale under the second and fourth paragraphs under "—Certain Covenants—Asset Sales") dispositions necessary or advisable (as determined by the Parent Guarantor in good faith) in order to consummate any acquisition of any Person, business or assets;

(q) dispositions of Investments (including Equity Interests) in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements or rights of first refusal between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(r) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(s) the issuance of directors' qualifying shares and shares issued to foreign nationals to the extent required by applicable law;

(t) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property that is purchased within 90 days of such disposition; and

(u) a sale or transfer of equipment receivables, or participations therein, and related assets.

For the avoidance of doubt, the unwinding of Swap Contracts shall not be deemed to constitute an Asset Sale.

"*beneficial owner*" has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will not be deemed to have beneficial ownership of any securities that such "person" has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms "*beneficial ownership*," "*beneficially owns*" and "*beneficially owned*" have a corresponding meaning.

"*Board of Directors*" means as to any Person, the board of directors, board of managers, sole member or managing member or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers, sole member or managing member or other governing body of such entity, or in each case, any duly authorized committee thereof, and the term "*directors*" means members of the Board of Directors.

"*Business Day*" means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law or regulation to close in the State of New York or, with respect to any payments to be made under the Indenture, the place of payment.

"*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 (it being understood and agreed, for the avoidance of doubt, that "cash-settled phantom appreciation programs" in connection with employee benefits that do not require a dividend or distribution shall not constitute Capital Stock).

"*Cash Contribution Amount*" means the aggregate amount of cash contributions made to the capital of the Issuer or any Guarantor and designated as a "Cash Contribution Amount" as described in the definition of "Contribution Indebtedness."

"*Cash Equivalents*" means:

(1) U.S. dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member state of the European Union and, with respect to any Foreign Subsidiaries, other currencies held by such Foreign Subsidiary in the ordinary course of business;

(2) securities issued or directly fully guaranteed or insured by the government of the United States, the United Kingdom or any country that is a member of the European Union (as of the Issue Date) or any agency or instrumentality thereof in each case with maturities not exceeding two years from the date of acquisition;

(3) money market deposits, certificates of deposit, time deposits and eurodollar time deposits with maturities of two years or less from the date of acquisition, bankers' acceptances, in each case with maturities not exceeding two years, and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $250.0 million in the case of domestic banks or $100.0 million (or the dollar equivalent thereof) in the case of foreign banks;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with any financial institution or securities dealers of recognized national standing meeting the qualifications specified in clause (3) above;

(5) commercial paper or variable or fixed rate notes issued by a corporation or other Person (other than an Affiliate of the Parent Guarantor) rated at least "A-2" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within two years after the date of acquisition;

(6) readily marketable direct obligations issued by any state, commonwealth or territory of the United States of America or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;

(7) Indebtedness issued by Persons with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least "A-2" or "P-2" from either S&P or Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency);

(8) investment funds investing at least 95% of their assets in investments of the types described in clauses (1) through (7) above and (9) and (10) below;

(9) 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 (or reasonably equivalent ratings of another internationally recognized ratings agency); and

(10) in the case of investments by any Foreign Subsidiary or investments made in a country outside the United States of America, other investments of comparable tenor and credit quality to those described in the foregoing clauses (1) through (9) customarily utilized in the countries where such Foreign Subsidiary is located or in which such investment is made.

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

"*Cash Management Services*" means any of the following to the extent not constituting a line of credit (other than an overnight draft facility that is not in default): automated clearing house transactions, treasury and/or cash management services, including, without limitation, treasury, depository, pooling, overdraft, credit, purchasing or debit card, non-card e-payables services, electronic funds transfer, treasury management services (including controlled disbursement services, overdraft automatic clearing house fund transfer services, return items and interstate depository network services), other demand deposit or operating account relationships, foreign exchange facilities and merchant services.

"*CFC*" means any Subsidiary of the Issuer or any Subsidiary of a Guarantor organized in the United States, any state thereof or the District of Columbia, in each case, which Subsidiary is a "controlled foreign corporation" within the meaning of Section 957 of the Code and any of such Subsidiary's direct or indirect Subsidiaries.

"*CFC Holdco*" means any Subsidiary of the Issuer or any Subsidiary of a Guarantor organized in the United States any state thereof or the District of Columbia, in each case, which Subsidiary owns no material assets other than equity interests of one or more CFCs and any of such Subsidiary's direct or indirect Subsidiaries.

"Change of Control" means (a) any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than a Permitted Holder, acquires beneficial ownership of Voting Stock of the Parent Guarantor representing more than 50.0% of the aggregate ordinary voting power for the election of directors of the Parent Guarantor; or (b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Parent Guarantor and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder;

"*Change of Control Triggering Event*" means the occurrence of a Change of Control that is accompanied or followed by a downgrade by one or more gradations, including gradations within ratings categories as well as between ratings categories (unless after any such downgrade, the Notes maintain an Investment grade Rating from any Rating Agency), or withdrawal of the rating of the Notes within the Ratings Decline Period, in each case by at least two of the three Rating Agencies, as a result of which the rating of the Notes on the last day of such Ratings Decline Period is below the rating by such Rating Agencies in effect immediately preceding the first public announcement of the Change of Control (or occurrence thereof if such Change of Control occurs prior to public announcement or has been withdrawn).

"*Code*" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"*Consolidated EBITDA*" means, with respect to any Person and its Restricted Subsidiaries on a consolidated basis for any period, the Consolidated Net Income of such Person for such period:

(1) increased, in each case to the extent deducted and not added back in calculating such Consolidated Net Income (and without duplication), by:

(a) provision for taxes based on income, profits or capital, including federal, state, franchise, excise, property and similar taxes and foreign withholding taxes paid or accrued, including giving effect to any penalties and interest with respect thereto, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits and including an amount equal to the amount of tax distributions actually made to the holders of Equity Interests of such Person or its Restricted Subsidiaries or any direct or indirect parent of such Person or its Restricted Subsidiaries in respect of such period (in each case, to the extent attributable to the operations of such Person and its Restricted Subsidiaries), which shall be included as though such amounts had been paid as income taxes directly by such Person or its Restricted Subsidiaries; *plus*

(b) Consolidated Interest Expense; *plus*

(c) all depreciation and amortization charges and expenses, including amortization or expense recorded for upfront payments related to any contract signing and signing bonus and incentive payments; *plus*

(d) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any Restricted Subsidiary of such Person that is not a wholly owned Restricted Subsidiary of such Person; *plus*

(e) earn-out obligations incurred in connection with any acquisition or other Investment and paid or accrued during the applicable period; *plus*

(f) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of equity interests held by management and all losses, charges and expenses related to payments made to holders of options or other derivative equity interests in the common equity of such Person or any direct or indirect parent of the Parent Guarantor in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution; *plus*

(g) all non-cash losses, charges and expenses, including any write-offs or write-downs; *provided* that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period, (i) such Person may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated and (ii) to the extent such Person does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; *plus*

(h) all costs and expenses in connection with pre-opening and opening and closure and/or consolidation of facilities that were not already excluded in calculating such Consolidated Net Income; *plus*

(i) restructuring charges, accruals or reserves and business optimization expense, including any restructuring costs and integration costs incurred in connection with any acquisitions, start-up costs (including entry into new market/channels and new service offerings), costs related to the closure, relocation, reconfiguration and/or consolidation of facilities and costs to relocate employees, integration and transaction costs, retention charges, severance, contract termination costs, recruiting and signing bonuses and expenses, future lease commitments, systems establishment costs, conversion costs and excess pension charges and consulting fees, expenses attributable to the implementation of costs savings initiatives, costs associated with tax projects/audits and costs consisting of professional consulting or other fees relating to any of the foregoing; *plus*

(j) Pro Forma Cost Savings; *plus*

(k) all adjustments of the nature used in connection with the calculation of "Adjusted EBIT" and "Adjusted EBITDA" (or similar pro forma non-GAAP measures) as set forth in the "Offering Memorandum Summary" section in this Offering Memorandum relating to this offering of the Notes that contains a reconciliation of net income to such measure to the extent adjustments of such nature continue to be applicable during the period in which Consolidated EBITDA is being calculated; *provided* that any such adjustments that consist of reductions in costs and other operating improvements or synergies shall be calculated in accordance with, and satisfy the requirements specified in, the definition of "Pro Forma Basis"; *plus*

(l) the amount of loss or discount on sale of receivables and related assets to the Receivables Subsidiary in connection with a Receivables Financing; *plus*

(m) with respect to any joint venture that is not a Restricted Subsidiary, an amount equal to the proportion of those items described in clauses (a), (b) and (c) above relating to such joint venture corresponding to such Person's and the Restricted Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Restricted Subsidiary) solely to the extent Consolidated Net Income was reduced thereby;

(2) *decreased* (without duplication and to the extent increasing such Consolidated Net Income for such period) by (i) non-cash gains or income, excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated

cash charges that were deducted (and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Issue Date and (ii) the amount of any minority interest income consisting of a Subsidiary loss attributable to minority equity interest of third parties in any non-Wholly Owned Subsidiary (to the extent not deducted from Consolidated Net Income for such period);

(3) *increased* (with respect to losses) or *decreased* (with respect to gains) by, without duplication, any net realized gains and losses relating to (i) amounts denominated in foreign currencies resulting from the application of FASB ASC 830 (including net realized gains and losses from exchange rate fluctuations on intercompany balances and balance sheet items, net of realized gains or losses from related Swap Contracts (entered into in the ordinary course of business or consistent with past practice)) or (ii) any other amounts denominated in or otherwise trued-up to provide similar accounting as if it were denominated in foreign currencies; and

(4) *increased* (with respect to losses) or *decreased* (with respect to gains) by, without duplication, any gain or loss relating to Swap Contracts (excluding Swap Contracts entered into in the ordinary course of business or consistent with past practice);

provided that the Parent Guarantor may, in its sole discretion, elect to not make any adjustment for any item pursuant to the foregoing clauses (1) through (4) above if any such item individually is less than $1.0 million in any fiscal quarter.

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

(a) the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including pay in kind interest payments, amortization of original issue discount, the interest component of Financing Lease Obligations and net payments and receipts (if any) pursuant to interest rate Swap Contracts (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of Indebtedness, Swap Contracts or other derivative instruments, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, discounts, fees and expenses and expensing of any bridge, commitment or other financing fees, costs of surety bonds, charges owed with respect to letters of credit, bankers' acceptances or similar facilities, and all discounts, commissions, fees and other charges associated with any Receivables Financing); *plus*

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

(c) interest income of the referent Person and its Restricted Subsidiaries for such period;

provided that in the case of any Person that became a Restricted Subsidiary of such Person after the commencement of such four-quarter period, the interest expense of such Person paid in cash prior to the date on which it became a Restricted Subsidiary of such Person will be disregarded. For purposes of this definition, interest on Financing Lease Obligations will be deemed to accrue at the interest rate reasonably determined by such Person to be the rate of interest implicit in such Financing Lease Obligations in accordance with GAAP.

"*Consolidated Net Income*" means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP and before any reduction in respect of Preferred Stock dividends**;** *provided* that (without duplication):

(a) all net after-tax extraordinary, nonrecurring, infrequent, exceptional or unusual gains, losses, income, expenses and charges, in each case as determined in good faith by such Person, and in any event including, without limitation, all restructuring, severance, relocation, retention and completion payments, consolidation, integration or other similar charges and expenses, contract termination costs, system establishment charges, conversion costs, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments, settlements or modifications to pension and post-retirement employee benefit plans, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to any acquisition or Permitted Investment (including any transition-related expenses (including retention or transaction-related bonuses or payments) incurred before, on or after the Issue Date), will be excluded;

(b) (i) transaction fees, costs and expenses incurred in connection with the consummation of any equity issuances, investments, acquisition transactions, dispositions, recapitalizations, mergers, amalgamations, option buyouts and the Incurrence, modification or repayment of Indebtedness permitted to be Incurred under the Indenture (including any Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions and (ii) without duplication of any of the foregoing, non-operating or non-recurring professional fees, costs and expenses for such period will be excluded;

(c) [Reserved];

(d) all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions, including the sale or other disposition of any Equity Interests of any Person, other than in the ordinary course of business (as determined in good faith by such Person) will be excluded;

(e) all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Swap Contracts or other derivative instruments (including deferred financing costs written off and premiums paid) will be excluded;

(f) all non-cash gains, losses, expenses or charges attributable to the movement in the mark-to-market valuation of Indebtedness, Swap Contracts or other derivative instruments will be excluded;

(g) any non-cash or unrealized currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Swap Contracts for currency exchange risk), will be excluded;

(h) (i) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or converted into cash) with respect to such equity ownership to the referent Person or a Restricted Subsidiary thereof in respect of such period and (ii) the net income for such period will include any ordinary course dividends or distributions or other payments paid in cash (or converted into cash) with respect to such equity ownership received from any such Person during such period in excess of the amounts included in subclause (i) above;

(i) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies will be excluded;

(j) the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to any acquisition consummated before or after the Issue Date, and the amortization, write-down or write-off of any amounts thereof, net of taxes, will be excluded;

(k) all non-cash impairment charges and asset write-ups, write-downs and write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising from the application of GAAP, will be excluded;

(l) all non-cash expenses realized in connection with or resulting from equity or equity-linked compensation plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;

(m) any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement will be excluded;

(n) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses, costs of surety bonds, charges owed with respect to letters of credit, bankers' acceptances or similar facilities, and expensing of any bridge, commitment or other financing fees (including in connection with a transaction undertaken but not completed), will be excluded;

(o) all discounts, commissions, fees and other charges (including interest expense) associated with any Receivables Financing will be excluded;

(p) (i) the non-cash portion of "straight-line" rent expense will be excluded and (ii) the cash portion of "straight-line" rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(q) expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a good faith determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount (i) has not been denied by the applicable carrier in writing and (ii) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed within such 365-day period); *provided* that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (q);

(r) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

(s) non-cash charges or income related to adjustments to deferred tax asset valuation allowances will be excluded;

(t) cash dividends or returns of capital from Investments (such return of capital not reducing the ownership interest in the underlying Investment), in each case received during such period, to the extent not otherwise included in Consolidated Net Income for that period or any prior period subsequent to the Issue Date, will be included;

(u) solely for the purpose of determining the amount available for Restricted Payments under clause (c) of the first paragraph under "—Certain Covenants—Limitation on Restricted Payments," and without duplication of provisions under clause (c) of the first paragraph under "—Certain Covenants—Limitation on Restricted Payments" with respect to cash dividends or returns on Investments, the net income (or loss) for such period of any Restricted Subsidiary (other than the Issuer or a Guarantor) will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation 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 such Person 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 such Person or any of its Restricted Subsidiaries in respect of such period, to the extent not already included therein (subject, in the case of a dividend to another Restricted Subsidiary (other than the Issuer or a Guarantor), to the limitation contained in this clause (u));

(v) all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations (and all related expenses) other than in the ordinary course of business (as determined in good faith by such Person) will be excluded; and

(w) any non-cash interest expense and non-cash interest income, in each case to the extent there is no associated cash disbursement or receipt, as the case may be, before the earlier of the maturity date of the Notes and the date on which all the Notes cease to be outstanding, shall be excluded;

provided that the Parent Guarantor may, in its sole discretion, elect to not make any adjustment for any item pursuant to clauses (a) through (w) above if any such item individually is less than $1.0 million in any fiscal quarter.

For the purpose of the covenant described under "—Certain Covenants—Limitation on Restricted Payments" only, there shall be excluded from Consolidated Net Income any income arising from the sale or other disposition of Restricted Investments, from repurchases or redemptions of Restricted Investments, from repayments of loans or advances which constituted Restricted Investments or from any dividends, repayments of loans or advances or other transfers of assets from Unrestricted Subsidiaries, in each case to the extent such amounts increase the amount of Restricted Payments permitted under such covenant pursuant to clauses (c)(5) or (c)(6) of the first paragraph thereof.

"*Consolidated Net Tangible Assets*" means the aggregate amount of assets (including deferred tax assets (without reducing such deferred tax assets by deferred tax liabilities), and less applicable reserves and other properly deductible items) after deducting therefrom all goodwill, trade names, trademarks, patents, unamortized debt discount and expense, investments, and other like intangibles, all as set forth in the most recent consolidated balance sheet of the Parent Guarantor and its Restricted Subsidiaries and computed in accordance with GAAP, determined on a Pro Forma Basis.

"*Consolidated Senior Secured Net Debt Ratio*" means, as of any date of determination, the ratio of (1) (x) Consolidated Total Indebtedness of the Parent Guarantor that is secured by a Lien as of such date and not subordinated in right of payment to the Notes *minus* (y) the amount of unrestricted cash and Cash Equivalents that would be stated on the balance sheet of the Parent Guarantor and its Restricted Subsidiaries for which internal financial statements are available immediately preceding such date and held by the Parent Guarantor and its Restricted Subsidiaries as of such date of determination, and in each case, calculated on a Pro Forma Basis, to (2) the Consolidated EBITDA of the Parent Guarantor for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding such date, calculated on a Pro Forma Basis; *provided* that, in the event that the Parent Guarantor shall classify Indebtedness Incurred on the date of determination as secured in part pursuant to clause (24) of the definition of "Permitted Liens" and in part pursuant to one or more other clauses of such definition (other than Liens Incurred under clause (6) thereof securing Indebtedness Incurred under clause (a)(B) of the definition of "Permitted Debt") as provided in the final paragraph of such definition, any calculation of Consolidated Total Indebtedness that is secured by a Lien for purposes of clause (x) above on such date (but not in respect of any future calculation following such date) shall not include any such Indebtedness (and shall not give effect to any repayment, repurchase, redemption, defeasance or other acquisition, retirement or discharge of Indebtedness from the proceeds thereof) to the extent secured pursuant to any such other clause of such definition. For purposes of calculating the Consolidated Senior Secured Net Debt Ratio with respect to any revolving Indebtedness, the Parent Guarantor may elect, at any time (which election may not be changed with respect to such revolving Indebtedness), to either (x) give pro forma effect to the Incurrence of the entire committed amount of such Indebtedness, in which case such committed amount may thereafter be borrowed or reborrowed, in whole or in part, from time to time, without further compliance with the Consolidated Senior Secured Net Debt Ratio component of any provision hereunder, or (y) give pro forma effect to the Incurrence of the actual amount drawn under such revolving Indebtedness, in which case, the ability to Incur the amounts committed to under such Indebtedness will be subject to the Consolidated Senior Secured Net Debt Ratio (to the extent being Incurred pursuant to such ratio) at the time of each such Incurrence. In the Indenture, the Parent Guarantor will elect that on the Issue Date, the entire committed amount of the revolving portion of the Senior Credit Agreement shall be deemed to have been Incurred on the Issue Date (with any subsequent permanent reductions in the committed amount of such revolving credit facility reducing the amount Incurred on the Issue Date).

"*Consolidated Total Assets*" means the total consolidated assets of the Parent Guarantor and its Restricted Subsidiaries, as shown on the most recent consolidated balance sheet of the Parent Guarantor and its Restricted Subsidiaries, determined on a Pro Forma Basis.

"*Consolidated Total Indebtedness*" means, as of any date of determination, an amount equal to (1) the aggregate principal amount of Indebtedness of the Parent Guarantor and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis, to the extent required to be recorded on a balance sheet in accordance with GAAP, consisting of funded Indebtedness for borrowed money or Financing Lease Obligations (other than Indebtedness with respect to a Qualified Receivables Financing, Cash Management Services, or as a result of the mark-to-market impact of a Swap Contract, if any, or that are otherwise removed in consolidation or the proceeds of which have been deposited in a customary escrow account or similar arrangement (but only for so long as such proceeds remain in such account or arrangement) and excluding obligations in respect of letters of credit except to the extent of unreimbursed amounts thereunder) and (2) the aggregate amount of all outstanding Disqualified Stock of the Parent Guarantor and all Disqualified Stock and 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, in each case of clauses (1) and (2) above, based on internal financial statements that are available immediately preceding such date and calculated on a Pro Forma Basis.

"*Consolidated Total Net Debt Ratio*" means, as of any date of determination, the ratio of (1) (x) Consolidated Total Indebtedness of the Parent Guarantor as of such date *minus* (y) the amount of unrestricted cash and Cash Equivalents that would be stated on the balance sheet of the Parent Guarantor and its Restricted Subsidiaries for which internal financial statements are available immediately preceding such date and held by the Parent Guarantor and its Restricted Subsidiaries as of such date of determination, and in each case, calculated on a Pro Forma Basis, to (2) the Consolidated EBITDA of the Parent Guarantor for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding such date, calculated on a Pro Forma Basis.

"*continuing*" means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

"*Contingent Obligations*" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"*Contribution Indebtedness*" means Indebtedness of the Parent Guarantor or any Restricted Subsidiary in an aggregate principal amount not greater than the aggregate amount of cash contributions (other than Excluded Contributions) made to the capital of the Parent Guarantor or any Restricted Subsidiary (other than, in the case of such Restricted Subsidiary, contributions by the Parent Guarantor or any other Restricted Subsidiary to its capital) after the Issue Date and designated as a Cash Contribution Amount; *provided* that such Contribution Indebtedness (a) is Incurred within 210 days after the making of such cash contributions and (b) is so designated as Contribution Indebtedness pursuant to an Officer's Certificate on the Incurrence date thereof.

"*Credit Agreement*" means (i) the Senior Credit Agreement and (ii) whether or not the Senior Credit Agreement remains outstanding, if designated by a Designating Party to be included in the definition of "Credit Agreement," one or more (A) debt facilities, indentures or commercial paper facilities providing for revolving credit loans, term loans, notes, debentures, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, notes, mortgages, guarantees, collateral documents, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances) or (C) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased; *provided* that such increase in borrowings is permitted under the Indenture, replaced or refunded in whole or in part from time to time and whether by the same or any other agent, lender or investor or group of lenders or investors.

"*Data Download Program*" means the interactive electronic interface made available by the Board of Governors of the Federal Reserve System or any successor information system.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Designated Non-cash Consideration*" means the Fair Market Value of non-cash consideration received by the Parent Guarantor or one of its Restricted Subsidiaries 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, 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 Parent Guarantor or any direct or indirect parent of the Parent Guarantor, as applicable (other than Excluded Equity), that is issued after the Issue Date for cash and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on the issuance date thereof, the cash proceeds of which are contributed to the capital of the Parent Guarantor (if issued by any direct or indirect parent of the Parent Guarantor) and excluded from the calculation set forth in clause (c) of the first paragraph of the covenant described under "—Certain Covenants—Limitation on Restricted Payments."

"*Designating Party*" means, for the purpose of taking certain actions identified as such in the Indenture, the Parent Guarantor or the Issuer, as the case may be.

"*Disqualified Stock*" means, with respect to any Person, any Equity Interests of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is puttable, redeemable or exchangeable), in each case, at the option of the holder thereof or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale; *provided* that the relevant asset sale or change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Equity Interests than the asset sale and change of control provisions applicable to the Notes and any purchase requirement triggered thereby may not become operative until compliance with the asset sale and change of control provisions applicable to the Notes (including the purchase of any Notes tendered pursuant thereto)),

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock, or

(3) is redeemable at the option of the holder thereof, in whole or in part,

in each case, prior to the date that is 91 days after the earlier of the maturity date of the Notes and the date the Notes are no longer outstanding; *provided* that only the portion of Equity Interests that so mature or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided*, *further*, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Parent Guarantor or its Subsidiaries or a direct or indirect parent of the Parent Guarantor or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Parent Guarantor or its Subsidiaries or a direct or indirect parent of the Parent Guarantor in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; *provided*, *further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any Capital Stock that arises only by reason of the happening of a contingency or any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Equity Offering*" means any public or private sale on or after the Issue Date of capital stock or Preferred Stock of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, as applicable (other than Disqualified Stock), other than:

(1) public offerings with respect to the Parent Guarantor's or such direct or indirect parent's common stock registered on Form S-4 or Form S-8 or successor form thereto;

(2) issuances to any Subsidiary of the Parent Guarantor; and

(3) any such public or private sale that constitutes an Excluded Contribution or Refunding Capital Stock.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Excluded Contributions*" means the Net Cash Proceeds and Cash Equivalents, or the Fair Market Value of other assets, received by the Parent Guarantor after the Issue Date from:

(1) contributions to its common equity capital, and

(2) the sale of Capital Stock (other than Excluded Equity) of the Parent Guarantor,

in each case designated as Excluded Contributions pursuant to an Officer's Certificate, or that are utilized to make a Restricted Payment pursuant to clause (2) of the second paragraph of the covenant described under "—Certain Covenants—Limitation on Restricted Payments." Excluded Contributions will be excluded from the calculation set forth in clause (c) of the first paragraph of "—Certain Covenants—Limitation on Restricted Payments."

"*Excluded Equity*" means (i) Disqualified Stock, (ii) any Equity Interests issued or sold to a Restricted Subsidiary or any employee stock ownership plan or trust established by the Parent Guarantor or any of its Subsidiaries or a direct or indirect parent of

the Parent Guarantor (to the extent such employee stock ownership plan or trust has been funded by the Parent Guarantor or any Subsidiary or a direct or indirect parent of the Parent Guarantor) and (iii) any Equity Interest that has already been used or designated (x) as (or the proceeds of which have been used or designated as) a Cash Contribution Amount, Designated Preferred Stock, an Excluded Contribution or Refunding Capital Stock, or (y) to increase the amount available under clause (4)(a) of the second paragraph under "—Certain Covenants—Limitation on Restricted Payments" or clause (14) of the definition of "Permitted Investments" or is proceeds of Indebtedness referred to in clause (13)(b) of the second paragraph under "—Certain Covenants—Limitation on Restricted Payments."

"*Exempted Indebtedness*" means, as of any particular time, all then outstanding Indebtedness of the Parent Guarantor and Principal Property Subsidiaries incurred after the Issue Date and secured by any mortgage, security interest, pledge or lien other than those permitted by the second paragraph under "—Certain Covenants—Liens."

"*Existing 2024 Notes*" means, collectively, the Issuer's 4.875% Senior Notes due 2024 and 4.250% Senior Notes due 2024.

"*Existing 2024 Notes Indenture*" means the indenture, dated as of August 16, 2016, among the Issuer, the guarantors party thereto, Wilmington Trust, National Association, as trustee, and certain other parties party thereto governing the Existing 2024 Notes, as amended or supplemented from time to time.

"*Existing 2025 Notes*" means Dutch Holdings' 3.75% Senior Notes due 2025.

"*Existing 2025 Notes Indenture*" means the indenture, dated as of September 27, 2016, among Dutch Holdings, the guarantors party thereto, Wilmington Trust, National Association, as trustee, and certain other parties party thereto governing the Existing 2025 Notes, as amended or supplemented from time to time.

"*Existing 2027 Notes*" means the 4.750% Senior Notes due 2027 of the Issuer and Dutch Holdings.

"*Existing 2027 Notes Indenture*" means the indenture, dated as of June 15, 2020, among the Issuer, Dutch Holdings, the guarantors party thereto, Wilmington Trust, National Association, as trustee, and certain other parties party thereto governing the Existing 2027 Notes, as amended or supplemented from time to time.

"*Existing Notes*" mean, collectively, the 2024 Notes, the 2025 Notes and the 2027 Notes.

"*Existing Notes Indentures*" means, collectively, the Existing 2024 Note Indenture, the Existing 2025 Notes Indenture and the Existing 2027 Note Indenture.

"*Fair Market Value*" means, with respect to any asset or property, the price that could be negotiated in an arm's-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction (as determined in good faith by the senior management or the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, whose determination will be conclusive for all purposes under the Indenture and the Notes).

"*Financing Lease Obligation*" means, as applied to any Person, any obligation that is required to be accounted for as a financing or capital lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP. At the time any determination thereof is to be made, the amount of the liability in respect of a financing or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP.

"*Fitch*" means Fitch Ratings, Inc. or any successor to the rating agency business thereof.

"*Fixed Charge Coverage Ratio*" means, with respect to any Person as of any date, the ratio of (1) Consolidated EBITDA of such Person for the most recent period of four consecutive fiscal quarters for which internal financial statements are available immediately preceding the date on which such calculation of the Fixed Charge Coverage Ratio is made, calculated on a Pro Forma Basis for such period, to (2) the Fixed Charges of such Person for such period calculated on a Pro Forma Basis. In the event that the Parent Guarantor or any of its Restricted Subsidiaries Incurs or redeems or repays any Indebtedness (other than in the case of revolving credit borrowings or revolving advances under any Qualified Receivables Financing unless the related commitments have been terminated and such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems Preferred Stock or Disqualified Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to, substantially simultaneously with, or in connection with, the event for which the calculation of the Fixed Charge Coverage Ratio is

made, then the Fixed Charge Coverage Ratio shall be calculated on a Pro Forma Basis with respect thereto; *provided* that, in the event that the Parent Guarantor shall classify Indebtedness Incurred on the date of determination as Incurred in part as Ratio Debt and in part pursuant to one or more clauses of the definition of "Permitted Debt" (other than in respect of clause (o) of such definition) as provided in the third paragraph of such covenant, any calculation of Fixed Charges pursuant to this definition on such date (but not in respect of any future calculation following such date) shall not include any such Indebtedness (and shall not give effect to any repayment, repurchase, redemption, defeasance or other acquisition, retirement or discharge of Indebtedness from the proceeds thereof) to the extent Incurred pursuant to any such other clause of such definition.

"*Fixed Charges*" means, with respect to any Person for any period, the sum of:

(1) Consolidated Interest Expense of such Person for such period, and

(2) the product of (a) all cash dividend payments (excluding items eliminated in consolidation) on any series of Preferred Stock or Disqualified Stock of such Person and its Restricted Subsidiaries for such period and (b) a fraction, the numerator of which is one and the denominator of which is one *minus* the then current combined federal, state and local statutory tax rate of such Person and its Restricted Subsidiaries, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

"*Fixed GAAP Date*" means August 16, 2016; *provided* that at any time and from time to time after the Issue Date, the Parent Guarantor may by written notice to the Trustee elect to change the Fixed GAAP Date to be the date specified in such notice, and upon such notice, the Fixed GAAP Date shall be such date for all periods beginning on and after the date specified in such notice.

"*Fixed GAAP Terms*" means (a) the definitions of the terms "Consolidated Interest Expense," "Consolidated Net Income," "Consolidated Net Tangible Assets," "Consolidated Total Assets," "Consolidated Senior Secured Net Debt Ratio," "Consolidated Total Net Debt Ratio," "Consolidated Total Indebtedness," "Consolidated EBITDA," "Financing Lease Obligation" and "Indebtedness," (b) all defined terms in the Indenture to the extent used in or relating to any of the foregoing definitions, and all ratios and computations based on any of the foregoing definitions, and (c) any other term or provision of the Indenture or the Notes that, at the Parent Guarantor's election, may be specified by the Parent Guarantor by written notice to the Trustee from time to time; *provided* that the Parent Guarantor may elect to remove any term from constituting a Fixed GAAP Term.

"*Foreign Subsidiary*" means a Restricted Subsidiary not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia and any direct or indirect Subsidiary of such Restricted Subsidiary.

"*GAAP*" means generally accepted accounting principles in the United States of America as in effect on the Fixed GAAP Date (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of the Indenture), including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies); *provided* that the Parent Guarantor may at any time elect by written notice to the Trustee to use IFRS in lieu of GAAP for financial reporting purposes and, upon any such notice, references herein to GAAP shall thereafter be construed to mean (a) for periods beginning on and after the date specified in such notice, IFRS as in effect on the date specified in such notice (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of the Indenture) and (b) for prior periods, GAAP as defined in the first sentence of this definition (prior to this proviso). All ratios and computations based on GAAP contained in the Indenture shall be computed in conformity with GAAP.

"*guarantee*" means, as to any Person, a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"*Guarantee*" means any guarantee of the Obligations of the Issuer under the Indenture and the Notes in accordance with the provisions of the Indenture.

"*Guarantors*" means, collectively, (i) Parent Guarantor, (ii) each Restricted Subsidiary of the Parent Guarantor (other than the Issuer) that executes (or otherwise becomes a party to) the Indenture on the Issue Date, (iii) each other Restricted Subsidiary of the Parent Guarantor that Incurs a Guarantee of the Notes, including a Subsidiary of Parent Guarantor that, in connection with a designation of such Subsidiary (or any of its direct or indirect Subsidiaries) as a Successor Parent Guarantor, Guarantees the Notes in accordance with the provisions of the Indenture, (iv) any direct or indirect parent of Parent Guarantor that, in connection with a

designation of such parent (or any of its direct or indirect parents) as a Successor Parent Guarantor, Guarantees the Notes in accordance with the provisions of the Indenture, and (v) each Parent Guarantor that becomes a Prior Parent Guarantor as a result of a New Parent Guarantor Designation; *provided* that upon the release or discharge of such Person from its Guarantee in accordance with the Indenture, such Person shall automatically cease to be a Guarantor; *provided, further*, that no CFC or any CFC Holdco shall in any event be required to be a Guarantor.

"*holder*" or "*noteholder*" means the Person in whose name a Note is registered on the registrar's books.

"*IFRS*" means the International Financial Reporting Standards as issued by the International Accounting Standards Board.

"*Incur*" means, with respect to any Indebtedness, Capital Stock or Lien, to issue, assume, guarantee, incur or otherwise become liable for such Indebtedness, Capital Stock or Lien, as applicable; *provided* that any Indebtedness, Capital Stock or Lien of a Person existing at the time such Person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary.

"*Indebtedness*" means, with respect to any Person, without duplication:

(1) the principal of any indebtedness 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 deferred and unpaid purchase price of any property, (d) in respect of Financing Lease Obligations or (e) representing any Swap Contracts, in each case, if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Swap Contracts) would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any guarantee by such Person of the Indebtedness of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); *provided*, *however*, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value of such asset at such date of determination, and (b) the amount of such Indebtedness of such other Person.

The term "Indebtedness" shall not include any lease, concession or license of property (or Guarantee thereof) which would be considered a Non-Financing Lease Obligation, any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practices, or obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the Issue Date or in the ordinary course of business or consistent with past practices.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

(i) Contingent Obligations Incurred in the ordinary course of business or consistent with past practices;

(ii) obligations under or in respect of Receivables Financings;

(iii) any balance that constitutes a trade payable, accrued expense or similar obligation to a trade creditor, in each case Incurred in the ordinary course of business;

(iv) intercompany liabilities that would be eliminated on the consolidated balance sheet of the Parent Guarantor and its consolidated Subsidiaries;

(v) prepaid or deferred revenue arising in the ordinary course of business;

(vi) Cash Management Services;

(vii) in connection with the purchase by the Parent Guarantor or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided*, *however*, that,

at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;

(viii) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, deferred compensatory or employee or director equity plans, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage taxes;

(ix) Capital Stock (other than Disqualified Stock and Preferred Stock); or

(x) obligations, to the extent such obligations would otherwise constitute Indebtedness, under any agreement that has been irrevocably defeased or satisfied and discharged pursuant to the terms of such agreement.

"*Independent Financial Advisor*" means an accounting, appraisal or investment banking firm or consultant, in each case of nationally recognized standing that is, in the good faith determination of the Parent Guarantor, qualified to perform the task for which it has been engaged.

"*Initial Purchasers*" means the initial purchasers listed in this Offering Memorandum under "Plan of Distribution."

"*Investment Grade Rating*" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by Fitch or 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 U.S. government or any agency or instrumentality thereof (other than Cash Equivalents),

(2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Parent Guarantor and its Subsidiaries,

(3) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above and clause (4) below which fund may also hold immaterial amounts of cash pending investment and/or distribution, and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"*Investments* " means, with respect to any Person, (i) all investments by such Person in other Persons (including Affiliates) in the form of (a) loans (including guarantees of Indebtedness), (b) advances or capital contributions (excluding accounts receivable, trade credit and advances or other payments made to customers, dealers, suppliers and distributors and payroll, commission, travel and similar advances to officers, directors, managers, employees, consultants and independent contractors made in the ordinary course of business), and (c) purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any such other Person and (ii) investments that are required by GAAP to be classified on the balance sheet of the Parent Guarantor in the same manner as the other investments included in clause (i) of this definition to the extent such transactions involve the transfer of cash or other property; *provided* that Investments shall not include, in the case of the Parent Guarantor and the Restricted Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business. If the Parent Guarantor or any Restricted Subsidiary sells or otherwise disposes of any Equity Interests of any Restricted Subsidiary, or any Restricted Subsidiary issues any Equity Interests, in either case, such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Parent Guarantor, the Parent Guarantor shall be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Equity Interests of and all other Investments in such Restricted Subsidiary retained. In no event shall a guarantee of an operating lease of the Parent Guarantor or any Restricted Subsidiary be deemed an Investment. 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 Parent Guarantor's equity interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Parent Guarantor 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 Parent

Guarantor shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Parent Guarantor's "Investment" in such Subsidiary at the time of such redesignation *less*

(b) the portion (proportionate to the Parent Guarantor's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value at the time of such transfer.

The amount of any Investment outstanding at any time (including for purposes of calculating the amount of any Investment outstanding at any time under any provision of the covenant described under "—Certain Covenants—Limitation on Restricted Payments," and otherwise determining compliance with such covenant) shall be the original cost of such Investment (determined, in the case of any Investment made with assets of the Parent Guarantor or any Restricted Subsidiary, based on the Fair Market Value of the assets invested and without taking into account subsequent increases or decreases in value), reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Parent Guarantor or a Restricted Subsidiary in respect of such Investment and shall be net of any Investment by such Person in the Parent Guarantor or any Restricted Subsidiary.

"*Issue Date*" means , 2020.

"*joint venture*" means any joint venture or similar arrangement (in each case, regardless of legal formation), including but not limited to collaboration arrangements, profit sharing arrangements or other contractual arrangements.

"*JV Distributions*" means, at any time, 50% of the aggregate amount of all cash dividends or distributions received by the Parent Guarantor or any of its Restricted Subsidiaries as a return on an Investment in a Permitted Joint Venture during the period from the Issue Date through the end of the fiscal quarter most recently ended immediately prior to such date for which financial statements are internally available; *provided* that the Parent Guarantor or any of its Restricted Subsidiaries are not required to reinvest such dividends or distributions in the Permitted Joint Venture.

"*Leverage Excess Proceeds*" means with respect to any Asset Sale, the Net Cash Proceeds from such Asset Sale minus the Applicable Proceeds from such Asset Sale.

"*Lien*" means, with respect to any asset, any mortgage, lien, 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 or an agreement to sell be deemed to constitute a Lien.

"*Market Capitalization*" means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Parent Guarantor (or any successor entity) or any direct or indirect parent of the Parent Guarantor on the date of the declaration or making of the relevant Restricted Payment multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests for the 30 consecutive trading days immediately preceding the date of declaration or making of such Restricted Payment.

"*Moody's*" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"*Net Cash Proceeds*" means the aggregate cash proceeds (using the Fair Market Value of any Cash Equivalents) received by the Parent Guarantor or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received in respect of or upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Swap Contracts in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration (including, without limitation, legal, accounting and investment banking fees, and brokerage and sales commissions), and 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 related thereto), amounts required to be applied to

the repayment of principal, premium (if any) and interest on Indebtedness required (other than pursuant to the second paragraph of the covenant described under "—Certain Covenants—Asset Sales") to be paid as a result of such transaction, any costs associated with unwinding any related Swap Contracts in connection with such transaction and any deduction of appropriate amounts to be provided by the Parent Guarantor 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 Parent Guarantor or any of its Restricted Subsidiaries after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"*New Parent Guarantor Designation*" means a written notice provided by a Designating Party to the Trustee and the holders pursuant to which (a) the Designating Party designates a Guarantor to be "Parent Guarantor" (which, following the effectiveness of such designation, shall be a Successor Parent Guarantor) under the Indenture pursuant to a supplemental indenture, which will set forth the New Parent Guarantor Designation Effective Date, upon which all references to "Parent Guarantor" in the Indenture shall refer to such Successor Parent Guarantor (the Parent Guarantor immediately prior to the effectiveness of such designation shall be a Prior Parent Guarantor), and (b) the Designating Party certifies that such Successor Parent Guarantor shall own, directly or indirectly, all or substantially all of the assets and operations owned by the Prior Parent Guarantor immediately before the effectiveness of such designation; *provided* that if any "Parent Guarantor" is designated and, as a direct result of such designation, any entity that was a Restricted Subsidiary immediately prior to such designation (a "*Previous Restricted Subsidiary*") will no longer be a Restricted Subsidiary immediately following such designation, such Previous Restricted Subsidiary will be treated for purposes of the Indenture as having been designated an Unrestricted Subsidiary and the requirements set forth in the definition of "Unrestricted Subsidiary" and the requirements set forth in the covenant described under "—Certain Covenants—Limitation on Restricted Payments" (including, without limitation, the requirement set forth in the definition of "Investments" that the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time that such Unrestricted Subsidiary is designated an Unrestricted Subsidiary shall be treated as an Investment) must be complied with in order for the New Parent Guarantor Designation Effective Date to have occurred. On the New Parent Guarantor Designation Effective Date, such Prior Parent Guarantor will no longer be "Parent Guarantor" under the Indenture but will continue to be a "Guarantor" (unless and until such Guarantee is released in accordance with the terms of the Indenture) and, if such Prior Parent Guarantor is a Subsidiary of such Successor Parent Guarantor, a "Restricted Subsidiary" under the Indenture.

"*New Parent Guarantor Designation Effective Date*" means the date on which a New Parent Guarantor Designation becomes effective for purposes of the Indenture.

"*Non-Financing Lease Obligation*" means a lease obligation that is not required to be accounted for as a financing or capital lease on both the balance sheet and the income statement for financial reporting purposes in accordance with GAAP. For avoidance of doubt, a straight-line or operating lease shall be considered a Non-Financing Lease Obligation.

"*Non-Guarantor Subsidiary*" means any Restricted Subsidiary of the Parent Guarantor (other than the Issuer) that is not a Guarantor.

"*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), premium, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

"*Offering Memorandum*" means the Offering Memorandum related to this offering of Notes, dated , 2020.

"*Officer*" means, with respect to any Person, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary (or any person serving the equivalent function of any of the foregoing) of such Person (or of any direct or indirect parent or the general partner, managing member or sole member of such Person) or any individual designated as an "Officer" for purposes of the Indenture by the Board of Directors of such Person (or the Board of Directors of any direct or indirect parent or the general partner, managing member or sole member of such Person).

"*Officer's Certificate*" means a certificate signed on behalf of any Person required to deliver an Officer's Certificate under the Indenture by an Officer of such Person.

"*Opinion of Counsel*" means a written opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Parent Guarantor or its Restricted Subsidiaries.

"*Pari Passu Indebtedness*" means:

(1) with respect to the Issuer, the Notes and any Indebtedness that ranks *pari passu* in right of payment to the Notes; and

(2) with respect to any Guarantor, its Guarantee and any Indebtedness that ranks *pari passu* in right of payment to such Guarantor's Guarantee.

"*Permitted Asset Swap*" means the purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Parent Guarantor or any of its Restricted Subsidiaries and another Person; *provided* that such purchase and sale or exchange must occur within 90 days of each other and any cash or Cash Equivalents received must be applied in accordance with the covenant described under "—Certain Covenants—Asset Sales."

"*Permitted Debt*" shall have the meaning assigned thereto in the covenant described under "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock."

"*Permitted Holder*" means (a) any Person with a class or series of Voting Stock that is traded on a stock exchange or in the over-the-counter market (or any Subsidiary of such Person) unless (and until such time as) any other Person or group is deemed to be or becomes a beneficial owner of Voting Stock of such Person that is traded on a stock exchange or on the over-the-counter market representing more than 50% of the total voting power of the Voting Stock of such Person, and (b) any Person or group, together with its Affiliates, whose acquisition of beneficial ownership constitutes a Change of Control Triggering Event in respect of which a Change of Control Offer has been made, or is not required to be made, in each case in accordance with the requirements of the Indenture.

"*Permitted Investments*" means:

(1) any Investment in cash and Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(2) any Investment in the Parent Guarantor (including the Notes) or any Restricted Subsidiary;

(3) any Investments by Subsidiaries that are not Restricted Subsidiaries in other Subsidiaries that are not Restricted Subsidiaries;

(4) any Investment by the Parent Guarantor or any Restricted Subsidiary in a Person that is primarily 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, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Parent Guarantor or a Restricted Subsidiary (and any Investment held by such Person that was not acquired by such Person in contemplation of so becoming a Restricted Subsidiary or in contemplation of such merger, consolidation, amalgamation, transfer, conveyance or liquidation);

(5) any Investment in securities or other assets received in connection with an Asset Sale made pursuant to the provisions of "—Certain Covenants—Asset Sales" or any other disposition of assets not constituting an Asset Sale;

(6) any Investment (x) existing on the Issue Date, (y) made pursuant to binding commitments in effect on the Issue Date or (z) that replaces, refinances, refunds, renews or extends any Investment described under either of the immediately preceding clauses (x) or (y), *provided* that any such Investment is in an amount that does not exceed the amount replaced, refinanced, refunded, renewed or extended, except as contemplated pursuant to the terms of such Investment in existence on the Issue Date or as otherwise permitted under this definition or the covenant described under "—Certain Covenants—Limitation on Restricted Payments";

(7) loans and advances to, or guarantees of Indebtedness of, employees, directors, officers, managers, consultants or independent contractors in an aggregate amount, taken together with all other Investments made pursuant to this clause (7) that are at the time outstanding, not in excess of the greater of (x) $25.0 million and (y) 0.5% of Consolidated Total Assets;

(8) loans and advances to officers, directors, employees, managers, consultants and independent contractors for business-related travel and entertainment expenses, moving and relocation expenses and other similar expenses, in each case in the ordinary course of business;

(9) any Investment (x) acquired by the Parent Guarantor or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Parent Guarantor or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization by the Parent Guarantor or any such Restricted Subsidiary of such other Investment or accounts receivable, or (b) as a result of a foreclosure or other remedial action by the Parent Guarantor or any of its Restricted Subsidiaries with respect to any Investment or other transfer of title with respect to any Investment in default and (y) received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Parent Guarantor or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer, or (B) litigation, arbitration or other disputes;

(10) Swap Contracts and Cash Management Services permitted under clause (j) of "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock";

(11) any Investment by the Parent Guarantor or any of its Restricted Subsidiaries in a Similar Business (other than an Investment in an Unrestricted Subsidiary) in an aggregate amount, taken together with all other Investments made pursuant to this clause (11) that are at the time outstanding, not to exceed the greater of (x) $275.0 million and (y) 4.25% of Consolidated Total Assets; *provided*, *however*, that if any Investment pursuant to this clause (11) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (2) above and shall cease to have been made pursuant to this clause (11) for so long as such Person continues to be a Restricted Subsidiary;

(12) additional Investments by the Parent Guarantor or any of its Restricted Subsidiaries in an aggregate amount, taken together with all other Investments made pursuant to this clause (12) that are at the time outstanding, not to exceed the greater of (x) $330.0 million and (y) 5.25% of Consolidated Total Assets; *provided*, *however*, that if any Investment pursuant to this clause (12) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (2) above and shall cease to have been made pursuant to this clause (12) for so long as such Person continues to be a Restricted Subsidiary;

(13) 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 clause (2), (3), (4), (8), (9), (13) or (14) of such paragraph);

(14) Investments the payment for which consists of Equity Interests (other than Excluded Equity) of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, as applicable; *provided*, *however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (c) of the first paragraph of the covenant described under "—Certain Covenants—Limitation on Restricted Payments";

(15) Investments consisting of the leasing, licensing, sublicensing or contribution of intellectual property in the ordinary course of business or pursuant to joint marketing arrangements with other Persons;

(16) Investments consisting of purchases or acquisitions of inventory, supplies, materials and equipment or purchases, acquisitions, licenses, sublicenses or leases or subleases of intellectual property, or other rights or assets, in each case in the ordinary course of business;

(17) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;

(18) Investments of a Restricted Subsidiary acquired after the Issue Date or of an entity merged or amalgamated into or consolidated with a Restricted Subsidiary in a transaction that is not prohibited by the covenant described under "—Certain Covenants—Merger, Consolidation, Amalgamation or Sale of All or Substantially All Assets" after the Issue Date to the extent

that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(19) repurchases of the Notes and the Existing Notes;

(20) guarantees of Indebtedness permitted to be Incurred under "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," and Obligations relating to such Indebtedness and guarantees (other than guarantees of Indebtedness) in the ordinary course of business;

(21) advances, loans or extensions of trade credit in the ordinary course of business by the Parent Guarantor or any of its Restricted Subsidiaries;

(22) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business;

(23) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(24) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures Incurred in the ordinary course of business in connection with the cash management operations of the Parent Guarantor and its Subsidiaries;

(25) Investments in joint ventures of the Parent Guarantor or any of its Restricted Subsidiaries in an aggregate amount, taken together with all other Investments made pursuant to this clause (25) that are at the time outstanding, not to exceed the greater of (x) $275.0 million and (y) 4.25% of Consolidated Total Assets; provided that the Investments permitted pursuant to this clause (25) may be increased by the amount of JV Distributions, without duplication of dividends or distributions increasing amounts available pursuant to clause (c) of the first paragraph of the covenant described under "—Certain Covenants—Limitation on Restricted Payments";

(26) additional Investments so long as, after giving effect thereto on a Pro Forma Basis, the Consolidated Total Net Debt Ratio does not exceed 3.25 to 1.00;

(27) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(28) Investments acquired as a result of a foreclosure by the Parent Guarantor or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(29) Investments resulting from pledges and deposits that are Permitted Liens;

(30) acquisitions of obligations of one or more officers or other employees of any direct or indirect parent of the Parent Guarantor, the Parent Guarantor or any Subsidiary of the Parent Guarantor in connection with such officer's or employee's acquisition of Equity Interests of any direct or indirect parent of the Parent Guarantor, so long as no cash is actually advanced by the Parent Guarantor or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(31) Guarantees of Non-Financing Lease Obligations (for the avoidance of doubt, excluding Financing Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Parent Guarantor or any Restricted Subsidiary in the ordinary course of business;

(32) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted by the covenant described under "—Certain Covenants—Limitation on Restricted Payments";

(33) non-cash Investments made in connection with tax planning and reorganization activities;

(34) Investments made pursuant to obligations entered into when the Investment would have been permitted hereunder so long as such Investment when made reduces the amount available under the clause under which the Investment would have been permitted; and

(35) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees in the ordinary course of business.

"*Permitted Joint Venture*" means, with respect to any specified Person, a joint venture in any other Person engaged in a Similar Business in respect of which the Parent Guarantor or a Restricted Subsidiary beneficially owns at least 35% of the Equity Interests of such Person.

"*Permitted Liens*" means, with respect to any Person:

(1) Liens Incurred in connection with workers' compensation laws, unemployment insurance laws or similar legislation, or in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or to secure public or statutory obligations of such Person or to secure surety, stay, customs or appeal bonds to which such Person is a party, or 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, landlords', materialmen's, repairman's, construction contractors', mechanics' or other like Liens, in each case for sums not yet overdue by 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 (or which, if due and payable, are being contested in good faith by appropriate proceedings and for which adequate reserves are being maintained, to the extent required by GAAP);

(3) Liens for taxes, assessments or other governmental charges or levies (i) which are not yet due or payable or (ii) which are being contested in good faith by appropriate proceedings and for which adequate reserves are being maintained to the extent required by GAAP, or for property taxes on property such Person or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge, levy or claim is to such property;

(4) Liens in favor of the issuer of performance and surety bonds, bid, indemnity, warranty, release, appeal or similar bonds or with respect to regulatory requirements or letters of credit or bankers' acceptances issued and completion of guarantees provided for, in each case, pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) survey exceptions, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) 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 do not in the aggregate materially adversely interfere with the ordinary conduct of the business of such Person;

(6) Liens Incurred to secure Obligations in respect of Indebtedness permitted to be Incurred pursuant to clause (a) or (d) of the definition of "Permitted Debt"; *provided* that, in the case of clause (d), such Lien extends only to the assets and/or Capital Stock the acquisition, lease, construction, repair, replacement or improvement of which is financed thereby and any replacements, additions and accessions thereto and any income or profits thereof; *provided further*, that individual financings provided by a lender may be cross-collateralized to other financings provided by such lender or its affiliates;

(7) Liens of the Issuer or any of the Guarantors existing on the Issue Date (other than Liens Incurred to secure Obligations under the Senior Credit Agreement);

(8) Liens on assets of, or Equity Interests in, a Person at the time such Person becomes a Subsidiary of the Parent Guarantor; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided*, *further*, that such Liens are limited to all or a portion of the assets (and improvements on such assets) that secured (or, under the written arrangements under which the Liens arose, could secure) the obligations to which such Liens relate; *provided*, *further*, that for purposes of this clause (8), if a Person becomes a Subsidiary of

the Parent Guarantor, any Subsidiary of such Person shall be deemed to become a Subsidiary of the Parent Guarantor, and any assets of such Person or any Subsidiary of such Person shall be deemed acquired by the Parent Guarantor at the time of such merger, amalgamation or consolidation;

(9) Liens on assets at the time the Parent Guarantor or any Restricted Subsidiary acquired the assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Parent Guarantor or such Restricted Subsidiary; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; *provided*, *further*, that such Liens are limited to all or a portion of the assets (and improvements on such assets) that secured (or, under the written arrangements under which the Liens arose, could secure) the obligations to which such Liens relate; *provided*, *further*, that for purposes of this clause (9), if, in connection with an acquisition by means of a merger, amalgamation or consolidation with or into the Parent Guarantor or any Restricted Subsidiary, a Person other than the Parent Guarantor or a Restricted Subsidiary is the successor company with respect thereto, any Subsidiary of such Person shall be deemed to become a Subsidiary of the Parent Guarantor or any Restricted Subsidiary, and any assets of such Person or any such Subsidiary of such Person shall be deemed acquired by the Parent Guarantor or any Restricted Subsidiary, at the time of such merger, amalgamation or consolidation;

(10) Liens securing Indebtedness or other obligations of the Issuer or a Guarantor owing to the Issuer or another Guarantor 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 Swap Contracts Incurred in compliance with the covenant described under "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock";

(12) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business 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, sublicenses, occupancy agreements or assignments of or in respect of real or personal property;

(14) Liens arising from, or from Uniform Commercial Code financing statement filings regarding, operating leases or consignments entered into by the Issuer and the Guarantors in the ordinary course of business;

(15) Liens in favor of the Parent Guarantor or any Guarantor;

(16) Liens on accounts receivable and related assets of the type specified in the definition of "Receivables Financing" Incurred in connection with a Qualified Receivables Financing and (ii) Liens securing Indebtedness or other obligations of any Receivables Subsidiary;

(17) deposits made or other security provided in the ordinary course of business to secure liability to insurance carriers or under self-insurance arrangements in respect of such obligations;

(18) Liens on the Equity Interests of Unrestricted Subsidiaries;

(19) grants of intellectual property, software and other technology licenses;

(20) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(21) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(22) Liens Incurred to secure Cash Management Services and other "bank products" (including those described in clauses (j) and (w) of the definition of "Permitted Debt");

(23) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in

clause (7), (8), (9), (11), (24) or (25) of this definition; *provided*, *however*, that (x) such new Lien shall be limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements on such property), (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (7), (8), (9), (11), (24) or (25) of this definition at the time the original Lien became a Permitted Lien under the Indenture, and (B) an amount necessary to pay any fees and expenses, including unpaid accrued interest and the aggregate amount of premiums (including tender premiums), and underwriting discounts, defeasance costs and fees and expenses in connection therewith, related to such refinancing, refunding, extension, renewal or replacement, and (z) any Liens incurred under this clause (23) to secure refinancing of indebtedness secured by a Lien permitted under clause (25) hereunder shall reduce the amount available under such clause (25);

(24) Liens securing Pari Passu Indebtedness permitted to be Incurred pursuant to the covenant described under "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" if, at the time of any Incurrence of such Pari Passu Indebtedness on a Pro Forma Basis, the Consolidated Senior Secured Net Debt Ratio would not exceed 4.25 to 1.00;

(25) other Liens securing Obligations the principal amount of which does not exceed the greater of (x) $425.0 million and (y) 6.50% of Consolidated Total Assets, at any one time outstanding;

(26) Liens on the Equity Interests or assets of a joint venture to secure Indebtedness of such joint venture Incurred pursuant to clause (u) of the definition of "Permitted Debt";

(27) Liens on equipment of the Issuer or any Guarantor granted in the ordinary course of business to the Issuer's or such Guarantor's client at which such equipment is located;

(28) Liens created for the benefit of (or to secure) all of the Notes or the related Guarantees;

(29) Liens on property or assets used to redeem, repay, defease or to satisfy and discharge Indebtedness; *provided* that such redemption, repayment, defeasance or satisfaction and discharge is not prohibited by the Indenture;

(30) 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 and exportation of goods in the ordinary course of business;

(31) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (ii) attaching to pooling, commodity trading accounts or other commodity brokerage accounts Incurred in the ordinary course of business; and (iii) in favor of banking or other financial institutions or entities, or electronic payment service providers, 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 or finance industry;

(32) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other Persons not given in connection with the issuance of Indebtedness; (ii) relating to pooled deposit or sweep accounts of the Issuer or a Guarantor to permit satisfaction of overdraft or similar obligations Incurred in the ordinary course of business of the Issuer and the Guarantors; or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or a Guarantor in the ordinary course of business;

(33) any encumbrance or restriction (including put and call arrangements) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(34) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(35) Liens on vehicles or equipment of the Issuer or a Guarantor granted in the ordinary course of business;

(36) Liens on assets of Non-Guarantor Subsidiaries securing Indebtedness Incurred in accordance with clause (t) of the definition of "Permitted Debt";

(37) Liens disclosed by the title insurance policies delivered on or subsequent to the Issue Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement,

extension or renewal Liens are permitted by the Indenture); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(38) Liens arising solely by virtue of any statutory or common law provision or customary business provision relating to banker's liens, rights of set-off or similar rights;

(39) (a) Liens solely on any cash earnest money deposits made by the Parent Guarantor or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment and (b) Liens on advances of cash or Cash Equivalents in favor of the seller of any property to be acquired in a Permitted Investment to be applied against the purchase price for such Investment;

(40) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(41) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(42) 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;

(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Parent Guarantor or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(44) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(46) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements;

(47) Liens created pursuant to the general conditions of a bank operating in The Netherlands based on the general conditions drawn up by the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*) and the Consumers Union (*Consumentenbond*) or pursuant to any other general conditions of, or any contractual arrangement with, any such bank to substantially the same effect; and

(48) Liens on cash proceeds (and the related escrow accounts) in connection with the issuance into (and pending the release from) a customary escrow arrangement of any Indebtedness to the extent such Indebtedness is Incurred in compliance with the covenant described under "—Certain covenants—Limitation on incurrence of Indebtedness and issuance of Disqualified Stock and Preferred Stock."

For purposes of determining compliance with this definition, (x) a Lien need not be Incurred solely by reference to one category of Permitted Liens described in this definition but may be Incurred under any combination of such categories (including in part under one such category and in part under any other such category), (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Parent Guarantor shall, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (z) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (6) or (24) above (giving effect to the Incurrence of such portion of such Indebtedness), the Parent Guarantor, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (6) or (24) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition.

"*Person*" means any individual, corporation, company, partnership, limited liability company, 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 right of payment of dividends or upon liquidation, dissolution or winding up.

"*Prior Parent Guarantor*" means any Parent Guarantor following designation of another Guarantor to be "Parent Guarantor" pursuant to a New Parent Guarantor Designation.

"*Principal Property Subsidiary*" means any Subsidiary that owns, operates or leases one or more Restricted Properties.

"*Pro Forma Basis*" means, with respect to the calculation of any test, financial ratio, basket or covenant under the Indenture, including the Consolidated Senior Secured Net Debt Ratio, the Consolidated Total Net Debt Ratio and the Fixed Charge Coverage Ratio and the calculation of Consolidated Net Tangible Assets and Consolidated Total Assets, of any Person and its Restricted Subsidiaries, as of any date, that pro forma effect will be given to any acquisition, merger, amalgamation, consolidation, Investment, any issuance, Incurrence, assumption or repayment or redemption of Indebtedness (including Indebtedness issued, Incurred or assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated), any issuance or redemption of Preferred Stock or Disqualified Stock, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division, segment or operating unit, any operational change (including the entry into any material contract or arrangement) or any designation of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of such Person being used to calculate such test, financial ratio, basket or covenant (the "*Reference Period*"), or subsequent to the end of the Reference Period but prior to such date or prior to or substantially simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary of the subject Person or was merged, amalgamated or consolidated with or into the subject Person or any other Restricted Subsidiary of the subject Person after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period; *provided* that (x) pro forma effect will be given to reasonably identifiable and quantifiable pro forma cost savings or expense reductions related to operational efficiencies (including the entry into any material contract or arrangement), strategic initiatives or purchasing improvements and other cost savings, improvements or synergies, in each case, that have been realized, or reasonably expected to be realized, by such Person and its Restricted Subsidiaries based upon actions to be taken within 24 months after the consummation of the action as if such cost savings, expense reductions, improvements and synergies occurred on the first day of the Reference Period and (y) no amount shall be added back pursuant to this definition to the extent duplicative of amounts that are otherwise included in computing Consolidated EBITDA for such Reference Period.

For purposes of making any computation referred to above:

(1) 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 date for which a determination under this definition is made had been the applicable rate for the entire period (taking into account any Swap Contracts applicable to such Indebtedness if such Swap Contracts has a remaining term in excess of 12 months);

(2) interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Parent Guarantor or a direct or indirect parent of the Parent Guarantor to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP;

(3) 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 a Designating Party may designate;

(4) interest on any Indebtedness under a revolving credit facility or a Qualified Receivables Financing computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period; and

(5) to the extent not already covered above, any such calculation may include adjustments calculated in accordance with Regulation S-X under the Securities Act.

Any pro forma calculation may include, without limitation, (1) adjustments calculated in accordance with Regulation S-X under the Securities Act, (2) adjustments calculated to give effect to any Pro Forma Cost Savings and (3) all adjustments of the type used in connection with the calculation of "Adjusted EBIT" and "Adjusted EBITDA" as set forth in footnotes (2) and (4) to "Offering Memorandum Summary—Summary Historical Combined Financial Information and Other Data" to the extent such adjustments, without duplication, continue to be applicable to the Reference Period; *provided* that any such adjustments that consist of reductions in

costs and other operating improvements or synergies shall be calculated in accordance with, and satisfy the requirements specified in, the definition of "Pro Forma Cost Savings."

"*Pro Forma Cost Savings*" means, without duplication of any amounts referenced in the definition of "Pro Forma Basis," an amount equal to the amount of cost savings, operating expense reductions, operating improvements (including the entry into any material contract or arrangement) and acquisition synergies, in each case, projected in good faith to be realized (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actions taken or to be taken by the Parent Guarantor (or any successor thereto) or any Restricted Subsidiary, net of the amount of actual benefits realized or expected to be realized during such period that are otherwise included in the calculation of Consolidated EBITDA from such actions; *provided* that such cost savings, operating expense reductions, operating improvements and synergies are reasonably identifiable (as determined in good faith by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Parent Guarantor (or any successor thereto) or of any direct or indirect parent of the Parent Guarantor and are reasonably anticipated to be realized within 24 months after the consummation of any change that is expected to result in such cost savings, expense reductions, operating improvements or synergies; *provided* that no cost savings, operating expense reductions, operating improvements and synergies shall be added pursuant to this definition to the extent duplicative of any expenses or charges otherwise added to Consolidated Net Income or Consolidated EBITDA, whether through a pro forma adjustment, add back exclusion or otherwise, for such period.

"*Qualified Receivables Financing*" means any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

(1) the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor shall have determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Parent Guarantor and its Restricted Subsidiaries,

(2) all sales of accounts receivable and related assets by the Parent Guarantor or any Restricted Subsidiary to the Receivables Subsidiary are made at Fair Market Value (as determined in good faith by the Parent Guarantor), and

(3) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Parent Guarantor) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Parent Guarantor or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) to secure any Credit Agreement shall not be deemed a Qualified Receivables Financing.

"*Rating Agency*" means (1) each of Fitch, Moody's and S&P and (2) if Fitch, Moody's or S&P ceases to rate the Notes for reasons outside of the Parent Guarantor's control, a "nationally recognized statistical rating organization" within the meaning of Section 3 under the Exchange Act selected by the Parent Guarantor or any direct or indirect parent of the Parent Guarantor as a replacement agency for Fitch, Moody's or S&P, as the case may be.

"*Ratings Decline Period*" means the period that (i) begins on the occurrence of a Change of Control and (ii) ends on the date that is 60 days following consummation of such Change of Control.

"*Receivables Fees*" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Receivables Financing.

"*Receivables Financing*" means any transaction or series of transactions that may be entered into by the Parent Guarantor or any of its Subsidiaries pursuant to which the Parent Guarantor or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Receivables Subsidiary (in the case of a transfer by the Parent Guarantor or any of its Subsidiaries), and (b) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Parent Guarantor or any of its Subsidiaries, and any assets related thereto including, without limitation, all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Swap Contracts entered into by the Parent Guarantor or any such Subsidiary in connection with such accounts receivable.

"*Receivables Repurchase Obligation*" means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"*Receivables Subsidiary*" means a Wholly Owned Restricted Subsidiary of the Parent Guarantor (or another Person formed for the purposes of engaging in a Qualified Receivables Financing with the Parent Guarantor in which the Parent Guarantor or any Subsidiary of the Parent Guarantor or a direct or indirect parent of the Parent Guarantor makes an Investment and to which the Parent Guarantor or any Subsidiary of the Parent Guarantor or a direct or indirect parent of the Parent Guarantor transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Parent Guarantor and its Subsidiaries or a direct or indirect parent of the Parent Guarantor and all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor (as provided below) as a Receivables Subsidiary and:

(1) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Parent Guarantor or any other Subsidiary of the Parent Guarantor (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Parent Guarantor or any other Subsidiary of the Parent Guarantor in any way other than pursuant to Standard Securitization Undertakings, or (iii) subjects any property or asset of the Parent Guarantor or any other Subsidiary of the Parent Guarantor, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings,

(2) with which neither the Parent Guarantor nor any other Subsidiary of the Parent Guarantor has any material contract, agreement, arrangement or understanding other than on terms which the Parent Guarantor reasonably believes to be no less favorable to the Parent Guarantor or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Parent Guarantor, and

(3) to which neither the Parent Guarantor nor any other Subsidiary of the Parent Guarantor has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

"*Refinancing Expenses*" means, in connection with any refinancing, replacement, renewal or extension of any Indebtedness, Disqualified Stock or Preferred Stock permitted by the Indenture, the aggregate amount of (1) accrued and unpaid interest in respect of the Indebtedness being refinanced; (2) increases in the principal amount of any Indebtedness being refinanced resulting from the in-kind payment of interest on such Indebtedness (or in the case of Disqualified Stock or Preferred Stock being refinanced, issuance of additional shares of such Disqualified Stock or Preferred Stock); (3) the aggregate amount of original issue discount on the Indebtedness, Disqualified Stock or Preferred Stock being refinanced; (4) premiums (including tender premiums) and other costs associated with the redemption, repurchase, retirement, discharge or defeasance of the Indebtedness, Disqualified Stock or Preferred Stock being refinanced, and (5) all fees and expenses (including underwriting discounts, commitment, ticking and similar fees, expenses and discounts) associated with the repayment of the Indebtedness, Disqualified Stock or Preferred Stock being refinanced and the incurrence of the Indebtedness, Disqualified Stock or Preferred Stock in connection with such refinancing.

"*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 Parent Guarantor or a Restricted Subsidiary in exchange for assets transferred by the Parent Guarantor or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless such Person is, or upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

"*Related Taxes*" means any taxes, charges or assessments, including, but not limited to, sales, use, transfer, rental, ad valorem, value-added, stamp, property, consumption, franchise, license, capital, net worth, gross receipts, excise, occupancy, intangibles or similar taxes, charges or assessments (other than U.S. federal, state or local income taxes), required to be paid by the Parent Guarantor or any other direct or indirect parent of the Parent Guarantor by virtue of its being incorporated or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than the Parent Guarantor, any of its Subsidiaries or any other direct or indirect parent of the Parent Guarantor), or being a holding company parent of the Parent Guarantor, any of its Subsidiaries or any other direct or indirect parent of the Parent Guarantor or receiving dividends from or other

distributions in respect of the Capital Stock of the Parent Guarantor, any of its Subsidiaries or any other direct or indirect parent of the Parent Guarantor, or having guaranteed any obligations of the Parent Guarantor or any Subsidiary thereof, or having made any payment in respect of any of the items for which the Parent Guarantor or any of its Subsidiaries is permitted to make payments to any parent entity pursuant to the covenant described under "—Certain Covenants—Limitation on Restricted Payments," or acquiring, developing, maintaining, owning, prosecuting, protecting or defending its intellectual property and associated rights (including but not limited to receiving or paying royalties for the use thereof) relating to the business or businesses of the Parent Guarantor or any Subsidiary thereof.

"*Replacement Assets*" means (1) substantially all the assets of a Person primarily engaged in a Similar Business or (2) a majority of the Voting Stock of any Person primarily engaged in a Similar Business that will become, on the date of acquisition thereof, a Restricted Subsidiary.

"*Restricted Investment* " means an Investment other than a Permitted Investment.

"*Restricted Property*" means (a) any manufacturing facility, or portion thereof, owned or leased by the Parent Guarantor or any of its Subsidiaries and located within the continental United States, which, in the opinion of the Board of Directors of the Parent Guarantor or any direct or indirect parent of the Parent Guarantor, is of material importance to the business of the Parent Guarantor and its Subsidiaries taken as a whole, but no such manufacturing facility, or portion thereof, shall be deemed of material importance if its gross book value (before deducting accumulated depreciation) is less than 10.0% of Consolidated Net Tangible Assets, or (b) any shares of capital stock of any Subsidiary owning any such manufacturing facility. As used in this definition, "*manufacturing facility*" means property, plant and equipment used for actual manufacturing such as quality assurance, engineering, maintenance, staging area for work in process materials, employees' eating and comfort facilities and manufacturing administration, and it excludes sales offices, research facilities and facilities used only for warehousing or general administration.

"*Restricted Subsidiary* " means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this "Description of Notes," all references to Restricted Subsidiaries shall mean Restricted Subsidiaries of the Parent Guarantor (including the Issuer).

"*S&P*" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, or any successor to the rating agency business thereof.

"*Sale/Leaseback Transaction*" means an arrangement relating to property now owned or hereafter acquired by the Parent Guarantor or a Restricted Subsidiary whereby the Parent Guarantor or a Restricted Subsidiary transfers such property to a Person and the Parent Guarantor or such Restricted Subsidiary leases it from such Person, other than leases between the Parent Guarantor and a Restricted Subsidiary or between Restricted Subsidiaries.

"*SEC*" means the Securities and Exchange Commission.

"*Secured Indebtedness*" means any Indebtedness secured by a Lien other than Indebtedness with respect to Cash Management Services.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Senior Credit Agreement*" means the credit agreement, dated as of February 1, 2013, among Dutch Holdings, Axalta Coating Systems U.S. Holdings, Inc., the guarantors from time to time party thereto, the financial institutions named therein and Bank of America, N.A., as Administrative Agent, as described under "Description of Other Indebtedness" in the Offering Memorandum, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Designating Party) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Designating Party) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder permitted under "—Certain Covenants—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers, issuers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders, investors or group of investors.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "significant subsidiary" of the Parent Guarantor within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"*Similar Business*" means any business engaged or proposed to be engaged in by the Parent Guarantor and its Subsidiaries on the Issue Date and any business or other activities that are similar, ancillary, complementary, incidental or related to, or an extension, development or expansion of, the businesses in which the Parent Guarantor and its Subsidiaries are engaged on the Issue Date.

"*Standard Securitization Undertakings*" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Parent Guarantor or any Subsidiary of the Parent Guarantor which the Parent Guarantor has determined in good faith to be customary in a Receivables Financing including, without limitation, those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"*Stated Maturity*" means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer of such security, unless such contingency has occurred).

"*Subordinated Indebtedness*" means (a) with respect to the Issuer, any Indebtedness of the Issuer which is by its terms expressly subordinated in right of payment to the Notes, and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms expressly subordinated in right of payment to its Guarantee.

"*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 the Voting Stock 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, (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 and 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 interests or otherwise, and (y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity and (3) any Person that is consolidated in the consolidated financial statements of the specified Person in accordance with GAAP.

"*Successor Parent Guarantor*" means a Guarantor that has been designated as "Parent Guarantor" pursuant to a New Parent Guarantor Designation and is not a Prior Parent Guarantor.

"*Swap Contract*" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any obligations or liabilities under any such master agreement.

"*TIA*" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the Issue Date.

"*Treasury Rate*" means the yield to maturity as of the date of the relevant redemption notice of the most recently issued United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (or is obtainable from the Federal Reserve System's Data Download Program as of the date of such H.15) that has become publicly available at least two Business Days prior to such 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 date of such redemption notice to , 2024; *provided*, *however*, that if the period from such date to , 2024 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 Officer*" means any officer within the corporate trust administration department of the Trustee, with direct responsibility for performing the Trustee's duties under the Indenture and also means, with respect to a particular corporate trust matter, any other

officer of the Trustee to whom such matter is referred because of such person's knowledge of and familiarity with the particular subject.

"*Unrestricted Subsidiary*" means:

(1) any Subsidiary of the Parent Guarantor that at the time of determination shall be designated an Unrestricted Subsidiary by the Designating Party in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Designating Party may designate any Subsidiary of the Parent Guarantor (including any existing Subsidiary and any newly acquired or newly formed Subsidiary of the Parent Guarantor but excluding the Issuer) 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 Parent Guarantor or any other Subsidiary of the Parent Guarantor that is not a Subsidiary of the Subsidiary to be so designated; *provided*, *however*, that either:

(a) the Subsidiary to be so designated has total consolidated assets of $1,000 or less; or

(b) if such Subsidiary has consolidated assets greater than $1,000, then such designation would be permitted under the covenant described under "—Certain Covenants—Limitation on Restricted Payments."

The Designating Party may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, *however*, that immediately after giving effect to such designation:

(x) (1) the Parent Guarantor could Incur $1.00 of additional Indebtedness as Ratio Debt, or

(2) the Fixed Charge Coverage Ratio for the Parent Guarantor and its Restricted Subsidiaries would be equal to or greater than such ratio for the Parent Guarantor and its Restricted Subsidiaries immediately prior to such designation,

in each case on a Pro Forma Basis taking into account such designation, and

(y) no Event of Default shall have occurred and be continuing.

Any such designation by the Designating Party shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors of the Parent Guarantor, any direct or indirect parent of the Parent Guarantor or the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"*U.S. Government Obligations*" 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 each case, are not callable or redeemable at the option of the issuer 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 U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations 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 U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the number of years (and/or portion thereof) obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of such Indebtedness or redemption or similar payment, in respect of such Disqualified Stock or Preferred Stock, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"*Wholly Owned Restricted Subsidiary*" means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

"*Wholly Owned Subsidiary*" of any Person means a direct or indirect Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

LIMITATIONS ON VALIDITY AND ENFORCEABILITY OF THE GUARANTEES

Set out below is a summary of certain limitations on the enforceability of the guarantees in each of the jurisdictions in which guarantees are being provided. It is a summary only, and proceedings of bankruptcy, insolvency or a similar event could be initiated in any of these jurisdictions and in the jurisdiction of organization of a future guarantor of the Notes offered hereby. The application of these various laws in multiple jurisdictions could trigger disputes over which jurisdiction's law should apply, and could adversely affect your ability to enforce your rights and to collect payment in full under the Notes offered hereby and the guarantees.

Also set out below is a brief description of certain aspects of insolvency law, in force as of the date hereof, in the European Union, Australia, Bermuda, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, South Africa, Sweden, Switzerland, the United Kingdom and the United States. In the event that any one or more of the guarantors experiences financial difficulty, it is not possible to predict with certainty in which jurisdiction or jurisdictions insolvency or similar proceedings would be commenced or the outcome of such proceedings.

European Union

Several of the guarantors are organized under the laws of member states of the European Union ("Member States" and "EU," respectively).

The EC Regulation No. 2015/848 on Insolvency Proceedings (the "Recast Insolvency Regulation") applies to insolvencies which commence after 26 June 2017, subject to certain exceptions (it does not apply to (a) insurance undertakings, (b) credit institutions, (c) investment firms and other firms, institutions and undertakings to the extent covered by the Bank Insolvency Directive (Directive 2001/24/EC), and (d) collective investment undertakings). Pursuant to Article 3(1) of the Recast Insolvency Regulation, the court which shall have jurisdiction to open insolvency proceedings in relation to a company is the court of the Member State (other than Denmark) where the company concerned has its "centre of main interests" ("COMI"). Article 3(1) defines COMI as the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. The ultimate determination of where any such company has its COMI is a question of fact on which the courts of the different Member States may have differing or conflicting views. COMI is determined at the time the request to open the relevant insolvency proceedings is made (where a court is involved).

The term COMI is not a static, but rather a facts and circumstances based concept and may hence change from time to time. In the case of a company or legal person, the COMI is presumed to be located in the country of its registered office in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the three-month period prior to the request for the opening of insolvency proceedings. Specifically, the presumption of the COMI being at the place of the registered office should be rebuttable if the company's central administration is located in a Member State other than the one where it has its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State.

If the COMI of a company, at the time an insolvency application is made, is located in a Member State (other than Denmark), only the courts of that Member State have jurisdiction to open main insolvency proceedings in respect of that company under the Recast Insolvency Regulation. The types of insolvency proceedings which may be opened as main proceedings in the relevant jurisdiction are listed in Annex A to the Recast Insolvency Regulation. Insolvency proceedings opened in one Member State under the Recast Insolvency Regulation are to be recognized in the other Member States (other than Denmark), although secondary proceedings may be opened in another Member State. The effects of those main proceedings, however, do not affect third party rights *in rem* situated in a territory of another Member State in accordance with Article 5 of Recast Insolvency Regulation. Pursuant to Article 3(2) of the Recast Insolvency Regulation, if the COMI of a company is in one Member State (other than Denmark), the courts of another Member State (other than Denmark) have jurisdiction to open secondary and "territorial" proceedings (sometimes referred to as "synthetic" insolvency proceedings) only in the event that such debtor has an "establishment" in the territory of such other Member State. An "establishment" is defined to mean any place of operations where the company carries out or has carried out in the three-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets. Secondary proceedings may be any insolvency proceeding listed in Annex A of the Recast Insolvency Regulation and, for the avoidance of doubt, are not limited to winding-up proceedings. Territorial proceedings are, in effect, secondary proceedings which are commenced prior to the opening of main insolvency proceedings and which will usually convert to secondary proceedings on the opening of the main proceedings. The effects of secondary and territorial insolvency proceedings opened in that other Member State are restricted to the assets of the company which are situated in such other Member State. If the company does not have an establishment in any other Member State, no court of any other Member State has jurisdiction to open territorial proceedings in respect of such company under the Recast Insolvency Regulation.

Pursuant to Article 3(4) of the Recast Insolvency Regulation, where main proceedings in the Member State in which the company has its COMI have not yet been opened, territorial insolvency proceedings can only be opened in another Member State (other than Denmark) where the company has an establishment and either: (a) insolvency proceedings cannot be opened in the Member State in which the company's COMI is situated under that Member State's law; or (b) the territorial insolvency proceedings are opened at the request of (i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested, or (ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings. Irrespective of whether the insolvency proceedings are main or secondary insolvency proceedings, such proceedings will, subject to certain exceptions (including rights *in rem*, creditor set-off, reservation of title proceedings, immovable property and employment contracts), be governed by the *lex fori concursus*, that is, the local insolvency law of the court that has assumed jurisdiction for the insolvency proceedings of the debtor.

The courts of all Member States (other than Denmark) must recognise the judgment of the court opening main proceedings and give the same effect to the order in the other relevant Member States so long as no secondary insolvency proceedings or territorial insolvency proceedings have been opened there. Pursuant to Article 21 of the Recast Insolvency Regulation, the insolvency officeholder appointed by the court in the Member State which has jurisdiction to commence main proceedings may exercise the powers conferred on him by the law of that Member State in another Member State (other than Denmark) (such as to remove assets of the company from that other Member State). These powers are subject to certain limitations (e.g. the powers are available provided that no insolvency proceedings have been opened in that other Member State nor has any preservation measure to the contrary been taken there further to a request to open insolvency proceedings in that other Member State where the company has assets). In order to avoid the opening of secondary proceedings, the insolvency practitioner in the main proceedings may also give a unilateral undertaking in respect of the assets located in the Member State in which secondary proceedings could be opened that, when distributing assets or realisation proceeds, it will comply with the distribution and priority rights under national law that creditors would have if secondary proceedings were opened in that Member State. This, however, is subject to a "qualified majority" (as defined under national law) of known local creditors (being creditors whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the debtor's COMI is located) approving the undertaking. The law applicable to the distribution of proceeds and ranking of claims is also the law of the Member State where secondary proceedings are opened.

In addition, the concept of "group coordination proceedings" has been introduced in the Recast Insolvency Regulation with the aim of bolstering communication and efficiency in the insolvency of several members of a group of companies. Under Article 61 of the Recast Insolvency Regulation, group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group. Participation in group coordination proceedings and adherence to the coordinating insolvency practitioner's recommendations or plan, however, is voluntary.

Brexit, i.e. the UK having ceased to be a Member State on 31 January 2020, did not have an immediate impact on cross-border corporate restructuring and insolvency as EU regulations will continue to apply until the end of the transition period, which, unless extended, will run until 31 December 2020. The position beyond 31 December 2020 is unknown at this time as it depends on a trade deal being agreed between the UK and the EU, and whether or not such a deal includes a replacement for the current automatic recognition of UK insolvency procedures across the EU and vice versa. In the absence of a deal addressing automatic recognition, it will be harder for UK office holders and UK restructuring and insolvency proceedings to be recognised in Member States and to effectively deal with assets located in Member States. Much will then depend upon the private international law rules in the particular Member State and the need may well arise to open parallel proceedings, increasing the element of risk. In particular in cases where the appointment of a UK office holder has been made in reliance on a UK domestic approach rather than the COMI rules, it is much less certain that there will be recognition in the relevant Member State.

In the event that any guarantor organized under the laws of a Member State experiences financial difficulty, it is not possible to predict with certainty in which jurisdiction or jurisdictions insolvency or similar proceedings will be commenced, or the outcome of such proceedings. Applicable insolvency laws may affect the enforceability of the obligations of the relevant guarantor or any other company. The insolvency, administration and other laws of the jurisdictions in which the respective companies are organized or operate may be materially different from, or conflict with, each other and there is no assurance as to how the insolvency laws of the potentially involved jurisdictions will be applied in relation to one another.

Australia

Guarantees

A guarantee provided by a company incorporated under the *Corporations Act 2001* (Cth) may be unenforceable if:

(a) the company does not have the power, under its constituent document, to provide the guarantee in the circumstances of the case; or

(b) the directors do not exercise their duty to act in good faith for the benefit of the company and for a proper purpose in giving the guarantee.

In determining whether there is sufficient benefit, all relevant facts and circumstances of the transaction need to be considered by the directors, including the benefits and detriments to the guarantor in giving the guarantee, and the respective benefits to the other parties involved in the transaction. The issue is particularly relevant where a company provides a guarantee in relation to the obligations of another member of its corporate family, as is the case for the guarantees given by the Australian guarantor with respect to the Notes offered hereby. In determining whether there is sufficient benefit, the directors need to give primary consideration to the benefits and detriments to the guarantor in giving the guarantee, in addition to the benefits to the other members of the corporate family.

Whether a guarantee entered into in breach of directors' duties can be avoided against a party relying on the guarantee depends on certain factors, including whether the party knew of or suspected the breach. Under Australian law, a person is entitled to assume that the directors have properly performed their duties to the company unless that person knows or suspects that they have not done so.

Insolvency

As of the date of this offering memorandum, one of the guarantors is incorporated under the laws of the Commonwealth of Australia (the "Australian Guarantor"). Therefore, insolvency proceedings with respect to that guarantor would be likely to proceed under, and be governed by, Australian insolvency law. The procedural and substantive provisions of Australian insolvency laws afford debtors and unsecured creditors only limited protection from the claims of secured creditors.

There are four principal corporate insolvency processes in Australia: administration (sometimes referred to as voluntary administration); deed of company arrangement; receivership; and liquidation (also referred to as winding up). There is also a fifth less common regime, which is a creditor's scheme of arrangement. A brief description of each is set out below.

Administration

Under Section 435A of the *Corporations Act 2001* (Cth) (the "Corporations Act"), the object of administration is to provide for the business, property and affairs of an insolvent company to be administered in a way that maximizes the chances of the company, or as much as possible of its business, continuing in existence. Alternatively, if it is not possible for the company or its business to continue in existence, the object of the administration is to achieve a better return for the company's creditors and members than would result from an immediate winding up of the company. In the vast majority of cases, a company is put into administration by resolution of its board of directors if the board of directors resolves that the company is insolvent or is likely to become insolvent at some future time.

In some cases an administrator may be appointed by a secured creditor who is entitled to enforce its security over the whole or substantially the whole of the company's property. However, a secured creditor will usually prefer to appoint a receiver (pursuant to a contractual right in its security) who, unlike an administrator, will primarily act in the interests of the secured creditor to realize the secured property (even though a receiver also owes various duties to the company in its capacity as agent and an officer of the company). A secured creditor with a security interest over the whole or substantially the whole of the company's property has a limited period following the appointment of an administrator in which to appoint a receiver, should it wish to do so.

Administration is only intended to last for a short period, during which time the administrator controls the company and acts as its agent. The powers of the directors and officers are suspended, though they remain in office and have a duty to assist the administrator. The administrator's role is to assess the company's situation and to report to creditors on the three available options (liquidation, execution of a deed of company arrangement or to return the company to the control of its directors) and report to creditors as to which option should be followed.

To permit the administrator the opportunity to do this, during the administration there is a moratorium on the enforcement of certain types of creditors' claims and actions against the company and its property (subject to certain exceptions) and a stay on legal proceedings that will prevent, among other things, security being enforced (subject to certain exceptions, including the right of a secured creditor to appoint a receiver in certain circumstances, as referred to above).

Deed of Company Arrangement

A deed of company arrangement is an agreement binding on the company and its creditors (and sometimes others) in the nature of a compromise. By force of the Corporations Act, the agreement is one which will bind unsecured creditors whose debts are provable whether or not those creditors vote in favor of it, provided that a simple majority (in number, unless a poll is conducted, in which case it is by number and value) votes in favor of the deed of company arrangement.

The Corporations Act is relatively flexible on the contents of the deed of company arrangement. Once the deed of company arrangement is executed, the administration terminates and the moratorium restrictions come to an end and are replaced by the provisions of the deed, which may include similar moratorium protections in respect of creditor claims.

The deed administrator may be tasked by the deed with realizing assets, closing down the business, restructuring the company or pursuing litigation with a view to the payment of dividends to creditors. The deed may apply a moratorium, compromise creditors' claims, provide for the payment of creditors by installment or specify that different creditors are to receive different treatment, provided that the deed is not unfairly prejudicial to a creditor or creditors as a whole. This is usually assessed by comparing the return that a creditor is entitled to receive under the deed with the return that the creditor could expect to receive if the company was liquidated.

Secured creditors may continue to deal with the property over which they have security and are not bound by the deed, unless the secured creditor voted in favor of the deed (and the deed restricts its ability to enforce its security) or it is prevented from enforcing by a court order.

In the event that a guarantor enters into a deed of company arrangement, creditors may lose various rights in respect of the guarantor, including their right to bring a claim against the guarantor. They may be left with a right to prove any claim against a fund established under a deed of company arrangement, which may not be sufficient to satisfy the guarantee.

Receivership

The right to appoint a receiver is a contractual right granted by the company to a creditor pursuant to its security. Whilst a receiver is appointed as agent of the company for liability purposes, the receiver's primary responsibility is to act in the best interests of its appointee. A receiver's appointment and powers are generally governed by the terms of the security agreement under which it is appointed. The receiver's principal task is to take possession and control of the secured property, realize the property subject to the security and pay the proceeds to the security holder. Receivership is a regime implemented for the benefit of the secured creditor that appoints the receiver. In contrast, both administration and liquidation are regimes aimed at securing the best outcome for all of the company's creditors and members as a whole.

As an officer of the company, a receiver owes certain duties to the company, unsecured creditors and shareholders. Where a company grants security over an asset, the proceeds of enforcement must generally be remitted to the holder of the security, unless there are claims ranking in priority to the holder of the security, as summarized below:

(1) if the proceeds are from contracts of insurance and the insurance policy is in respect of liability to third parties, the proceeds must be paid to the third party in respect of whom the liability was incurred;

(2) auditor's fees and expenses for the period between when the Australia Securities Investments Commission has refused consent to the auditor's resignation and the date the receiver was appointed;

(3) wages, superannuation contributions and superannuation guarantee charges payable by the company in respect of services rendered to the company by the employees prior to the date the receiver was appointed;

(4) all amounts due on or before the date the receiver is appointed in respect of leave of absence owing to employees;

(5) retrenchment payments; and

(6) all amounts that have been advanced by other parties to the company for the purpose of paying wages, superannuation contributions or payments in respect of leave of absence or termination of employment.

During a receivership, there is no moratorium in place and other creditors may pursue debts and claims against the company provided that the company is not also in administration or liquidation.

Liquidation

The purpose of a liquidation is to enable the realization of all of a company's assets, the calling up of partly paid shares and the distribution of the proceeds among the company's creditors and (if there is a surplus after paying creditors) a distribution of the

surplus to members. The distribution of proceeds will be subject to statutory priority rules. The company's existence will then be brought to an end by deregistration.

Generally speaking, to the extent that their security is sufficient, secured creditors stand outside the liquidation and therefore do not have to prove their debts. Secured creditors also have the right to appoint a receiver and manager and enforce against the secured property during the liquidation. Secured creditors are generally entitled to sell the assets subject to their security or have them sold and to receive the proceeds (subject to the rights of any prior security holders).

Creditor's Scheme of Arrangement

A scheme of arrangement is an arrangement or compromise which binds the company and its creditors even though a minority of those creditors may oppose it. Schemes of arrangement are rarely used in an insolvency context, as they require an extended court approval process and the approval of 75% in value and 50% in number of each class of affected creditor. A scheme of arrangement is most commonly used where a company is seeking to restructure all or some of its term debt rather than to compromise the claims of creditors generally.

Voidable transactions

Under Australian law, if an order to wind-up were to be made against the Australian Guarantor and a liquidator was appointed, the liquidator would have the power to investigate the validity of past transactions and may seek various court orders, including orders to void certain transactions entered into prior to the winding-up of the Australian Guarantor and for the repayment of money. These include transactions entered into within a specified period of the winding-up that a court considers uncommercial transactions or transactions entered into when winding-up is imminent that have the effect of preferring a creditor or creditors or otherwise defeating, delaying or interfering with the rights of creditors.

In Australia, under the *Corporations Act 2001* (Cth), a guarantee (or payment under a guarantee) may be set aside (subject to certain defences) if the guarantor is being wound up and the guarantee (or payment) is found by a court, on the application of the company's liquidator, to be an "insolvent transaction."

A transaction of a company is an insolvent transaction if it is:

(a) an "unfair preference" (as defined below) given by the company to a creditor of the company, or

(b) an "uncommercial transaction" (as defined below) of the company,

and the company was insolvent at the time or became insolvent because of the transaction (or an act or omission made for the purpose of giving effect to the transaction).

An unfair preference is given by a company to a creditor if a transaction to which the company and the creditor are parties results in the creditor receiving from the company, in respect of an unsecured debt that the company owes to the creditor, more than the creditor would otherwise receive from the company if it were to prove for the debt in a winding up.

Uncommercial transactions are those which a reasonable person in the company's circumstances would not have entered into having regard to any relevant matter including:

(c) the benefits (if any) to the company of entering into the transaction;

(d) the detriment to the company of entering into the transaction; and

(e) the respective benefits to other parties of entering into the transaction.

A liquidator is empowered to challenge any insolvent transaction if it was entered into, or an act was done for the purpose of giving effect to it, by the company in the six months ending on the "relation back day" (which will usually be the date on which any application to the court to wind-up the company was made or where immediately before the winding up order was made the company was under administration, the date of commencement of the administration). Any insolvent transaction which is also an uncommercial transaction of the company may be challenged if it was entered into, or an act was done for the purpose of giving effect to it, by the company in the two years ending on the relation back day.

Where a related entity of the company is a party to the insolvent transaction, the period of challenge is four years ending on the relation back day. If the transaction were entered into for a purpose including the purpose of defeating, delaying or interfering with the rights of any or all of the creditors of the company on a winding up, the period of challenge is ten years.

Where a company was under administration or subject to a deed of company arrangement immediately before the company resolved, or a court ordered, that the company be wound up, an uncommercial transaction or an unfair preference may be challenged by a liquidator if the transaction was entered into, or an act was done for the purpose of giving effect to it, by the company during the period from the relation back day and ending when the company made the resolution, or when the court made the order, that the company be wound up, and the transaction, or the act done for the purpose of giving effect to it, was not entered into, or done on behalf of, the company by, or under the authority of, the administrator of the company or the administrator of the deed of company arrangement (as applicable).

'Ipso facto' laws

With effect from 1 July 2018, a stay applies to the enforcement of rights against entities that arise due to (or in some cases following) the occurrence or subsistence of certain events or circumstances ("Specified Events"). These Specified Events include: (a) an entity publicly announcing that it is proposing a compromise or arrangement under section 411 of the Corporations Act or otherwise when an application to propose a compromise or arrangement under section 411 of the Corporations Act is made and the application states that it is being made for the purpose of the entity avoiding being wound up in insolvency; (b) the appointment of a managing controller to the whole or substantially the whole of the property of an entity; (c) an entity entering into administration; (d) an entity's financial position, if any of the preceding events have occurred; and (e) a reason that, in substance, is contrary to the relevant sub-section prescribing the relevant stay. The stay will also apply to the enforcement of rights due to certain reasons connected with the foregoing that may be prescribed by regulation. To the extent that these stays apply, they would restrict the exercise of rights in respect of Events of Default arising by reason of such events. The legislation provides that specified contracts and rights may be excluded from the operation of the stay by regulation or declaration. Regulation 5.3A.50(k) of the Corporations Regulations exempt from the operation of the stays "a contract agreement or arrangement that is, or governs, securities, financial products, bonds, promissory notes, or syndicated loans". As such, it is not expected that the stay will apply to the Notes or the Indenture though there can be no certainty that this will be the case, as the legislative amendments and regulations are untested and aspects of their drafting are unclear.

Bermuda

Several of the guarantors are incorporated under the laws of Bermuda.

The following is a summary of the law and procedure under the Bermuda Companies Act 1981 (the "Act") in so far as it relates to liquidations of companies in Bermuda. The relevant sections of the Act can be found in Part XIII, and the corresponding rules are set out in the Companies (Winding Up) Rules 1982.

Procedure for a Court Ordered Winding Up

There are two types of insolvent liquidations in Bermuda—voluntary and compulsory. The former is usually referred to as a "creditors voluntary" ("CVL") and is begun by the company itself passing a resolution in general meeting. A full description of the CVL procedure appears in the next section of this summary. Compulsory liquidations are commenced by way of a petition presented to the Supreme Court in Bermuda upon which the Court will be asked to make a winding up order. There are a number of circumstances in which a company may be wound up by the Court (S.161), the most common of which is when the company is insolvent (S.161 (e)). It is also possible for the company, in general meeting, to resolve to petition to wind itself up under this procedure. In that case the petition is presented by the company.

In the case of insolvency, the petition can be presented by either the company, a creditor or contributory member (although this is limited to situations where the member continues to have an economic interest, e.g. they are liable to contribute in the event of a liquidation or the company may be solvent and capable of paying members). For the purpose of this section, creditor includes a contingent or prospective creditor (S.163). The petitioner must show that the company is insolvent. The Registrar of Companies ("Registrar") may also present a petition in circumstances where it would be just and equitable to wind up the company. Although the Act applies to insurance companies, there are additional special provisions relating to the presentation petitions in respect of insurance companies.

Insolvency can be proved in one of three ways:

(i) commercial insolvency - the company is unable to pay its debts as they fall due;

(ii) balance sheet insolvency - assets do not exceed liabilities; or

(ii) deemed insolvency - a statutory demand for a liquidated sum which remains unpaid, without reasonable excuse, for three weeks (S.162 (a)).

The petition when presented must be verified by an affidavit. The date of the hearing of the petition must be advertised, and before an order is made the Court, through the Registrar, must be satisfied that the procedural requirements relating to service and advertising have been complied with. Any creditor or contributory can appear on the day of the hearing of the petition provided that they have filed prior notice of their intention to do so, and in the event that they wish to contest the petition, have filed affidavit evidence prior to the hearing setting out the basis of their objection to an order being made.

In respect of any petition, whatever the basis, either before (in special circumstances), or upon, a winding up order being made, a provisional liquidator is appointed and the rights and duties of the directors (or sole director, as the case may be) cease. Upon the making of a winding up order, or upon the appointment of a provisional liquidator, no actions may be commenced or continued against the company without leave of the Court. This automatic stay does not extend beyond Bermuda and if there are proceedings against the company in a jurisdiction outside Bermuda, relief in that jurisdiction would need to be sought to obtain a stay.

The liquidator is required to collect in the assets and distribute them *pari passu* amongst unsecured creditors. The steps to be undertaken in this procedure include the following:

- calling for a statement of affairs to be prepared by the company's former officers/directors which sets out the financial position of the company; and
- calling the first meetings of creditors and contributories.

This is required to be done within a month of the winding up order, but further time can be obtained by application to the Court. The purpose of the meetings is to appoint liquidator(s) and, if desired by creditors, a committee of inspection. The committee acts as an advisory "board" to the liquidator and can sanction certain of the liquidators' actions which would otherwise need to be sanctioned by the Court. In the event that the creditors and contributories cannot agree on the nomination of a liquidator, the Court will decide which candidate to appoint. In any event the appointment of the liquidator and the committee must be made by the court following the first meetings. For the purpose of voting at the first meeting proofs of debt will be called for, but a creditor can only vote in respect of that portion of its claim that is liquidated.

Secured creditors may realize their security outside the estate; accounting to the liquidator for any excess or filing a proof of claim as an unsecured creditor for any shortfall.

These are preferential creditors:

- employees working in Bermuda are entitled to their full contractual rights on termination (Employment Act 2000);
- employees employed outside of Bermuda (maximum of $2,500 per employee); and
- the government of Bermuda with respect to certain taxes, etc. (S.236) which will be paid in full prior to the distribution to unsecured creditors.

Expenses of the liquidation will be deducted from the available funds prior to the payment of any preferential creditors (Rule 140).

The liquidator will call for proofs of claim from creditors and adjudicate each claim to determine if it is valid. Once this process has been completed, he will make a dividend distribution to all unsecured creditors *pari passu*.

That is, in its simplest form, the process. The liquidator's general powers are set out in s.175. However, there are a number of matters which may also arise or require to be investigated by the liquidator as follows:

- the liquidator is entitled to the entirety of the books and records and property of the company (s.186) and to aid him in this can apply to court to examine on oath anyone suspected of having property or information (s.195);
- no proceedings can be commenced or continued against the company once an order has been made or liquidator appointed (s.167);
- any dispositions of the company's property or transfer of shares are void if carried out following the presentation of the Petition without a court order (s.166);
- transactions involving payments to creditors within 6 months prior to the Petition being presented may be set aside if made with the dominant intention of preferring those creditors over others (s.237);
- directors and officers may be liable for debts of the company personally if it is determined that they carried on the business of the company knowing it was insolvent and with the intent to defraud creditors (s.246); and
- the liquidator has the power to investigate the affairs of the company and to determine and, if felt necessary, take action against directors for breach of duty (Directors duties are set out in s.97).

Under the provisions of the Conveyancing Act 1983, as amended, certain dispositions of a company's property are voidable if the (i) disposition was made with the dominant purpose of putting the property out of the reach of creditors and (ii) an obligation to the person seeking to set the disposition aside existed at the time of the disposition or was reasonably foreseeable at that time or arises within 2 years of that date. The limitation period on such dispositions is six years from the transfer, or, if later, from the time when the obligation arose or cause of action accrued.

Any floating charge made within 12 months immediately preceding presentation of the petition shall be invalid unless (a) the company was solvent at the time of creation or (b) the charge was in respect of monies advanced specifically at the time the security was given (s.239).

The liquidator has the right to apply to the Court to disclaim a contract which he considers onerous on the company or which is unprofitable or unsaleable (s.240).

Set-off in respect of debts is permissible provided there exists mutuality and the sum in question is a debt as at the date of liquidation.

There are of course numerous other procedural requirements involved in the process of winding up prior to, during and at the completion of the liquidation. Accounts are required to be filed, books kept and rules relating to proofs of debt followed. The interpretation of the various sections listed above has been developed over the years in case law in the United Kingdom (from which country most of the law is derived).

Procedure for a Creditors Voluntary Liquidation ("CVL")

The steps to be followed in a CVL are:

The directors must prepare:

- a statement of affairs as of the most recent date possible; and
- a list of creditors with full names, addresses and to whose attention notices of the creditors meeting must be sent.

The directors of the company meet prior to the meetings of the shareholders and of the creditors to:

- authorise the convening of the meetings and the resolution to be put on behalf of the board;
- consider and approve the statement of affairs and list of creditors; and
- appoint one of the directors to preside at the creditors meeting.

Notice must be given of a Special General Meeting of members to:

- wind up the company voluntarily;
- appoint a liquidator; and
- appoint up to 5 nominees to the committee of inspection.

Notice must be given of a meeting of creditors to be held on the same day or the day after the members meeting (general and special proxies should be enclosed with the notice of the meeting). Notice of the meeting of creditors will be dependent upon the requirement for notice of shareholders meetings as set out in the company's bye-laws. Notice of the creditors' meeting must be published in the Official Gazette on two occasions prior to the meeting. Notice of members' meeting and of the creditors' meeting is usually sent out on the same day.

The Special General Meeting must be held and the relevant resolutions passed.

The creditors' meeting must be held. Either a general or special proxy must be received by 4:00 p.m. on the day preceding the creditors' meeting in order to be valid for the purposes of the creditors' meeting. It is not necessary for a proof of debt to be lodged with the company prior to the creditors' meeting. The Chairman will, for voting purposes, use the value shown in the statement of affairs. If a proxy holder, a liquidator cannot vote for his own appointment as liquidator.

The purpose of the creditors' meeting is to receive the statement of affairs and list of creditors and, if wished, to appoint a liquidator and committee of inspection. The quorum is three creditors present or represented, or all of the creditors, if there are less than three. A resolution of the creditors is passed when approved by a majority in number and value of those voting personally or by proxy. If the creditors do not nominate a liquidator, either because they decline to do so or because they cannot agree who should be nominated, then the company's nominee becomes liquidator. If the creditors nominate someone other than the person chosen by the

company any director, member or creditor can apply to the Court, within seven days, to have the company's nominee or some other person appointed in place of, or jointly with, the creditors' nominee.

A committee of inspection consisting of a maximum of five persons may be appointed by the creditors. This committee is a representative body to assist and supervise the liquidator. The members at their earlier meeting, or at a subsequent meeting, can nominate up to five persons to act as members of the committee. The creditors may also appoint up to five persons to the committee; however, the creditors may decide, which, if any, of the members' nominees shall serve on the committee.

Liquidator's fees are fixed by this committee, or, if there is no such committee, then by the creditors at a later meeting.

Notices relating to the winding up of the company, the appointment of the liquidator and formal notice to claim are advertised in the Official Gazette and filed with the Registrar.

The liquidator will take into custody the company's seal, papers, books, documents and other property and a statement to the effect that the company is in liquidation should appear on all letters, invoices, orders etc.

The liquidator will write to creditors asking them to submit details of claims and will enclose a formal notice to claim (giving a minimum of 14 days notice). This notice of claim is the same as that which is advertised in the Official Gazette.

The liquidator must then examine every proof and claim to priority that he receives and omit or reject it in writing or require further evidence. If he rejects a proof he must state his grounds in writing to the creditor.

The liquidator realises any assets and makes calls, if any, on any members liable to contribute and pays liabilities in due order.

During this time the liquidator will call meetings of the committee of inspection (if a committee was appointed) when required.

In the event that the winding up continues for more than one year the liquidator summons a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year (or such longer period as the Registrar may allow), and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

As soon as the affairs of the company are fully wound up the liquidator will prepare an account of the winding up showing how the winding up has been conducted and how the property of the company has been disposed of. Thereupon he will call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation thereof. Each meeting will be called by advertisement in an appointed newspaper specifying the time, place and object thereof published at least one month before the meeting (in addition to notices and proxies being sent out to members and creditors). At the creditors' meeting a resolution is passed relating to the disposal of the company's books and records. The liquidator files relevant documentation with the Registrar within one week of the date of the meetings and on the expiration of three (3) months from the registration thereof the company will be deemed dissolved.

Brazil

There are several options under Brazilian law to guarantee contractual obligations, which are classified as personal or *in rem* guaranty. Both personal and *in rem* guaranties are mainly regulated by the Law 10,406 of January 10, 2002 (The Brazilian Civil Code).

Guarantees

Insolvency

The corporate insolvency laws of Brazil currently in effect contemplate (a) two types of voluntary reorganization proceedings (*recuperação judicial*—which has similarities with the corporate reorganization proceedings provided under the U.S. Bankruptcy Code's Chapter 11—*and recuperação extrajudicial*—which is a form of 'prepackaged' arrangement that is submitted to court confirmation in order for binding a dissenting or absenting minority) and (b) one liquidation proceeding (*falência*, which may be either voluntary or involuntary).

Federal Law No. 11,101/05 (the "Bankruptcy Law") may be less favorable to creditors than those of certain other jurisdictions. In addition, any judgment obtained in Brazilian courts in respect of any payment obligations in foreign currency in connection with a guarantee normally uses the exchange rate in effect (a) on the date of actual payment; (b) on the date on which such judgment is rendered; or (c) on the date on which collection or enforcement proceedings are started against a Brazilian company.

Judicial Reorganization

"Judicial Reorganization" (*Recuperação Judicial*) is a type of debtor-in-possession reorganization proceeding.

An application for Judicial Reorganization is voluntary only. The debtor files an application before the state court of its principal place of business (the "Bankruptcy Court"), supported with the information and documentation required under the Bankruptcy Law (the "Required Documentation"), which includes a statement about the causes of insolvency, accounting statements, balance sheets, accrued income statements and the like.

Acceptance of the Case by the Bankruptcy Court

If the Required Documentation is in good standing, the Bankruptcy Court will accept the case and issue an order under which it will (a) appoint the insolvency administrator, who has no managerial powers over the debtor and acts solely as an assistant of the Bankruptcy Court (the "Administrator"); (b) order the immediate stay of certain actions (including foreclosure on assets of the debtor) and enforcements filed against the debtor for a 180-day period; and (c) order the issuance of a public notice containing the summary of the mentioned decision and the list of creditors ("List of Creditors") as attached to the request for Judicial Reorganization (the "Acceptance Decision").

The Acceptance Decision triggers the occurrence of the following concomitant events: (a) 180-day stay period for certain actions and enforcement proceedings; and (b) 60-day legal term for the presentation of the reorganization plan (the "Reorganization Plan"), which is followed by the voting on the plan. Furthermore, the Acceptance Decision should order the publication on the Official Gazette of a public notice (*Edital*) containing, among other information, the list of creditors, individualizing them with their respective classification and amount. Upon the publication of such public notice, a 15-day legal term begins to run in order to file proofs of claims and/or challenges to the List of Creditors before the Administrator.

Stay Period

All enforcement proceedings filed against the debtor are stayed for 180 days following the Acceptance Decision, with a few exceptions.

If the Reorganization Plan is not approved within the stay period and unless it is not extended for an additional period of time at the court's discretion, the creditors should be able to resume the enforcement proceedings, irrespectively of the stage of the negotiations concerning the Reorganization Plan.

Presentation and Voting of the Reorganization Plan

Following the Acceptance Decision, the debtor will have up to 60 days to file with the Bankruptcy Court a Reorganization Plan consisting of the means of reorganization, such as a change in the company's control, sale of its assets, a debt for equity swap, mergers or leases of commercial establishments.

If any creditor files an objection to the plan, it will be submitted to the "General Meeting of Creditors" ("GMC"), where creditors are divided in four classes: (a) holders of labor-related credits and credits resulting from on-the-job accidents; (b) secured creditors, consisting of holders of credits with *in rem* guarantees (namely *penhor* and *hipoteca*); (c) unsecured creditors; and (d) small businesses.

The Plan Must be Approved by All Classes

In order to be approved at the GMC, the Reorganization Plan must be approved by a majority vote within all four (4) classes. The majority must be reached both in amount and number of creditors attending the GMC.

Notwithstanding the above, the Bankruptcy Court has discretionary powers to cram down the Reorganization Plan and approve the Reorganization in certain cases.

Once approved, the Reorganization is granted and the compliance with its terms is court-supervised for up to two years. Non-performance of the Reorganization Plan should result in debtor's liquidation, as a general rule.

Filing of Proofs of Claims

The publication of the public notice ordered by the Acceptance Decision triggers the commencement of a 15-day term for creditors that are subject to the Judicial Reorganization to either file proofs of claims or dispute the List of Creditors. The proofs of

claims and challenges are presented to the Administrator, who is responsible for analyzing creditor's claims and preparing a second list of creditors. The second list may be disputed by creditors before the Bankruptcy Court.

Creditors Not Subject to the Proceedings

The Judicial Reorganization encompasses all creditors, except for: (a) creditor guaranteed with fiduciary ownership of real estate property or movable assets (*alienação fiduciária*); (b) lessor under a commercial leasing agreement (*arrendamento mercantil*); (c) owner or committed seller of real estate whose respective agreements include an irrevocability or irreversibility clause (*promessa de compra e venda irrevogável de imóvel*); (d) owner under a sale agreement with retention title (*venda com reserve de domínio*); and (e) creditor under an advance on export contract (*adiantamento a contrato de câmbio* or "ACC"). Tax debts are also exempted from the Judicial Reorganization.

Sale of Assets

Article 60 of the Bankruptcy Law provides for the conditions under which "separate productive units and branches" can be sold by the debtor without succession liability to the buyer.

Financing in Judicial Reorganization

In Brazil, the financing provided to the reorganizing entity are considered post-petition claims in a contingent liquidation, but *pari passu* with other types of post-petition claims, even ranking below creditors holding fiduciary liens and ACCs.

Also, there is no preferential treatment for the post-filing financing provided by statutory law during Reorganization, although this is usually done contractually (in the Reorganization Plan) and generally approved by the Bankruptcy Court and pre-petition creditors.

Participation of Holders of the Notes Offered Hereby in Insolvency Proceedings

Technicalities may undermine the ability of the holders of the Notes offered hereby to directly participate or otherwise receive distributions in such insolvency proceedings. The holder of a claim in *recuperação judicial* proceedings is likely to be the trustee in its own name, and sometimes the trustee is also empowered to vote reorganization plans and file motions in court. The holders of the Notes offered hereby willing to directly participate in insolvency proceedings may need to hire local counsel in order to segregate their individual claim from the claim held by the trustee. Also, courts may reject the vote of the trustee in *recuperação judicial* proceedings if the trustee does not present written evidence that instructions were received from the holders of the Notes according with the terms of the indenture governing the Notes offered hereby. In a *falência*, a court may order that each holder of the Notes file an individual claim (as opposed to a single claim filed by the trustee for the benefit of the holders of the Notes), for which holders of the Notes may need to engage local counsel. In the latter scenario, the trustee may be unable to remit distributions for the holders of the Notes.

Substantive Consolidation of a Corporate Group

It is not unusual that the assets and liabilities of a group of entities belonging to the same corporate group that file a joint request for *recuperação judicial* consolidate in a single estate. The typical effects of which are that a single plan of reorganization may be filed and creditors of each entity vote together on the plan of reorganization. Relative priorities amongst the creditors of the various entities may not be protected by the court. While the Bankruptcy Law does not provide for the possibility of consolidation, courts have been either processing consolidated cases on the basis that assets and liabilities of the group are intertwined or leaving the decision about the consolidation to the creditors – in the latter case, the approval of the substantive consolidation takes place at the GMC. It is often the case that no interested party challenges an implicit attempt to consolidate and the case moves forward on such basis.

Cross-border Reorganization

Brazilian law has no specific provisions on cross-border reorganization or bankruptcy proceedings. Foreign court decisions must be submitted to ratification before the Brazilian Federal Court of Appeals (*Superior Tribunal de Justiça*) in order to become enforceable in Brazil (*homologação de sentença estrangeira*). Court decisions taken on foreign judicial reorganization or bankruptcy proceedings may be subject to the same proceeding, observing the proper formal and material requirements. See "Service of Process and Enforcement of Civil Liabilities – Brazil."

Notwithstanding the foregoing, Brazilian Courts have accepted requests for *recuperação judicial* by foreign entities which are part of a corporate group whose "center of main interest" or "principal place of business" (*principal estabelecimento*) is located in Brazil. Such requests typically involve other Brazilian entities from the same corporate group. The "COMI-equivalent" test conducted by Brazilian courts for foreign entities have been taking into consideration the following factors, *inter alia*: the place where most

relevant business decisions are taken; if the foreign entity is a mere investment or debt issuance vehicle; if there are relevant assets in Brazil; if there are relevant creditors outside Brazil; if relief is necessary to allow for the recovery of the group in Brazil.

On the other hand, it must be highlighted that Brazilian courts have exclusive jurisdiction over reorganization and bankruptcy of Brazilian companies, which means that it is highly unlikely that Brazilian courts would recognize foreign insolvency proceedings involving Brazilian companies.

Extrajudicial Reorganization

The second mechanism granted to debtors by the Bankruptcy Law to pursue reorganization, the "Extrajudicial Reorganization" (*Recuperação Extrajudicial*), is a pre-packed type of arrangement which is brought before the Bankruptcy Court only for confirmation.

Creditors that are not subject to the Judicial Reorganization, the holders of labor related credits, credits arising out of on-the-job accidents and tax credits are excluded from the Extrajudicial Reorganization.

The Extrajudicial Reorganization may precede a Judicial Reorganization and may enclose all categories of credits (other than those that are excluded, as explained in the preceding paragraph), some categories of creditors or even a group of certain categories. In order to include all creditors of a certain category, the approval by the holders of more than 3/5 of the amount of the credits is necessary.

Bankruptcy Liquidation

Pursuant to the Bankruptcy Law, the "Bankruptcy Liquidation" (*Falência*) is the remedy for entities that are not economically or financially viable, and their assets and productive resources will be preserved and sold so as to optimize their efficient use by the subsequent owner.

In Bankruptcy Liquidation, the debtor loses control of the assets, which are managed and sold by the insolvency Administrator in favor of the creditors, under the supervision of the Bankruptcy Court and the Public Attorney.

Under Brazilian law, the bankruptcy (forced liquidation) requested by a creditor shall be decreed whenever (a) the debtor company fails, without legal reason, to pay a debt represented by a protested enforceable instrument in an amount exceeding 40 minimum wages, the total of which currently equates to BRL41,800; or (b) foreclosure proceedings are pending and the debtor company does not pay, deposit or appoint sufficient assets within the requisite legal term. A debtor may also be considered bankrupt if it (i) sells its assets in advance or resorts to ruinous or fraudulent means to make payments; (ii) performs (or tries to perform by unequivocal actions) a sham transaction or the disposal of part or all of its assets to a third party, with the objective of delaying payments or defrauding creditors; (iii) transfers its place of business without the consent of all creditors and does not maintain sufficient assets to settle its liabilities; (iv) performs a fraudulent (sham) transaction to transfer its main place of business to evade the law or to prejudice a creditor; (v) gives or increases security for an existing debt and does not maintain sufficient free and clear assets to settle its liabilities; (vi) becomes absent without leaving any competent representative with enough resources to pay the creditors; (vii) abandons its place of business or tries to hide from its domicile, head office or main place of business; and/or (viii) fails to perform an obligation due under a judicial reorganization plan.

The order of payment as provided for in the Bankruptcy Law, after the payment of the indispensable expenses to the administration of the bankruptcy with cash availabilities, is the following:

(a) Salary-related claims matured at most 3 months prior to liquidation decree, limited to five times the minimum wage per worker, paid off as soon as there is available cash;

(b) Payment of the restitutions in cash (including ACC claims);

(c) Post-petition claims;

(d) Administrator's fees and post-petition labor claims (*pari passu*);

(e) Amounts advances post-liquidation decree; Liquidation expenses;

(f) Legal fees;

(g) Post-reorganization financing, post-reorganization and post-liquidation obligations and post-reorganization and post-liquidation tax claims (*pari passu*);

(h) Labor-related (150 minimum wages, minus 5 minimum wages already paid) and credits resulting from on-the-job accidents;

(i) Secured claims (*penhor* and *hipoteca*);

(j) Claims listed as "Public Collectible Debts";

(k) Special privileged claims;

(l) General privileged claims;

(m) Unsecured claims;

(n) Claims related to contractual penalties and fines for breach of criminal or administrative law, including tax-related fines;

(o) Subordinated claims, as follows: those so provided for by law or contract, as well as the credits of shareholders and officers without an employment bond.

In the event of bankruptcy (forced liquidation), all of a Brazilian entity's obligations which are denominated in foreign currency will be converted into Brazilian Reals at the prevailing exchange rate on the date of declaration of the bankruptcy (forced liquidation) by the court.

Canada

One of the guarantors is an unlimited company formed under the laws of the Province of Nova Scotia in Canada. In the event of an insolvency of the Canadian guarantor, insolvency proceedings may be initiated in Canada in respect of such Canadian guarantor, which proceedings would be governed by Canadian insolvency laws. In such circumstances, the guarantee obligations of the Canadian guarantor may become subject to review under applicable Canadian insolvency laws and applicable provincial laws on fraudulent conveyance. Pursuant to such laws, a Canadian court could void the obligations under the relevant guarantee if, among other things, the Canadian guarantor, at the time it incurred the indebtedness evidenced by its guarantee:

- issued the guarantee with the intention to delay, hinder, defeat or defraud creditors, noting however that if such occurs in the context of a related party transaction, the intention may be, in certain circumstances, by statute, inferred or not be a necessary element;
- received less than fair market value for issuing the guarantee at the time it issued the guarantee;
- was insolvent or rendered insolvent by reason of issuing the guarantee; or
- had the effect of giving the beneficiaries of the guarantees a preference.

Under the Bankruptcy and Insolvency Act (Canada), the Canadian guarantor would be considered insolvent if:

- it is for any reason unable to meet its obligations as they generally become due;
- it has ceased paying its current obligations in the ordinary course of business as they generally become due; or
- the aggregate of its property is not, at fair valuation, sufficient, or if disposed at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

We cannot be sure, depending on the circumstances, as to the standard that a court would use to determine whether or not a Canadian guarantor was solvent at the relevant time or, regardless of the standard that the court uses, that the issuance of the guarantee would not be voided or the guarantee would not be subordinated to the Canadian guarantor's other debt. If such a case were to occur, the guarantee could also be subject to the claim that the guarantee was incurred for our benefit and only indirectly for the benefit of the relevant Canadian guarantor and that, as a result, the obligations of the relevant Canadian guarantor were incurred for less than fair consideration.

In the context of insolvency proceedings commenced pursuant to Canadian federal bankruptcy and insolvency laws (the ''Insolvency Proceedings''), creditors may be stayed from claiming against a debtor company any pre-filing debt or obligations, unless such stay is lifted by the court supervising the relevant Insolvency Proceedings.

If a Canadian court were to find that the incurrence of a guarantee was a transfer at undervalue, preference or other similar voidable transaction, the Canadian court could, among other things, have the guarantee set aside or voided. In the event of a finding that a transfer at undervalue or similar voidable transaction has occurred, holders of the Notes offered hereby may not receive any repayment on the Notes offered hereby. Further, the voidance of the Notes offered hereby could result in an event of default with respect to our other debt that could result in acceleration of such debt.

In addition to the foregoing, it should be noted that under Canadian bankruptcy and insolvency statutes, a court may grant an order authorizing interim financing secured by a court-ordered charge that may rank in priority to the claim of any other creditor of the debtor. In such a circumstance, the court must consider a number of factors, including:

- the period during which the debtor is expected to be subject to the Insolvency Proceedings;
- how the debtor's business and financial affairs are to be managed during the Insolvency Proceedings;
- whether the debtor's management has the confidence of its major creditors;
- whether the interim financing would enhance the prospects of a viable proposal being made in respect of the debtor;
- the nature and value of the debtor's property;
- whether any creditor would be materially prejudiced as a result of the security or charge; and
- whether the court-appointed trustee or monitor files a report recommending the approval of the interim financing.

To the extent that a Canadian court grants such interim financing secured by a court-ordered charge, the Canadian guarantor's obligations under its guarantee of the Notes may become subordinate to its obligations pursuant to the interim financing.

England and Wales

Insolvency Law

Certain guarantors are incorporated under the laws of England and Wales (the "English Guarantors"). Any insolvency proceeding by or against any of the English Guarantors would likely proceed under, and be governed by, English insolvency laws. However, pursuant to the Recast Insolvency Regulation, where a company incorporated under English law has its COMI in a member state of the European Union, then the main insolvency proceedings for that company will, subject to certain exceptions, be opened in the EU member state in which its COMI is located and be subject to the laws of that EU member state (see "*—European Union*" above). In addition, the Cross Border Insolvency Regulations 2006, which implement the UNCITRAL Model Law on Cross Border Insolvency in Great Britain, provide that foreign (i.e. non English) insolvency proceedings may be recognised where any English company has its COMI or an "establishment" (being a place of operations where it carries out a non transitory economic activity with human means and assets or services) in such foreign jurisdiction. In case of any conflict, the Recast Insolvency Regulation will prevail over the Cross-Border Insolvency Regulations 2006.

English insolvency law is different to the laws of the United States and other jurisdictions with which investors may be familiar. In the event that an English Guarantor experiences financial difficulty, it is not possible to predict with certainty the outcome of insolvency or similar proceedings. The obligations under the Notes are guaranteed by the guarantees. English insolvency laws and other limitations could limit the enforceability of a guarantee against an English Guarantor.

The following is a brief description of certain aspects of English insolvency law relating to certain limitations on the guarantees. The application of these laws could adversely affect investors, their ability to enforce their rights under the guarantees and therefore may limit the amounts that investors may receive in an insolvency of an English Guarantor.

Administration

English insolvency statutes empower English courts to make an administration order in respect of an English company, a company with its COMI or an "establishment" (see "*European Union*" above) in England or indeed any company incorporated in an EEA State in certain circumstances and provided rules of private international law (including as to the entity's connection to the jurisdiction) are complied with. Without limitation and subject to specific conditions, an administration order can be made if the court is satisfied that (a) the relevant company is or is likely to become "unable to pay its debts" and (b) the administration order is reasonably likely to achieve the purpose of administration.

A company is unable to pay its debts if it is insolvent on a "cash flow" basis (unable to pay its debts as they fall due) or if it is insolvent on a "balance sheet" basis (the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities), as per Section 123 of the Insolvency Act 1986 (the "Insolvency Act"). Such insolvency is presumed if, among other matters, the company fails either to satisfy a creditor's statutory demand for a debt exceeding £750 within 21 days of service or to satisfy in full or in part a judgment debt (or similar court order). The purpose of an administration is comprised of three parts that must be looked at successively: rescuing the company as a going concern or, if that is not reasonably practicable, achieving a better result for the company's creditors as a whole than would be likely upon immediate liquidation or, if neither of those objectives is reasonably practicable and the interests of the creditors as a whole are not unnecessarily harmed thereby, realising property to make a distribution to one or more secured or preferential creditors. The order of priority which applies to any distribution to creditors is set out below (see "*Priority on insolvency*" below).

Without limitation and subject to specific conditions, an English company or the directors of such company may also appoint an administrator out of court. (Further, the holder of a "qualifying floating charge" which has become enforceable would also be entitled to appoint an administrator out of court; however, as no such security is being given to support the guarantees provided by the English Guarantors this will not apply to the holders of the Notes but another creditor holding such a charge could have this right.) Different appointment procedures apply according to the identity of the appointor.

An administrator is given wide powers to conduct the business of the company to which they are appointed and, subject to certain requirements under the Insolvency Act, dispose of the property of a company in administration (including property subject to a floating charge; no such floating charge is being given at closing to support the guarantees of the Notes provided by the English Guarantors).

In addition, certain rights of creditors, including secured creditors, are curtailed in an administration. Upon the appointment of an administrator, a statutory moratorium is imposed and no step may be taken to enforce security or a guarantee over the company's property except with the consent of the administrator or leave of the court (although a demand for payment could be made under a guarantee granted by the company). The same requirements for consent or permission apply to the institution or continuation of legal process (including legal proceedings, execution, distress and diligence) against the company or property of the company. In either case, a court will consider discretionary factors in determining any application for leave in light of the hierarchy of statutory objectives of administration described above.

However, certain creditors of a company in administration may, in certain defined circumstances, be able to realise their security over certain of that company's property notwithstanding the statutory moratorium. This is by virtue of the disapplication of the moratorium in relation to a "security financial collateral arrangement" (generally, a charge over cash or financial instruments such as shares, bonds or tradeable capital market debt instruments and credit claims) under the Financial Collateral Arrangements (No. 2) Regulations 2003 (as amended) (the "Financial Collateral Regulations").

Scheme of arrangement

Although not an insolvency proceeding, pursuant to Part 26 of the Companies Act 2006 the English courts have jurisdiction to sanction a scheme of arrangement that effects a compromise of a company's liabilities between a company and its creditors (or any class of its creditors). An English Guarantor may be able to pursue a scheme in respect of its financial liabilities. In addition, a foreign guarantor which (a) is liable to be wound up under the Insolvency Act and (b) has a "sufficient connection" to England and Wales could also pursue a scheme. In practice, a foreign company is likely to satisfy the first limb of this test and the second limb has been found to be satisfied where, amongst other things, the company's COMI is in England, the company's finance documents are English law governed or the company's finance documents have been amended in accordance with their terms to be governed by English law. Ultimately, each case will be considered on its particular facts and circumstances so previous cases will not necessarily determine whether or not any of the grounds of the second limb are satisfied in the present case.

Before the court considers the sanction of a scheme of arrangement, affected creditors will vote on the proposed compromise or arrangement in respect of their claims in a single class or in a number of classes, depending on the rights of such creditors that will be affected by the proposed scheme and any new rights that such creditors are given under the scheme. Such compromise can be proposed by the company or its creditors. If a majority in number representing 75% or more by value of those creditors present and voting at the meeting(s) of each class of creditors vote in favour of the proposed scheme, irrespective of the terms and approval thresholds contained in the finance documents, then that scheme will (subject to the sanction of the court) be binding on all affected creditors, including those affected creditors who did not participate in the vote and those who voted against the scheme. The scheme then needs to be sanctioned by the court at a sanction hearing where the court will review the fairness of the scheme and consider whether it is reasonable. The court has discretion as to whether to sanction the scheme as approved, make an order conditional upon modifications being made or reject the scheme.

Unlike an administration proceeding, the commencement of a scheme of arrangement does not trigger a moratorium of claims or proceedings. Note, however, the stand-alone moratorium and new restructuring process (similar to a scheme of arrangement but with an ability for cross-class cram-down) introduced by the Corporate Insolvency and Governance Act 2020 ("CIGA") (see "*Corporate Insolvency and Governance Act 2020*" below).

Company voluntary arrangement

Pursuant to Part I of the Insolvency Act, a company (by its directors or its administrator or liquidator, as applicable) may propose a company voluntary arrangement to the company's shareholders and creditors which entails a compromise, or other arrangement, between the company and its creditors, typically a rescheduling or reducing of the company's debts. Provided that the proposal is approved by the requisite majority of creditors by way of a decision procedure, it will bind all unsecured creditors who

were entitled to vote on the proposal. A company voluntary arrangement cannot affect the right of a secured creditor to enforce its security, except with its consent.

In order for the company voluntary arrangement proposal to be passed, it must be approved by at least 75% (by value) of the company's creditors who respond in the decision procedure, and no more than 50% (by value) of unconnected creditors may vote against it. Secured debt cannot be voted in a company voluntary arrangement, however, a secured creditor may vote to the extent that it is undersecured. A secured creditor who proves in the company voluntary arrangement for the whole of its debt may be deemed to have given up its security.

A company may take steps to obtain a stand-alone moratorium once it intends to make a proposal for a company voluntary arrangement (see "*Corporate Insolvency and Governance Act 2020*" below).

Liquidation/winding-up

Liquidation is a company dissolution procedure under which the assets of a company are realised and distributed by the liquidator to creditors in the statutory order of priority prescribed by the Insolvency Act (see "*Priority on insolvency*" below). There are two forms of winding-up: (a) compulsory liquidation, by order of the court; and (b) members' voluntary liquidation or creditors' voluntary liquidation, in each case by resolution of the company's members. The difference between the two latter proceedings is the solvency of the company in question; in a members' voluntary liquidation, the directors of the company swear a statutory declaration as to the company's solvency over the following 12 months whereas the primary ground for the compulsory winding-up of an insolvent company is that it is unable to pay its debts (as defined in Section 123 of the Insolvency Act – see "*Administration*" above). Note that while a creditors' voluntary liquidation (other than as an exit from administration) is initiated by a resolution of the members, not the creditors, once in place the process is subject to some degree of control by the creditors.

The effect of a compulsory winding-up differs in a number of respects from that of a voluntary winding-up. In a compulsory winding up, under Section 127 of the Insolvency Act any disposition of the relevant company's property made after the commencement of the winding up is, unless sanctioned by the court, void. However, this will not apply to any property or security interest subject to a disposition or created or otherwise arising under a financial collateral arrangement under the Financial Collateral Regulations and will not prevent a close-out netting provision taking effect in accordance with its terms. Subject to certain exceptions, when an order is made for the winding-up of a company by the court, it is deemed to have commenced at the time of the presentation of the winding up petition. Once a winding up order is made by the court, a stay of all proceedings against the company will be imposed. No action or proceeding may be continued or commenced against the company without permission of the court and subject to such terms as the court may impose although there is no freeze on the enforcement of security.

In the context of a voluntary winding up, however, there is no equivalent to the retrospective effect of a winding-up order; the winding-up commences on the passing of the resolution to wind up. As a result, there is no equivalent of Section 127 of the Insolvency Act. There is also no automatic stay in the case of a voluntary winding-up – it is for the liquidator, or any creditor or contributory of the company, to apply for a stay to prevent the continuation of legal proceedings and enforcement of security.

A liquidator has the power to bring or defend legal proceedings on behalf of the company, to carry on the business of the company as far as it is necessary for its beneficial winding up, to sell the company's property and execute documents in the name of the company and to challenge antecedent transactions (see "*Avoidance of Transactions*" below).

Any secured creditor(s) in our corporate group may also have additional remedies available to them under English law to satisfy their obligations. The exercise of such remedies may be adverse to the interests of the holders of the Notes.

Priority on insolvency

One of the primary functions of winding-up (and, where the company cannot be rescued as a going concern, one of the possible functions of administration) under English law is to realise the assets of the company in question and distribute the proceeds from those assets to the company's creditors.

In accordance with the Insolvency Act and the Insolvency (England and Wales) Rules 2016, creditors are placed into different classes, with the proceeds from the realisation of the insolvent company's property applied in descending order of priority, as set out below. With the exception of the Prescribed Part (as defined below), distributions generally cannot be made to a class of creditors until the claims of the creditors in a prior-ranking class have been paid in full. Unless creditors have agreed otherwise with the company, distributions are made on a pari passu basis, that is, the assets are distributed in proportion to the debts due to each creditor within a class.

Contractual setting-off arrangements entered into after a company enters liquidation or administration are only respected to the extent they fall within the definition of "mutual dealing" as applied by the mandatory insolvency set-off regime. This regime sees an account being taken of what is due from each party to the other in respect of their mutual dealings, and only the resulting net balance is either provable by the creditor in the administration or liquidation of the company (if amounts remain due to the creditor) or, conversely, is payable by the creditor to the company (if amounts remain due to the company).

The general priority on insolvency is as follows (in descending order of priority):

- *First ranking*: holders of fixed charge security (but only to the extent the value of the secured assets covers that indebtedness);
- *Second ranking*: expenses of the insolvent estate (there are statutory provisions setting out the order of priority in which expenses are paid);
- *Third ranking*: ordinary and secondary preferential creditors.

  Ordinary preferential debts include (but are not limited to) debts owed by the insolvent company in relation to: (a) contributions to occupational and state pension schemes; (b) wages and salaries of employees for work done in the four months before the insolvency date, up to a maximum of £800 per person; (c) holiday pay due to any employee whose contract has been terminated, whether the termination takes place before or after the date of insolvency; and (d) bank and building deposits eligible for compensation under the Financial Services Compensation Scheme ("FSCS") up to the statutory limit. As between one another, ordinary preferential debts rank equally.

  Secondary preferential debts rank for payment after the discharge of ordinary preferential debts and include bank and building deposits eligible for compensation under the FSCS to the extent that claims exceed the statutory limit. The UK government has confirmed its intention in the Finance Bill 2020 that from 1 December 2020 secondary preferential debts will include claims by HMRC in respect of taxes including VAT, PAYE income tax (including student loan repayments), employee NI contributions and Construction Industry Scheme deductions (but excluding corporation tax and employer NI contributions) which are held by the company on behalf of employees and customers. As between one another, secondary preferential debts rank equally;
- *Fourth ranking*: holders of floating charge security, according to the priority of their security. This would include any security interest that was stated to be a fixed charge in the document that created it but which, on proper interpretation by the court, was rendered a floating charge. However, before distributing asset realisations to the holders of floating charges, the Prescribed Part (as defined below) must, subject to certain exceptions, be set aside for distribution to unsecured creditors;
- *Fifth ranking*:
  - firstly, provable debts of unsecured creditors and (to the extent of any unsecured shortfall) secured creditors, in each case including accrued and unpaid interest on those debts up to the date of commencement of the relevant insolvency proceedings. To pay the secured creditors any unsecured shortfall, the insolvency officeholder can only use realisations from unsecured assets as secured creditors are not entitled to any distribution from the Prescribed Part unless the Prescribed Part is sufficient to pay out all unsecured creditors;
  - secondly, interest on the company's debts (at the higher of the applicable contractual rate and the rate determined in accordance with the Judgments Act 1838 (currently 8% per annum)) in respect of any period after the commencement of liquidation or after the commencement of an administration which has been converted into a distributing administration. However, in the case of interest accruing on amounts due under the Notes or the guarantees, such interest due to the holders of the Notes may, if there are sufficient realisations from the secured assets, be discharged out of such security recoveries; and
  - thirdly, non-provable liabilities, being liabilities that do not fall within any of the categories above and therefore are only recovered in the (unusual) event that all categories above are fully repaid; and
- *Sixth ranking*: shareholders. If, after the repayment of all unsecured creditors in full, any remaining funds exist, these will be distributed to the shareholders of the insolvent company.

Subject to the above order of priority, subordinated creditors are ranked according to the terms of the subordination language in the relevant documentation.

An insolvency practitioner of the company (e.g. an administrator, administrative receiver or liquidator) will generally be required to ring-fence a certain percentage of the proceeds of enforcement of floating charge security for the benefit of unsecured creditors (after making full provision for preferential creditors and expenses out of floating charge realisations) (the "Prescribed Part"). This ring-fence applies to (a) 50% of the first £10,000 of the company's net property and (b) 20% of the remainder of the company's net property over £10,000, with a maximum aggregate cap of £800,000 (except where the company's net property is

available to be distributed to the holder of a first-ranking floating charge created before 6 April 2020, in which case the maximum aggregate cap is £600,000). The Prescribed Part must be made available to unsecured creditors unless the cost of doing so would be disproportionate to the resulting benefit to creditors.

Foreign currency

Under English insolvency law, where creditors are asked to submit formal proofs of claim for their debts, the office-holder will convert all foreign currency denominated proofs of debt into pound sterling at a single rate for each currency determined by the office-holder by reference to the exchange rates prevailing on the relevant date. This provision overrides any agreement between the parties. If a creditor considers the rate to be unreasonable, they may apply to the court.

Accordingly, in the event that an English Guarantor goes into liquidation or administration, holders of the Notes may be subject to exchange rate risk between the date on which such English Guarantor goes into liquidation or administration and receipt of any amounts to which such holders of the Notes may become entitled.

Avoidance of transactions

There are circumstances under English insolvency law in which the granting by an English company of security and/or guarantees can be challenged. In most cases, this will only arise if the company is placed into administration or liquidation within a specified period after the granting of the security and/or guarantee. Therefore, if during the specified period an administrator or liquidator is appointed to an English company, the administrator or liquidator may challenge the validity of the security or guarantee given by such company.

The Issuers cannot be certain that, in the event that the onset of an English company's insolvency (as described below) is within any of the requisite time periods, the grant of a guarantee in respect of the Notes would not be challenged or that a court would uphold the transaction as valid.

Onset of insolvency

The date of the onset of insolvency, for the purposes of transactions at an undervalue and preferences (as discussed below) depends on the insolvency procedure in question.

In an administration, the onset of insolvency is the date on which: (a) the court application for an administration order is issued; (b) the notice of intention to appoint an administrator is filed at court; or (c) otherwise, the date on which the appointment of an administrator takes effect. In a compulsory liquidation, the onset of insolvency is the date the winding-up petition is presented to court, whereas in a voluntary liquidation it is the date the company passes the relevant winding-up resolution. Where liquidation follows administration, the onset of insolvency will be the same as for the initial administration.

Connected persons

If a given transaction at an undervalue or preference has been entered into by the company with a "connected person", then particular specified time periods and presumptions will apply to any challenge by an administrator or liquidator (as set out below).

A "connected person" of a company granting a security interest or guarantee for the purposes of transactions at an undervalue or preferences is a party who is: (a) a director of the company; (b) a shadow director; (c) an associate of such director or shadow director; or (d) an associate of the relevant company.

A party is associated with an individual if they are: (a) a relative of the individual; (b) the individual's husband, wife or civil partner; (c) a relative of the individual's husband, wife or civil partner; (d) the husband, wife or civil partner of a relative of the individual; or (e) the husband, wife or civil partner of a relative of the individual's husband, wife or civil partner. A party is associated with a company if they are employed by that company. A company is associated with another company if the same person has control of both companies, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or if a group of two or more persons has control of each company and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

A person is to be taken as having control of a company if the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it. Where two or more persons together satisfy either of these conditions, they are to be taken as having control of the company.

The potential grounds for challenge available under English law that may apply to any security interest or guarantee granted by an English company include, without limitation, the following described below:

Transactions at an undervalue

Under English insolvency law, a liquidator or administrator of an English company could apply to the court for an order to set aside the creation of a security interest or a guarantee (or grant other relief) where the creation of such security interest or guarantee constituted a transaction at an undervalue.

A transaction will only be a transaction at an undervalue if, at the time of the transaction or as a consequence of the transaction, the English company is unable to pay its debts or becomes unable to pay its debts (as defined in Section 123 of the Insolvency Act). The transaction can be challenged if the onset of the English company's insolvency is within a period of two years from the date the English company grants the security interest or the guarantee. A transaction may be set aside as a transaction at an undervalue if the company made a gift to a person, if the company received no consideration or if the company received consideration of significantly less value, in money or money's worth, than the consideration given by such company. However, a court shall not make an order if it is satisfied that the company entered into the transaction in good faith and for the purpose of carrying on its business and that, at the time it did so, there were reasonable grounds for believing the transaction would benefit it.

If the court determines that the transaction was a transaction at an undervalue, the court shall make such order as it sees fit to restore the company to the position it would have been in had it not entered into the transaction. In any proceedings, it is for the administrator or liquidator to show that the English company was unable to pay its debts unless a beneficiary of the transaction was a connected person (see "*Connected persons*" above), in which case there is a presumption of insolvency and the connected person must demonstrate that the company was not unable to pay its debts at the time of the transaction or became unable to do so as a consequence of the transaction.

An order by the court for a transaction at an undervalue may affect the property of, or impose any obligation on, any person whether or not they are the person with whom the company entered into the transaction, but such an order will not prejudice any interest in property which was acquired from a person other than the English company in good faith and for value or prejudice any interest deriving from such an interest, and will not require a person who received a benefit from the transaction in good faith and for value to pay a sum to the liquidator or administrator of the company, except where the person was a party to the transaction.

Preference

Under English insolvency law, a liquidator or administrator of an English company could apply to the court for an order to set aside payments, the creation of a security interest or a guarantee (or grant other relief) where such payment, creation of security interest or guarantee constituted a preference.

It will only be a preference if, at the time of the transaction or in consequence of the transaction, the English company is unable to pay its debts or becomes unable to pay its debts (as defined in Section 123 of the Insolvency Act). The transaction can be challenged if the English company enters into insolvency within a period of six months (if the beneficiary of the security or the guarantee is not a connected person) or two years (if the beneficiary is a connected person) from the date the English company grants the security interest or the guarantee. A transaction may constitute a preference if a transaction has the effect of putting a creditor of the English company (or a surety or guarantor for any of the company's debts or liabilities) in a better position (in the event of the company going into insolvent liquidation) than such creditor, guarantor or surety would otherwise have been in had that transaction not been entered into. However, a court shall not make an order unless the company which entered into the transaction was influenced by a desire to produce a preferential position in relation to that person when taking their decision.

If the court determines that the transaction was a preference, the court shall make such order as it sees fit to restore the company to the position it would have been in had it not entered into the transaction. In any proceedings, it is for the administrator or liquidator to show that the English company was unable to pay its debts at the relevant time and that there was such desire to prefer the relevant creditor. If, however, the beneficiary of the transaction was a connected person (except where such beneficiary is a connected person by reason only of being the company's employee), it is presumed that the company intended to put that person in a better position and the connected person must demonstrate that there was, in fact, no such desire on the part of the company to prefer them.

An order by the court for a preference may affect the property of, or impose any obligation on, any person whether or not they are the person to whom the preference was given, but such an order will not prejudice any interest in property which was acquired from a person other than the English company in good faith and for value or prejudice any interest deriving from such an interest, and will not require a person who received a benefit from the preference in good faith and for value to pay a sum to the liquidator or administrator of the company, except where the payment is to be in respect of a preference given to that person at a time when they were a creditor of the English company.

Transactions defrauding creditors

Under English insolvency law, where a transaction was at an undervalue and the court is satisfied that it was made for the substantial purpose of putting assets beyond the reach of a person who is making, or may make, a claim against the company in question, or of otherwise prejudicing the interests of a person in relation to the claim which that person is making or may make, the transaction may be set aside by the court as a transaction defrauding creditors. This provision may be used by any person who claims to be a "victim" of the transaction including the UK Financial Conduct Authority and the UK Pensions Regulator (with the leave of the court if the company is in liquidation or administration) and use of the provision is therefore not limited to liquidators or administrators. There is no statutory time limit under English insolvency legislation within which the challenge must be made (subject to the normal statutory limitation periods) and the relevant company does not need to be insolvent at the time of, or as a result of, the transaction.

If the court determines that the transaction was a transaction defrauding creditors, the court may make such order as it sees fit to restore the position to what it would have been if the transaction had not been entered into and to protect the interests of the victims of the transaction.

The relevant court order may affect the property of, or impose any obligation on, any person whether or not they are the person with whom the transaction was entered into. However, such an order will not prejudice any interest in property which was acquired from a person other than the debtor company in good faith, for value and without notice of the relevant circumstances, and will not require a person who received a benefit from such transaction in good faith, for value and without notice of the relevant circumstances to pay any sum to the liquidator or administrator of the company unless such person was a party to the transaction.

Disclaimer

An English liquidator has the power to disclaim onerous property, which is any unprofitable contract or other property of the company that cannot be sold, readily sold or may give rise to a liability to pay money or perform any other onerous act, by serving the prescribed notice on the relevant party. A contract may be unprofitable if it gives rise to prospective liabilities and imposes continuing financial obligations on a company that may be detrimental to creditors. A contract will not be unprofitable merely because it is financially disadvantageous or because the company could have made, or could make, a better bargain. However, this power to disclaim onerous property does not apply to an executed contract nor can it, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

Limitations on enforcement

The grant of a guarantee by any of the English Guarantors in respect of the obligations of another group company must satisfy certain legal requirements. More specifically, such a transaction must be allowed by the respective company's memorandum and articles of association. To the extent that these documents do not allow such an action, there is the risk that the grant of the guarantee and the subsequent security can be found to be void and the respective creditor's rights unenforceable. Some comfort may be obtained for third parties if they are dealing with an English Guarantor in good faith; however, the relevant legislation is not without difficulties in its interpretation.

Further, corporate benefit must be established for each English Guarantor in question by virtue of entering into the proposed transaction. Section 172 of the Companies Act 2006 provides that a director must act in a way that he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. If the directors enter into a transaction where there is no or insufficient commercial benefit, they may be found to be abusing their powers as directors and such a transaction may be vulnerable to being set aside by a court. Section 172(3) of the Companies Act 2006 additionally provides that, in certain circumstances, the directors need to consider or act in the interests of the creditors of the company. While the statutory provisions do not prescribe when directors' duties to creditors arise, the Court of Appeal has recently held that the shift takes place when the directors know, or should know, that the company in question is or is likely to become insolvent, with "likely" in this context meaning "probable".

Security and/or guarantees granted by an English Guarantor may also be subject to potential limitations to the extent they would result in unlawful financial assistance contrary to English company law.

Under English company law, subject to limited exceptions, any security granted by a charging company incorporated in England and Wales (including security governed by law other than English law) (together with prescribed particulars of the relevant security) may be delivered to the Registrar of Companies for registration within 21 days after the date of creation of the relevant security interest. While the Companies Act 2006 does not impose an obligation as such on English companies to register security created on or after 6 April 2013, security will be deemed to be void against a liquidator, administrator and any creditor of the applicable charging company if not registered within the 21-day period. When security becomes so void, the debt which was intended to be secured by such security is deemed to become immediately payable. In limited circumstances, it may be possible to apply to the English courts for an order to rectify a failure to register and allow the relevant charge to be registered after the 21-day period has expired.

Security created on or after 1 October 2011 by overseas companies over assets in England and Wales does not need to be registered with the Registrar of Companies. Registration with applicable asset registries may, however, still be required depending on the nature of the collateral assets.

Corporate Insolvency and Governance Act 2020

On 26 June 2020, CIGA enacted fundamental reforms to the UK's existing insolvency and companies legislation and confers on the UK government extensive powers to make a range of further amendments to such legislation until 30 April 2021 (subject to extension). Some of these measures had been proposed in August 2018 but were fast-tracked through the UK legislative process in response to COVID-19. The measures include the following:

Moratorium

CIGA introduced a new standalone moratorium to enable a company to seek rescue options and reach an agreement with its creditors to facilitate a restructuring.

Subject to certain exclusions and meeting requisite conditions, any company that is liable to be wound up under the Insolvency Act is eligible for a moratorium. Ineligible companies include certain financial services companies (including insurance and securitization companies as well as parties to capital market arrangements). Directors of any eligible company may commence a moratorium by filing the requisite papers at court. From 30 March 2021, directors must apply to court to commence a moratorium for any company that has entered into a moratorium, administration or company voluntary arrangement in the preceding twelve months, whereupon the court will consider whether a moratorium will result in a better outcome for creditors as a whole than winding up without one.

Costs incurred during a moratorium will be treated in the same way as expenses in an administration. Where a company exits a moratorium and subsequently enters into administration or liquidation within a 12-week period, any unpaid moratorium debts and any pre-moratorium debts for which the company did not have a payment holiday (save for financial debt accelerated during the moratorium), will have super-priority over any costs or claims in the administration or liquidation (except for claims of fixed charge creditors to the extent such creditors can be paid out of the assets charged and any fees and expenses of the official receiver).

A moratorium will last for an initial period of 20 business days, which may be extended for a further 20 business days by the directors of the company. Where an extension is proposed, statements from the directors and the monitor must be filed with the court confirming that the qualifying conditions continue to be met. Further extensions (beyond 40 business days) will be available:

(i) pursuant to an out-of-court filing for a period of up to one year from commencement, if more than 50% (by value) of secured and more than 50% (by value) of unsecured creditors vote in favor of the extension, unless in both cases, more than 50% (by number) of unconnected secured and unsecured creditors vote against the extension. Only creditors with pre-moratorium debt in respect of which the company has a payment holiday, which has fallen due or may fall due before the proposed revised end date of the moratorium, will have the right to vote;

(ii) pursuant to an application by the directors to court for such period as the court sees fit;

(iii) in connection with a company voluntary arrangement until the proposal is implemented, accepted or rejected by creditors or withdrawn by the company; and

(iv) at the court's discretion in connection with a scheme of arrangement or restructuring plan.

Enforcement of Ipso Facto Clauses Prohibited

CIGA introduced a permanent prohibition on the enforcement of termination clauses and the imposition of amended terms by a supplier in contracts for goods and services, which would have been triggered by the commencement of insolvency proceedings against the counterparty company. Such proceedings include winding up and administration, as well as the new moratorium and restructuring plan. Other rights to terminate under the contract (i.e. other than on the counterparty's insolvency) are preserved, to the extent the termination event arises after commencement of the insolvency proceeding. To prevent undue hardship, a supplier may be allowed to terminate the contract if the company, the relevant insolvency practitioner or the court consents. Financial services contracts and entities involved in financial services are not affected by this new prohibition.

Restructuring Plan

CIGA also provides for a new restructuring process, similar to a scheme of arrangement under the Companies Act 2006, but with an ability for a cross-class cram-down to bind dissenting stakeholders to the restructuring. This new standalone restructuring plan is available to any company that is liable to be wound up under the Insolvency Act, excluding certain financial market participants and any other company excluded by the Secretary of State.

The company must: (i) have encountered, or be likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern; and (ii) have proposed a compromise or arrangement with its creditors or members for the purpose of eliminating, reducing, preventing or mitigating such financial difficulties. There is no financial eligibility criteria, thereby making it available to both solvent and insolvent companies (in the latter case, the plan would be proposed by the incumbent insolvency practitioner).

The process closely resembles that for schemes of arrangement, whereby a proposed restructuring plan must be filed at court as part of the proponent's application to convene a hearing. Creditors and members whose rights would be affected by the restructuring or compromise arrangement must be permitted to participate in a convening meeting ordered by the court. At the hearing, the court will examine the classes of stakeholders and may order "out-of-the-money" creditors and members (i.e. those shown not have a genuine economic interest in the company) not to attend future meetings. Thereafter, the court may convene further stakeholder meetings, details of which must be sent to every stakeholder in that class, accompanied by details of the plan and directors' material interests in the company.

The proposed restructuring plan will be voted on at the relevant creditors' or members' meeting, and approved if the required majority of 75% by value of the creditors or members, or class of creditors or members present, vote in favor of it. In contrast to a scheme of arrangement, there is no requirement that a majority in number must also vote in favor of the plan. Where a convening application is made within 12 weeks after the end of the new standalone moratorium, any creditors in respect of "moratorium debts" and "priority pre-moratorium debts" may not participate in the vote and may not be compromised under the plan without their consent.

Following the creditors' or members' meeting(s), a sanction hearing will be held. Here, the court will consider if the necessary plan requirements have been met and decide whether to sanction the restructuring plan. The court has discretion to sanction a plan, even if one or more classes of creditors or members did not vote in favor of it, thereby "cramming-down" dissenting classes, if:

(i) the court is satisfied that no creditor or member in the dissenting class(es) would be worse off than they would be in what the court considers to be the most likely alternative scenario, were the plan not sanctioned; and

(ii) the restructuring plan has been approved by a number representing 75% by value of a class of creditors or members who would receive a payment, or have a genuine economic interest in the company, in the event of the most likely alternative scenario referred to in (i) above.

A restructuring plan must then be sanctioned by the court at a sanction hearing where the court will review the fairness of the restructuring plan. If sanctioned, it will be binding on all affected parties, whether they initially voted in favor of it or not. Parties' rights following confirmation of a restructuring plan will be as provided for in the plan and any previous rights will be extinguished. If a company subsequently enters an insolvency procedure after the failure of a restructuring plan, the rights and claims of any creditors bound by the failed plan would be as set out in the plan.

No winding up petitions or orders

CIGA has temporarily suspended the ability of creditors to present a winding up petition during the period between 27 April 2020 and 31 December 2020 (subject to extension) on the basis of a company's inability to pay its debts, unless the creditor has reasonable grounds to believe that COVID-19 did not have a financial effect on the company or that the company's inability to pay its debts would have existed even if COVID-19 had not had a financial effect on the company. With regards to petitions that have been presented during this period but before CIGA came into force, the court can make such order as it thinks appropriate to restore the position to what it would have been if the petition had not been presented. This could lead to the voiding of winding up orders made in respect of such petitions.

Similarly, no winding up orders may be made by the courts during this period on the basis of an inability to pay debts if: (i) it appears to the court that COVID-19 had a financial effect on the company before the presentation of the petition, and (ii) the court is not satisfied that the inability to pay debts would have existed even if COVID-19 had not had a financial effect on the company. Any winding up orders made during this period but before CIGA came into force will be void and the court can give directions to the insolvency official to restore the company to its "pre-petition" position.

Statutory demands

Under CIGA, as from 27 April 2020 the presentation of a winding up petition will not be permitted on the basis of a statutory demand served during the period between 1 March 2020 and 31 December 2020 (subject to extension). This applies whether or not COVID-19 had an impact on the company's failure to discharge the demand.

France

Insolvency

We conduct part of our business activity in France and, to the extent that the registered office of the Issuers or any of the guarantors is deemed to be in France, they could be subject to French court-assisted proceedings affecting creditors, i.e. *mandat ad hoc* or *conciliation* proceedings (which do not fall within the scope of the EU Insolvency Regulation). In addition, to the extent that their COMI or, in cases where the EU Insolvency Regulation does not apply, their main center of interests within the meaning of article R. 600-1 of the French Commercial Code, is deemed to be in France or they have an establishment in France, they could also be subject to French court-administered proceedings affecting creditors, i.e. either safeguard proceedings, accelerated safeguard proceedings or accelerated financial safeguard proceedings (*sauvegarde*, *sauvegarde accélérée* or *sauvegarde financière accélérée*), judicial reorganization proceedings (*redressement judiciaire*) or judicial liquidation proceedings (*liquidation judiciaire*).

Specialized courts exist for (i) conciliation or insolvency proceedings with respect to debtors that meet or exceed (on a stand-alone basis or together with the companies under their control) (x) 20 million euros in turnover and 250 employees or (y) 40 million euros in turnover, (ii) commencement of proceedings with respect to which the court's international jurisdiction results from the application of the EU Insolvency Regulation or (iii) in cases where the EU Regulation does not apply, from the debtor having its main center of interests within the jurisdiction of such specialized courts.

In addition, the French court that commences insolvency proceedings with respect to the member of a corporate group has jurisdiction over all the other members of the group (subject to French courts having international jurisdiction with respect to such entities, in accordance with the rules outlined above and to specific control thresholds); accordingly, a court can supervise the insolvency proceedings of the whole group and may, for this purpose, appoint the same administrator and creditors' representative (*mandataire judiciaire*) for all proceedings in respect of members of the group.

In general, French insolvency legislation favors the continuation of a business and protection of employment over the payment of creditors and could limit your ability to enforce your rights under the Notes and/or the guarantees granted by the French Guarantors.

Annex A of the EU Insolvency Regulation lists safeguard, accelerated safeguard, accelerated financial safeguard, judicial reorganization and judicial liquidation proceedings as insolvency proceedings within the meaning of the EU Insolvency Regulation. Any company of our group having its COMI in France would be subject to French main insolvency proceedings within the meaning of the EU Insolvency Regulation and any company of our group having an establishment in France and its COMI in another EU Member State (other than Denmark) could be subject to French secondary insolvency proceedings within the meaning of the EU Insolvency Regulation.

The following is a general discussion of preventive and insolvency proceedings governed by French law for informational purposes only and does not address all the French legal considerations that may be relevant to holders of the Notes offered hereby. Such proceedings will likely be amended in the context of the Restructuring Directive into French law with respect to which French statute n° 2019-486 dated 22 May 2019 ("*Loi Pacte*") grants the French government twenty-four months to enact appropriate measures through ordinances for the transposition of the EU Restructuring Directive.

Grace periods

In addition to insolvency laws discussed below, you could, like any other creditors, be subject to Article 1343-5 of the French Civil Code (*Code civil*).

Pursuant to the provisions of this article, French courts may, in any civil or commercial proceedings involving the debtor, whether initiated by the debtor or the creditor, taking into account the debtor's financial position and the creditor's needs, defer or otherwise reschedule over a maximum period of two years the payment dates of payment obligations and decide that any amounts, the payment date of which is thus deferred or rescheduled, will bear interest at a rate that is lower than the contractual rate (but not lower than the legal rate, as published semi-annually by the French government) or that payments made shall first be allocated to repayment of principal. A court order made under Article 1343-5 of the French Civil Code will suspend any pending enforcement measures, and any contractual default interest or penalty for late payment will not accrue or be due during the grace periods ordered by the relevant judge.

If the debtor is engaged in conciliation proceedings or has reached a conciliation agreement that is in the course of being executed, special rules apply to the grant of grace periods (see "*Court-assisted Proceedings*" below).

Insolvency test

Under French law, a debtor is considered to be insolvent (*en état de cessation des paiements*) when it is unable to pay its due debts with its immediately available assets (*actif disponible*) taking into account available credit lines, existing debt rescheduling agreements and moratoria.

The date of insolvency (*état de cessation des paiements*) is generally deemed to be the date of the court ruling commencing the judicial reorganization or judicial liquidation proceedings, unless the court sets an earlier date, which may be carried back up to 18 months before the date of such court ruling. Except for fraud, the date of insolvency may not be fixed at an earlier date than the date of the final court decision that approved an agreement (*homologation*) in the context of conciliation proceedings. The date of insolvency marks the beginning of the hardening period (see below).

Court-assisted Proceedings

A French debtor facing difficulties may in certain conditions request the commencement of court-assisted proceedings (*mandat ad hoc* or *conciliation*), the aim of which is to reach an agreement with the debtor's main creditors and stakeholders (*e.g.*, an agreement to reduce or reschedule its indebtedness).

Mandat ad hoc proceedings may only be initiated by the debtor itself, in its sole discretion. In practice, *mandat ad hoc* proceedings are used by debtors that are facing any type of difficulties but are not insolvent (see "Insolvency test" above). The proceedings are informal and confidential by law (save for the disclosure of the court decision appointing the *mandataire ad hoc* to the statutory auditors, if any). They are carried out under the aegis of a court-appointed officer (*mandataire ad hoc*), whose name may be suggested by the debtor itself, under the supervision of the president of the court. The proceedings are not limited in time. The duties of the *mandataire ad hoc* are determined by the competent court (usually the commercial court) that appoints him or her, usually to facilitate negotiations with creditors. Any agreement between the debtor and its creditors will be negotiated on a purely consensual and voluntary basis: those creditors not willing to take part cannot be bound by the agreement nor forced to accept it. *Mandat ad hoc* proceedings do not automatically stay any pending proceedings and creditors are not barred from taking legal action against the debtor to recover their claims but those that have accepted to take part in the proceedings usually accept not to do so for their duration. In any event, the debtor retains the right to petition the relevant judge for a grace period under Article 1343-5 of the French Civil Code (see "Grace periods" above). The agreement reached is reported to the president of the court but is not formally approved by it.

Conciliation proceedings may only be initiated by the debtor itself if it faces actual or foreseeable difficulties of a legal, economic or financial nature and is not insolvent (see "Insolvency test" above) or has not been insolvent for more than 45 calendar days. The proceedings are confidential by law (save for the disclosure of the court decision commencing the proceedings to the statutory auditors, if any). They are carried out under the aegis of a court-appointed conciliator (*conciliateur*), whose name may be suggested by the debtor itself, under the supervision of the president of the court. The proceedings may last up to five months (after an initial period of a maximum of four months, upon request of the *conciliateur*, the court may extend the conciliation period up to the absolute maximum of five months). The duties of the *conciliateur* are to assist the debtor in negotiating an agreement with all or part of its creditors and/or trade partners that puts an end to its difficulties, e.g. providing for the restructuring of its indebtedness. Any agreement between the debtor and its creditors will be negotiated on a purely consensual and voluntary basis: those creditors not willing to take part cannot be bound by the agreement nor forced to accept it. *Conciliation* proceedings do not automatically stay any pending proceedings and creditors are not barred from taking legal action against the debtor to recover their claims but those that have accepted to take part in the proceedings usually accept not to do so, and creditors may not request the opening of insolvency proceedings (*redressement judiciaire* or *liquidation judiciaire*) against the debtor, for the duration of the conciliation proceedings. Pursuant to Article L. 611-7 of the French Commercial Code, during the proceedings, the debtor retains the right to petition the judge that commenced them for a grace period in accordance with Article 1343-5 of the French Civil Code (see "Grace periods" above) provided that a creditor has formally put the debtor on notice to pay, or is suing for payment; the judge will take its decision after having heard the conciliator and may condition the duration of the measures it orders to reaching an agreement in the conciliation proceedings.

Additionally, pursuant to Article L. 611-10-1 of the French Commercial Code, the judge, having commenced conciliation proceedings may, during the execution period of a conciliation agreement (whether it is acknowledged or approved as described below), impose grace periods on creditors who were asked to participate in the conciliation proceedings (other than the tax and social security administrations) and have formally put the debtor on notice to pay or are suing for payment of claims that were not dealt with in the conciliation agreement, such decision being taken after hearing the *conciliateur* if he/she has been appointed to monitor the implementation of the agreement

The conciliation agreement reached between the parties may be acknowledged (*constaté*) by the president of the Commercial Court at the request of the parties, which makes the agreement binding upon them (in particular, performance of the conciliation

agreement prevents any action by the creditors party thereto against the debtor to obtain payment of claims governed by the conciliation agreement) and enforceable without further recourse to a judge (*force exécutoire)*, but the conciliation proceedings remain confidential.

Alternatively, the conciliation agreement may be approved (*homologué*) by the Commercial Court at the request of the debtor following a hearing held for that purpose to which the works council or employee representatives, as the case may be, must be convened, if (i) the debtor is not insolvent or the conciliation agreement has the effect of putting an end to the debtor's insolvency, (ii) the conciliation agreement effectively ensures that the company will survive as a going concern and (iii) the conciliation agreement does not impair the rights of the non-signatory creditors. Such approval will have the same effect as its acknowledgement (*constatation*) as described above and, in addition:

- the decision of approval by the relevant Civil or Commercial Court, which should only disclose the amount of any New Money Lien (as defined below) and the guarantees and security interests granted to secure the same, will be public but the agreement itself should otherwise remain confidential except vis-à-vis the works council or employee representatives that are informed of the content of the conciliation agreement and may have access to the full conciliation agreement at the clerk's office (*greffe*) of the Court;
- creditors that, in the context of the conciliation proceedings, provide new money, goods or services designed to ensure the continuation of the business of the debtor (other than shareholders providing new equity in the context of a capital increase) will enjoy a priority of payment over all pre-commencement and post-commencement claims (except with respect to certain pre-commencement employment claims and procedural costs) (the "New Money Lien"), in the event of subsequent safeguard proceedings, judicial reorganization proceedings or judicial liquidation proceedings;
- in the event of subsequent safeguard, accelerated safeguard, accelerated financial safeguard, judicial reorganization or judicial liquidation proceedings, the claims benefiting from the New Money Lien may not,without their holders' consent, be written off and their payment date may not be rescheduled to a date later than the date on which the safeguard or reorganization plan is adopted, not even by the creditors' committees (the powers of the bondholders general meeting in this respect are the subject of debate);
- when the debtor is submitted to statutory auditing, the conciliation agreement is communicated to its statutory auditors; and
- in the event of subsequent judicial reorganization proceedings or judicial liquidation proceedings, the date of insolvency (see "Insolvency test" above), and therefore the starting date of the hardening period (as defined below—see The "hardening period (*période suspecte*) in judicial reorganization and liquidation proceedings"), cannot be set by the court as of a date earlier than the date of the approval (*homologation*) of the agreement by the court (except in case of fraud).

Whether the conciliation agreement is acknowledged or approved, the court may, at the request of the debtor, appoint the *conciliateur* to monitor the implementation of the agreement (*mandataire à l'exécution de l'accord*) during its execution and, while the agreement is in force:

- interest accruing on the claims that are the subject to the conciliation agreement may not be compounded;
- the debtor retains the right to petition the judge that commenced the conciliation proceedings for a grace period in accordance with Article L. 611-10-1 of the French Commercial Code as explained above; and
- a third party that had previously granted credit support (a guarantee or security interest) with respect to the debtor's obligations may benefit from the provisions of the conciliation agreement as well as from grace periods granted to the debtor in the context of conciliation proceedings.

If the debtor breaches the terms of the conciliation agreement, any party to it may petition the president of the court or the court (depending on whether the agreement was acknowledged or approved) for its termination. If such termination is granted, grace periods granted in relation to the conciliation proceedings may be revoked. Conversely, provided the conciliation agreement is duly performed, any individual proceedings by creditors with respect to obtaining payment of the claims dealt with by the conciliation agreement are suspended and/or prohibited. The commencement of subsequent safeguard or insolvency proceedings will automatically put an end to the conciliation agreement, in which case the creditors will recover their claims (decreased by the payments already received) and pre-existing security interests or guarantees.

Conciliation proceedings in which a draft plan is supported by a large majority of creditors that is likely to meet the threshold requirements for creditors' consent in safeguard, is a mandatory preliminary step of accelerated safeguard proceedings or accelerated financial safeguard proceedings, as described below.

At the request of the debtor and after the creditors taking part in the proceedings have been consulted on the matter, *mandat ad hoc* and conciliation proceedings may also be used to organize the partial or total sale of the debtor, in particular through a "plan for

the disposal of the business" (*plan de cession*) that could be implemented in the context of subsequent safeguard, judicial reorganization or liquidation proceedings. Provided that they comply with certain requirements, any offers received in this context by the *mandataire ad hoc* or the *conciliateur* may be directly considered by the court in the context of safeguard, judicial reorganization or judicial liquidation proceedings after consultation of the State prosecutor.

As a matter of law, any contractual provision that (i) modifies the conditions for the continuation of an ongoing contract by reducing the debtors' rights or increasing its obligations simply by reason of the designation of a *mandataire ad hoc* or of the commencement of conciliation proceedings or of a request submitted to this end or (ii) requires the debtor to bear, by reason only of the appointment of a *mandataire ad hoc* or of the commencement of conciliation proceedings, more than three-quarters of the fees of the professional advisers retained by creditors in connection with these proceedings, is deemed null and void.

Where the maximum time period allotted to court-assisted proceedings expires without an agreement being reached, the proceedings will end. The termination of such proceedings does not, in and of itself entail any specific legal consequences for the debtor, in particular it does not result in the automatic commencement of insolvency proceedings. New conciliation proceedings cannot be commenced before 3 months have elapsed as from the end of the previous ones.

Due to the COVID-19 epidemic and state of health emergency that was imposed by the French government, Ordinance n° 2020-341 of 27 March 2020 and Ordinance n° 2020-596 dated 20 May, 2020, have modified conciliation proceedings to provide that:

1. the duration of conciliation proceedings is increased by five months, thereby increasing the maximum duration of conciliation proceedings to 10 months (instead of 5 months previously);
2. until 31 December 2020, if a creditor does not accept, by the deadline set by the conciliator, a request made by the conciliator to suspend payment of its claim for the duration of the conciliation proceedings, the debtor may request from the President of the Commercial Court in ex-parte proceedings, for the duration of the conciliaton proceedings:

- the stay or prohibition of any legal action for payment or for termination of a contract for a payment default;
- the stay or prohibition of any judicial enforcement measure against the debtor's movable or immovable property as well as any judicial procedure relating to the distribution of the debtor's assets that would not have become final; or
- the deferral or rescheduling of the creditor's claim.

In addition, the debtor may petition the judge that commenced conciliation proceedings for a grace period in accordance with Article 1343-5 of the French Civil Code (see "*—France—Grace periods*" above) even before the creditor sends any notice to pay or initiates any suit for payment if a creditor does not accept, by the deadline set by the conciliator, a request made by the conciliator to suspend payment of his claim for the duration of the conciliation.

Court-administered Proceedings—Safeguard

A debtor that experiences difficulties that it is not able to overcome may, in its sole discretion, initiate safeguard proceedings (*procédure de sauvegarde*) with respect to itself, *provided* that it is not insolvent (see *"*Insolvency test*"* above). Creditors of the debtor are not notified of, nor invited to attend the hearing before the court at which the commencement of safeguard proceedings is requested. Following the commencement of safeguard proceedings, a court-appointed administrator (*administrateur judiciaire*) is appointed (except for small companies where the court considers that such appointment is not necessary) to investigate the business of the debtor during an "observation period" (being the period starting on the date of the court decision commencing the proceedings and ending on the date on which the court takes a decision on the outcome of the proceedings), which may last up to 18 months. The role of the court-appointed administrator is also to assist the debtor in preparing a draft safeguard plan (*projet de plan de sauvegarde*) that it will circularize to its creditors. Creditors do not have effective control over the proceedings, which remain in the hands of the debtor assisted by the court-appointed administrator. The court-appointed administrator will, in accordance with the terms of the judgment appointing him or her, exercise *ex post facto* control over decisions made by the debtor ("*mission de surveillance*") or assist the debtor to make all or some of the management decisions ("*mission d'assistance*"), all under the supervision of the court.

If, after commencement of the proceedings, it appears that the debtor was insolvent (*en état de cessation des paiements*) before their commencement, at the request of the debtor, the administrator, the creditors' representative or the Public Prosecutor but, in any event, after having heard the debtor, the court may convert the safeguard proceedings into judicial reorganization proceedings.

In addition, the court may convert safeguard proceedings into (i) judicial reorganization proceedings (a) at any time during the observation period if the debtor is insolvent or (b) in case no plan has been adopted by the relevant creditors' committee and, if any,

the bondholders' general meeting (as described below), if the approval of a safeguard plan is manifestly impossible and if the company would shortly become insolvent should safeguard proceedings end or (ii) judicial liquidation proceedings at any time during the observation period if the debtor is insolvent and its recovery is manifestly impossible. In all such cases:

(1) the court may decide at the request of the debtor, the court-appointed administrator, the creditors' representative or the Public Prosecutor and in all such cases with the exception of (i) (b), the court may act upon its own initiative ; and

(2) the court's decision is only taken after having heard the debtor, the court-appointed administrator, the creditors' representative, the State prosecutor and the workers' representatives (if any).

As soon as safeguard proceedings are commenced, any unpaid amount of share capital of the debtor becomes immediately due and payable.

Due to the COVID-19 epidemic and state of health emergency that was imposed by the French government, Ordinance n° 2020-596 dated 20 May, 2020, modified safeguard proceedings to provide that:

- as an incentive for new financings granted to debtors in the context of safeguard or reorganization proceedings, Ordinance n° 2020-596 dated 20 May 2020 provides for a new safeguard or reorganization privilege (the "S/R Lien"), applicable exclusively to proceedings commenced between 22 May 2020 and the earlier of the date of implementation of EU Restructuring Directive 2019/1023 dated 20 June 2019 and 17 July 2021. The S/R Lien is distinct from the existing statutory preference enjoyed by financing granted after commencement of the proceedings, with the approval of the bankruptcy judge, after commencement of the proceedings for the needs of the proceedings or of the observation period.
- The S/R Lien applies to all new cash contributions made, with the exception of those made through a share capital increase, by any person:
    - during the observation period, in order to ensure the continuity of debtor's business and its sustainability, in which case such cash contributions must be authorized by the bankruptcy judge, or
    - for the implementation of the safeguard or reorganization plan, *i.e.* within the plan as approved or modified by the court, and for the purposes of its execution, it being specified that the judgment must mention all claims benefiting from the S/R Lien, as well as the relevant amounts.

- Claims benefiting from the S/R Lien enjoy a priority of payment over pre-commencement and post-commencement claims except with respect to employees' super-privilege claims, procedural costs and the New Money Lien in the event of on-going or subsequent safeguard proceedings, judicial reorganization proceedings or judicial liquidation proceedings.

Such claims may not termed-out or written-off without the consent of the relevant creditors.During the safeguard proceedings, payment by the debtor of any debts incurred (i) prior to the commencement of the proceedings or (ii) after the commencement of the proceedings if not incurred for the purposes of the proceedings or the observation period or in consideration of services rendered/goods delivered to the debtor ("post-commencement non-privileged debts"), is prohibited, subject to very limited exceptions. For example, the court can authorize payments for prior debts in order to discharge a lien on property needed for the continued operation of the debtor's business or to recover goods or rights transferred as collateral in a fiduciary estate (*patrimoine fiduciaire*).

Creditors must be consulted on the manner in which the debtor's liabilities will be settled under the safeguard plan (debt write-offs, payment terms or debt-for-equity-swaps) prior to the plan being approved by the court. The rules governing consultation will vary depending on the size of the business.

Standard consultation: this applies in respect of debtors whose accounts are not certified by a statutory auditor or prepared by a chartered accountant or, if they are, who have 150 employees or less or a turnover of €20 million or less unless, upon their or the administrator's request and with the consent of the court, they are subject to the committee-based consultation (see below).

In such case, the administrator notifies the proposals for the settlement of debts to the court-appointed creditors' representative, who seeks the agreement of each creditor who filed a claim, regarding the debt write-offs and payment schedules proposed. Creditors are consulted individually or collectively.

French law does not state whether the debt settlement proposals can vary according to the creditor and whether the principle of equal treatment of creditors is applicable at this consultation stage. According to legal commentaries and established practice, differing treatment as between creditors is possible, *provided* that it is justified by the difference in situation of the creditors and approved by the court-appointed creditors' representative. In practice, it is also possible at the consultation stage to make a proposal for a partial payment of claims over a shorter time period instead of a full payment of such claims over the length of the plan (ten years maximum except for agricultural businesses where the maximum is fifteen years).

Creditors whose payment terms are not affected by the plan or who are paid in cash in full as soon as the plan is approved are not required to be consulted.

Creditors that do not respond within 30 days of their receipt of the debt settlement proposal (other than debt-for-equity-swap) made to them are deemed to have accepted it. The creditors' representative keeps a list of the responses from creditors, which is notified to the debtor, the court-appointed administrator and the controllers.

Within the framework of a standard consultation, the court that approves the safeguard plan (*plan de sauvegarde*) can impose a uniform rescheduling of the claims of creditors having refused the proposals that were submitted to them (subject to specific regimes such as the one applicable to claims benefiting from the New Money Lien or the S/R Lien) over a maximum period of ten years (except for agricultural businesses where the maximum is fifteen years and for claims with maturity dates of more than the deferral period set by the court, in which case the maturity date shall remain the same), but no write-off of any claim or debt-for-equity swap may be imposed without the relevant creditor's individual acceptance.

Following a court imposed rescheduling, the first payment must be made within a year of the judgment adopting the plan (in the third and subsequent years, the amount of each annual instalment must be of at least 5% of the amount of each debt claim (except for agricultural businesses)) or on the first payment date following the initial maturity of the claim if it is later than the first payment date provided for by the plan, in which case the amount of such first payment is equal to what the creditor would have received had he been paid in accordance with the uniform payment rescheduling applying to the other creditors.

Committee-based consultation: This applies to large companies, whose accounts are certified by a statutory auditor (*commissaire aux comptes)* or established by a chartered-accountant (*expert-comptable)* and with more than 150 employees or a turnover greater than €20 million, or upon the debtor's or the administrator's request and with the consent of the court in the case of debtors that do not meet the aforementioned thresholds.

The consultation involves the submission of a proposed safeguard plan for consideration by two creditors' committees that are established by the court-appointed administrator on the basis of the claims that arose prior to the judgment commencing the proceedings:

- one for credit institutions or assimilated institutions and entities having granted credit or advances in favor of the debtor (or their successors) (the "Credit Institutions Committee"); and
- the other one for suppliers having a claim that represents more than 3% of the total amount of the claims of all the debtor's suppliers and other suppliers invited to participate in such committee by the court-appointed administrator (the "Major Suppliers Committee").

If there are any outstanding debt securities in the form of *obligations* (such as bonds or notes and including capital market debt instruments such as the Notes), a single general meeting of all holders of such debt securities will be established (the "Bondholders General Meeting"), in which all such holders are to take part irrespective of whether or not there are different issuances or of the governing law(s) of those *obligations*.

As a general matter, only the legal owner of the debt claim will be invited onto the committee or general meeting. Accordingly, a person holding only an economic interest therein will not itself be a member of the committee or general meeting.

The proposed plan:

- must "take into account" subordination agreements entered into by the creditors before the commencement of the proceedings;
- may treat creditors differently if it is justified by their differences in situation; and
- may, *inter alia*, include a rescheduling or cancellation of debts (subject to the specific regime of claims benefiting from the New Money Lien or the S/R Lien), and/or debt-for-equity swaps (debt-for-equity swaps requiring the relevant shareholder consent).

If the plan provides for a share capital increase, the shareholders may subscribe to such share capital increase by way of a set-off against their claims against the debtor (as reduced according to the provisions of the plan, where applicable).

Creditors that are members of the Credit Institutions Committee or of the Major Suppliers Committee may also prepare alternative safeguard plans in accordance with the above principles that will also be put to the vote of the committees and of the general bondholders meeting, it being specified that approval of any such alternative plan is subject to the same two-thirds majority vote in each committee and in the Bondholders General Meeting and gives rise to a report by the court-appointed administrator (*administrateur judiciaire*). Bondholders are not permitted to present their own alternative plan.

The committees must approve or reject the safeguard plan within 20 to 30 days of its submission. The period may be extended or shortened but may never be shorter than 15 days. The plan must be approved by a majority vote of each committee (two-thirds of the outstanding claims of the creditors casting a vote).

Each member of a Credit Institutions Committee or of the Bondholders General Meeting must, if applicable, inform the court-appointed administrator of the existence of any agreement relating to (i) the exercise of its vote or (ii) the full or total payment of its claim by a third party as well as of any subordination agreement. The court-appointed administrator shall then submit to such person a proposal for the computation of its voting rights in the Credit Institutions Committee/Bondholders General Meeting. In the event of disagreement, the matter may be ruled upon by the president of the Commercial Court in summary proceedings at the request of the creditor or of the court-appointed administrator.

The amounts of claims secured by a trust (*fiducie*) granted by the debtor do not give rise to voting rights. In addition, creditors whose repayment schedule is not modified by the plan, or for which the plan provides for a payment of their claims in cash in full as soon as the plan is adopted or as soon as their claims are admitted, do not need to be consulted on the plan nor take part in the vote.

Following the approval of the plan by the two creditors' committees, the plan will be submitted for approval to the Bondholders General Meeting at the same two-thirds majority vote. Following approval by the creditors' committees and the Bondholders General Meeting, and determination of the rescheduling of the claims of creditors that are not members of the committees or bondholders in accordance with the standard consultation process referred to above, the plan has to be approved (*arrêté*) by the court. The court must verify that the interests of all creditors are "sufficiently protected" and that required shareholder consent (if applicable) has been obtained. Once so approved by the relevant court, the safeguard plan will be binding on all the members of the committees and all bondholders (including those who did not vote or voted against the adoption of the plan).

If the debtor's proposed plan is not approved by both committees and the Bondholders General Meeting within the first six months of the observation period (either because they do not vote on the plan or because they reject it), this six-month period may be extended by the court at the request of the court-appointed administrator for a period not exceeding the duration of the observation period, in order for the plan to be approved through the committee-based consultation process. Absent such extension, the court can still adopt a safeguard plan within the time remaining until the end of the observation period. In such a case, the rules are the same as the ones applicable for the standard consultation process described above.

If the draft plan provides for a modification of the share capital or the by-laws, the court may decide that the shareholders general meeting and, as the case may be, the general meetings of the holders of securities giving access to the share capital of the company shall vote, the first time the relevant meeting is convened, at a simple majority of the votes of the shareholders or other security holders, as the case may be, attending, or represented at, the meeting, provided that they hold, or hold securities giving access to, at least half of the shares with voting rights. The second time the meeting is convened, the usual provisions relating to quorum and majority shall apply.

If the court adopts a safeguard plan, it can set a time period during which the assets that it deems to be essential to the continuation of the business of the debtor may not be sold without its consent.

If no proposed safeguard plan whatosever is adopted by the committees, and, if applicable, the general bondholders meeting, at the request of the debtor, the court-appointed administrator, the *mandataire judiciaire* or the State prosecutor, the court may convert the safeguard proceedings into judicial reorganization proceedings if it appears that the adoption of a safeguard plan is impossible and if the end of the safeguard proceedings would certainly lead to the debtor shortly becoming insolvent.

Specific case—Creditors that are public institutions: public creditors (financial administrations, social security and unemployment insurance organizations) may agree to grant debt write-offs under conditions that are similar to those that would be granted under normal market conditions by a private economic operator placed in a similar position. Public creditors may also decide to enter into subordination agreements for liens or mortgages, or relinquish these security interests. Public creditors examine possible debt write-offs within the framework of a local administrative committee (*Commission des Chefs de Services Financiers*). The tax administrations may grant relief from all direct taxes. As regards indirect taxes, relief may only be granted from default interest, adjustments, penalties or fines.

Court-administered Proceedings—Accelerated Safeguard and Accelerated Financial Safeguard

A debtor that is engaged in conciliation proceedings may request the commencement of accelerated safeguard proceedings (*procédure de sauvegarde accélérée*) or accelerated financial safeguard proceedings (*procédure de sauvegarde financière accélérée*).

The accelerated safeguard proceedings and accelerated financial safeguard proceedings have been designed to "fast-track" difficulties faced by large companies, i.e. those:

- that publish consolidated accounts in accordance with Article L. 233-16 of the French Commercial Code; or
- whose accounts are certified by a statutory auditor or established by a certified public accountant and who have (i) more than 20 employees or (ii) a turnover greater than €3 million (excluding VAT) or (iii) whose total balance sheet exceeds €1.5 million. However, Ordinance n° 2020-596 dated 20 May 2020 provides that these mentioned thresholds will no longer be required for proceedings commenced between 22 May 2020 and the earlier of the date of implementation of the EU Restructuring Directive 2019/1023 dated 20 June 2019 and 17 July 2021.

Ordinance n° 2020-596 dated 20 May 2020 provides that only the publication of consolidated accounts as provided for above will be required for proceedings commenced between 22 May 2020 and the earlier of the date of implementation of the EU Restructuring Directive 2019/1023 dated 20 June 2019 and 17 July 2021, the conditions relating to the above mentioned thresholds relating to employees and turnover will no longer be required.

If the debtor does not exceed the thresholds provided for to constitute creditors' committees (see above), the court shall authorize such constitution in the opening decision.

To be eligible for accelerated safeguard proceedings or accelerated financial safeguard proceedings the debtor must fulfil the following conditions:

- the debtor must not have been insolvent for more than 45 days when it initially applies for commencement of conciliation proceedings;
- the debtor must be subject to ongoing conciliation proceedings when it applies for the commencement of the proceedings;
- as is the case for regular safeguard proceedings, the debtor must face difficulties that it is not in a position to overcome; and
- the debtor must have prepared a draft safeguard plan ensuring the continuation of its business as a going concern that is supported by enough of its creditors involved in the proceedings to render likely its adoption by the relevant committees (credit institutions' committee only for financial accelerated safeguard proceedings) and bondholders general meeting, if any, within a maximum of three months following the commencement of accelerated safeguard proceedings, or within a maximum of two months following the commencement of accelerated financial safeguard proceedings.

While accelerated safeguard proceedings apply to all creditors (except employees), accelerated financial safeguard proceedings apply only to "financial creditors" (i.e., creditors that belong to the Credit Institutions Committee and Bondholders General Meeting), the payment of whose debt is suspended until adoption of a plan through accelerated financial safeguard proceedings. The debtor will be prohibited from paying to any creditor to whom the accelerated safeguard or accelerated financial safeguard proceedings (as the case may be) apply, any amounts (including interest) in respect of debts incurred (i) prior to the commencement of the proceedings or (ii) after the commencement of the proceedings if not incurred for the purposes of the proceedings or the observation period or in consideration of services rendered/goods delivered to the debtor (post-commencement non-privileged debts). Such amounts may be paid only after the judgment of the court approving the safeguard plan and in accordance with its terms. Creditors other than financial creditors (such as public creditors, the tax or social security administration and suppliers) are not directly impacted by accelerated financial safeguard proceedings. Their debts will continue to be due and payable in the ordinary course of business according to their contractual or legal terms.

The regime applicable to standard safeguard proceedings is broadly applicable to accelerated safeguard or accelerated financial safeguard proceedings (for example, creditors will be consulted by way of a committee-based consultation on, as the case may be, a draft accelerated safeguard plan (*projet de plan de sauvegarde accélérée*) or a draft accelerated financial safeguard plan (*projet de plan de sauvegarde financière accélérée*) and creditors that are members of the credit institutions committee or the Major Suppliers Committee, but not bondholders, may also prepare alternative draft plans as described above (see "*committee-based consultation*")), to the extent compatible with the accelerated timing, since the maximum duration of accelerated safeguard proceedings is three months and the maximum duration of accelerated financial safeguard proceedings is two months (provided the court has decided to extend the initial one month period). In particular, the creditors' committees and the bondholders general meeting are required to vote on the proposed safeguard plan within a minimum period of 15 days of its being notified to them in the case of accelerated safeguard proceedings, or within eight days in the case of accelerated financial safeguard proceedings.

However, certain provisions relating to ongoing contracts and to the recovery of assets by their owners do not apply in accelerated safeguard or accelerated financial safeguard proceedings.

The plan in the context of accelerated safeguard proceedings or accelerated financial safeguard proceedings is adopted following the same majority rules as in standard safeguard proceedings and may notably provide for rescheduling, debt cancellation and conversion of debt into equity capital of the debtor (debt-for-equity swaps requiring relevant shareholder consent). No debt rescheduling or cancellation may be imposed, without their consent, on creditors that do not belong to one of the committees or are not bondholders.

If a plan is not adopted by the creditors and approved by the court within the applicable deadline, the court shall terminate the proceedings. The court cannot reschedule amounts owed to the creditors outside of the committee process. Ordinance n° 2020-596 dated 20 May 2020 provides that for proceedings commenced between 22 May 2020 and the earlier of the date of implementation of the EU Restructuring Directive 2019/1023 dated 20 June 2019 and 17 July 2021, if a plan is not adopted by the creditors and approved by the court by the applicable deadline the debtor, the judicial administrator, the creditors, representative or the public prosecutor may request, without any delay, that reorganization or liquidation proceedings (as the case may be) be opened.

The list of claims of creditors party to the conciliation proceedings certified by the statutory auditor shall be deemed to constitute the filing of such claims for the purpose of accelerated safeguard proceedings or, as applicable, accelerated financial safeguard proceedings (see below) unless the creditors otherwise elect to make such a filing (see below).

Court-administered Proceedings—Judicial Reorganization or Liquidation Proceedings

Judicial reorganization (*redressement judiciaire*) or liquidation (*liquidation judiciaire*) proceedings may be initiated against or by a debtor only if it is insolvent and, in the case of liquidation proceedings only, if the debtor's recovery is manifestly impossible. The debtor is required to petition for judicial reorganization or liquidation proceedings, within 45 days of becoming insolvent if it does not file for conciliation proceedings (as discussed above); *de jure* managers (including directors) and, as the case may be, *de facto* managers that would have failed to file such a petition within the deadline are exposed to civil liability.

Where the debtor requested the commencement of judicial reorganization proceedings and the court, after having heard the debtor, considers that judicial liquidation proceedings would be more appropriate, it may order the commencement of the proceedings that it determines to be most appropriate. The same would apply if the debtor requested the commencement of judicial liquidation proceedings and the court considered that judicial reorganization proceedings would be more appropriate. In addition, at any time during the observation period, upon request of the debtor, the court-appointed administrator, the creditors' representative (*mandataire judiciaire*), a controller, the State prosecutor or upon its own initiative, the court may convert the judicial reorganization proceedings into judicial liquidation proceedings if it appears that the debtor's recovery is manifestly impossible. The court's decision is only taken after having heard the debtor, the court-appointed administrator, the creditors' representative, the controllers, the State prosecutor and the workers' representatives (if any).

The objectives of judicial reorganization proceedings are the sustainability of the business, the preservation of employment and the payment of creditors, in that order.

As soon as judicial reorganization or judicial liquidation proceedings are commenced, any unpaid amount of share capital of the debtor becomes immediately due and payable.

In the event of judicial reorganization proceedings, an administrator (*administrateur judiciaire*) is usually appointed by the court to investigate the business of the debtor during an observation period, which may last up to 18 months, and make proposals either for the reorganization of the debtor (by helping the debtor to elaborate a draft judicial reorganization plan, which is similar to a draft safeguard plan), or the sale of the business or the liquidation of the debtor. The court-appointed administrator will assist the debtor in making management decisions (*mission d'assistance*) or may be empowered by the court to take over the management and control of the debtor (*mission d'administration*). Judicial reorganization proceedings broadly take place in a manner that is similar to safeguard proceedings (see above), subject to certain specificities.

In particular, the rules relating to creditor consultation, especially the powers of the court adopting the judicial reorganization plan (*plan de redressement*) in the event of rejection by the creditors of proposals made to them, are the same (see above). At any time during the observation period, the court can, at the request of the debtor, the court-appointed administrator, the creditors' representative (*mandataire judiciaire*), the State prosecutor or at its own initiative, order the partial stop of the activity (*cessation partielle de l'activité*) or order the liquidation of the debtor if its recovery is manifestly impossible. At the end of the observation period, the outcome of the proceedings is decided by the court.

In addition, Ordinance n° 2020-596 dated 20 May, 2020 modified the judicial reorganization proceedings to provide for the new S/R Lien (as defined and detailed above, see "—Court-administered Proceedings—Safeguard"). In judicial reorganization proceedings, in case a shareholders' meeting needs to vote to bring the shareholders' equity to a level equal to at least one half of the share capital as required by Article L. 626-3 of the French Commercial Code, the administrator may appoint a trustee (*mandataire de*

justice) to convene a shareholders' meeting and to vote on behalf of the shareholders that refuse to vote in favour of such a resolution if the draft restructuring plan provides for a modification of the equity to the benefit of a third party(ies) undertaking to comply with the reorganization plan.

If the proposed reorganization plans are manifestly not likely to ensure that the debtor will recover or if no reorganization plan is proposed, the court, upon the request of the court-appointed administrator, can order the total or partial transfer of the business in accordance with the process for a sale of the business described below.

In judicial reorganization proceedings if (i) the company has at least 150 employees, or if it controls (within the meaning of the French Labor Code) one or more companies having together at least 150 employees, (ii) the disappearance of the company is likely to cause serious harm to the national or regional economy and to local employment (iii) the modification of the company's share capital appears to be the only credible way to avoid harm to the national or regional economy and to allow the continued operation of the business as a going concern, then, at the request of the court-appointed administrator or of the State prosecutor(x) after the review of the options for a total or partial sale of the business and (y) if at least 3 months have elapsed as from the court decision commencing the proceedings, provided that the shareholders meetings required to approve the modification of the company's share capital required for adoption of the reorganization plan have refused such modification, the insolvency court may either:

- appoint a court officer (*mandataire*) in order to convene the shareholders meeting and vote the share capital increase in lieu of the shareholders having refused to do so, up to the amount provided for in the reorganization plan; or
- order, in favor of the persons who have undertaken to perform the reorganization plan, the sale of all or part of the share capital held by the shareholders having refused the share capital modification and holding, directly or indirectly a portion of the share capital providing them with a majority of the voting rights (including as a result of an agreement with other shareholders) or a blocking minority in the company's shareholder meetings, any consent clause being deemed unwritten; the other shareholders have the right to withdraw from the company and request that their shares be purchased simultaneously by the transferees.

In the event of a sale ordered by the court, the price of the shares shall, failing agreement between the parties, be set by an expert designated by the court in summary proceedings.

In either of the above cases, the reorganization plan shall be subject to the undertaking of the new shareholders to hold their shares for a certain time period set by the court that may not exceed the duration of the reorganization plan.

If the court decides to order the judicial liquidation of the debtor, the court will appoint a liquidator, which is generally the former creditors' representative (*mandataire judiciaire*). There is no observation period in judicial liquidation proceedings nor does the law limit their duration (except with respect to simplified judicial liquidation proceedings). The liquidator is vested with the power to represent the debtor and perform the liquidation operations (mainly liquidate the assets and settle the liabilities to the extent the proceeds from the liquidated assets are sufficient, in accordance with the creditors' priority order of payment). The liquidator will take over the management and control of the debtor and the managers of the debtor are no longer in charge of its management.

Concerning the liquidation of the assets of the debtor, there are two possible outcomes:

- a sale of the business (*cession d'entreprise*) (in which case a court-appointed administrator (*administrateur judiciaire*) will usually be appointed to manage the debtor during a temporary period of continuation of the business operations ordered by the court (three months, renewable once) and organize such sale of the business as a going-concern via an asset sale, a.k.a a "sale plan" (*plan de cession*)), any third party (as construed under French insolvency law) being entitled to present a bid on all or part of the debtor's business; or
- a sale of the individual assets of the debtor, in which case the liquidator may decide to:
    - launch auction sales (*vente aux enchères* (or *adjudication amiable* for real estate assets only));
    - sell on an amicable basis (*vente de gré à gré*) each asset for which spontaneous purchase offers have been received, (the formal authorization of the bankruptcy judge being necessary to conclude the sale agreement with the bidder); or
    - request, under the supervision of the bankruptcy judge, all potential interested purchasers to bid on each asset, as the case may be, by way of a private competitive process whereby the bidders submit their offers only at the hearing without the proposed prices being disclosed before such hearing (*procédure des plis cachetés*). However the possibility to implement such process is questioned by certain legal authors and case-law in this respect has varied.

If the court adopts a reorganization or sale plan, it can set a time period during which the assets that it deems to be essential to the continuation of the business of the debtor may not be sold without its consent.

The court will end the proceedings when either no due liabilities remain, the liquidator has sufficient funds to pay off the creditors (*extinction du passif*) or continuation of the liquidation process becomes impossible due to insufficiency of assets (*insuffisance d'actif*).

The court may also terminate the proceedings:

- when the interest of the continuation of the liquidation process is disproportionate compared to the difficulty of selling the assets;
- in the event where there are insufficient funds to pay off the creditors, by appointing a *mandataire* in charge of continuing ongoing lawsuits and allocating the amounts received from these lawsuits between the remaining creditors.

The "hardening period" (période suspecte) in judicial reorganization and judicial liquidation proceedings

The date of insolvency (*cessation des paiements*) of a debtor is deemed to be the date of the court order commencing the proceedings, unless the court sets an earlier date, which may be no earlier than 18 months before the date of such court order. Also, except in the case of fraud, the insolvency date may not be set at a date earlier than the date of the final court decision that approved an agreement (*homologation*) in the context of conciliation proceedings (see above). The insolvency date is important because it marks the beginning of the hardening period ("*période suspecte*"), being the period from the insolvency date of the debtor to the court decision commencing the judicial reorganization or liquidation proceedings affecting it.

Certain transactions entered into during the hardening period are automatically void or voidable by the court.

- Automatically void transactions include transactions or payments entered into during the hardening period that may constitute voluntary preferences for the benefit of some creditors to the detriment of other creditors. These include transfers of assets for no consideration or for a nominal consideration, contracts under which the obligations of the debtor significantly exceed the reciprocal obligations of the other party, payments of debts not due at the time of payment, payments of debts that are due made in a manner that is not commonly used in the ordinary course of business, deposits of cash or monetary instruments ordered by a court decision that has not yet become final to serve as bond or as a precautionary measure in accordance with article 2350 of the French Civil Code, security granted for debts previously incurred, provisional attachment or seizure measures (*mesures conservatoires*) (unless the attachment or seizure predates the date of insolvency), operations relating to stock options, the transfer of any assets or rights to a trust arrangement (*fiducie*) (unless such transfer is made as security for a debt simultaneously incurred), any amendment to a trust arrangement (*fiducie*) that affects assets or rights already transferred in the trust as security for debt incurred prior to such amendment, and notarized declarations of exemption of assets from seizure (*déclaration d'insaisissabilité*) pursuant to article L.526-1 of the French Commercial Code.
- Transactions that are voidable by the court include payments made on debts that are due, transactions for consideration and notices of attachments made to third parties (*avis à tiers détenteur*), seizures (*saisie attribution*) and oppositions made during the hardening period, in each case if the court determines that the party dealing with the debtor knew that the debtor was insolvent at the relevant time. Transactions relating to the transfer of assets for no consideration are also voidable when entered into during the six-month period prior to the beginning of the hardening period.

There is no hardening period prior to safeguard proceedings.

Status of Creditors during Safeguard, Accelerated Safeguard, Accelerated Financial Safeguard, Judicial Reorganization or Judicial Liquidation Proceedings

Contractual provisions pursuant to which the commencement of the proceedings triggers the acceleration of the debt (except with respect to judicial liquidation proceedings in which the court does not order the continued operation of the business) or the termination or cancellation of an ongoing contract are not enforceable against the debtor. Nor are "*contractual provisions modifying the conditions of continuation of an ongoing contract, diminishing the rights or increasing the obligations of the debtor solely upon the opening of judicial reorganization proceedings*" (in accordance with a decision of the French Supreme Court dated January 14, 2014, n° 12-22.909, which case law is likely to be extended to safeguard, accelerated safeguard or accelerated financial safeguard proceedings). However, the court-appointed administrator can unilaterally decide to terminate ongoing contracts (*contrats en cours*) that it believes the debtor will not be able to continue to perform. Conversely, the court-appointed administrator can require that other parties to a contract continue to perform their obligations even though the debtor may have been in default, but on the condition that the debtor fully performs its post-commencement contractual obligations (and provided that, in the case of judicial reorganization or judicial liquidation proceedings, absent consent to other terms of payment, the debtor pays cash on delivery). The commencement of liquidation proceedings, however, automatically accelerates the maturity of all of a debtor's obligations unless the court orders the continued operation of the business with a view to the adoption of a sale plan (*plan de cession*)as described above; in such case, the

acceleration of the obligations will only occur on the date of the court decision adopting the sale plan (*plan de cession*) as described above, or on the date on which the continued operation of the business ends.

As from the court decision commencing the proceedings:

- accrual of interest is suspended, except in respect of loans for a term of at least one year, or of contracts providing for a payment that is deferred by at least one year (however, accrued interest can no longer be compounded);
- the debtor is prohibited from paying debts incurred prior to the commencement of the proceedings, subject to specified exceptions (which essentially cover the set-off of related (*connexes*) debts and payments authorized by the insolvency judge (*juge commissaire*) to recover assets required by the continued operation of the business);
- the debtor is prohibited from paying debts having arisen after the commencement of the proceedings unless they were incurred for the purposes of the proceedings or of the observation period or in consideration of services rendered/goods provided to the debtor;
- debts duly arising after the commencement of the proceedings and that were incurred for the purposes of the proceedings or of the observation period, or in consideration of services rendered/goods provided to the debtor during this period, must be paid as and when they fall due and, if not, will be given priority over debts incurred prior to the commencement of the proceedings (with certain limited exceptions, such as claims secured by a New Money Lien), provided that they are duly brought to the attention of the judicial administrator or, failing one, the *mandataire judiciaire*, or, should they both have ceased to be in office, the plan commissioner or the judicial liquidator, within one year of the end of the observation period within one year of the end of the observation period;
- creditors (only financial creditors in the case of accelerated financial safeguard proceedings) may not initiate or pursue any individual legal action against the debtor (or, during the observation period, against a guarantor of the debtor where such guarantor is a natural person and the proceedings are safeguard, accelerated safeguard, accelerated financial safeguard or judicial reorganization proceedings) with respect to any claim arising prior to the court decision commencing the proceedings, if the objective of such legal action is:
  - to obtain an order for payment of a sum of money by the debtor to the creditor (however, the creditor may require that a court determine the amount due in order to file a proof of claim, as described below);
  - to terminate a contract for non-payment of amounts owed by the creditor; or
  - to enforce the creditor's rights against any assets of the debtor except (i) in judicial liquidation proceedings, by way of the applicable specific process for judicial foreclosure (*attribution judiciaire*) of the pledged assets or (ii) where such asset- whether tangible or intangible, movable or immovable-is located in another Member State within the European Union, in which case the rights *in rem* of creditors thereon would not be affected by the insolvency proceedings commenced in France, in accordance with the terms of Article 8 of the E.U. Insolvency Regulation;
- in the context of reorganization or liquidation proceedings only, absent consent to other terms of payment, immediate cash payment for services rendered pursuant to an ongoing contract (*contrat en cours*), will be required.

However, a natural person that is the guarantor of the debtor may avail itself of the provisions of a safeguard plan ("*plan de sauvegarde*") adopted by the Court but not of the provisions of a judicial reorganization plan ("*plan de redressement*").

In accelerated financial safeguard proceedings, the above rules only apply to the creditors that fall within the scope of the proceedings (see above). Debts owed to other creditors, such as suppliers, continue to be payable in the ordinary course of business.

As a general rule, creditors domiciled in metropolitan France whose claims arose prior to the commencement of the proceedings must file a claim with the court-appointed creditors' representative within two months of the publication of the court decision in an official gazette (*Bulletin Officiel des annonces civiles et commerciales*); this period is extended to four months for creditors domiciled outside metropolitan France. Creditors must also file a claim for the post-commencement non-privileged debts, with respect to which the two or four month period referred to above starts to run as from their maturity date. Creditors whose claims have not been submitted during the relevant period are, except for limited exceptions, barred from receiving distributions made in connection with the proceedings. Employees are not subject to such limitations and are preferred creditors under French law.

At the beginning of the proceedings, the debtor must provide the court-appointed administrator and the creditors' representative with the list of all its creditors and all of their claims. Where the debtor has informed the creditors' representative of the existence of a claim, the claim as reported by the debtor is deemed to be a filing of the claim with the creditors' representative on behalf of the creditor. Creditors are allowed to ratify or amend a proof of claim so made on their behalf until the insolvency judge rules on the admissibility of the claim. They may also file their own proof of claim within the deadlines described above.

In accelerated safeguard and accelerated financial safeguard proceedings however, the debtor draws a list of the claims of its creditors having taken part in the conciliation proceedings, which is certified by its statutory auditors or accountant. Although such creditors may file proofs of claim as part of the regular process, they may also avail themselves of this simplified alternative and merely adjust if necessary the amounts of their claims as set forth in the list prepared by the debtor (within the above two or four months' time limit). Creditors that did not take part in the conciliation proceedings must file their proofs of claim within the aforementioned deadlines.

If the court adopts a safeguard plan, accelerated safeguard plan, accelerated financial safeguard plan or reorganization plan, claims of creditors included in the plan will be paid according to the terms of the plan.

If the court adopts a sale plan (*plan de cession*) of the debtor in judicial reorganization or judicial liquidation proceedings (see above), the proceeds of the sale will be allocated towards the repayment of its creditors according to the ranking of the claims. If the court decides to order the judicial liquidation of the debtor, the liquidator appointed by the court will be in charge of settling the debtor's debts in accordance with their ranking.

French insolvency law assigns priority to the payment of certain preferred creditors, including employees, post-commencement legal costs (essentially, court officials fees), creditors who benefit from a New Money Lien or a S/R Lien (see above), post-commencement privileged creditors and the French State (taxes and social charges). In the event of judicial liquidation proceedings only, certain pre-commencement secured creditors whose claim is secured by real estate are paid prior to post-commencement privileged creditors. This order of priority does not apply to all creditors, for example it does not apply to creditors benefiting from a retention right over assets with respect to their claim related to such asset.

Creditors' Liability

Pursuant to Article L. 650-1 of the French Commercial Code (as interpreted by case law), where safeguard, judicial reorganization or judicial liquidation proceedings have been commenced, creditors may only be held liable for the losses suffered as a result of facilities granted to the debtor, if the granting of such facilities was wrongful and if the relevant creditor (i) committed a fraud, or (ii) interfered with the management of the debtor or (iii) obtained security or guarantees that are disproportionate to such facilities. In addition, any security or guarantees taken to support facilities in respect of which a creditor is found liable on any of these grounds can be cancelled or reduced by the court.

Limitations on Enforcement

Limitations on Guarantees

The liabilities and obligations of the French guarantor are subject to:

- certain exceptions, including to the extent of any obligations which would constitute prohibited financial assistance within the meaning of Article L. 225 216 of the French Commercial Code or infringement of the provisions of Articles L. 241-3, L. 242-6 or L. 244-1 of the French Commercial Code; and
- French corporate benefit rules.

Under French financial assistance rules, a company is prohibited from guaranteeing indebtedness of another company that is used, directly or indirectly, for the purpose of its acquisition.

Under French corporate benefit rules, a guarantor must receive an actual and adequate benefit from the transaction involving the granting by it of the guarantee, taken as a whole. A court could declare any guarantee unenforceable and, if payment had already been made under the relevant guarantee, require that the recipient return the payment to the relevant guarantor, if it found that these criteria were not fulfilled. The existence of a real and adequate benefit to the guarantor and whether the amounts guaranteed are commensurate with the benefit received are matters of fact as to which French case law provides no clear guidance.

Accordingly, each of the guarantees by the French guarantor and the amounts recoverable thereunder will be limited, at any time, to an amount equal to the aggregate of the proceeds of the Notes to the extent directly or indirectly on-lent by the Issuers, or used to refinance any indebtedness previously directly or indirectly on-lent, to the French guarantor or any of its subsidiaries under intercompany loans or similar arrangements and outstanding on the date a payment is requested to be made by the French guarantor under its guarantees. Any payment made by the French guarantor under its guarantees in respect of the obligations of any other obligor shall reduce *pro tanto* the outstanding amount of the intercompany loans due by the French guarantor or its subsidiaries under the intercompany loan arrangements referred to above. By virtue of this limitation, the French guarantor's obligation under the guarantees could be significantly less than amounts payable with respect to the Notes, or the French guarantor may have effectively no obligation under its guarantees.

In addition, if the French guarantor receives, in return for issuing the guarantee, an economic return that is less than the economic benefit the French guarantor would obtain in a transaction entered into on an arm's length basis, the difference between the actual economic benefit and that in a comparable arm's length transaction could be taxable under certain circumstances.

Fraudulent Conveyance

French law contains specific, "*action paulienne*" provisions dealing with fraudulent conveyance both in and outside insolvency proceedings. The *action paulienne* offers creditors protection against a decrease in their means of recovery. A legal act performed by a debtor (including, without limitation, an agreement pursuant to which such debtor guarantees the performance of the obligations of a third party or agrees to provide or provides security for any of such debtor's or a third party's obligations, enters into additional agreements benefiting from existing security or any other legal act having similar effect)) can be challenged in or outside insolvency proceedings of the relevant debtor by the creditors' representative (*mandataire judiciaire*), the commissioner of the safeguard or reorganization plan (*commissaire à l'exécution du plan*) insolvency proceedings of the relevant debtor, or by any of the creditors of the relevant debtor outside the insolvency proceedings or any creditor who was prejudiced in its means of recovery as a consequence of the act in or outside insolvency proceedings. Any such legal act may be declared unenforceable against third parties if: (i) the debtor performed such act without an obligation to do so; (ii) the relevant creditor or (in the case of the debtor's insolvency proceedings) any creditor was prejudiced in its means of recovery as a consequence of the act; and (iii) at the time the legal act was performed, both the debtor and the counterparty to the transaction knew or should have known that one or more of such debtor's creditors (existing or future) would be prejudiced in their means of recovery (where the legal act was entered into for no consideration (*à titre gratuit*), no such knowledge of the counterparty is necessary). If a court found that the issuance of the Notes or the granting of a guarantee involved a fraudulent conveyance that did not qualify for any defense under applicable law, then the issuance of the Notes or the granting of such guarantee could be declared unenforceable against third parties or declared unenforceable against the creditor who lodged the claim in relation to the relevant act. As a result of such successful challenges, holders of the Notes may not enjoy the benefit of the Notes, the guarantees and the value of any consideration that holders of the Notes received with respect to the Notes or the guarantees could also be subject to recovery from the holders of the Notes and, possibly, from subsequent transferees. In addition, under such circumstances, holders of the Notes might be held liable for any damages incurred by prejudiced creditors of the Issuers or the guarantors as a result of the fraudulent conveyance.

Germany

Insolvency

Certain guarantors of the Notes are organized under the laws of Germany and have their registered office in Germany (the "German Guarantors"). Consequently, in the event of an insolvency of any such guarantor, subject to the information presented under "—European Union," insolvency proceedings may, therefore, be initiated in Germany. Such proceedings would then be governed by German law. However, pursuant to the E.U. Insolvency Regulation, where a German company conducts business in more than one member state of the European Union, the jurisdiction of the German courts may be limited if the company´s "centre of main interests" is found to be in a member state other than Germany (please see "*European Union*"). There are a number of factors that are taken into account to ascertain the "centre of main interests," which should correspond to the place where the company conducts the administration of its interests on a regular basis and is therefore ascertainable by third parties. The point of time at which this issue falls to be determined is at the time that the request to open insolvency proceedings is received.

The insolvency laws of Germany and, in particular, the provisions of the German Insolvency Code (*Insolvenzordnung*) may not be as favorable to your interests as creditors as the insolvency laws of other jurisdictions, including in respect of priority of creditors' claims, the ability to obtain post-petition interest and the duration of the insolvency proceedings, and hence may limit your ability to recover payments due on the notes to an extent exceeding the limitations arising under other insolvency laws. See "Risk Factors—Risks Related to the Notes Offered Hereby—Insolvency laws of jurisdictions outside the United States may not be as favorable to you as the U.S. bankruptcy laws and may preclude holders of the Notes offered hereby from recovering payments due under the Notes offered hereby."

The following is a brief description of certain aspects of the insolvency laws of Germany.

Under German insolvency law, there is no consolidation of the assets and liabilities of a group of companies in the event of insolvency. In case of a group of companies, each entity, from an insolvency law point of view, has to be dealt with separately (*i.e.*, there is generally no group insolvency concept under German insolvency law). As a consequence, there is, in particular, no pooling of claims among the respective entities of a group, but rather claims of and vis-à-vis each entity have to be dealt with separately. On April 21, 2018, the Bill to Facilitate the Handling of Group Insolvencies (*Gesetz zur Erleichterung der Bewältigung von Konzerninsolvenzen*) entered into force. While the bill does not abolish the principle of separate insolvency proceedings in relation to each group entity, it provides for the following four key amendments of the German Insolvency Code in order to facilitate an efficient administration of group insolvencies: (i) a single court may be competent for each group entity's insolvency proceeding; (ii) the appointment of a single person as insolvency administrator for all group companies is facilitated; (iii) certain coordination obligations

are imposed on insolvency courts, insolvency administrators and creditors' committees; and (iv) certain parties may apply for "coordination proceedings" (*Koordinationsverfahren*) and the appointment of a "coordination insolvency administrator" (*Koordinationsverwalter*) with the ability to propose a "coordination plan" (*Koordinationsplan*).

Under German insolvency law, insolvency proceedings are not initiated by the competent insolvency court *ex officio*, but require that the debtor or a creditor files a petition for the opening of insolvency proceedings. Insolvency proceedings can be initiated either by the debtor or by a creditor in the event of over-indebtedness (*Überschuldung*) of the debtor or in the event that the debtor is unable to pay its debts as and when they fall due (*Zahlungsunfähigkeit*). According to the relevant provision of the German Insolvency Code, a debtor is over-indebted when its liabilities exceed the value of its assets (based on their liquidation values), unless a continuation of the debtor's business is predominantly likely (*überwiegend wahrscheinlich*). As a guideline, the debtor is deemed illiquid if it is unable to pay 10% or more of its due and payable liabilities during the subsequent three weeks, unless it is virtually certain that the company can close the liquidity gap shortly thereafter (*demnächst*) and it can be deemed acceptable to the creditor to continue to wait for the payments owed by such debtor. If a stock corporation (*Aktiengesellschaft—AG*), a European law stock corporation based in Germany (*Societas Europaea—SE*) or a limited liability company (*Gesellschaft mit beschränkter Haftung—GmbH*) or any company not having an individual as personally liable shareholder (such as, *e.g.*, a limited partnership with a GmbH as sole general partner (*GmbH & Co. KG*)) becomes illiquid and/or over indebted, the managing director(s) of such company and, in certain circumstances its shareholders, are obligated to file for the opening of insolvency proceedings without undue delay; however, at the latest within three weeks after the mandatory insolvency reason, *i.e.*, illiquidity and/or over-indebtedness, occurred. Non-compliance with these obligations exposes management to both severe damage claims as well as sanctions under criminal law. Once illiquidity or over-indebtedness occurred, any payments, including any payments under the notes, are voidable. In addition, imminent illiquidity (*drohende Zahlungsunfähigkeit*) is a valid insolvency reason under German law which exists if the company currently is able to service its payments obligations, but will presumably not be able to continue to do so at some point in time within a certain prognosis period. However, only the debtor, but not the creditors, is entitled (but not obligated) to file for the opening of insolvency proceedings in the event of an imminent illiquidity.

The Act to Temporarily Suspend the Obligation to File for Insolvency and to Limit Directors' Liability in the Case of Insolvency Caused by the Covid-19 Pandemic, which was adopted on March 27, 2020 (the "COVInsAG"), provides, *inter alia*, for a suspension of the obligation to file for insolvency due to over-indebtedness until December 31, 2020. The suspension — as in force from October 1, 2020 — applies unless the insolvency is not caused by consequences of the Covid-19 pandemic The COVInsAG also provides for a relief from claw-back, if the debtor fulfilled the requirements for the suspension of filing duties, for the satisfaction of claims or the provision of collateral for these claims, which the creditor was entitled to receive and unless the creditor knew that the restructuring and refinancing efforts of the debtor were not suitable to eliminate an existing illiquidity of the debtor in the meaning of section 17 of the German Insolvency Code (*Insolvenzordnung*).

The insolvency proceedings are administered by the competent insolvency court, which monitors the due performance of the proceedings. Upon receipt of the insolvency petition, the insolvency court may take preliminary protective measures to secure the property of the debtor during the preliminary proceedings (*Insolvenzeröffnungsverfahren*). The insolvency court may prohibit or suspend any measures taken to enforce individual claims against the debtor's assets during these preliminary proceedings and may appoint a preliminary insolvency administrator (*vorläufiger Insolvenzverwalter*), who, depending on the court decision, may have the right to manage and dispose of the business and assets of the debtor. This only applies where the debtor has not (successfully) applied for so-called self-administration (*Eigenverwaltung*), in which event the court will only appoint a preliminary custodian (*vorläufiger Sachwalter*), who will supervise the management of the affairs by the debtor. During preliminary insolvency proceedings, the insolvency court generally must set up a "preliminary creditors' committee" (*vorläufiger Gläubigerausschuss*) if the debtor has satisfied as least two of the following three requirements in its previous financial year: a balance sheet total in excess of €6,000,000 (after deducting an equity shortfall if the debtor is over indebted), revenues of at least €12,000,000 in the twelve months prior to the last balance sheet date and/or fifty or more employees on average. The requirements apply to the respective entity without taking into account the assets of other group companies. If these requirements are not met, a preliminary creditors' committee can be established at the request of the preliminary insolvency administrator (*vorläufiger Insolvenzverwalter*) or a creditor. The preliminary creditors' committee will be able to participate in certain important insolvency court decisions. It will have, for example, the power to influence the following: the selection of a preliminary insolvency administrator or an insolvency administrator (*vorläufiger Insolvenzverwalter* and *Insolvenzverwalter*), orders for debtor-in-possession proceedings (*Anordnung der Eigenverwaltung*), and appointments of preliminary trustees (*Sachwalter*). In case the members of the preliminary creditors' committee unanimously agree on an individual such suggestion is binding on the court unless the suggested individual is not eligible (*i.e.*, not competent and/or not impartial). The court orders the opening (*Eröffnungsbeschluss*) of the formal insolvency proceedings (*eröffnetes Insolvenzverfahren*) if certain requirements are met, in particular if there are sufficient assets *(Insolvenzmasse)* to cover at least the cost of the insolvency proceedings. If the assets of the debtor are expected not to be sufficient, the insolvency court will only open main insolvency proceedings if third parties, for instance creditors, advance the costs themselves. In the absence of such advancement, the petition for opening of insolvency proceedings will be dismissed for insufficiency of assets (*Abweisung mangels Masse*).

Upon the opening of formal insolvency proceedings, an insolvency administrator *(Insolvenzverwalter)* (usually the same person who acted as preliminary insolvency administrator) is appointed by the insolvency court, unless debtor-in-possession proceedings (*Eigenverwaltung*) are ordered. In the absence of debtor-in-possession proceedings, the right to administer the debtor's business affairs and to dispose of the assets of the debtor passes to the insolvency administrator with the insolvency creditors (*Insolvenzgläubiger*) only being entitled to change the individual appointed as insolvency administrator at the occasion of the first creditors' assembly (*erste Gläubigerversammlung*) with such change requiring that (i) a simple majority of votes cast (by number and amount of insolvency claims) has voted in favor of the proposed individual to become insolvency administrator and (ii) the proposed individual being eligible as officeholder, *i.e.*, sufficiently qualified, business-experienced and impartial. The insolvency administrator has full power to manage the business and dispose of the debtor's assets, whereas the debtor is no longer entitled to manage the business or dispose of its assets. The insolvency administrator may raise new financial indebtedness and incur other liabilities to continue the debtor's business operations or may deem them necessary to wind down the company, and satisfaction of these liabilities as preferential debts of the estate (*Massenschulden*) will be preferred to any insolvency liabilities created by the debtor (including secured debt insofar as the proceeds of an enforcement of relevant security are not sufficient to settle the secured claims). These new liabilities incurred by the insolvency administrator qualify as preferential claims against the estate (*Masseverbindlichkeiten*) which are preferred to any insolvency claim of an unsecured creditor (with the residual claim of a secured insolvency creditor remaining after realization of the available collateral (if any) also qualifying as unsecured insolvency claim).

The most important consequences of such opening of formal insolvency proceedings that are subject to the German insolvency regime (against a German Guarantor or against any other guarantor having its centre of main interest in Germany and where the German insolvency courts have jurisdiction in accordance with the E.U. Insolvency Regulation or the German Insolvency Code) would be the following:

- the right to administer and dispose of assets of the relevant insolvent debtor would generally pass to the insolvency administrator (*Insolvenzverwalter*) as sole representative of the insolvency estate, unless debtor-in-possession proceedings (*Eigenverwaltung*) are ordered;
- if the court does not order debtor-in-possession proceedings (*Eigenverwaltung*), disposals effected by management of the insolvent debtor after the opening of formal insolvency proceedings are null and void by operation of law;
- if, during the final month preceding the date of filing for insolvency proceedings, a creditor in the insolvency proceedings acquires through execution (*e.g.*, attachment) a security interest in part of the insolvent debtor´s property that would normally form part of the insolvency estate, such security becomes null and void by operation of law upon the opening of formal insolvency proceedings; and
- that claims against the insolvent debtor may generally only be pursued in accordance with the rules set forth in the German Insolvency Code (*Insolvenzordnung*).

Under German insolvency law, termination rights, automatic termination events or "escape clauses" entitling one party to terminate an agreement, or resulting in an automatic termination of an agreement, upon the opening of insolvency proceedings in respect of the other party, the filing for insolvency or the occurrence of reasons justifying the opening of insolvency proceedings (*insolvenzbezogene Kündigungsrechte* or *Lösungsklauseln*) may be invalid if they frustrate the right of the insolvency administrator to elect whether or not to perform the contract unless they reflect termination rights applicable under statutory law. This may also relate to agreements that are not governed by German law in the event insolvency proceedings are opened in Germany against the counterparty.

Moreover, powers of attorney granted by the relevant debtor and certain other legal relationships cease to be effective upon the opening of insolvency proceedings. Certain executory contracts become unenforceable at such time unless and until the insolvency administrator opts for performance.

Any person that has a right to segregation (*Aussonderung*), *i.e.*, the relevant asset of this person does not constitute part of the insolvency estate, does not participate in the insolvency proceedings; the claim for segregation must be enforced in the course of ordinary court proceedings against the insolvency administrator.

All other creditors, whether secured or unsecured (unless they have a right to separate an asset from the insolvency estate (*Aussonderungsrecht*), wishing to assert claims against the insolvent debtor need to participate in the insolvency proceedings. Any individual enforcement action (*Zwangsvollstreckung*) brought against the debtor by any of its creditors is subject to an automatic stay once insolvency proceedings have been opened while actions regarding preferential claims against the estate (*Masseverbindlichkeiten*) may be brought against the insolvency administrator. German insolvency proceedings are collective proceedings and creditors may generally no longer pursue their individual claims in the insolvency proceedings separately, but can instead only enforce them in compliance with the restrictions of the German Insolvency Code. Therefore, secured creditors are generally not entitled to enforce any security interest outside the insolvency proceedings. In the insolvency proceedings, however, secured creditors have certain preferential rights (*Absonderungsrechte*). Depending on the legal nature of the security interest, entitlement to enforce such security is

either vested with the secured creditor or the insolvency administrator. In this context it should be noted that the insolvency administrator generally has the sole right to realize any moveable assets in his/the debtor's possession which are subject to preferential rights (*e.g.,* liens over movable assets (*Mobiliarsicherungsrechte*), security transfer of title (*Sicherungsübereignung*)) as well as to collect any claims that are subject to security assignment agreements (*Sicherungsabtretungen*). In case the enforcement right is vested with the insolvency administrator, the enforcement proceeds, less certain contributory charges for (i) assessing the value of the secured assets (*Feststellungskosten*) and (ii) realizing the secured assets (*Verwertungskosten*) which, in the aggregate, usually add-up to 9% of the gross enforcement proceeds plus VAT (if any) and are disbursed to the creditor holding a security interest in the relevant collateral up to an amount equal to its secured claims. With the remaining unencumbered assets of the debtor, the insolvency administrator has to satisfy the creditors of the insolvency estate (*Massegläubiger*) first (including the costs of the insolvency proceedings as well as any preferred liabilities incurred by the insolvency estate after the opening of formal insolvency proceedings). Thereafter, all other claims (insolvency claims—*Insolvenzforderungen*), in particular claims of unsecured creditors, will be satisfied on a pro rata basis if and to the extent there is cash remaining in the insolvency estate (*Insolvenzmasse*) after the security interest and the preferential claims against the estate have been settled and paid in full. Hence, the proceeds resulting from the disposal of the insolvency estate of the debtor may not be sufficient to satisfy the unsecured claims of the holders of the Notes. In addition, it may take several years until an insolvency dividend (if any) is distributed to unsecured creditors. A different distribution of enforcement proceeds can be proposed in an insolvency plan (*Insolvenzplan*) that can be submitted by the debtor or the insolvency administrator and requires the consent of the debtor as well as the consent of each class of creditors in accordance with specific majority rules. Claims of subordinated creditors in the insolvency proceedings (*nachrangige Insolvenzgläubiger*) are satisfied only after the claims of other non-subordinated creditors (including the unsecured insolvency claims) have been fully satisfied.

German insolvency law provides for certain creditors and their claims to be subordinated by law (including, but not limited to, claims made by shareholders (unless privileged) of the relevant debtor for the return or repayment of shareholder loans or comparable actions). The restrictive nature of the covenants and undertakings in the Indenture may result in the holders of the Notes and/or the applicable Trustee being considered in a "shareholder like position" (*gesellschafterähnliche Stellung*). In that event, in an insolvency proceeding over the assets of a German Guarantor, the claims arising from a guarantee would be treated as a subordinated insolvency claim (*nachrangige Insolvenzforderungen*). Subordinated insolvency claims are not eligible to participate in the insolvency proceedings over the assets of a German Guarantor unless the insolvency court handling the case has granted special permission allowing these subordinated insolvency claims to be filed which is not granted in the vast majority of insolvency cases governed by German law.

Claims of a person who becomes a creditor of the insolvency estate only after the opening of insolvency proceedings generally rank senior to the claims of regular, unsecured creditors. See also below under "*—Satisfaction of Subordinated Claims.*"

Realizing the value of the insolvency estate for distribution of the proceeds among the creditors is commonly achieved by disposing of the debtor's assets, or, as the case may be, by disposing of the debtor's business as a going concern. It is possible to implement a debt-to-equity conversion through an insolvency plan. However, it will not be possible to force a creditor into a debt-to-equity conversion if it does not consent to such debt-to-equity conversion. If a company faces imminent illiquidity and/or over-indebtedness it may also file for preliminary debtor–in-possession proceedings (*Schutzschirmverfahren*). In such a case and upon request of the debtor, the court will prohibit enforcement measures (other than with respect to immoveable assets) and may implement other preliminary measures to protect the debtor from creditor enforcement actions for up to three months if an independent expert testifies that the restructuring of the debtor's business is not obviously futile (*offensichtlich aussichtslos*) and that the debtor is not already illiquid. During such period, the debtor shall, together with its creditors and a preliminary trustee (*vorläufiger Sachwalter*), prepare an insolvency plan which ideally will be implemented in formal debtor-in-possession proceedings (*Eigenverwaltung*) after formal insolvency proceedings have been opened. By submitting the insolvency plan itself the debtor may prevent a debt-to-equity conversion.

Hardening Periods and Fraudulent Transfer

In insolvency proceedings governed by the insolvency laws of Germany, the security interests granted as well as the guarantee provided could be subject to potential challenges by an insolvency administrator (*Insolvenzverwalter*) under the rules of avoidance as set out in the German Insolvency Code (*Insolvenzordnung*) as more recently amended by the Act for the improvement of legal certainty concerning avoidance claims pursuant to the German Insolvency Code and the German Code on Avoidance (*Gesetz zur Verbesserung der Rechtssicherheit bei Anfechtungen nach der Insolvenzordnung und dem Anfechtungsgesetz vom 29. März 2017*) that came into force on April 5, 2017.

Based on these rules, an insolvency administrator may avoid (*anfechten*) transactions, performances or other acts that are deemed detrimental to insolvency creditors and were effected prior to the commencement of insolvency proceedings during applicable avoidance periods. Generally, if transactions, performances or other acts are successfully avoided by the insolvency administrator, any amounts or other benefits derived from such challenged transaction, performance or act will have to be returned to the insolvency estate. Such transactions can include the payment of any amounts to the holders of the Notes as well as granting them any security

interest. The administrator's right to avoid transactions can, depending on the circumstances, extend to transactions during the 10-year period prior to the filing of petition for commencement of insolvency proceedings. In the event such a transaction is successfully avoided, the holders of the Notes would be under an obligation to repay the amounts received or to waive the guarantee.

In particular, an act (*Rechtshandlung*) or a legal transaction (*Rechtsgeschäft*) (which term includes the granting of a guarantee, the provision of security or the repayment of debt) may be avoided according to the German Insolvency Code in the following cases:

- any act granting an insolvency creditor, or enabling an insolvency creditor to obtain, security or satisfaction for a debt (*Befriedigung*) can be avoided if the act was performed (i) in the last three months prior to the filing of the petition for the commencement of the insolvency proceedings and the debtor was illiquid (*zahlungsunfähig*)at the time when such act was taken and the creditor had knowledge of such illiquidity (or of the circumstances that unmistakably suggest that the debtor was illiquid) at such time, or (ii) if such act was performed after the filing of a petition for the commencement of the insolvency proceedings and the creditor had knowledge of the illiquidity of the debtor or of the filing of such petition (or of circumstances unmistakably suggesting such illiquidity or filing);
- any act granting an insolvency creditor, or enabling an insolvency creditor to obtain, security or satisfaction to which such creditor was not entitled or which was granted or obtained in a form or at a time to which or at which such creditor was not entitled to such security or satisfaction if (i) such act was performed during the last month prior to the filing of the petition for the commencement of the insolvency proceedings or after such filing, (ii) such act was performed during the second or third month prior to the filing of the petition and the debtor was illiquid at such time, or (iii) such act was performed during the second or third month prior to the filing of the petition for the commencement of the insolvency proceedings and the creditor knew at the time such act was taken that such act was detrimental to the other insolvency creditors (or had knowledge of circumstances that unmistakably suggest such detrimental effects);
- any legal transaction effected by the debtor that is directly detrimental to the insolvency creditors or by which the debtor loses a right or the ability to enforce a right or by which a proprietary claim against a debtor is obtained or becomes enforceable, if (i) it was entered into during the three months prior to the filing of the petition of the commencement of the insolvency proceedings, the debtor was illiquid at the time of such transaction and the counterparty to such transaction had knowledge of the illiquidity at such time or (ii) it was entered after such filing and the counterparty to such transaction had knowledge thereof of either the debtor´s illiquidity or such filing at the time of the transaction;
- any act by the debtor without (adequate) consideration (for example, whereby a debtor grants security for a third-party debt), which might be regarded as having been granted gratuitously (*unentgeltlich*), if it was effected in the four years prior to the filing of a petition for the commencement of insolvency proceedings against the debtor;
- any act performed by the debtor in the ten years prior to the filing of the petition for the commencement of insolvency proceedings with the intent (known to the beneficiary of the act at the time of such act) to prejudice its creditors; if the relevant act consisted of a settlement of an obligation or the grant of a security to the counterparty, the relevant period is four years instead of ten years; "knowledge by the beneficiary of the act" in terms of such provision is presumed if the beneficiary knew that the debtor was imminently illiquid (*drohende Zahlungsunfähigkeit*) and that the relevant act disadvantaged the other creditors; in case the relevant act granted a creditor, or enabled a creditor to obtain, security or satisfaction in a form or at a time to which or at which such creditor was entitled, the "knowledge by the beneficiary of the act" is presumed if the beneficiary knew that the debtor was actually illiquid (*eingetretene Zahlungsunfähigkeit*) and that the relevant act disadvantaged the other creditors; the fact that the creditor agreed on a payment plan with the debtor or agreed to deferred payments establishes a presumption that he had no knowledge of the debtor being illiquid at this time;
- any non-gratuitous contract (*entgeltlicher Vertrag*) entered into by the debtor in the last two years prior to the filing of the petition for the opening of insolvency proceedings with a closely related party (which term includes in particular the management, supervisory board members and shareholders owning more than 25% of the debtor's share capital, certain persons with comparable access to information about the debtor, and certain of their or its affiliates, management and relatives) and which is directly detrimental to the insolvency creditors, unless the closely related party was unaware of the debtor's intent to prejudice its creditors;
- any act that provides security or satisfaction for a claim of a shareholder for repayment of a shareholder loan (*Gesellschafterdarlehen*) made to the debtor or a similar claim if (i) in the case of the provision of security, if the act occurred during the ten years prior to the filing of the petition for the commencement of the insolvency proceedings or after the filing of such petition or (ii) in the case of satisfaction the act occurred during the last year prior to the filing of the petition for the commencement of the insolvency proceedings or after the filing of such petition; and
- any act whereby the debtor grants satisfaction for a loan claim or an economically equivalent claim to a third party if (i) the satisfaction was effected in the last year prior to the filing of a petition for the commencement of insolvency proceedings or thereafter and (ii) a shareholder of the debtor had granted security or was liable as a guarantor or surety

(*Garant oder Bürge*) (in which case the shareholder has to compensate the debtor for the amounts paid (subject to further conditions)).

In this context, "knowledge" is generally deemed to exist if the other party is aware of the facts from which the conclusion must be drawn that the debtor was unable to pay its debts generally as they fell due, that a petition for the opening of insolvency proceedings had been filed, or that the act was detrimental to, or intended to prejudice, the insolvency creditors, as the case may be. A person is deemed to have knowledge of the debtor's intention to prejudice the insolvency creditors if it was aware of the debtor's actual illiquidity (*Zahlungsunfähigkeit*) or impending illiquidity (*drohende Zahlungsunfähigkeit*) and that the transaction prejudiced the debtor´s creditors, provided that, if the relevant act by the debtor consisted of a settlement of an obligation or the grant of a security which was due to be paid or granted, as the case may be, then the knowledge of the debtor´s intention to prejudice the insolvency creditors is only presumed if the other party was aware of the actual illiquidity (*Zahlungsunfähigkeit*) of the debtor and of the fact that the transaction prejudiced the debtor´s creditors. With respect to a "related party", there is a general statutory presumption that such party had "knowledge".

If any of the guarantees given or any security interest granted by any of the German Guarantors were avoided or held unenforceable for any reason, you would cease to have any claim in respect thereof. Any amounts received from a transaction that has been avoided would have to be repaid to the insolvent estate and you would have a claim solely under the Notes and the remaining security, if any.

The granting of security concurrently with the incurrence of debt may be qualified as a "cash transaction" and may as such be privileged—under certain circumstances—under the German Insolvency Code (*Insolvenzordnung*) (*Bargeschäftsprivileg*) by not being subject to certain avoidance rights.

The COVInsAG, however, provides for a privileged treatment of any kind of newly granted third-party financing (*i.e.*, not only traditional cash loans but also commercial credits and other forms of financing) and shareholder loans under German insolvency law avoidance provisions. Thus, the repayment (including reasonable interest payments) of third-party financing and shareholder loans by September 30, 2023 shall not be considered disadvantageous to creditors if the relevant financing is granted between March 1, 2020 and December 31, 2020 and the debtor fulfilled the requirements for the suspension of the filing duties. This privilege also includes the provision of collateral in favour of third-party financing providers, but does not apply in case of the provision of collateral in favour of a shareholder loan or receivables from economically similar acts.

Furthermore, even in the absence of an insolvency proceeding, a third-party creditor who has obtained an enforcement order (*Vollstreckungstitel*) but has failed to obtain satisfaction on its enforceable claims by a levy of execution, under certain circumstances, has the right to avoid certain transactions, such as the payment of debt and the granting of security pursuant to the German Code on Avoidance (*Anfechtungsgesetz*). The conditions for avoidance under the German Code on Avoidance differ to a certain extent from the above-described rules under the German Insolvency Code and the avoidance periods are calculated from the date when a creditor exercises its rights of avoidance in the courts.

The German restructuring laws will likely be subject to further amendments in near future. On June 20, 2019, the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (the "EU Restructuring Directive") has been adopted. The EU Restructuring Directive was published in the Official Journal of the European Union on June 26, 2019, and the member states have approximately two years to transpose the substantive parts of the EU Restructuring Directive into their national legislation, although a one-year extension can be granted. The EU Restructuring Directive aims to put in place key principles for all member states on effective preventive restructuring and second chance frameworks, and measures to make all types of insolvency procedures more efficient by reducing their length and associated costs and improving their quality. The key feature of the EU Restructuring Directive is the introduction of a preventive restructuring framework. The EU Restructuring Directive sets out minimum EU standards to be applied by the member states (*i.e.*, minimum harmonization). Whereas certain features of the EU Restructuring Directive need to be transposed into national legislation, the EU Restructuring Directive leaves a large degree of discretion regarding the implementation of certain other features. Most notably, the EU Restructuring Directive provides for a framework pursuant to which claims of the relevant creditors may be modified in a restructuring plan by majority vote with a majority of not more than 75% of the amount of claims in each class and, where applicable, a majority by numbers and against the voting of a single creditor in a pre-insolvency restructuring procedure, *i.e.* outside formal insolvency proceedings. The EU Restructuring Directive also provides for cross-class cram-down, *i.e.* even if the creditors of one class voting on the restructuring plan did not consent to the restructuring plan with the required majority, the restructuring plan might still be adopted and take effect for the dissenting creditors. Further, the EU Restructuring Directive provides for a stay on enforcement, which needs to be transposed into national legislation. The implementation of the EU Restructuring Directive into national legislation might also include priority ranking for new financing.

On September 19, 2020, the German ministry of justice and consumer protection published a ministerial draft, followed by a draft bill (*Regierungsentwurf*) published on October 14, 2020 by the German Federal Government on a Law on Development of Restructuring and Insolvency Laws (*Gesetz zur Fortentwicklung des Sanierungs- und Insolvenzrechts*, *SanInsFoG*), providing in particular for the implementation of the EU Restructuring Directive into German law and stipulating certain other amendments of German insolvency laws, *e.g.* the implementation of the framework for an optional restructuring plan as well as certain measures due to consequences from Covid-19. According to the current draft the law shall enter into force on January 1, 2021.

Satisfaction of Subordinated Claims

The insolvency estate shall serve to satisfy the liquidated claims held by the personal creditors against the debtor on the date when the insolvency proceedings were opened. The following claims shall be satisfied ranking junior to the other claims of insolvency creditors in the order given below, and according to the proportion of their amounts if ranking with equal status: (i) interest and penalty payments accrued on the claims of the insolvency creditors from the day of the opening of the insolvency proceedings; (ii) costs incurred by individual insolvency creditors due to their participation in the proceedings; (iii) fines, regulatory fines, coercive fines and administrative fines, as well as such incidental legal consequences of a criminal or administrative offence binding the debtor to pay money; (iv) claims to the debtor's gratuitous performance of a consideration; and (v) claims for restitution of a shareholder loan (*Gesellschafterdarlehen*) or claims resulting from legal transactions corresponding in economic terms to such a loan. The CovInsAG, however, suspends the statutory subordination of shareholder loans and receivables from economically similar acts in insolvency proceedings applied for up until September 30, 2023 for newly granted shareholder loans granted between March 1, 2020 and December 31, 2020 and where the debtor fulfilled the requirements for the suspension of the filing duties.

Limitations on Validity and Enforceability of the Guarantees

The German Guarantors of the notes that are organized under German law are incorporated or established in the form of a GmbH (*Gesellschaft mit beschränkter Haftung*, Limited Liability Company), or as a GmbH & Co. KG, a limited partnership with a GmbH (Limited Liability Company) as its sole general partner. Consequently, the granting of guarantees by these German Guarantors is subject to certain provisions of the German Limited Liability Company Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, the "GmbHG").

Sections 30 and 31 of the GmbHG ("Sections 30 and 31") prohibit a GmbH from disbursing its assets to its shareholders to the extent that the amount of the GmbH's net assets determined in accordance with the provisions of the German Commercial Code (*Handelsgesetzbuch*, the "HGB") (*i.e.*, assets minus liabilities and liability reserves)—or, in case of a GmbH & Co. KG, its general partner's net assets—is or would fall below the amount of its stated share capital (*Begründung einer Unterbilanz*) or would increase any already existing capital impairment (*Vertiefung einer Unterbilanz*). Guarantees granted by a GmbH or a GmbH & Co. KG in order to guarantee liabilities of a direct or indirect parent or sister company are considered disbursements under Sections 30 and 31. Therefore, in order to enable German subsidiary guarantors to grant guarantees to secure liabilities of a direct or indirect parent or sister company without the risk of violating Sections 30 and 31, it is standard market practice for credit agreements, notes, indentures and guarantees and security documents to contain so-called "limitation language" in relation to subsidiaries incorporated in Germany in the legal form of a GmbH or a GmbH & Co. KG with a GmbH as its sole general partner incorporated or established in Germany. Pursuant to such limitation language, the beneficiaries of the guarantees agree to enforce the guarantees against the German Guarantors only if and to the extent that such enforcement does not result in the subsidiary's—or, in case of a GmbH & Co. KG, in the general partner's—net assets falling below, or increasing an existing shortfall of, its stated share capital.

Accordingly, as a matter of German corporate law the documentation in relation to the guarantees provided by a German Guarantor contains, and the Indenture will contain, such contractual limitation language and such guarantees are limited in the manner described. These limitations would, to the extent applicable, restrict the right of payment and would limit the claim accordingly irrespective of the granting of the subsidiary guarantee. This could lead to a situation in which the respective guarantee by a German Guarantor cannot be enforced at all.

Furthermore, it cannot be ruled out that the case law of the German Federal Supreme Court (*Bundesgerichtshof*) regarding so-called—destructive interference (*existenzvernichtender Eingriff*) (*i.e.*, a situation where a shareholder deprives a German limited liability company of the liquidity necessary for it to meet its own payment obligations) may be applied by courts with respect to the enforcement of a subsidiary guarantee granted by a German (direct or indirect) subsidiary guarantor or sister company of the Issuer. In such case, the amount of proceeds to be realized in an enforcement process may be reduced, even to zero. According to a decision of the German Federal Supreme Court (*Bundesgerichtshof*), a security or guarantee agreement may be void due to tortious inducement of breach of contract if a creditor knows about the distressed financial situation of the debtor and anticipates that the debtor will only be able to grant collateral by disregarding the vital interests of its other business partners. It cannot be ruled out that German courts may apply this case law with respect to the granting of subsidiary guarantees by the German Guarantors. Furthermore, the beneficiary of a transaction effecting a repayment of the stated share capital of the grantor of the subsidiary guarantee could moreover become personally liable under exceptional circumstances. The German Federal Supreme Court (*Bundesgerichtshof*) ruled that this could be

the case if for example the creditor were to act with the intention of detrimentally influencing the position of the other creditors of the debtor in violation of the legal principle of *bonos mores* (*Sittenwidrigkeit*). Such intention could be present if the beneficiary of the transaction was aware of any circumstances indicating that the grantor of the guarantee is close to collapse (*Zusammenbruch*), or had reason to enquire further with respect thereto.

German capital maintenance rules are subject to ongoing court decisions (see, for example, the more recent decision of the German Federal Supreme Court (*Bundesgerichtshof*) dated March 21, 2017, file no. II ZR 93/16, regarding the preservation of the share capital). We cannot assure you that future court rulings may not further limit the access of shareholders to assets of its subsidiaries constituted in the form of a limited liability company or of a limited partnership, the general partner or general partners of which is or are a limited liability company, which can negatively affect the ability of the German subsidiaries to make payments on the guarantees or of the beneficiaries of the guarantees to enforce the guarantees.

If the circumstances for a suspension of filing obligations as set out above are met, the COVInsAG also provides for a relief from lender liability, as any new loans or the provision of collateral for such loans is not regarded against *bonos mores*. This relief includes deferrals and "amend & extend" transactions. See also "—*Hardening Periods and Fraudulent Transfer*."

Ireland

Irish insolvency law

Under the Recast Insolvency Regulation, replacing the EU Insolvency Regulation, the Irish Guarantor's COMI is presumed to be the place of its registered office (i.e. Ireland) in the absence of proof to the contrary and provided that the Irish Guarantor did not move its registered office within the three months prior to a request to open insolvency proceedings. See "Limitations on Validity and Enforceability of the Guarantees—European Union."

As the Irish Guarantor's COMI is presumed to be Ireland, any main insolvency proceedings in respect of the relevant Irish Guarantor would fall within the jurisdiction of the courts of Ireland. As to what might constitute "proof to the contrary" regarding the location of a company's COMI, the key decision is that in Re Eurofood IFSC Ltd ((2004) 4 IR 370 (Irish High Court); (2006) IESC 41 (Irish Supreme Court); (2006) Ch 508; ECJ Case C 341/04 (European Court of Justice)), given in respect of the equivalent provision in the previous EU Insolvency Regulation (Regulation (EC) No. 1346/2000). In that case, on a reference from the Irish Supreme Court, the European Court of Justice concluded that "factors which are both objective and ascertainable by third parties" would be needed to demonstrate that a company's actual situation is different from that which the location of its registered office is deemed to reflect. For instance, if a company with its registered office in Ireland does not carry on any business in Ireland, that could rebut the presumption that the company's COMI is in Ireland. However, if a company with its registered office in Ireland does carry on business in Ireland, the fact that its economic choices are controlled by a parent undertaking in another jurisdiction would not, of itself, be sufficient to rebut the presumption. If the Irish Guarantor's COMI was found to be in another EU jurisdiction and not in Ireland, main insolvency proceedings would be opened in that jurisdiction instead.

Irish insolvency laws and other limitations could limit the enforceability of a guarantee provided by the Irish Guarantor and any security interests granted by the Irish Guarantor.

Under Irish law, Irish courts have the power to wind up a company in certain circumstances including where it is unable to pay its debts. Any creditor, the company, the directors of the company or any of its shareholders may apply to the court for the winding up of a company. Once a winding up order is made, a stay on all proceedings against the company will be imposed. No legal action may be continued or commenced against the company without leave of the court. In addition to a court liquidation, shareholders of an Irish company have the power to appoint a liquidator to the company where the company is insolvent. There is no automatic stay on proceedings against the company, however a liquidator (or creditor or shareholder) may apply to court for such a stay. A liquidation of an Irish company does not override the rights of secured creditors who remain free to enforce their security and retain the proceeds of enforcement in priority to the claims of unsecured creditors.

The Irish Guarantor's liabilities in respect of the Notes offered hereby will, in the event of a liquidation of the Irish Guarantor, rank after the cost of liquidation and those of the Irish Guarantor's debts that are entitled to priority under Irish law. Preferential debts under Irish law include, amongst others, certain amounts owed to the Irish Revenue, social security contributions, remuneration owed the employees.

Enforcement of a guarantee or collateral by a creditor may be prevented by the appointment of an examiner to the Irish Guarantor. Under the Irish examinership regime (designed to facilitate the survival of companies in financial difficulties) the rights of creditors and third parties are largely suspended for the period of the examinership, which lasts for 70 days but which may be extended by up to further 30 days (or possibly longer in certain circumstances). In particular a secured creditor is precluded from (i) commencing any actions for a winding-up, (ii) appointing a receiver, (iii) putting any attachment, sequestration, distress or execution into force against the property or assets of the company, (iv) enforcing security, (v) repossessing goods on lease or hire or

supplied on retention of title, or (vi) from enforcing on any guarantee of the company's debt. If an examinership application is successful, the examiner must then formulate a scheme of arrangement. If this scheme is approved by a majority of the creditors of the company and the Irish courts this can result in a mandatory write down of some of debt of certain creditors.

The priority in which claims are paid on the insolvency of an Irish company are broadly as follows:

- remuneration, costs and expenses of an examiner are paid in full before any other claim, secured or unsecured;
- debts due to fixed chargeholders—assets that are subject to a fixed charge belong to the security holder and not to the company;
- expenses certified by the examiner rank after the claims of fixed chargeholders;
- costs and expenses of the winding-up;
- fees due to the liquidator;
- social security contributions;
- taxes and remuneration owed to employees;
- floating charges ranked in order of their creation;
- unsecured debts ranking equally; and
- deferred debts ranking equally.

Irish insolvency laws may also affect transactions entered into or payments made by an Irish company during the period before insolvency, the "hardening period". Such transactions include fraudulent preferences—a fraudulent preference is deemed to have been given where the company entered into a transaction with a view to giving a creditor or guarantor of that creditor a better position than it would otherwise have been in if the company goes into insolvent liquidation. The hardening period is six months.

Limitations on guarantees

Irish companies can provide guarantees subject to the following limitations:

- Corporate capacity and benefit—the Irish company has the capacity to do so and there is sufficient corporate benefit to the Irish company in giving the guarantee. It is usually possible to show benefit if the Irish company is providing a guarantee in relation to the debts/obligations of another group company. Also, even where there is a lack of corporate capacity, this will generally not render the guarantee void provided the creditor acts in good faith.
- Financial assistance—an Irish company cannot give a guarantee for the purpose of acquisition of shares in itself or its holding company. However, certain exemptions apply and the legislation provides for a validation procedure which permits otherwise prohibited financial assistance.
- Loans to directors—an Irish company cannot give a guarantee in relation to debts/obligations of its directors or persons connected to its directors including companies controlled by its directors. However, there is an exemption from the general prohibition if the relevant debts/obligations are debts/obligations of another group company.

Luxembourg

Insolvency Proceedings

Certain guarantors are incorporated under the laws of Luxembourg (each a "Luxembourg Guarantor").

Accordingly, Luxembourg courts should have, in principle, jurisdiction to open main insolvency proceedings with respect to a Luxembourg Guarantor, as an entity having its registered office and central administration *(administration centrale)* and centre of main interest, as used in the E.U. Insolvency Regulation, in the Grand Duchy of Luxembourg, such proceedings to be governed by Luxembourg insolvency laws. According to the E.U. Insolvency Regulation, there is a rebuttable presumption that a company has its centre of main interest in the jurisdiction in which it has the place of its registered office. As a result, there is a rebuttable presumption that the centre of main interest of each of the Luxembourg Guarantors is in the Grand Duchy of Luxembourg and consequently that any "main insolvency proceedings" (as defined in the E.U. Insolvency Regulation) would be opened by a Luxembourg court and be governed by Luxembourg law.

However, the determination of where a Luxembourg Guarantor has its centre of main interest is a question of fact, which may change from time to time. The E.U. Insolvency Regulation states that the centre of main interest of a debtor should correspond to the place where the debtor conducts the administration of its interests on a regular basis and "is therefore ascertainable by third parties." In

the Eurofood IFSC Limited decision by the European Court of Justice ("ECJ"), the ECJ restated the presumption in the E.U. Insolvency Regulation that the place of a company's registered office is presumed to be the company's centre of main interest and stated that the presumption can only be rebutted if "factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at the registered office is deemed to reflect."

Under Luxembourg insolvency laws, the following types of proceedings (the "Insolvency Proceedings") may be opened against the Luxembourg Guarantors:

- bankruptcy proceedings (*faillite*), the opening of which is initiated by the relevant guarantor, by any of its creditors or by Luxembourg courts *ex officio*. The managers/directors of the relevant Luxembourg Guarantor have the obligation to file for bankruptcy within one month in case it is in a state of cessation of payment (*cessation de paiement*).

Following such a request, the Luxembourg courts having jurisdiction may open bankruptcy proceedings, if the relevant guarantor (i) is in default of payment (*cessation des paiements*) and (ii) has lost its commercial creditworthiness (*ébranlement de crédit*). If a court finds that these conditions are satisfied, it may also open ex officio bankruptcy proceedings, absent a request made by the relevant Luxembourg Guarantor. The main effects of such proceedings are (i) the suspension of all measures of enforcement against the relevant Luxembourg Guarantor, except, subject to certain limited exceptions, for secured creditors and (ii) the payment of the relevant Luxembourg Guarantor's creditors in accordance with their ranking upon the realization of the guarantor's assets:

- controlled management proceedings (*gestion controlée*), the opening of which may only be requested by the relevant Luxembourg Guarantor and not by its creditors and under which a court may order provisional suspension of payments. The enforcement of claims by creditors is suspended; and
- composition proceedings (*concordat préventif de faillite*), the obtaining of which is requested by the relevant guarantor only after having received a prior consent from a majority of its creditors holding 75% at least of the claims against the relevant Luxembourg Guarantor. The obtaining of such composition proceedings will trigger a provisional stay on enforcement of claims by creditors.

In addition to these proceedings, the ability of the holders of Notes to receive payment on the Notes may be affected by a decision of a court to grant a stay on payments (*sursis de paiements*) or to put the relevant Luxembourg Guarantor into judicial liquidation (*liquidation judiciaire*). Judicial liquidation proceedings may be opened at the request of the public prosecutor against companies pursuing an activity violating criminal laws or that are in serious violation of the commercial code or of the Luxembourg laws governing commercial companies. The management of such liquidation proceedings will generally follow similar rules as those applicable to bankruptcy proceedings.

The relevant Luxembourg Guarantor's liabilities in respect of the Notes will, in the event of a liquidation of the guarantor following bankruptcy or judicial liquidation proceedings, rank after the cost of liquidation (including any debt incurred for the purpose of such liquidation) and those of the relevant Luxembourg Guarantor's debts that are entitled to priority under Luxembourg law. For example, preferential debts under Luxembourg law include, among others:

- certain amounts owed to the Luxembourg Revenue;
- value-added tax and other taxes and duties owed to the Luxembourg Customs and Excise;
- social security contributions; and
- remuneration owed to employees.

For the avoidance of doubt, the above list is not exhaustive.

Assets in the form of shares or receivables over which a security interest has been granted and perfected will in principle not be available for distribution to unsecured creditors (except after enforcement and to the extent a surplus is realized), and subject to application of the relevant priority rule and liens and privileges arising mandatorily by law.

During insolvency proceedings, all enforcement measures by unsecured creditors are suspended. In the event of controlled management proceedings, the ability of secured creditors to enforce their security interest may also be limited, automatically causing the rights of secured creditors to be frozen until a final decision has been taken by the court as to the petition for controlled management, and may be affected thereafter by a reorganization order given by the relevant Luxembourg court subject to the exceptions under the Luxembourg Collateral Law as referred to below. A reorganization order requires the prior approval of more than 50% of the creditors representing more than 50% of the relevant guarantor's liabilities in order to take effect.

Luxembourg insolvency laws may also affect transactions entered into or payments made by the guarantor during the period before bankruptcy, the so-called "hardening period" (*période suspecte*), which is a maximum of six months, plus ten days, preceding the judgment declaring bankruptcy, except that in certain specific situations the court may set the start of the suspect period at an

earlier date, if the bankruptcy judgment was preceded by another insolvency proceedings (*e.g.*, a suspension of payments or controlled management proceedings) under Luxembourg law.

In particular:

- pursuant to article 445 of the Luxembourg Code of Commerce (*code de commerce*), specified transactions (such as, in particular, the granting of a security interest for antecedent debts; the payment of debts which have not fallen due, whether payment is made in cash or by way of assignment, sale, set-off or by any other means; the payment of debts which have fallen due by any means other than in cash or by bill of exchange; the sale of assets or entering into transactions generally without consideration or with substantially inadequate consideration) entered into during the hardening period (or the ten days preceding it) will be set aside or declared null and void, if so requested by the insolvency receiver; article 445 does not apply for financial collateral arrangements and set-off arrangements subject to the Luxembourg law of August 5, 2005 on financial collateral arrangements (the "Luxembourg Collateral Law"), such as Luxembourg Law pledges over shares or receivables.
- pursuant to article 446 of the Luxembourg Code of Commerce, payments made for matured debts, as well as other transactions concluded for consideration during the hardening period, are subject to cancellation by the court upon proceedings instituted by the insolvency receiver if they were concluded with the knowledge of the bankrupt's cessation of payments; such hardening period rule does not apply for financial collateral arrangements and set-off arrangements subject to the Luxembourg Collateral Law, such as Luxembourg law pledges over shares or receivables.
- article 448 of the Luxembourg Code of Commerce and article 1167 of the Civil Code (*action paulienne*) gives the insolvency receiver (acting on behalf of the creditors) the right to challenge any fraudulent payments and transactions made prior to the bankruptcy, without any time limit.

The Luxembourg Collateral Law provides that with the exception of the provisions on over-indebtedness *(surendettement)* (which only apply to natural persons), the national or foreign provisions governing reorganization measures, winding-up proceedings or other similar proceedings and attachments are not applicable to financial collateral arrangements (such as Luxembourg pledges over shares or receivables) and shall not constitute an obstacle to the enforcement and to the performance by the parties of their obligations. Certain preferred creditors of a Luxembourg company (including the Luxembourg tax, social security and other authorities) may have a privilege that ranks senior to the rights of the secured or unsecured creditors.

Foreign law security interests over claims or financial instruments granted by a Luxembourg pledgor will be valid and enforceable as a matter of Luxembourg law notwithstanding any Insolvency Proceedings, if such foreign law security interests are similar in nature to Luxembourg security interests falling within the scope of the Luxembourg Collateral Law. In such situation, Luxembourg hardening period *(période suspecte)* rules are disapplied (save for the case of fraud).

In principle, a bankruptcy order rendered by a Luxembourg court does not result in automatic termination of contracts except for *intuitu personae* contracts, that is, contracts for which the identity of the company or its solvency were crucial. The contracts, therefore, subsist after the bankruptcy order. However, the bankruptcy, no interest on any unsecured claim will accrue vis-à-vis the bankruptcy estate. Insolvency proceedings may therefore have a material adverse effect on the business and assets of a Luxembourg Guarantor and the obligations of a Luxembourg Guarantor under the Notes offered hereby.

Continuance of on-going contracts

The bankruptcy receiver *(curateur)* decides whether or not to continue performance under on-going contracts (*i.e.*, contracts existing before the bankruptcy order). The bankruptcy receiver may elect to continue the business of the debtor, provided the bankruptcy receiver obtains the authorization of the court and such continuation does not cause any prejudice to the creditors. However, two exceptions apply:

- the parties to an agreement may contractually agree that the occurrence of a bankruptcy constitutes an early termination or acceleration event. However, such clauses may not always be effective and enforceable against the bankruptcy receiver taking into account the interest of the distressed company and the legally binding provisions of bankruptcy laws in Luxembourg; and
- intuitu personae contracts (*i.e.*, contracts whereby the identity of the other party constitutes an essential element upon the signing of the contract) are automatically terminated as of the bankruptcy judgment since the debtor is no longer responsible for the management of the company. Parties can agree to continue to perform under such contracts.

The bankruptcy receiver may elect not to perform the obligations of the bankrupt party which are still to be performed after the bankruptcy under any agreement validly entered into by the bankrupt party prior to the bankruptcy. The counterparty to that agreement may make a claim for damages in the bankruptcy and such claim will rank *pari passu* with claims of all other unsecured creditors

and/or seek a court order to have the relevant contract dissolved. The counterparty may not require specific performance of the contract.

Fraudulent conveyance

Third parties (including, without limitation, any *commissaire*, *juge-commissaire*, *liquidateur* or *curateu*r or similar official) are also admitted to challenge certain acts of disposal viewed as preferential transactions made by a Luxembourg Guarantor if, among other things, they can show that the relevant Luxembourg Guarantor has given "preference" to any person by defrauding their rights (the rights of creditors generally), under the *action paulienne (action pauliana)*, and Luxembourg courts have the power to void the preferential transaction.

Finally, any international aspects of Luxembourg bankruptcy, controlled management and composition proceedings may be subject to the E.U. Insolvency Regulation. Please see "—European Union."

Security Interests Considerations

The granting of security interests over movable or immovable, tangible or intangible, assets may be subject to validity and/or enforceability conditions. The breach of any of such conditions may render such security interests invalid or unenforceable. The foreclosure of security interests may be subject to formalities (*e.g.*, judicial or non-judicial consent) and may be time consuming in the event that the foreclosure takes place under judicial control or in the event of a legal dispute. Courts may condition the enforcement of a security interest and/or guarantee upon the evidence that the creditor has a final and undisputed claim triggering the foreclosure of the security interest and/or guarantee. Enforcement of security interests and/or guarantees may be hindered by conflict of law and/or conflict of jurisdiction issues and may not breach any public policy provision and/or mandatory legal provisions. Case law on security interests over intellectual property rights is very limited.

According to Luxembourg conflict of law rules, the courts in Luxembourg will generally apply the *lex rei sitae* or *lex situs* (the law of the place where the assets or subject matter of the pledge or security interest is situated) in relation to the creation, perfection and enforcement of security interests over such assets. As a consequence, Luxembourg law will apply in relation to the creation, perfection and enforcement of security interests over assets located or deemed to be located in Luxembourg, such as registered shares in Luxembourg companies, bank accounts held with a Luxembourg bank, receivables/claims governed by Luxembourg law and/or having debtors located in Luxembourg, tangible assets located in Luxembourg, securities which are held through an account located in Luxembourg, bearer securities physically located in Luxembourg, etc.

If there are assets located or deemed to be located in Luxembourg, the security interests over such assets will be governed by Luxembourg law and must be created, perfected and enforced in accordance with Luxembourg law. The Luxembourg Collateral Law governs the creation, validity, perfection and enforcement of pledges over shares, bank accounts and receivables located or deemed to be located in Luxembourg.

Under the Luxembourg Collateral Law, the perfection of security interests depends on certain registration, notification and acceptance requirements. A share pledge agreement must be (i) acknowledged and accepted by the company which has issued the shares (subject to the security interest) and (ii) registered in the shareholders' register of such company. If future shares are pledged, the perfection of such pledge will require additional registration in the shareholders' register of such company. A pledge over receivables becomes enforceable against the debtor of the receivables and third parties from the moment when the agreement pursuant to which the pledge was created is entered into between the pledgor and the pledgee. However, if the debtor has not been notified of the pledge or if he did not otherwise acquire knowledge of the pledge, he will be validly discharged if he pays the pledgor. A bank account pledge agreement must be notified to and accepted by the account bank. In addition, the account bank has to waive any pre-existing security interests and other rights in respect of the relevant account. If (future) bank accounts are pledged, the perfection of such pledge will require additional notification to, acceptance and waiver by the account bank. Until such registrations, notifications and acceptances occur, the pledge agreements are not effective and perfected against the debtors, the account banks and other third parties.

The Luxembourg Collateral Law sets out the following enforcement remedies available upon the occurrence of an enforcement event:

- direct appropriation of the pledged assets at (i) a value determined in accordance with a valuation method agreed upon by the parties or (ii) the listing price of the pledged assets;
- sale of the pledged assets (i) in a private transaction at commercially reasonable terms (*conditions commerciales normales*), (ii) by a public sale at the stock exchange, or (iii) by way of a public auction;
- court allocation of the pledged assets to the pledgee in discharge of the secured obligations following a valuation made by a court-appointed expert; or

- set-off between the secured obligations and the pledged assets.

As the Luxembourg Collateral Law does not provide any specific time periods and depending on (i) the method chosen, (ii) the valuation of the pledged assets, (iii) any possible recourses and (iv) the possible need to involve third parties, such as, *e.g.*, courts, stock exchanges and appraisers, the enforcement of the security interests might be substantially delayed.

Foreign law governed security interests and the powers of any receivers/administrators may not be enforceable in respect of assets located or deemed to be located in Luxembourg. Security interests/arrangements, which are not expressly recognized under Luxembourg law and the powers of any receivers/administrators might not be recognized or enforced by the Luxembourg courts, even over assets located outside of Luxembourg, in particular where the Luxembourg security grantor becomes subject to Luxembourg Insolvency Proceedings or where the Luxembourg courts otherwise have jurisdiction because of the actual or deemed location of the relevant rights or assets, except if "main insolvency proceedings" (as defined in the E.U. Insolvency Regulation) are opened under Luxembourg law and such security interests/arrangements constitute rights in rem over assets located in another Member State in which the E.U. Insolvency Regulation applies, and in accordance of article 5 of the E.U. Insolvency Regulation.

The perfection of the security interests created pursuant to the pledge agreements does not prevent any third party creditor from seeking attachment or execution against the assets, which are subject to the security interests created under the pledge agreements, to satisfy their unpaid claims against the pledgor. Such creditor may seek the forced sale of the assets of the pledgors through court proceedings, although the beneficiaries of the pledges will in principle remain entitled to priority over the proceeds of such sale (subject to preferred rights by operation of law).

Under Luxembourg law, certain creditors of an insolvent party have rights to preferred payments arising by operation of law, some of which may, under certain circumstances, supersede the rights to payment of secured or unsecured creditors, and most of which are undisclosed preferences (*privilèges occultes*). This includes in particular the rights relating to fees and costs of the insolvency official as well as any legal costs, the rights of employees to certain amounts of salary, and the rights of the Treasury and certain assimilated parties (namely social security bodies), which preferences may extend to all or part of the assets of the insolvent party. This general privilege takes in principle precedence over the privilege of a pledgee in respect of pledged assets.

Limitation on validity and enforceability of the Guarantees

The Luxembourg Guarantors will grant security interests and guarantees in order to secure, inter alia, the obligations under the Notes offered hereby.

The granting of cross- or up-stream security interests and guarantees by a Luxembourg company in order to secure the obligations of other entities may raise some corporate benefit issues, in particular in relation to the corporate interest of the Luxembourg company having to provide such security interests/guarantees. The Luxembourg company law does not provide for rules governing the ability of a Luxembourg company to guarantee the indebtedness of another entity of the same group. However, it is generally admitted that the granting of a guarantee by a Luxembourg company for the obligations of another group company shall be subject to the following conditions: (i) it must be within the corporate purpose of the guarantor as set out in its articles of association; (ii) it shall correspond to a demonstrable and commensurate corporate benefit received by the guarantor company and (iii) the financial obligations assumed by the guarantor must not be disproportionate to the financial capacity of the guarantor. Whether an action is in the corporate interest of a company is a matter of fact not a legal issue. The directors/managers of a company are those who are able to assess whether such company has a corporate benefit and interest in granting cross- or up-stream security interests or guarantees.

It is considered that a company may give a guarantee or security interest, provided the giving of the guarantee or security interest is covered by the company's corporate objects and in the best interest of the company. The test regarding the guarantor's corporate interest is whether the company that provides the guarantee/security interest receives some consideration in return (such as an economic or commercial benefit) and whether the benefit is proportionate to the burden of the assistance. A guarantee/security interest that exceeds the guarantor company's ability to meet its obligations to the beneficiary of the guarantee and to its other creditors would expose its directors or managers to personal liability. It cannot ultimately be excluded that granting of security interest/guarantee, which would be considered by a Luxembourg court as made in the absence of corporate interest, be declared void.

The Guarantee granted by each of the Luxembourg Guarantors may be limited to a certain percentage of, among other things, the company's own funds *(capitaux propres)* and intra-group indebtedness.

Finally, each of the Luxembourg Guarantors has been incorporated in the form of a private limited liability company *(société à responsabilité limitée, or "Sàrl")*. Enforcement on these entities will depend on their financial situation and will only be limited to their assets. Shareholders of a Sàrl cannot in principle be held liable for debts contracted by the Sàrl.

Registration in Luxembourg

The registration of the Notes, the indenture, the guarantees and the transaction documents (and any document in connection therewith) with the *Administration de l'Enregistrement et des Domaines* in Luxembourg may be required in the case of legal proceedings before Luxembourg courts or in the case that the Notes, the security interest agreements, the indentures, the guarantees and the transaction documents (and any document in connection therewith) must be produced before an official Luxembourg authority *(autorité constituée)*. In such case, either a nominal registration duty or an *ad valorem* duty (or, for instance, 0.24% of the amount of the payment obligation mentioned in the document so registered) will be payable depending on the nature of the document to be registered. No *ad valorem* duty is payable in respect of security interest agreements, which are subject to the Luxembourg Collateral law.

The Luxembourg courts or the official Luxembourg authority may require that the Notes, the indenture, the guarantees and the transaction documents (and any document in connection therewith) and any judgment obtained in a foreign court be translated into French or German.

COVID-19 crisis legislation

In the context of the COVID-19 crisis, the Luxembourg COVID-19 Grand Ducal Regulation of 25 March 2020 enacted measures in order to postpone certain mandatory delays or time periods which were to mature or expire between 18 March 2020 and one month after the end of the state of public health emergency declared by the Luxembourg government on 18 March 2020. The article 6 of the law of 20 June 2020 extending the Luxembourg COVID-19 Grand Ducal Regulation notably states that terms provided by statute of limitations and procedural deadlines that would have otherwise expired during the suspension period established by the Luxembourg COVID-19 Grand Ducal Regulation of 25 March 2020 are postponed to up to the usual delay required for its implementation after the end of this period. Similarly and pursuant to article 9 of the law of 20 June 2020, extending the Luxembourg COVID-19 Grand Ducal Regulation, the deadline for making a declaration of default of payments to the Luxembourg registry are suspended for a period of six months. Such provisions would not formally suspend any legal actions in Luxembourg against the Luxembourg Guarantors in order to enforce a U.S. or UK judgment during the Luxembourg COVID-19 Suspension Period. However, Luxembourg courts and court bailiffs' activities might be disrupted during the state of public health emergency including for crucial proceedings (for e.g. insolvency proceedings).

Mexico

Corporate Guarantees

The Notes offered hereby will be fully and unconditionally secured by a personal guarantee of certain of our Mexican subsidiaries. The subsidiary personal guarantees provide a basis for a direct claim against the subsidiary guarantors; however, it is possible that the personal guarantees of these subsidiaries may not be enforceable under applicable laws. While Mexican law does not prohibit the giving of subsidiary personal guarantees and, as a result, does not prevent the subsidiary personal guarantees of the Notes offered hereby from being valid, binding and enforceable against our Mexican subsidiary guarantors, in the event that a Mexican subsidiary guarantor is declared insolvent, bankrupt or becomes subject to a judicial reorganization proceeding (*concurso mercantil*) or to bankruptcy (*quiebra*), if the personal guarantees of our Mexican subsidiaries are granted within three years prior to the date of the *concurso mercantil* declaration of any Mexican guarantor, the personal guarantees may be subject to challenges for avoidance within the *concurso mercantil* proceeding of the basis of being a gratuitous transaction in which our Mexican subsidiaries assumed a debt with no legal consideration in return. Under the Mexican Business Reorganization Act (*Ley de Concursos Mercantiles*), if our Mexican subsidiaries are insolvent, bankrupt or become subject to *concurso mercantil*, their obligations under the Notes offered hereby would (i) be converted into Mexican Pesos and then from Mexican Pesos into inflation indexed reference units (*unidades de inversion*, known as UDIs) at the date the *concurso mercantil* declaration, (ii) cease to accrue interest, and (iii) be subject to certain statutory preferences, including administrative claims, certain tax, social security, labor and secured claims. Payments of debts incurred prior to the judicial declaration of *concurso mercantil* and foreclosure will be stayed during the reorganization stage.

Bankruptcy (*Concurso Mercantil*)

In the event that Mexican companies generally cease paying debts when due, they may be declared in *concurso mercantil* in accordance with the applicable law in Mexico (*Ley de Concursos Mercantiles*).

Under the *Ley de Concursos Mercantiles*, the *concurso mercantil* proceedings have two consecutive phases: "conciliation" (*conciliación*) and "liquidation" (*quiebra*). The purpose of the conciliation phase is to enable the continuation of the Mexican companies' activities through the execution of a restructuring agreement with their creditors. The purpose of the liquidation phase is to liquidate the business, as a whole or by the sale of operating units or their individual assets, to repay their creditors. Companies may request to proceed to the liquidation phase directly, thereby avoiding the conciliation stage.

According to the *Ley de Concursos Mercantiles*, a company can enter *concurso mercantil* proceedings if it has generally ceased paying debts when due, which is statutorily defined as payment default with respect to two or more creditors, and either (i) requests to be declared in *concurso mercantil* and meets either of the two conditions described below, or (ii) any of its creditors or the public prosecutor (*Ministerio Público*) makes a claim for the *concurso mercantil* declaration of the company and the company meets both of the following conditions:

- 35% or more of the company's outstanding liabilities are 30 days past due as of the date of the filing of the *concurso mercantil* petition.
- The company has insufficient liquid assets and receivables (which are specifically defined) to support at least 80% of its obligations that are due and payable.

Two or more companies forming part of the same corporate group (*grupo societario*) can simultaneously file a petition and be jointly declared in *concurso mercantil*, without substantive consolidation.

A federal court with jurisdiction over the location in which a company maintains its domicile is competent to receive the petition and conduct the *concurso mercantil* proceeding, except in the case of holding or subsidiary companies, where the competent court will either be the court that is conducting the first proceeding filed or has jurisdiction over the location in which the company maintains its domicile.

The judgment declaring a company in *concurso mercantil* will contain, among other things: (i) an order to suspend the payment of debts incurred prior to the effectiveness date of the judgment, except for those that are essential to the ordinary course of the company's business, (ii) an order to suspend all writs of attachment or foreclosure during the conciliation stage, with the exceptions set forth in the *Ley de Concursos Mercantiles* (the court may consider some collateral non-essential for the ordinary course of the company's business, such as some employment claims and secured claims), and (iii) a retroactive date (*fecha de retroacción*) for purpose of scrutinizing any fraudulent conveyance (such date shall be the date that is 270 days prior to the date of *concurso mercantil* declaration and 540 days for related party transactions, and it may be extended up to three years).

Upon the declaration of insolvency, all debts of the relevant company are automatically considered due and payable, will cease to accrue interest, and be converted, if they are in foreign currency, into Mexican pesos (if applicable), and then into *unidades de inversión*, which are inflation indexed reference units, unless the debts are secured loans, which will be preserved in their original currency and continue to accrue the agreed ordinary interest (with no default interest accrual) up to the value of the collateral. Any provision of an agreement that worsens the contractual terms for a debtor pursuant to the filing of a petition or a demand for, or the declaration of, *concurso mercantil*, shall be deemed not included therein.

The conciliation stage lasts 185 calendar days, but the governing bodies of the *concurso mercantil* or certain specific majorities of creditors may authorize up to two extensions of 90 days each, if they determine that they are close to reaching a restructuring agreement. In no event may the conciliation stage be extended beyond 365 calendar days. If there is no restructuring agreement by this deadline, the liquidation (*quiebra*) stage begins immediately. Once liquidation is declared, the judge starts with the liquidation of the business, as a whole or by sale of operating units or their individual assets, to pay the creditors' claims according to their grades. Creditors are ranked in the following order, depending on the nature of their credits:

1) privileged employment claims (salary and benefits accrued in the previous year and severance);
2) administrative claims and post-commencement financing;
3) claims incurred for regular expenses in connection with the security, repair, conservation and management of the estate assets;
4) claims for judicial or extrajudicial procedures for the benefit of the estate;
5) burial and terminal illness expenses (of individual debtors only);
6) secured claims that are paid out of the proceeds of the property that has been collateralized, and generally in the order that the securities have been registered in accordance with applicable law;
7) any remaining labor and employment claims;
8) unsecured tax claims;
9) priority claims, which are those from creditors with a privilege or a retention right (e.g., a mechanics' lien) and which claims are paid out of the proceeds of the retained property and are generally paid in the order of privilege that has been registered in accordance with applicable law or by the date of the claims; and
10) unsecured claims and subordinated creditors (including intercompany debt other than that of the parents of the debtor).

No payments may be made to any creditor of a certain rank before all of the creditors of a better rank have been paid off.

The principles governing insolvency or bankruptcy proceedings in Mexican courts may differ from principles governing insolvency or bankruptcy proceedings in other jurisdictions. Therefore, the ability of the holders of the Notes to effectively collect payments due under the Notes may be compromised or subject to delay.

The Netherlands

Fraudulent transfer and its consequences under Dutch law

Dutch law contains specific provisions dealing with fraudulent conveyance both in and outside of bankruptcy, the so called *actio pauliana* provisions. The *actio pauliana* offers creditors protection against a decrease in their means of recovery. To the extent that Dutch law applies, a legal act performed by a person (including, without limitation, an agreement pursuant to which it guarantees the performance of the obligations of a third party and any other legal act having a similar effect) can be challenged in or outside bankruptcy of the relevant person and may be nullified by the receiver in bankruptcy in a bankruptcy of the relevant person or by any of the creditors of the relevant person outside bankruptcy, if (i) the person performed such acts without an obligation to do so (*onverplicht*), (ii) generally the creditor concerned or, in the case of the person's bankruptcy, any creditor was prejudiced in its means of recovery as a consequence of the act, and (iii) at the time the act was performed both the person and the party with or towards which it acted, knew or should have known that one or more of its creditors (existing or future) would be prejudiced in their means of recovery, unless the act was entered into for no consideration (*om niet*) in which case such knowledge of the party with or towards which it acted is not necessary for a successful challenge on the grounds of fraudulent transfer. In addition, in the case of such a bankruptcy, the receiver in bankruptcy may nullify the debtor's performance of any due and payable obligation (including (without limitation) an obligation to provide security for any of its or a third party's obligations) if (i) the payee (*hij die betaling ontving*) knew that a request for bankruptcy had been filed at the moment of payment, or (ii) the performance of the obligation was the result of a consultation between the debtor and the payee with a view to give preference to the latter over the debtor's other creditors.

Bankruptcy proceedings under Dutch law

Under Dutch law, there are two corporate insolvency regimes:

(1) a moratorium of payments (*surséance van betaling*), which is intended to facilitate the reorganization of a debtor's debts and enable the debtor to continue as a going concern, and

(2) bankruptcy (*faillissement*), which is primarily designed to liquidate and distribute the (proceeds of the) assets of a debtor to its creditors.

Both insolvency regimes are set forth in the Dutch Bankruptcy Act (*Faillissementswet*).

A moratorium of payments is a court ordered general suspension of a debtor's obligations to its creditors. A moratorium of payments can be granted only at the request of the debtor and on the ground that the debtor foresees to be unable to continue payments when they fall due. A moratorium could be used as a defense by the debtor against a bankruptcy application by a creditor. It may be ordered only by the district court located in the district in which the company has its statutory seat. Upon the filing of the request for a moratorium, the court will generally immediately (*dadelijk*) grant a provisional moratorium and appoint an administrator (*bewindvoerder*) of the debtor's estate. Subsequently, a court hearing of among others the unsecured non-preferential creditors is required to decide on the definitive moratorium. The court will then decide whether to grant a definitive moratorium or, alternatively, the court may declare the debtor bankrupt. If a draft composition (*ontwerpakkoord*) is filed simultaneously with the application for a moratorium of payments, the court can order that the composition be processed before a decision about a definitive moratorium is made. If the composition is accepted and subsequently confirmed by the court (*gehomologeerd*), the provisional moratorium ends.

A definitive moratorium will generally be granted unless a qualified minority ((i) at least one-fourth of the total amount of unsecured claims held by creditors represented at the creditors' meeting or (ii) at least one-third in number of creditors represented at such meeting) of all unsecured non-preferential creditors withholds its consent. The moratorium of payments is only effective with regard to unsecured non-preferential creditors. A moratorium takes effect retroactively until midnight on the day on which the court has granted the provisional moratorium. Secured and preferential creditors (including tax and social security authorities) may enforce their rights against assets of the debtor in moratorium of payments to satisfy their claims as if there were no moratorium of payments. A recovery under Dutch law could, therefore, involve a sale of assets that does not reflect the going concern value of the debtor. However, the court may order a "cooling down period" for a maximum period of four months during which enforcement actions by secured or preferential creditors are barred.

In a moratorium of payments, a composition (*akkoord*) may be offered by the debtor to its creditors. Such a composition will be binding on all unsecured and non-preferential creditors, irrespective whether they voted in favor or against it or whether they were

represented at the creditor's meeting called for the purpose of voting on the composition plan, if: (i) it is approved by more than 50% in number of the general unsecured and non-preferential creditors present or represented at the creditor's meeting, representing at least 50% in amount of the general unsecured and non-preferential claims admitted for voting purposes; and (ii) it is subsequently ratified (*gehomologeerd*) by the court. Consequently, Dutch moratorium of payments proceedings could reduce the recovery of note holders. Interest payments that fall due after the date on which a moratorium of payments is granted cannot be claimed in a composition.

Bankruptcy is a court ordered general attachment of the assets of a debtor for the benefit of the debtor's collective creditors. The purpose of bankruptcy is to provide for a liquidation and distribution of the proceeds of the debtor's assets among its creditors in accordance with the respective rank and priority of their claims. Bankruptcy may be ordered only by the district court located in the district in which the company has its statutory seat. An application for bankruptcy can be made by either (i) one or more creditors of the debtor, (ii) the public prosecutor (if the public interest so requires) or (iii) the debtor itself, on the grounds that the debtor has ceased paying its debts. A debtor is considered to have ceased paying its debts if it has more than one creditor and if at least one of its payment obligations is due but unpaid.

As a result of a bankruptcy, the debtor loses all rights to administer and dispose of its assets. Furthermore, all pending executions of judgments and any attachments on the debtor's assets (other than with respect to secured creditors and certain other creditors, as further described below) will be terminated by operation of law, and any pending litigation on the date of the bankruptcy order is automatically suspended.

A bankruptcy order takes effect retroactively until midnight on the day the order is rendered. In the event of bankruptcy, a court will appoint a receiver in bankruptcy (curator) at its own discretion, which, in most cases, will be a practicing lawyer in the Netherlands. The receiver in bankruptcy manages the bankrupt estate, which consists of all of the debtor's assets and liabilities that exist on the date on which the bankruptcy was opened, and of all assets acquired during the bankruptcy. The bankruptcy estate is not liable for obligations incurred by the debtor after the bankruptcy order, except to the extent that such obligations arise from transactions that are beneficial to the estate. A receiver in bankruptcy operates under the supervision of a supervisory judge (*rechter-commissaris*) designated by the court, and thus most of a receiver in bankruptcy's major decisions require the prior approval of the supervisory judge.

There is no legal duty for a debtor or its managing board to file for bankruptcy. However, if the managing board of a company realizes that the company is or will be unable to pay its debts when they come due, it is required to take appropriate measures, which could include the cessation of trading, notification of creditors and the filing for either bankruptcy or a moratorium as described above.

The general principle of Dutch bankruptcy law is the so-called paritas creditorum (principle of equal treatment), which means that all creditors have an equal right to payment and that the proceeds of bankruptcy proceedings shall be distributed in proportion to the size of their claims. However, certain creditors (such as secured creditors and preferential creditors, including tax and social security authorities) will have special rights that take priority over the rights of other creditors.

As a general rule, all unsecured, pre-bankruptcy claims need to be submitted to the receiver in bankruptcy for verification, and the receiver in bankruptcy makes a preliminary determination as to the existence, ranking and value of the claim and whether and to what extent it should be admitted in the bankruptcy proceedings. Any remaining funds will be distributed to the debtor's shareholders. Secured creditors (other than the holders of the Notes, which are unsecured creditors) can exercise their rights during the bankruptcy or a moratorium as normal. However, the bankruptcy judge may call a "freeze order" (*afkoelingsperiode*) for a maximum period of four months (consisting of an initial two months, with a possible two month extension), during which period the secured creditors cannot exercise their rights unless such creditors have obtained a leave for enforcement from the bankruptcy judge. The receiver in bankruptcy can force secured creditors to enforce their security rights within a reasonable period of time, failing which the receiver in bankruptcy will be entitled to sell the secured assets and distribute the proceeds. The receiver in bankruptcy is authorized to make such forced sales in order to prevent a secured creditor from delaying the enforcement of the security without good reason. If a receiver in bankruptcy does make a forced sale of secured assets, the secured creditors have to contribute to the general bankruptcy expenses (*algemene faillissementskosten*) and will receive payment from the proceeds of that sale prior to ordinary, non-preferred creditors having an insolvency claim, but after creditors of the estate (*boedelschuldeisers*), and subject to satisfaction of higher ranking claims of creditors. Dutch tax authorities (*belastingdienst*) have a preferential claim in respect of the collection of certain taxes (for example, social security premiums, wage tax, value added tax, etc.) on certain movable property found on the debtor's premises (*bodemvoorrecht*). They may take recourse against such property irrespective of whether any security interests over such property exist. Excess proceeds of enforcement of security rights must be returned to the debtor in bankruptcy and may not be set off against any unsecured claims that the secured creditors may have. Such set off is, in principle, only allowed prior to the bankruptcy proceedings.

Interest accruing after the date of the bankruptcy order cannot be admitted unless secured by a pledge or mortgage. In that event, interest will be admitted pro memoria. To the extent that an interest is not covered by the proceeds of the security the creditor may not derive any rights from the admission. No interest is payable in respect of unsecured claims as of the date of a bankruptcy.

The existence, value and ranking of any claims submitted by the holders of the Notes may be challenged in the Dutch bankruptcy proceedings. Generally, in a creditors' meeting (*verificatievergadering*), the receiver in bankruptcy, the insolvent debtor and all verified creditors may dispute the verification of any other claim that has been submitted for verification. Creditors whose claims or value thereof are disputed in the creditors' meeting may be referred to separate court proceedings (*renvooi procedure*).

As in a moratorium of payment proceedings, in bankruptcy a composition may be offered to creditors, which will be binding upon all unsecured and non-preferential creditors, if: (i) it is approved by a simple majority of the creditors being present or represented at the creditors' meeting, representing at least 50% of the amount of the claims that are admitted for voting purposes, and (ii) it is subsequently ratified (*gehomologeerd*) by the court. Consequently, Dutch bankruptcy proceedings could reduce the recovery of holders of the Notes offered hereby. The Dutch Bankruptcy Act does not in itself recognize the concept of classes of creditors. Remaining amounts, if any, after satisfaction of the secured and the preferential creditors are distributed among the unsecured non-preferential creditors on a pro rata basis. Contractual subordination may, to a certain extent, be given effect in Dutch insolvency proceedings. However, the actual effect depends largely on the way such subordination is construed.

Foreign creditors are, in general, not treated different from creditors that are incorporated or residing in the Netherlands.

Bankruptcy related proceedings in the Netherlands may be time consuming and subject to significant delays and incidental litigation.

Legislative proposal

A legislative proposal has been adopted, which introduces a procedure for a pre-insolvency restructuring plan that offers an efficient and fairly informal process to effect a compulsory composition between the company and all or certain of its (secured) creditors or shareholders. The bill (which was initially named Continuity of Companies Act II and later changed into) Act on Court Confirmation of Extrajudicial Restructuring Plans (*Wet homologatie onderhands akkoord*) ("Act on Court Confirmation of Extrajudicial Restructuring Plans") introduces the possibility to offer a composition outside of formal insolvency proceedings. The Act on Court Confirmation of Extrajudicial Restructuring Plans is based on the UK Scheme of Arrangements and the US Chapter 11 procedure and it offers debtors additional possibilities to restructure their debt. Unlike a composition in suspension of payments and in bankruptcy, a composition under the Act on Court Confirmation of Extrajudicial Restructuring Plans can be offered to secured creditors as well as shareholders. The Act on Court Confirmation of Extrajudicial Restructuring Plans provides *inter alia* for cross-class cram-down, the restructuring of group company obligations through either one or more aligned proceedings, the termination of onerous contracts with deactivation of *ipso facto*, and supporting court measures. The bill was adopted by the Second Chamber of the Dutch parliament (*Tweede Kamer*) on 26 May 2020 and by the Dutch Senate (*Eerste Kamer*) on 6 October 2020. The Act on Court Confirmation of Extrajudicial Restructuring Plans has been entered (*afgekondigd*) in the Bulletin of Acts and Decrees (*Staatsblad*) on 3 November 2020, and will enter into force on 1 January 2021. The First Chamber of the Dutch parliament (*Eerste Kamer*) is currently expected to vote on the legislative proposal later this year.

Limitation on enforcement

You may not be able to enforce, or recover any amounts under a guarantee of any Dutch guarantor due to restrictions on the validity and enforceability of guarantees under Dutch law. Under Dutch law, receipt of any payment made by any Dutch guarantor under a guarantee may be adversely affected by specific or general defenses available to debtors under Dutch law in respect of the validity, binding effect and enforceability of such guarantee. The validity and enforceability of a guarantee of any Dutch guarantor may also be successfully contested by such Dutch guarantor (or their receiver in bankruptcy) on the basis of an ultra vires claim, as further described below. The validity and enforceability of the obligations of our Dutch subsidiaries under a guarantee may also be successfully contested by any creditor, or by the subsidiaries' respective receiver in bankruptcy when the subsidiary is in bankruptcy proceedings, if such obligation is prejudicial to the interests of any other creditor and the other requirements for voidable preference under the Dutch Civil Code (*Burgerlijk Wetboek*) and Dutch Bankruptcy Act are met, as further described below. As a result, the value of the guarantee provided by the Dutch Guarantors may be limited.

To the extent Dutch law applies, payment under a guarantee may be withheld under doctrines of reasonableness and fairness (*redelijkheid en billijkheid*), force majeure (*niet toerekenbare tekortkoming*) and unforeseen circumstances (*onvoorziene omstandigheden*) and other defences afforded by Dutch law to obligors generally. Other general defenses include claims that a guarantee or security interest should be avoided because it was entered into through undue influence (*misbruik van omstandigheden*), fraud (*bedrog*), duress (*bedreiging*) or error (*dwaling*). Furthermore, to the exten Dutch law applies, a party to an agreement may under certain circumstances suspend performance of its obligations under such agreement pursuant to the exceptio non-adimpleti contractus or otherwise.

Pursuant to Article 2:7 of the Dutch Civil Code, any transaction entered into by a legal entity may be nullified by the legal entity itself or its receiver in bankruptcy pursuant to an ultra vires claim if the objects of that entity were transgressed by the transaction and

the other party to the transaction knew or should have known this without independent investigation (*wist of zonder eigen onderzoek moest weten*). The Dutch Supreme Court (*Hoge Raad der Nederlanden*) has ruled that in determining whether the objects of a legal entity are transgressed, not only the description of the objects in that legal entity's articles of association is decisive, but all (relevant) circumstances must be taken into account, in particular whether the transaction is in the company's corporate interests (*vennootschappelijk belang*) and to its benefit; and whether the subsistence of the company is jeopardised by the transaction.

Dutch law contains specific provisions dealing with fraudulent conveyance both in and outside of bankruptcy, as described above.

Enforceability of U.S. judgments in the Netherlands

The Netherlands does not have a treaty with the United States providing for reciprocal recognition and enforcement of judgments (other than arbitration awards) in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any federal or state court in the United States based on civil liability, would not be directly enforceable in the Netherlands. However, if the party in whose favor such final judgment is rendered brings a new suit in a competent court in the Netherlands, such party may submit to a Dutch court the final judgment that has been rendered in the United States. If the Dutch court finds that the (a) jurisdiction of the court in the federal or state court in the United States has been based on grounds which are internationally acceptable (b) proper legal procedures have been observed, (c) the final judgment is – according to the law of the jurisdiction of the court – formally capable of being enforced, (d) the final judgment is not irreconcilable with a decision of a Dutch court rendered between the same parties or with an earlier decision of a foreign court rendered between the same parties in proceedings involving the same cause of action, provided that earlier decision can be recognized in the Netherlands, and (e) the final judgment does not contravene public policy in the Netherlands, the Dutch court will, in principle, give binding effect to the final judgment which has been rendered in the United States.

Russia

Limitations on Russian Subsidiary Guarantees

One of the guarantors is established in the form of a Russian limited liability company (*obschestvo s ogranichennoi otvetstvennostiu*) (the "Russian LLC Guarantor" and such guarantee, the "Russian Subsidiary Guarantee"). Execution of the Russian Subsidiary Guarantee requires the obtaining of corporate approvals in accordance with the Russian corporate law and it may require additional approvals in accordance with the Russian LLC Guarantor's internal documents and regulations. Failure to duly approve the guarantee may result in the challenging of the guarantee.

The Russian Subsidiary Guarantee may be void or voidable in certain cases. For example, if the transaction violates the public order, is fictitious or sham, it is void (and the relevant claim for application of consequences of a transaction being void can generally be filed within three years). The Russian Subsidiary Guarantee may also be challenged (typically within one year) if it violates laws and procedures, is executed through error, duress, material delusion, through lack of power or without the required consent of a third party where such consent is required. As described below, additional grounds for challenging the Russian Subsidiary Guarantee would exist in insolvency.

As a matter of Russian law, if one of the parties to an agreement is a foreign person/entity or the relations between such parties are otherwise affected by a foreign element, the parties to that agreement may generally agree on the application of foreign law to that agreement. The choice of foreign law, however, will not limit the application of certain mandatory provisions of Russian law if:

- these provisions apply directly due to their nature or high importance (super imperative norms or norms of direct applicability);
- these provisions apply due to public policy principle (ordre public); or
- all material aspects of the relations between the parties are connected with Russia.

The Russian Subsidiary Guarantee and the ability of a Russian LLC Guarantor to perform its obligations thereunder are subject to the applicable public laws of Russia, including laws regulating fighting corruption and terrorism, currency control laws, securities laws, anti-money laundering laws and other laws of a similar nature.

The Russian Subsidiary Guarantee is drafted on an Anglo-American model and includes terminology, formulations and approaches based on a legal style and practice other than that traditionally used in the Russian legal system. Russian law provides for such concepts as "guarantee", "representation", "waiver" and others, however their interpretation could be substantially different from the interpretation adopted in foreign jurisdictions.

Some of these concepts are new or unfamiliar to Russian law, such as the concept of subordination of claims with respect to a claim, including a guarantee. In the absence of a developed court practice, it is difficult to predict whether a Russian court would enforce any subordination provisions.

Moreover, certain concepts do not work under Russian law, e.g. the concept of contractual subordination or similar intercreditor arrangements is not recognised under Russian insolvency legislation. Accordingly, in a Russian insolvency a subordination agreement entered into by the Russian debtor may be disregarded.

In addition, if Russian law were to apply to the Russian Subsidiary Guarantee, it should be noted that Russian law does not have a concept of a "corporate guarantee" (such as the Russian Subsidiary Guarantee) and has two different notions of a "suretyship" and an "independent guarantee". The difference is that the validity of the former, unlike the validity of the latter, is dependent upon the validity of the secured obligations, i.e. is of an accessory nature. A document not specifically designated to be an "independent guarantee" would be treated as a suretyship and its validity would depend on the validity of the secured obligations.

Insolvency

As a general rule, a company is deemed to be insolvent, if its debts are at least three months overdue.

At the request of a creditor or authority the insolvency proceedings may be initiated if the overdue amount is not less than 300,000 Russian roubles and is confirmed by a court or arbitration decision. In certain cases, a company via its governing bodies may, and sometimes is obliged to, file for insolvency.

Russian insolvency legislation provides for four major stages of the insolvency proceedings, some of which are mandatory and some are optional. Russian law also recognizes amicable settlements as a possible outcome of insolvency proceedings.

Generally, the insolvency proceedings start with the supervision stage (*nabliudenie*). During the supervision stage, a temporary manager (*vremenniy upravlyaushiy*), generally proposed by the creditors and appointed by the court determines the amount of indebtedness, analyses the debtor's financial standing, receives creditors' applications and arranges the first creditors' meeting where the creditors decide on the next stage(s) of insolvency. The management of the debtor is not entitled to make certain key decisions (such as mergers, restructuring, liquidation of the company, payment of dividends, issue of notes, etc.), however, the management of the debtor remains in charge of the day-to-day operations under the supervision of the temporary manager.

Upon commencement of such supervision, all obligations of the debtor, save for current liabilities, may be settled only pursuant to the insolvency proceedings. The information on commencement of the insolvency proceedings is published in the official newspaper and is available on the Internet. All creditors need to, within 30 days, present their claims to the debtor to be included into the list of creditors. However, as a matter of Russian law, commencement of the insolvency proceedings in respect of the Russian LLC Guarantor would allow the creditors thereof to enter into these proceedings if the payment under the secured obligations became due and remains unpaid. Generally, the duration of the supervision stage is subject to a maximum term of seven months.

Following the supervision stage, the court, upon the decision of the creditors, may rule on the financial restructuring (*finansovoe ozdorovlenie*) of the debtor. During such financial restructuring the management of the debtor continues to be involved with the day-to-day operations but would be under the control of the administrative manager (*administrativniy upravlyaushiy*). The aim of this is to protect the debtor from the creditors, restore the debtor's solvency and arrange for the repayment of the debts in accordance with the agreed repayment schedule. Another attempt to restore the debtor's solvency may be taken during the external management (*vneshnee upravlenie*).

Upon commencement of the external management the powers of the debtor's management cease to exist and the external manager (*vneshniy upravlyaushiy*) obtains all management powers over the debtor. External management leads to moratorium on discharge of obligations of the debtor (other than current payments, such as taxes and wages). The external manager may use various instruments to restore the solvency of the debtor, including disposal of assets, termination of contracts, issuing shares, replacing assets, etc. Financial restructuring and external management may last up to two years.

If the solvency of the debtor may not be restored, the court commences the insolvency management stage (*konkursnoe proizvodstvo*). An insolvency manager (*konkursniy upravlyaushiy*) will replace the management of the debtor (if the management remained before the commencement of the insolvency management proceedings) and will focus primarily on the identification of all creditors, the restoration of assets, further sale of assets and the discharge of the obligations in accordance with the priority of claims in accordance with Russian insolvency legislation.

Russian law also recognizes amicable agreements (*mirovoe soglashenie*) as a possible outcome of insolvency proceedings. At any stage of the proceedings described above, the debtor (usually represented by the relevant managers appointed by the creditors) and

the creditors are entitled to conclude an amicable settlement agreement, which contains the terms and procedures on payment of debts and is subject to approval by court.

Russian insolvency legislation sets forth the order of priority in which the debtor's claims shall be discharged. All claims that became due before the commencement of the insolvency proceedings and have been included into such the list of creditor claims are generally discharged as follows:

- first priority claims include those arising from the debtor's liabilities to individuals for harm to life or health;
- second priority claims arise out of the debtor's obligation to pay wages, salary or other amounts payable under employment agreements in the ordinary course of business, or to pay fees or royalties to authors of intellectual property (these claims are sub-divided into categories depending on the amount payable); and
- other claims included into the list of creditor claims constitute third priority claims. Claims secured by collateral over the debtor's assets are generally settled out of the proceeds from the sale of such collateral ahead of all other claims with certain exceptions. The Russian insolvency legislation basically allows for allocation of 70 to 80 percent of such proceeds to the relevant secured lenders, with the remaining 20 to 30 percent being divided between creditors in respect of first and second priority and super-priority claims (as set out below).

Claims of creditors that are not included into the list of creditor claims or that qualify as preferential or suspicious transactions (as described below) are generally the last creditor claims to be satisfied, and may be considered claims of fourth priority. The claims of each order of priority are generally satisfied only after the satisfaction of the claims of the previous order of priority. In addition to an insolvency claim, there are other claims which the debtor may make, i.e., those which have arisen after the commencement of the stages of insolvency proceedings (e.g. insolvency managers' fees). These claims have super-priority in relation to insolvency unsecured claims. Russian insolvency law introduces various categories of current claims and the priority of such claims.

In cases of insolvency or insolvency proceedings against a borrower, a pledgor or a guarantor (relevant person), the following transactions entered into by such relevant person within a certain period of time prior to the commencement of the insolvency proceedings may be challenged:

- suspicious transactions: transactions at undervalue, or transactions wilfully aimed at causing harm to creditors generally, typically where the consideration was not due, comparable or was below the market value (executed one to three years prior to commencement of the insolvency proceedings, depending on the circumstances); and
- preferential transactions: transactions that lead, or may lead, to preferential treatment of a particular creditor, including transactions aimed at changing the order of priority of claims entered into after the commencement of insolvency proceedings.

In April 2020, in response to the economic and social impact of the COVID-19 pandemic, the Russian insolvency legislation was amended to allow the Russian government to impose a moratorium on insolvency. Based on this, the Russian government adopted Decree No. 428 dated 3 April 3 2020 that imposed a six-month moratorium (which may be extended upon resolution of the Government) starting from 6 April 2020.

The moratorium only applied to entities included in one of four lists (each such entity, a "protected debtor"):

- companies operating in the most affected by COVID-19 branches of Russian economy (the list of such branches was approved by the Russian government);
- systematically important organizations included in the list approved by the government;
- strategic enterprises and legal entities included in the President Decree No. 1009 dated 4 August 2004; and
- strategic organizations and government bodies responsible for uniform state policy in certain branches of economy included in the Government Resolution No. 1226-p dated 20 August 2009.

The moratorium was further extended until January 7, 2021 pursuant to the Government Resolution No. 1587 dated October 1, 2020, but only applying to entities operating in the branches of the Russian economy most affected by COVID-19.

In certain instances, the moratorium applies to affiliates of protected debtors and their assets. As of the date of this offering memorandum, Russian LLC Guarantor, to the extent that we are aware, is not, and was not, a protected debtor for purposes of the moratorium regime.

Creditors of protected debtors are prevented from filing insolvency petitions with respect to the protected debtors during the moratorium. However, the moratorium does not preclude creditors from seeking judicial remedy in court and commencing new enforcement proceedings based on claims which arose prior to or during the moratorium albeit actual enforcement and disposal of

assets further to the levying of execution is suspended. Creditors are also prohibited from enforcing security over the protected debtor's assets, including out of court enforcement. In addition, a number of restrictions apply during the moratorium in respect of the protected debtors, including prohibition on distributing profits and conducting set-off.

The protected debtors are entitled to waive application of moratorium provisions by filing an application to Russian Uniform Federal Register of Information on insolvency.

Singapore

Corporate Authorization and Capacity

Generally, a company incorporated in Singapore (the "Singapore Company") must have the requisite capacity and power to enter into guarantees, and must do so within the parameters of its constitutional documents. This would also involve ensuring that the Singapore Company has taken all corporate action, including the passing of corporate resolutions required under its constitutional documents, to authorize the execution by it of the guarantees and the exercise by it of its rights and the performance by it of its obligations under the guarantees.

Unfair Preferences and Undervalue Transactions

The guarantee given by a Singapore Company might be subject to challenges by a liquidator or a judicial manager under Singapore laws relating to transactions at an undervalue or preferential transactions.

On the application of a liquidator or judicial manager, the Singapore courts may make such an order as they think fit for restoring the position to what it would have been if the Singapore Company which is the subject of the application had not entered into, inter alia, any of the following types of transactions:

(i) a transaction with any person at an undervalue which took place at any time within the period of five years ending on the date of the commencement of the winding up or judicial management;

(ii) a transaction under which an unfair preference is given by the Singapore Company to a person who is an associate of the Singapore Company (otherwise than by reason only of being its employee), and which is not a transaction at an undervalue, at any time within the period of two years ending on the date of the commencement of the winding up or judicial management; or

(iii) in any other case of a transaction under which an unfair preference is given by the Singapore Company, and which is not a transaction at an undervalue, at any time within the period of six months ending on the date of the commencement of the winding up or judicial management;

provided that the Singapore Company was insolvent when it entered into the transaction or became insolvent as a result of the transaction. Where any such transaction at an undervalue was entered into with a person who is an associate of the Singapore Company (otherwise than by reason only of being its employee), such insolvency shall be presumed unless the contrary is shown.

A Singapore Company will be treated as having entered into a transaction with a person at an undervalue if:

(i) it makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the Singapore Company to receive no consideration; or

(ii) it enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the Singapore Company.

The Singapore courts shall not make any order in respect of a transaction at an undervalue if it is satisfied that the Singapore Company entered into the transaction in good faith for the purpose of carrying on its business and that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the Singapore Company.

The Singapore Company will be treated as having given an unfair preference to another person if:

(i) that person is a creditor of the Singapore Company or a surety or guarantor for a debt or other liability of the Singapore Company; and

(ii) the Singapore Company does anything or suffers anything to be done that (in either case) has the effect of putting the person into a position which, in the event of the winding up of the Singapore Company, will be better than the position he would have been in if that thing had not been done.

The Singapore courts shall not make an order in respect of an unfair preference given to any person unless the Singapore Company, when giving the unfair preference, was influenced in deciding to give the unfair preference by a desire to produce in relation to that person the effect referred to in sub-paragraph (ii) above. If the Singapore Company gave an unfair preference to a person who was, at the time the unfair preference was given, an associate of the Singapore Company (otherwise than by reason only of being its employee), the Singapore Company shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the unfair preference by the desire referred to above.

Difference in Insolvency Law

One of the guarantors is incorporated under the laws of Singapore ("Singapore Guarantor").

Any insolvency proceedings applicable to it will be likely to be governed by Singapore insolvency laws. Singapore insolvency laws differ from the insolvency laws of the United States and may make it more difficult for creditors to recover the amount in respect of the Singapore Guarantor's guarantee than they would have recovered in a liquidation or bankruptcy proceeding in the United States.

Priority of Secured Creditors

Singapore insolvency laws generally recognize the priority of secured creditors over unsecured creditors.

Preferential Creditors

Under Section 328 of the Singapore Companies Act, in a winding-up of a Singapore company, certain preferential debts are required to be paid in priority to all other unsecured debts. The preferential debts covered by Section 328 of the Singapore Companies Act are described briefly below:

(a) costs and expenses of the winding up;

(b) employees' wages and salaries (including any gratuity payable to an employee on termination of his services), capped at prescribed amounts;

(c) retrenchment benefits under employment contracts, capped at prescribed amounts;

(d) work injury compensation under the Work Injury Compensation Act (Cap 354) of Singapore;

(e) certain amounts due under employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under Singapore income tax laws;

(f) other remuneration payable in respect of employees' vacation leave; and

(g) taxes assessed and goods and services tax.

Disclaimer of Onerous Contracts

Section 332 of the Singapore Companies Act provides that where any property of a company consists of either an estate or interest in land that is burdened with onerous covenants, shares in corporations, unprofitable contracts or any other property that is unsaleable or not readily saleable by reason of its binding the company to any onerous act or payment of any sum, the liquidator may apply to disclaim such property within 12 months of (i) commencement of winding-up or (ii) such time as the liquidator becomes aware of such property or, in each case, such extended period as is allowed by the court.

South Africa

Ranking of claims

In the event of insolvency, the claims under a guarantee of the Notes by a company incorporated in South Africa would be subject to the insolvency laws of South Africa.

Under South African law, there are three types of creditors:

- secured creditors;
- preferent creditors; and
- concurrent creditors.

Secured creditors are creditors who hold security for their claims against the debtor in the form of a special mortgage, landlord's lien, pledge or right of retention. A secured creditor will be entitled to be paid out of the proceeds from the collateral subject to its security, after payment of costs and expenses and payment of any secured claim which ranks higher. If the proceeds from the encumbered property are insufficient to cover the secured creditor's claim against a debtor entity such as the Issuer, the secured creditor will have a concurrent claim for the balance from the free residue in the estate of the debtor entity (*i.e.*, that portion of the debtor's estate which is not subject to a security interest or preferences), if any.

Preferent creditors are entitled to payment out of the free residue of a debtor's estate before concurrent creditors. The Insolvency Act, No. 24 of 1936, of South Africa ("*SA Insolvency Act*") stipulates preferences in ranking of certain claims of preferent creditors, including, *inter alia*, salaries or remuneration of employees; statutory obligations, including workmen's compensation, customs and excise, unemployment insurance and value-added tax; income tax and proved preferent claims arising from bonds which afford preferences but not security.

Concurrent creditors do not enjoy any advantage over other creditors of a debtor. Instead, they are paid out of the free residue of the debtor's estate after any preferent creditors have been paid. Concurrent creditors all rank equally. Should the free residue be insufficient to meet their claims each receives a pro rata portion of its claim by way of cash dividend.

Insolvency procedures and reorganizations

The procedures available to wind up or reorganize companies under South African law are:

- winding up;
- compromise with creditors; and
- business rescue.

Winding up

The Companies Act, No. 61 of 1973 (as amended) ("*Old Companies Act*"), the Companies Act, No. 71 of 2008 (as amended) ("*New Companies Act*"), and the SA Insolvency Act govern the winding-up of companies in South Africa. Any creditor or the debtor itself may present an application for winding up to the court if the debtor is deemed unable, or is actually unable, to pay its debts as and when they become due. A company is deemed unable to pay its debts in certain specified instances, such as the failure by a debtor to pay a judgment debt.

Appointment of the liquidator. After the court has issued a winding-up order, a liquidator takes control of the debtor in the stead of its directors, who, in turn, are relieved of their powers to act as directors. The liquidator may be removed if he does not act in the best interest of the general body of creditors (he would, however, have to act with reckless disregard for the interest of the general body of creditors) or has acted in a dishonest manner, such as having misappropriated funds. The liquidator has certain primary functions. By way of example, the liquidator investigates the affairs of the debtor. The liquidator also takes control and possession of the assets of the debtor and realizes the assets of the debtor in order to pay creditors of the debtor from the proceeds received from the sale of such assets. The liquidator administers the debtor's affairs in order to finally wind up its affairs.

General procedure and realization of secured assets. In general, upon commencement of winding-up proceedings all creditors, including secured creditors, may not institute legal action to recover claims from the debtor. Instead they must seek to prove a claim against the debtor. If the claim is proved and the liquidator accepts the claim then the creditor will share in the proceeds from the sale of assets (in accordance with the ranking referred to above). If not, the creditor would have to either institute or continue legal action, substituting the liquidator as a party in the litigation. Provided that the liquidator has not elected to take possession of the assets forming the subject matter of a creditor's security (as more fully described below), a secured creditor is entitled, prior to the date of the second creditors' meeting, to realize its security provided that all proceeds from such realization will have to be paid over to the liquidator and such creditor will still be obliged to prove its claim, which will be paid to the extent of the realization and following final liquidation, in the ordinary course (after deduction from such proceeds of those of the costs of sequestration for which the creditor concerned is responsible). Where the creditor has not realized its security prior to the second meeting of creditors, he is obliged to deliver the property to the liquidator who will realize the security, usually through public auction of the entire business or parts of the business, taking into account the best interests of the secured creditor. There can be no assurance that a liquidator's realization will be the same as that which a secured creditor might achieve on its own.

"Takeover" of collateral by the liquidator. As an alternative to realization of a secured creditor's collateral, the liquidator may, by agreement with the creditor, take possession and control of the property from the secured creditor at a value agreed upon between the liquidator and the secured creditor or at the full amount of the creditor's claim.

Ongoing operations during liquidation. Regardless of whether the liquidator intends to take over the collateral of one or more creditors, it is possible for the liquidator to continue operating the debtor's business in order to facilitate a sale of the debtor or its assets as a going concern. A liquidator may arrange interim funding for the debtor that is paid as part of the costs of the execution

process, provided that the liquidator is reasonably confident the sale process will yield sufficient proceeds at relevant times to repay such funding. Court approval is required for any secured borrowings by the debtor. Typically, a liquidator will require indemnification from the creditors during continuation of the debtor's business.

In addition to these court-driven procedures, debtors and their creditors are free to enter into a contractually sanctioned reorganization of claims against the debtor if the creditors and the debtor agree.

Avoidance of claims. Under South African law, a number of pre-insolvency transactions, including granting guarantees and security, can be set aside by a court. For instance, a court may set aside certain dispositions of a debtor's property made prior to commencement of winding up proceedings.

Transactions not made for value. A court will set aside a disposition of the debtor's property if it was not made for value (as defined in the Insolvency Act) and, if:

- the disposition was made within two years of the date of the provisional liquidation order and the petitioning party proves that, immediately after the disposition was made, the liabilities of the debtor exceeded its assets; or
- the disposition was made two years before the date of the provisional liquidation order and the person who benefited from the disposition is unable to prove that, immediately after the disposition was made, the assets of the debtor exceeded its liabilities.

It is not necessary to establish whether or not the insolvent intended to prejudice creditors by making the disposition.

Preferences. South African law also makes provision for setting aside a disposition of the debtor's property if such disposition is made not more than six months before the date of the provisional liquidation order, such disposition has the effect of preferring one creditor over another and, if immediately after the making of such disposition, the liabilities of the debtor exceed the value of its assets. However, if the person in whose favor the disposition was made proves that the disposition was made in the ordinary course of business, being a disposition which would normally be entered into by solvent entities, and that the transaction was not intended to prefer one creditor above another, then such disposition may not be set aside.

South African law also provides that if a debtor makes a disposition of its property at any time when its liabilities exceed its assets, with the intention of preferring one of its creditors above another, and it is thereafter liquidated, the court may set aside the disposition.

In addition, South African law provides that any disposition by a debtor made prior to the date of a provisional liquidation order, in collusion with another person and in a manner which has the effect of prejudicing its creditors or of preferring one creditor over another, may be set aside. However, there is legal authority which states that in order for any transaction to be set aside under this provision, the transaction must have been concluded with a fraudulent intention.

Under South African common law, a disposition may be set aside where the creditors of the insolvent estate can prove that:

- the disposition reduces the assets of the company;
- the company and the entity in favor of whom the disposition was made had a common intention to defraud or prejudice the creditors of the insolvent; and
- the prejudice to the insolvent's creditors was caused by the fraud referred to above.

Dispositions without notice. South African law provides that if a company transfers a business belonging to it or the goodwill of that business or any goods or property forming part thereof (save in the ordinary course of business or for the purpose of securing the payment of a debt) and such company has not published a notice of the intended transfer in the Government Gazette within a period of not less than 30 and not more than 60 days prior to the date of such transfer, the transfer will be void as against the creditors of the seller for a period of six months after such transfer and in addition will be void against the trustee if the estate of the seller is liquidated within that time period.

Fraudulent conveyance statutes under South African law may limit your rights as a holder of the Notes to enforce the Guarantee against the South African Guarantor

The Guarantee by the South African Guarantor may be subject to review under the "impeachable transactions" provisions of the laws of South Africa.

If a company is wound up, it is possible that creditors of the Guarantor may challenge the Guarantee and intercompany obligations as impeachable transactions. If so, such laws may permit a court, if it makes certain findings, to:

- avoid or invalidate all or a portion of such Guarantor's obligations under the Guarantee;
- direct that holders of the Notes return any amounts paid under the Guarantee to such Guarantor or to a fund for the benefit of its creditors; or

- take other action that is detrimental to a Noteholder.

Compromise with creditors

A compulsory compromise of claims between the debtor and its creditors (once approved by creditors as referred to below) is contemplated in section 155 of the New Companies Act. A compromise with creditors under the New Companies Act may be proposed by the board of directors or, if the company is being wound up, by the liquidator. This differs from the position under section 311 of the Old Companies Act, which enabled a creditor or a shareholder, in addition to the board of directors or the liquidator, to propose a compromise with creditors. To become effective, the proposed compromise with creditors must be supported by a majority in number, representing at least 75% in value, of the creditors (or each relevant class of creditor) present and voting in person or by proxy, at a meeting called for that purpose.

A proposal or a compromise with creditors adopted in accordance with the provisions of section 155 of the New Companies Act may be submitted to court by the company for an order approving the proposal. A court may sanction the compromise as set out in such proposal if it considers it "just and equitable to do so" having consideration to the facts (including the number of creditors present and voting) set out in the New Companies Act.

Business rescue

The New Companies Act introduced the concept of "business rescue," a concept similar to chapter 11 bankruptcy proceedings in the United States. Business rescue allows a company that is "financially distressed" (defined as occurring where it seems reasonably likely that the company will not be able to pay its debts as they become due and payable during the ensuing six months or it seems reasonably likely that the company will become insolvent in the ensuing six months) and which appears to have a "reasonable prospect" of rescue to avoid liquidation by implementing a business rescue plan. Business rescue proceedings may be instituted by the board of directors of the company (by way of a company resolution to that effect) or by any affected person (including a shareholder or creditor, registered trade union or employee), on application to court or by the court of its own accord at any time during the course of any liquidation proceedings or proceedings to enforce any security against the company.

After initiating business rescue proceedings, the board of directors or the court, as the case may be, must appoint a business rescue practitioner who will assume full management control of the company in substitution for its board and pre-existing management. The Commission appoints each business rescue practitioner upon application by the board of directors or by an application to court by an affected person. However, directors are obliged to continue to exercise their functions, subject to the authority of the practitioner. The practitioner, after consultation with the creditors, other affected persons and the management of the company must prepare a business rescue plan for consideration and possible adoption at a meeting of creditors convened in accordance with the provisions of the New Companies Act listing, among other things, all details of the plan envisaged to rescue the company.

The company must publish a notice of the appointment of a practitioner to each affected person. The business rescue plan must be approved by creditors and, if the plan alters the rights of the holders of the company's securities, such holders must also approve the proposed business rescue plan. If not approved, the appointed business rescue practitioner may be required to revise the plan.

During a company's business rescue proceedings, the business rescue practitioner is empowered to suspend entirely, partially or conditionally, any provision of an agreement to which the company is a party (other than an employment contract or an ISDA agreement to which section 35A or 35B of the Insolvency Act applies) at the commencement of the business rescue period.

A provision of an agreement relating to security granted by a company would, notwithstanding suspension of same by a practitioner, continue to apply for the purposes of the disposal of the asset forming the subject matter of such security in respect of any proposed disposal of property by the company.

These powers have significant implications for claims of, and security held by, creditors. A practitioner may, for example, have the power to suspend provisions relating to creditors' rights, while maintaining provisions relating to creditors' performance obligations; however any cancellation of such provision of an agreement shall be subject to creditor and court approval.

During business rescue proceedings, a general moratorium is placed on legal proceedings against the company, and no legal action, including enforcement action, against the company, or in relation to property of the company, may be commenced except with, among other things, the written approval of the practitioner or leave of court. The only recourse provided for the affected creditor in the New Companies Act whose agreement with the company, or any provision thereof, has been suspended either entirely, partially or conditionally, during the course of business rescue proceedings is to institute a claim for damages against the company.

The New Companies Act provides a degree of protection of property interests of a party that has security over, or title interest in, property held by the company. It states that if the company wishes to dispose of any property in which another person has any security over, or title interest in, the company (via the business rescue practitioner) must obtain the prior consent of that other person, unless the proceeds from the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or the

title interest and, following the disposal, either promptly pays to that person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person or provide security for the amount of those proceeds, to the reasonable satisfaction of that other person.

Once under business rescue, claims against the company will rank as follows: (a) the practitioner's remuneration and expenses; (b) amounts due and payable to employees during business rescue proceedings; (c) post-commencement financing which is secured (in the order of preference in which they were incurred); (d) post-commencement financing which is unsecured (in the order of preference in which they were incurred); (e) secured financing which was incurred prior to the commencement of business rescue proceedings; (f) unsecured financing incurred prior to the commencement of business rescue proceedings; (g) all other unsecured claims against the company; and (h) shareholder claims against the company. No mention is made of secured claims prior to commencement of the business rescue proceedings in this section of the New Companies Act. However, the New Companies Act does state that to the extent that the practitioner's remuneration and expenses are not fully paid, the practitioner's claim for those amounts will rank in priority before the claims of all other secured and unsecured creditors.

Reckless trading

Under section 22 of the New Companies Act, a company is prohibited from carrying on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose or to trade under insolvent circumstances. Directors who allow their companies to trade under such circumstances may be held personally liable for any loss or damages sustained by the company as a consequence of allowing the company to trade recklessly or under insolvent circumstances. The Companies and Intellectual Property Commission (the "*CIP Commission*") may issue a notice to a company where the CIP Commission has reasonable grounds to believe that the company is carrying on its business in a reckless manner or under insolvent circumstances to show cause why the company should be permitted to continue carrying on its business. If the company to whom the notice has been issued fails, within 20 business days, to satisfy the CIP Commission that it is not engaging in reckless trading, the CIP Commission is empowered to issue a compliance notice to the company requiring it to cease carrying on its business or trading.

Regulatory Approval of Grant of Guarantees

The current policy of the SARB is to "pre-approve" certain types of transactions, payments and transfers for exchange control purposes. The issuing of a guarantee by South African residents is not a category of transaction that is pre-approved. Therefore, in order for a South African resident to issue a guarantee to a non-South African resident, the South African resident will be required to obtain the necessary approval from the SARB. No further approval will be required for the repatriation of funds realized by the non-resident party subject to any other conditions set out in the SARB approval, such as providing notice to the SARB of the repatriation. See "Risk Factors—Risks Related to the Notes—The guarantee to be granted by the South African guarantor may not be in place on the issue date."

Sweden

Applicable Insolvency Law

Some guarantors are incorporated under the laws of Sweden (each, a "Swedish Guarantor"). A Swedish Guarantor will in principle be subject to insolvency proceedings covered by the E.U. Insolvency Regulation, if it has its centre of main interest in Sweden. Any insolvency proceedings applicable to a Swedish Guarantor including any and all of its assets (in Sweden and abroad) will, as a starting point and by virtue of Article 4 of the E.U. Insolvency Regulation, be governed by Swedish insolvency law (*lex concursus*).

Under Swedish law, a debtor company may be subject to one of two types of insolvency proceedings (i) bankruptcy pursuant to the Swedish Bankruptcy Act (Sw. *konkurslagen (1987:672)*), as amended (the "Swedish Bankruptcy Act"), and (ii) reorganization pursuant to the Swedish Company Reorganization Act (1996:764), as amended (the "Swedish Reorganization Act").

The insolvency laws of Sweden may not be as favorable to creditors as the insolvency laws of other jurisdictions, including, inter alia, in respect of priority of creditors' claims, the ability to obtain post-petition interest and the duration of insolvency proceedings, and hence may limit the ability of creditors to recover payments due from a Swedish Guarantor to an extent exceeding the limitations arising under the insolvency laws of other jurisdictions. The following is a brief description of certain aspects of the insolvency laws of Sweden.

Insolvency Proceedings

Pursuant to the Swedish Bankruptcy Act, if a company is unable to rightfully pay its debts as they fall due and such inability is not merely temporary, it is deemed insolvent and can be declared bankrupt following a bankruptcy petition filed with the court by the debtor or by a creditor of the debtor.

In the event of bankruptcy the court will appoint a receiver in bankruptcy who will work in the interest of all creditors with the objective of selling the debtor's assets and distribute the proceeds among the creditors. The purpose of bankruptcy proceedings is to wind up the company in such a way that the company's creditors receive as high a proportion of their claims as possible. The receiver in bankruptcy is required to safeguard the assets and can decide to continue the business or to close it down, depending on what is best for all creditors. In general, the receiver in bankruptcy is required to sell the assets of the debtor as soon as possible and to distribute the proceeds. In the interim, the receiver will take over the management and control of the company and the company's directors and/or managing director will no longer be entitled to represent the company or dispose of the company's assets.

When distributing the proceeds, the receiver must follow the mandatory provisions of the Swedish Rights of Priority Act (*Sw. förmånsrättslagen*), as amended from time to time, that states the order in which creditors have a right to be paid. As a general principle, in bankruptcy proceedings competing claims have equal right to payment in relation to the size of the amount claimed from the debtor's assets. However, preferential or secured creditors have the benefit of payment before other creditors.

Enforcement Process

In case of enforcement outside bankruptcy, an enforcement process is initiated by the creditor obtaining an enforcement order from the Swedish Enforcement Authority or the court. Upon obtaining an enforcement order against a debtor, a creditor may apply to the Swedish Enforcement Authority for enforcement of its claim.

Priority of Certain Creditors

As a general principle, under Swedish insolvency law competing claims have equal right to payment in relation to the size of the amount claimed from the debtor's assets. However, some preferential and secured creditors, where such preference or security may arise as a consequence of law, have the benefit of payment before other creditors. There are two types of preferential rights: specific and general preferential rights. Specific preferential rights apply to certain specific property and give the creditor a right to payment from such property. General preferential rights cover all property belonging to the insolvent company's estate in bankruptcy, which is not covered by specific preferential rights, and give the creditor a right to payment from such property. Claims that do not carry any of the above mentioned preferential rights or exceed the value of the security provided for such claim (to the extent of such excess), are non-preferential and are of equal standing as against each other.

Challengeable Transactions

In bankruptcy and company reorganization proceedings, transactions can (in certain circumstances and subject to a time limit) be reversed and the goods or monies can then be returned to the bankruptcy estate or the company subject to company reorganization. Broadly, these transactions include, among others, situations where the debtor has conveyed property fraudulently or preferentially to one creditor to the detriment of its other creditors before the initiation of the relevant insolvency proceedings, created a new security interest, granted a guarantee or security that was either not stipulated at the time when the secured obligation arose or not perfected without delay after such time and the delay is not considered to be ordinary, or paid a debt that is not due or that is considerable compared to the value of the debtor's assets or if the payment is made by using unusual means of payment. In the majority of situations, a claim for recovery can be made concerning actions that were made during the three months preceding the commencement of the relevant insolvency proceedings. In certain situations, longer time limits apply and in others there are no time limits. These include, among others, situations where the other party to an agreement or other arrangement is deemed to be a closely related party to the debtor such as a subsidiary or parent company.

Limitations on Enforceability Due to the Swedish Reorganization Act

The Swedish Reorganization Act provides companies facing difficulty in meeting their payment obligations with an opportunity to resolve these without being declared bankrupt. Corporate reorganization proceedings shall, as a main rule, terminate within three months from commencement but may under certain conditions be extended for up to one year.

An administrator is appointed by the court and supervises the day-to-day activities and safeguards the interests of creditors as well as the debtor. However, the debtor remains in full possession of the business except that, for important decisions such as paying a debt that has fallen due prior to the order of reorganization, granting security for a debt that arose prior to the order, undertaking new obligations or transferring, pledging or granting rights in respect of assets of a substantial value for the business, the consent of the administrator is required.

The making of an order under the Swedish Reorganization Act does not have the effect of terminating contracts with the debtor and, during the reorganization procedure, the debtor's business activities continue in the ordinary course of business. However, the procedure includes a suspension of payments to creditors and the debtor cannot pay a debt that fell due prior to the order without the consent of the administrator and such consent may only be granted should there be exceptional reasons for doing so and any petition

for bankruptcy in respect of the debtor will be stayed. A moratorium also applies to execution in respect of a claim or enforcement of security during corporate reorganization proceedings unless the security assets are in the physical possession of the secured creditor or any agent acting on behalf of such creditor, which is the case with a share pledge over the shares in a Swedish limited liability company where the share certificates of such company has been delivered to the agent and with a Swedish law pledge over a loan governed by a negotiable debt instrument (Sw. löpande skuldebrev).

The debtor may apply to the court requesting public composition proceedings (*Sw. offentligt ackord*) which means that the amount of a creditor's claim may be reduced. The proposal for a public composition must meet certain requirements such as that a sufficient proportion of the creditors which are allowed to vote, in respect of a sufficient proportion of the outstanding claims vote in favor of such public composition. Creditors with set-off rights and secured creditors will not participate in the composition unless they wholly or partly waive their set-off rights or priority rights. Should the security not cover a secured creditor's full claim, the remaining claim will, however, be part of a composition. A creditors' meeting is convened to vote on the proposed composition. The public composition is binding proceedings.

Limitations on the Value of a Guarantee

A Swedish limited liability company may not provide a guarantee for the obligations of a parent or sister company, unless they belong to the same group of companies and the parent company of that group is domiciled within the European Economic Area. Furthermore, if a Swedish limited liability company provides any guarantee without receiving sufficient corporate benefit in return, such guarantee will, in whole or in part, be considered a distribution of assets, which will be lawful only to the extent there is sufficient coverage for the unrestricted equity capital of the Swedish limited liability company after the distribution (*i.e.* at the time the guarantee is provided). It should also be noted that laws relating to financial assistance in Sweden prohibit limited liability companies incorporated in Sweden from providing guarantees or other credit support for obligations of any person where such obligations are being incurred for the purpose of acquiring shares in the company itself or in any other superior member of the same Swedish group of companies. The guarantees given by the guarantors incorporated under the laws of Sweden are limited in accordance with the above restrictions relating to corporate benefit and financial assistance.

Foreign Currency

Whereas Swedish courts may award judgments in currencies other than Swedish Kronor, judgments will be enforced in Swedish Kronor, generally at the rate of exchange prevailing at the date of enforcement rather than at the date of judgment.

Switzerland

Insolvency Proceedings

Certain subsidiary guarantors are incorporated under the laws of Switzerland (the "Swiss Guarantors"). In the event of any such Swiss Guarantor's insolvency, insolvency proceedings may, therefore, only be initiated in Switzerland and Swiss insolvency law would then govern those proceedings. The insolvency laws of Switzerland and, in particular, the provisions of the Swiss Federal Act on Debt Enforcement and Bankruptcy (*Bundesgesetz über Schuldbetreibung und Konkurs*) may be less favorable to the interests of creditors than the insolvency laws of other jurisdictions, including in respect of priority of creditors, the ability to obtain post-petition interest and the duration of the insolvency proceedings, and therefore may limit the ability of creditors to recover payments due on the Notes to an extent exceeding the limitations arising under other insolvency laws.

The following is a brief description of certain aspects of the insolvency laws of Switzerland.

Under general Swiss insolvency law, there is no group insolvency concept, which means there is no consolidation of the assets and liabilities of a group of companies in the event of insolvency. In case of a group of companies, each entity has, from an insolvency law point of view, to be dealt with separately. As a consequence, there is, in particular, no pooling of claims among the respective entities of a group, but rather claims of, and *vis-à-vis*, each entity have to be dealt with separately.

Under Swiss insolvency law, insolvency proceedings are not initiated by the competent insolvency court *ex officio*, but rather require that a creditor file a petition for the opening of insolvency proceedings (as discussed in the paragraphs below). Moreover, insolvency proceedings must be initiated by the debtor itself according to Swiss corporate law in the event of over-indebtedness (*Überschuldung*) or can be initiated by a creditor according to Swiss insolvency law in the event that the debtor has obviously and permanently stopped to pay its debts as and when they fall due or has acted fraudulently, or is attempting to act fraudulently to the detriment of its creditors. Furthermore, a debtor may also initiate insolvency proceedings if it declares itself insolvent (*zahlungsunfähig*) before court. Generally, pursuant to the Swiss corporate law, a debtor is over-indebted when its liabilities exceed the value of its assets, which must be assessed on the basis of a balance sheet to be drawn up (i) on the basis of the liquidation value of the debtor's assets and (ii) based upon the going concern value. If the interim balance sheet shows that the creditors' claims are neither covered by assets valued at liquidation values nor at going concern values, the debtor's board of directors has to notify the bankruptcy

court, provided that creditors of the debtor do not agree to subordinate their claims in the amount necessary to cover the over-indebtedness (Article 725 Swiss Code of Obligations). The debtor's board of directors is obliged to file for insolvency without delay and non-compliance with this obligation exposes the board of directors to damage claims and, in extreme cases, to sanctions under criminal law. Under certain circumstances, the auditors of an over-indebted company are obliged to file for insolvency.

If a creditor wants to initiate insolvency proceedings, such creditor has to file an application for commencement of enforcement proceedings (*Betreibungsbegehren*) with the competent debt collection office (*Betreibungsamt*). With respect to unsecured claims, the competent debt collection office is located where the debtor is registered or resident. The debt collection office will then serve the debtor with the writ of payment (*Zahlungsbefehl*). There is no material assessment of the claim at this stage. The debtor may within ten days upon having been served with the writ of payment, file an objection (*Rechtsvorschlag*) to bring the procedure to a halt and obtain an individual stay of proceedings. No reasons need to be given for such objection. The debt collection office notifies the respective creditor of the objection.

For claims based on an enforceable judgment, the creditor can without any further delay file an application to lift this stay with the court (*Rechtsöffnungsbegehren*). For claims not based on an enforceable judgment, but on a certified and/or signed document evidencing the claim, provisional lifting of such stay can be applied for in summary proceedings (*provisorische Rechtsöffnung*). In the event the objection is set aside in these summary proceedings, the debtor may within 20 days bring an action in ordinary court proceedings for negative declaration that the creditor's claim does not exist (*Aberkennungsklage*).

The creditor may then ask the debt collection office to continue the enforcement proceeding (*Fortsetzungsbegehren*) in relation to an existing writ of payment having full force and effect. The competent debt collection office delivers a bankruptcy warning (*Konkursandrohung*) to the debtor. The insolvency court may take preliminary measures to secure property of the debtor in case this is requested by a creditor and required to secure the creditor's rights. After 20 days from receipt of the bankruptcy warning (*Konkursandrohung*), the creditor may petition the opening of insolvency proceedings. The competent insolvency court decides upon the insolvency without any delay, provided that there are no reasons which would lead to a suspension of the insolvency court's decision. In addition, the debtor has the right to file a request for a moratorium. The parties may file an appeal against any decision taken by the insolvency court.

The insolvency court orders the continuation of insolvency proceedings if certain requirements are met, in particular if there are sufficient assets to cover at least the costs of the insolvency proceedings. If the assets of the debtor are not expected to be sufficient, the insolvency court will only order to continue insolvency proceedings if third parties, for instance creditors, advance the costs of the insolvency proceedings themselves within 10 days of a respective public announcement. In the absence of such advancement, the insolvency proceedings will be closed for insufficiency of assets (*Einstellung des Konkursverfahrens mangels Aktiven*). Alternatively, the insolvency office may request the insolvency court to resolve upon summary insolvency proceedings (*summarisches Konkursverfahren*), if the assets are not sufficient to cover the cost of ordinary insolvency proceedings and the actual facts of the case are not complicated. Also, in such case, creditors have the right to request ordinary insolvency proceedings provided that adequate security for the relevant costs is given by the respective creditor.

After an insolvency has been declared, assets which are subject to a pledge and similar security rights are considered to be part of the debtor's estate (*Konkursmasse*). Upon the opening of formal insolvency proceedings (*Konkurseröffnung*), the right to administer and dispose over the business and the assets of the debtor passes to the insolvency office (*Konkursamt*). The insolvency office has full administrative and disposal authority over the debtor's estate (*Konkursmasse*), provided that certain acts require the approval of the insolvency court. The creditors' meeting may appoint a private insolvency administration (*private Konkursverwaltung*) and, in addition, a creditors' committee (*Gläubigerausschuss*). In such case, the private insolvency administration will be competent to maintain and liquidate the debtor's estate. The creditors' committee has additional competences.

Insolvency results in the acceleration of all claims against a debtor (secured or unsecured), except for those secured by a mortgage on the debtor's real property, and the relevant claims become due upon insolvency. As a result of such acceleration, a creditor's bankruptcy claim consists of the principal amount of the debt (discounted at 5% if not interest bearing), interest accrued thereon until the date of insolvency, and (limited) costs of enforcement. Upon insolvency, interest ceases to accrue. Only claims secured by a pledge enjoy a preferential treatment insofar as interest that would have accrued until the collateral is realized will be honored if and to such extent as the proceeds of the collateral suffice to cover such interests.

All creditors, whether secured or unsecured, wishing to assert claims against the debtor need to participate in the insolvency proceedings in Switzerland. Swiss insolvency proceedings are collective proceedings and creditors may generally no longer pursue their individual claims separately, but can instead only enforce them in compliance with, and subject to, the restrictions of Swiss insolvency laws. Therefore, secured creditors are generally (subject to certain exceptions) not entitled to enforce any security interest outside the insolvency proceedings. In the insolvency proceedings, however, secured creditors have certain preferential rights (*Vorzugsrechte*). Generally, entitlement to realize such security is vested with the insolvency administration. Realization proceedings are governed by Swiss insolvency laws which provide for a public auction, or, subject to certain conditions, a private sale. Proceeds

from enforcement are used to cover (i) enforcement costs, (ii) the claims of the secured creditor and (iii) any excess proceeds will be used to satisfy unsecured creditors.

Typically, liabilities resulting from acts of the insolvency administrator after commencement of formal insolvency proceedings constitute liabilities of the debtor's estate. Thereafter, all other claims (insolvency claims—*Konkursforderungen*), in particular claims of unsecured creditors, will be satisfied pursuant to the distribution provisions of Swiss insolvency laws, which provide for certain privileged classes of creditors, such as a debtor's employees. All other creditors will be satisfied on a *pro rata* basis if and to the extent there are funds remaining in the debtor's estate after the security interests and privileged claims have been settled and paid in full.

Swiss insolvency law also provides for reorganization procedures by composition with the debtor's creditors. Reorganization is initiated by a request with the competent court for a stay (*Nachlassstundung*) pending negotiation of one of the several statutory types of composition agreement with the creditors and confirmation of such agreement by the competent court.

Under Swiss insolvency laws, the insolvency administration may, under certain conditions, avoid transactions, such as, inter alia, the granting of, or the payment under, any guarantee or security or, if a payment has already been made under the relevant guarantee or security, require that the recipients return the amount received to the debtor's estate. In particular, a transaction (which term includes the granting of a guarantee, the provision of security and the payment of debt) detrimental to the debtor's other creditors may be avoided according to Swiss insolvency laws in the following cases if such acts result in damages to the creditors:

- The debtor has made a transaction being considered as a gift or a disposal of assets without any consideration, provided that the debtor made such transaction within the last year prior to the opening of formal insolvency proceedings (*Konkurseröffnung*). Similarly, transactions pursuant to which the debtor received a consideration which was disproportionate to its own performance, may be avoided.
- Certain acts are voidable if performed by the debtor within the last year prior to the opening of formal insolvency proceedings (*Konkurseröffnung*), provided that the debtor was already over-indebted at that time: (i) granting of security for already existing claims, provided that the debtor was not previously obliged to grant such security, (ii) payment of a monetary obligation (*Geldschuld*) in any other way than by payment in cash (*Barschaft*) or other customary means of payment, and (iii) the payment of a debt not yet due. However, any avoidance action is excluded if the beneficiary of the transaction can prove that it was not aware of the debtor's over-indebtedness and, being diligent, could not know that the debtor had been over-indebted at that time.
- Furthermore, any acts performed within the last five years prior to, inter alia, the opening of formal insolvency proceedings (*Konkurseröffnung*) performed by the debtor with the intention to disadvantage its creditors, or discriminate some creditors against others or to favor some creditors to others are voidable if such intention was, or exercising the requisite due diligence must have been known, to the debtor's counterparty.

If any guarantee or security is avoided as summarized above or held unenforceable for any other reason, the claimant would cease to have any claim in respect of the guarantee and would have a claim solely under the Notes and the remaining guarantees, if any. Any amounts obtained from transactions that have been avoided would have to be repaid.

Limitations on Up-stream or Cross-stream Guarantees

The granting of guarantees by the Swiss Guarantors is subject to certain restrictions in the distribution of corporate assets under Swiss corporate law (so-called up-stream/cross-stream limitations). Therefore, in order to enable the Swiss Guarantors to grant guarantees securing liabilities of the Issuer without the risk of violating such restrictions, it is standard market practice for guarantees, security documents and other up-stream or cross-stream obligations to contain a so-called "limitation language" in relation to subsidiaries incorporated in Switzerland in the form of a Swiss stock corporation (*Aktiengesellschaft*) or Swiss limited liability company (*Gesellschaft mit beschränkter Haftung*). Pursuant to such limitation language, the obligations under any guarantee granted by each of the Swiss Guarantors will be limited to its freely disposable equity from time to time, if and to the extent such requirements apply. The freely disposable equity is equal to the maximum amount which the relevant Swiss Guarantor can distribute to its shareholders as a dividend payment under Swiss law, as determined in accordance with Swiss law, presently being the total shareholder equity less the total of (i) the aggregate share capital and (ii) statutory reserves (including reserves for own shares and revaluations as well as capital surplus (*agio*)), to the extent such reserves cannot be transferred into unrestricted, distributable reserves, and require further corporate action by the Swiss Guarantor and may be subject to withholding tax. These limitations apply in relation to guarantees securing the performance of any obligations of any (direct or indirect) shareholder and/or any sister company of the Swiss Guarantors (up-stream/cross-stream).

United States

The Issuer and certain of the guarantors are organized under the laws of the states of the United States, have their registered offices in the United States and have property in the United States. In the event of insolvency, insolvency proceedings may, therefore,

be initiated in the United States. U.S. law would then govern those proceedings. A voluntary bankruptcy case may be commenced by us, or an involuntary bankruptcy case could be commenced by certain unsecured creditors as provided in the U.S. Bankruptcy Code.

Fraudulent Transfer

Under the U.S. Bankruptcy Code or comparable provisions of state fraudulent transfer or fraudulent conveyance laws, the incurrence of the obligations under the Notes and the issuance of the guarantees, whether now or in the future, by the Issuer and guarantors (together, the "Obligors") could be avoided, if, among other things, at the time the Obligors incurred the obligations or issued the related guarantee, the Obligors intended to hinder, delay or defraud any present or future creditor; or received less than reasonably equivalent value or fair consideration for the incurrence of such indebtedness and either:

- were insolvent or rendered insolvent by reason of such incurrence;
- were engaged in a business or transaction for which the Obligors' remaining assets constituted unreasonably small capital; or
- intended to incur, or believed that they would incur, debts beyond their ability to pay such debts as they mature.

A U.S. court would likely find that an Obligor did not receive reasonably equivalent value or fair consideration for the Notes offered hereby or such guarantee if such Obligor did not benefit directly or indirectly from the issuance of the Notes or the applicable guarantee.

We cannot be certain as to the standards a court would use to determine whether or not an Obligor was solvent at the relevant time or, regardless of the standard that a court uses, that payments to holders of the Notes offered hereby constituted fraudulent transfers on other grounds. Generally, however, an entity would be considered insolvent by a U.S. court 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;
- 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.

If the Notes offered hereby or guarantees were avoided or limited under fraudulent transfer or other laws, any claim you may make against any Obligor for amounts payable on the Notes offered hereby would be unenforceable to the extent of such avoidance or limitation. Moreover, the court could order you to return any payments previously made by any Obligor.

Although any guarantee entered into in connection with the issuance of the Notes offered hereby will contain a provision intended to limit that guarantor's liability to the maximum amount that it could incur without causing the incurrence of obligations under its guarantee to be a fraudulent transfer, this provision may not be effective to protect such guarantee from being voided under fraudulent transfer law, or may reduce that guarantor's obligation to an amount that effectively makes its guarantee worthless.

SERVICE OF PROCESS AND ENFORCEMENT OF CIVIL LIABILITIES

Australia

In Australia, the *Foreign Judgments Act 1991* (Cth) provides for the enforcement by registration of judgments rendered by certain courts in foreign jurisdictions (including, amongst others, the United Kingdom). The *Foreign Judgments Act 1991* (Cth) does not provide for the enforcement by registration of the judgments of state or federal courts of the United States of America.

At common law, a plaintiff may enforce a judgment obtained in a competent court in a foreign country (including the United States of America) by bringing an action for a liquidated sum relying on the foreign judgment as imposing an obligation on the defendant to pay the sum adjudged. Alternatively, or in addition, the plaintiff may bring a fresh action in the forum based on the original cause of action relying on the foreign judgment to estop the defendant from raising any defence, other than fraud, which was, or which could have been, raised in the foreign proceedings.

To be entitled to recognition at common law, a judgment in personam must have been rendered by a court which had jurisdiction over the person of the defendant at the time when the jurisdiction of that court was invoked. Other than in relation to foreign judgments that are capable of registration under the *Foreign Judgments Act 1991* (Cth), an Australian court must determine for itself whether according to Australian rules of private international law, such jurisdiction existed in the foreign court at that time.

A judgment in personam obtained against the Australian Guarantor in courts of the United States may, subject to compliance with the rules and procedures of the Supreme Court of the relevant jurisdiction, be the subject of an action for the purposes of enabling a corresponding judgment to be obtained and enforced in the Supreme Courts of New South Wales (being the location of the registered office of the Australian Guarantor) but any such judgment may not be recognized if it is a judgment which is, amongst other things:

(1) for an uncertain sum or otherwise not for a sum of money;

(2) in respect of taxes or any revenue law (including for any fiscal penalty) or a fine or other penalty or foreign governmental interests;

(3) obtained by fraud or contrary to notions of natural justice under the laws of New South Wales or in circumstances where the judgment debtor did not receive notice of the proceedings in sufficient time to enable the judgment debtor to defend or from a court whose jurisdiction is not recognized under the New South Wales's rules of private international law;

(4) contrary to the public policy of New South Wales;

(5) in favour of a person other than the applicant for enforcement or recognition in the same interest(s);

(6) not final and conclusive or is otherwise subject to appeal, dismissal, reversal, setting aside or stay of execution; or

(7) on a cause of action previously adjudicated;

A foreign judgment which is obtained in a currency other than Australian dollars may be converted into Australian dollars by the Supreme Court of the relevant jurisdiction when issuing the corresponding local judgment (however in the absence of an official or fixed exchange rate between Australian dollars and any other currency, we can express no opinion on how that rate of exchange is to be determined).

Bermuda

The courts of Bermuda would recognise as a valid judgment, a final and conclusive judgment in personam obtained in a foreign country's courts country (including the United States of America) against a Bermuda company under which a sum of money is payable (other than a sum of money payable in respect of multiple damages, taxes or other charges of a like nature or in respect of a fine or other penalty) and would give a judgment based thereon provided that (a) such courts had proper jurisdiction over the parties subject to such judgment; (b) such courts did not contravene the rules of natural justice of Bermuda; (c) such judgment was not obtained by fraud; (d) the enforcement of the judgment would not be contrary to the public policy of Bermuda; (e) no new admissible evidence relevant to the action is submitted prior to the rendering of the judgment by the courts of Bermuda; and (f) there is due compliance with the correct procedures under the laws of Bermuda.

Brazil

Provided that none of the parties to the agreement has initiated a concurrent lawsuit in Brazil, a final award issued by non-Brazilian courts for a specific sum of money will be recognized and enforced in the courts of Brazil through a recognition request, without reconsideration of the merits, after meeting certain formal requirements for the homologation of a foreign decision by the Superior Court of Justice (*Superior Tribunal de Justice - STJ*) of the Federative Republic of Brazil, according to the Constitutional

Amendment No. 45, dated December 8, 2004, published on the Official Gazette on December 31, 2004, as regulated by *Resolução* No. 9, dated May 4, 2005, issued by the Superior Court of Justice, which requirements are that such final award:

(1) fulfills all formalities required for its enforceability under the laws of the country in which it was issued or granted;

(2) is issued by a competent court after due service of process is made on the parties or on properly appointed agent(s) for service of process, which services must be made in accordance with Brazilian laws if made in Brazil;

(3) is final and therefore not subject to any appeal (*res judicata*) (note that Federal Law No. 13,105/2015 (the "Brazilian Code of Civil Procedure") authorizes the enforcement of foreign interlocutory decisions if the Superior Court of Justice grants an *exequatur* in a letter rogatory (articles 515, IX and 960, §1, of the Brazilian Code of Civil Procedure), but such provision was recently introduced in the Brazilian legal system (effective as of March, 2016) and there are no sufficient precedents yet to set specifically the requirements for such *exequatur* in case there is an enforcement outside Brazil);

(4) is for the payment of a determined sum of money;

(5) is authenticated by a Brazilian consular office with jurisdiction over the location of the foreign court that has issued the award and is accompanied by a sworn translation into Portuguese;

(6) is not contrary to national sovereignty, public policy, good morals or public morality; and

(7) is not similar to a proceeding in Brazil involving the same parties, based on the same grounds and with the same subject matter, which has already been judged by a Brazilian court of law.

The confirmation process may be time-consuming and may also give rise to difficulties in enforcing the foreign judgment in Brazil. Notwithstanding the foregoing, there is no assurance that confirmation will be obtained, that the process described above will be conducted in a timely manner or that Brazilian courts will enforce a monetary award for violation of laws of countries other than Brazil.

A plaintiff (whether Brazilian or non-Brazilian) who resides outside Brazil during the course of litigation in Brazil must provide a bond to guarantee the payment of the defendant's legal fees and court expenses if the plaintiff owns no real property in Brazil that could secure that payment, except in the case of collection claims based on an instrument that may be enforced in Brazilian courts without the review of its merit (*execução de título executivo extrajudicial*) or counterclaims as established under Article 83 of the Brazilian Code of Civil Procedure. The bond must have a value that is sufficient to satisfy the payment of court fees and the defendant's attorney fees, as determined by a Brazilian judge. This requirement does not apply to the enforcement of foreign judgments which have been duly confirmed by the Superior Court of Justice in Brazil.

If the Notes or the Indenture were to be declared void by a court with competent jurisdiction, a judgment obtained outside Brazil seeking to enforce a guarantee given by a guarantor residing in Brazil may not be ratified by the Superior Court of Justice in Brazil.

Canada

The laws of the province of Ontario permit an action to be brought before a court of competent jurisdiction in the province of Ontario (a "Canadian Court") to recognize and enforce a final and conclusive in personam judgment against the judgment debtor of any federal or state court located in the United States (a "U.S. Court") that is not impeachable as void or voidable under the applicable federal or state laws for a sum certain if, among other things: (i) the U.S. Court rendering such judgment had jurisdiction over the judgment debtor, as recognized by a Canadian Court (and submission in the indenture to the non-exclusive jurisdiction of a U.S. Court will be sufficient for that purpose); (ii) such judgment was not obtained by fraud or in a manner contrary to natural justice in contravention of the fundamental principles of procedure and the foreign judgment and the enforcement thereof would not be contrary to public policy (as the term is understood under the laws of the province of Ontario), or to an order made by the Attorney General of Canada under the *Foreign Extraterritorial Measures Act* (Canada) or by the Competition Tribunal under the *Competition Act* (Canada) in respect of certain judgments referred to in these statutes; (iii) the enforcement of such judgment does not constitute, directly or indirectly, the enforcement of foreign revenue, expropriatory, penal, or other public laws; (iv) the action to enforce such judgment is commenced within applicable limitation periods; (v) such judgment has not been satisfied; and (vi) such judgment is not under appeal or there is no other subsisting judgment in any jurisdiction relating to the same cause of action. Note, however, that any action in the Canadian Court may be affected by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.

In addition, under the *Currency Act* (Canada), a Canadian Court may only render judgment for a sum of money in Canadian currency, and in enforcing a foreign judgment for a sum of money in a foreign currency, a Canadian Court will render its decision in the Canadian currency equivalent of such foreign currency.

England

The United States and England currently do not have a treaty providing for the reciprocal recognition of and enforcement of judgments (as opposed to arbitration awards) in civil and commercial matters (although the United States and the United Kingdom are both parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

Consequently, a final judgment for payment rendered by any federal or state court in the United States based on civil liability, whether or not predicated solely upon U.S. federal securities laws, would not automatically be recognized or enforceable in England. In order to enforce any such U.S. judgment in England, proceedings must first be initiated before a court of competent jurisdiction in England by way of civil law action on the judgment debt before a court of competent jurisdiction in England (an "English court"). In such an action, an English court would not generally reinvestigate the merits of the original matter decided by the U.S. court (subject to what is said below) and it would usually be possible to obtain summary judgment on such a claim (assuming there is no good defense to it). Recognition and enforcement of a U.S. judgment by an English court in such an action is conditional upon (among other things) the following:

- the U.S. court having had jurisdiction over the original proceedings according to English conflicts of laws principles and rules of English private international law;
- the U.S. judgment not having been given in breach of a jurisdiction or arbitration clause;
- the U.S. judgment being final and conclusive on the merits in the sense of being final and unalterable in the court which pronounced it and being for a definite sum of money;
- the U.S. judgment not contravening English public policy or statute or the Human Rights Act 1998;
- the U.S. judgment not being for a sum payable in respect of taxes, or other charges of a like nature, or in respect of a penalty or fine, or otherwise involving the enforcement of a non-English penal or revenue law;
- the U.S. judgment not being contrary to the Protection of Trading Interests Act 1980;
- the U.S. judgment not having been obtained by fraud or in breach of English principles of natural justice;
- there not having been a prior inconsistent decision of an English court in respect of the same matter involving the same parties; and
- the English enforcement proceedings being commenced within the relevant limitation period.

Subject to the foregoing, investors may be able to enforce in England judgments in civil and commercial matters that have been obtained from U.S. federal or state courts. However, we cannot assure you that those judgments will be recognized or enforceable in England. In addition, it is questionable whether an English court would accept jurisdiction and impose civil liability if the original was commenced in England, instead of the United States, and predicated solely upon U.S. federal securities laws.

If an English court gives judgment for the sum payable under a U.S. judgment, the English judgment will be enforceable by methods generally available for this purpose. These methods generally permit the court discretion to prescribe the manner of enforcement. It may not be possible to obtain an English judgment or to enforce that judgment if the judgment debtor is subject to any insolvency or similar proceedings, or if the judgment debtor has any set off or counterclaim against the judgment creditor. Also note that, in any enforcement proceedings, the judgment debtor may raise any counterclaim that could have been brought if the action had been originally brought in England unless the subject of the counterclaim was in issue and denied in the U.S. proceedings.

France

Certain of the Guarantors are entities organized under the laws of France with their registered offices or principal places of business in France (the "French Entities"). The directors, officers and other executives of the French Entities are neither residents nor citizens of the United States (the "French Individuals"). Furthermore, most of the assets of the French Entities or the French Individuals are located outside the United States. As a result, it may not be possible for investors to effect service of process upon such persons and entities, or to enforce against them judgments of U.S. courts predicated upon the civil liability provisions of U.S. federal or state securities laws within the United States. However, it may be possible for investors to effect service of process within France upon those persons or entities, provided that The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965 is complied with.

The following is a summary of certain legal aspects of French law regarding the enforcement of civil law claims connected with the Notes against the French Entities and/or French Individuals.

The United States and France are not parties to a treaty providing for the reciprocal recognition and enforcement of judgments, other than arbitral awards rendered in civil and commercial matters. Accordingly, a judgment rendered by any U.S. federal or state

court based on civil liability, whether or not predicated solely upon U.S. federal or state securities laws, would not directly be recognized or enforceable in France.

A party in whose favor such judgment was rendered could initiate enforcement proceedings (*exequatur*) in France before the relevant civil court (*Tribunal Judiciaire*) that has exclusive jurisdiction over such matter.

Enforcement in France of such U.S. judgment could be obtained following proper (i.e., *non ex parte*) proceedings if such U.S. judgment is enforceable in the United States and if the French civil court is satisfied that the following conditions have been met (which conditions, under prevailing French case law, do not include a review by the French civil court of the merits of the foreign judgment):

- such U.S. judgment was rendered by a court having jurisdiction over the matter because the dispute is clearly connected to the jurisdiction of such court (i.e., there was no international forum shopping), the choice of the U.S. court was not fraudulent and the French courts did not have exclusive jurisdiction over the matter;
- such U.S. judgment does not contravene French international public policy rules, both pertaining to the merits and to the procedure of the case, including fair trial rights; and
- such U.S. judgment is not tainted with fraud under French law.

In addition to these conditions, it is well established that only final and binding foreign judicial decisions (i.e. those having a *res judicata* effect) can benefit from an exequatur under French law, that such U.S. judgment should not conflict with a French judgment or a foreign judgment that has become effective in France, and there is no proceedings pending before French courts at the time enforcement of the U.S. judgment is sought and having the same or similar subject matter as such U.S. judgment.

If the French civil court is satisfied that such conditions are met, the U.S. judgment will benefit from the *res judicata* effect as of the date of the decision of the French civil court and will thus be declared enforceable in France. However, the decision granting the exequatur is subject to appeal.

In addition, the discovery process under actions filed in the United States could be adversely affected under certain circumstances by French law No. 68 678 of July 26, 1968, as modified by French law No. 80 538 of July 16, 1980 and French Ordinance No. 2000 916 of September 19, 2000 (relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign authorities or persons), which could prohibit or restrict obtaining evidence in France or from French persons in connection with a judicial or administrative U.S. action. Pursuant to the regulations above, the U.S. authorities would have to comply with international (the 1970 Hague Convention on the Taking of Evidence Abroad) or French procedural rules to obtain evidence in France or from French persons.

Similarly, French data protection rules (law No. 78 17 of 6 January 1978 on data processing, data files and individual liberties, as modified) can limit under certain circumstances the possibility of obtaining information in France or from French persons in connection with a judicial or administrative U.S. action in a discovery context.

Furthermore, if an original action is brought in France, French courts may refuse to apply foreign law designated by the applicable French rules of conflict (including the law chosen by the parties to govern their contract) if the application of such law (in the case at hand) is deemed to contravene (i) French international public policy or (ii) overriding mandatory rules (as determined on a case by case basis by French courts). Furthermore, in an action brought in France on the basis of U.S. federal or state securities laws, French courts may not have the requisite power to grant all the remedies sought.

Pursuant to Article 14 of the French Civil Code, a French national (either a company or an individual) can sue a foreign defendant before French courts in connection with the performance of obligations contracted by the foreign defendant in France with a French person or in a foreign country with French Individuals. Pursuant to Article 15 of the French Civil Code, a French national can be sued by a foreign claimant before French courts in connection with the performance of obligations contracted by the French national in a foreign country with the foreign claimant (Article 15). For a long time, case law has interpreted these provisions as meaning that a French national, either claimant or defendant, could not be forced against its will to appear before a jurisdiction other than French courts. However, according to case law, the French courts' jurisdiction over French nationals is not mandatory to the extent an action has been commenced before a court in a jurisdiction that has sufficient contacts with the dispute and the choice of jurisdiction is not fraudulent. In addition, a French national may waive its rights to benefit from the provisions of Articles 14 and 15 of the French Civil Code, including by way of conduct by voluntarily appearing before the foreign court.

It must be noted that under Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of December 12, 2012, as regards legal actions falling within the scope of said Regulation, the privileges granted to French nationals pursuant to Articles 14 and 15 of the French Civil Code may not be invoked against a person domiciled in an EU Member State. Conversely, pursuant to Article 6.2 of Regulation (EU) No. 1215/2012, the privilege granted by Article 14 of the French Civil Code may be

invoked by a claimant domiciled in France, regardless of the claimant's nationality, to sue before French courts a defendant domiciled outside the EU. The French Supreme Court (*Cour de cassation*) has recently held that a contractual provision submitting one party to the exclusive jurisdiction of a court and giving another party the discretionary option to choose any competent jurisdiction was invalid. Accordingly, any provisions to the same effect in any relevant documents would not be binding on the party submitted to the exclusive jurisdiction of the court or prevent a French party from bringing an action before the French courts.

Germany

We have been advised by our German counsel that there is doubt as to the enforceability in Germany of civil liabilities based on U.S. federal or state securities laws, either in an original action or in an action to enforce a judgment obtained in U.S. federal or state courts. The United States and Germany currently do not have a treaty providing for the reciprocal recognition and enforcement of judgments, other than arbitration awards, in civil and commercial matters. Consequently, a final judgment by any U.S. federal or state court for payment, whether or not predicated solely upon U.S. federal or state securities laws, would not automatically be enforceable in Germany. A final judgment by a U.S. federal or state court, however, may be recognized and enforced in Germany in an action before a court of competent jurisdiction in accordance with the proceedings set forth by the German Code of Civil Procedure (*Zivilprozessordnung*). In such an action, a German court generally will not reinvestigate the merits of the original matter decided by a U.S. federal or state court, except as noted below. The recognition and enforcement of a U.S. judgment by a German court will be conditional upon a number of requirements, including the following:

- the judgment being final under U.S. federal or state law;
- the U.S. court could take jurisdiction of the case in accordance with the principles on jurisdictional competence according to German law
- the document introducing the proceedings was duly made known to the defendant in a timely manner that allowed for adequate defense;
- the judgment is not contrary to (i) any prior judgment which became *res judicata* rendered by a German court or (ii) any prior judgment which became *res judicata* rendered by a foreign court which is recognized in Germany and the procedure leading to the respective judgment is not in contradiction to any such prior judgment;
- the effects of its recognition will not be in conflict with material principles of German law, including, without limitation, fundamental rights under the constitution of Germany (*Grundrechte*). In this context, it should be noted that any component of a U.S. Federal or state court civil judgment awarding punitive damages or any other damages which do not serve a compensatory purpose, such as treble damages, will usually not be enforced in Germany. They may be regarded to be in conflict with material principles of German law;
- the reciprocity of enforcement of judgments is guaranteed; and
- the judgment became *res judicata* in accordance with the law of the place where it was pronounced.

Subject to the foregoing, purchasers of securities may be able to enforce judgments in civil and commercial matters obtained from U.S. federal or state courts in Germany. We cannot, however, assure you that attempts to enforce judgments in Germany will be successful. In addition, it is doubtful whether a German court would accept jurisdiction and impose civil liability in an original action predicated solely on U.S. federal securities laws.

In addition, in the past the recognition and enforcement of punitive damages has been denied by German courts as being incompatible with the substantial foundations of German law. Moreover, a German court may reduce the amount of damages granted by a U.S. court and recognize damages only to the extent that they are necessary to compensate actual losses or damages.

German civil procedure differs substantially from U.S. civil procedure in a number of respects. With respect to the production of evidence, for example, U.S. federal and state law and the laws of several other jurisdictions based on common law provide for pre-trial discovery, a process by which parties to the proceedings may prior to trial compel the production of documents by adverse or third parties and the deposition of witnesses. Evidence obtained in this manner may be decisive in the outcome of any proceeding. No such pre-trial discovery process exists under German law.

Ireland

Service of Process

Ireland has ratified the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, which may provide for a method of service of U.S. proceedings on an Irish person or company. However, the adequacy or sufficiency of service of any U.S. proceedings on an Irish person or company is ultimately a matter of U.S. law. As regards Irish proceedings, Irish law generally requires personal service on natural persons, while an Irish company may be

served with Irish proceedings by leaving a copy of the originating court document at, or posting it to, the registered office of the company.

Enforcement of Judgments

As the United States is not a party to a convention with Ireland in respect of the recognition and enforcement of judgments, a judgment of a U.S. court will not be automatically or directly recognized or enforceable in Ireland. Recognition and enforcement of a U.S. court judgment in Ireland requires an application to be made to the Irish High Court, and Irish common law rules would apply in order to determine whether the U.S. court judgment is recognizable and enforceable in Ireland. Recognition and enforcement may be granted on proper proof of the judgment of the U.S. court, without a retrial or examination of the merits of the case before the Irish courts, provided that:

(i) the U.S. court was a court of competent jurisdiction, according to the laws of Ireland (the submission to the jurisdiction of the U.S. court by a defendant may satisfy this rule);

(ii) the U.S. judgment has not been obtained or alleged to have been obtained by fraud;

(iii) the decision of the U.S. court, and the enforcement thereof, was not and would not be contrary to natural or constitutional justice under Irish law;

(iv) the U.S. judgment and the enforcement thereof would not be contrary to public policy as understood by the Irish courts or constitute the enforcement of a judgment of a penal or revenue (tax) nature;

(v) the U.S. judgment is final and conclusive. The U.S. judgment can be final and conclusive even if it is open to appeal or if an appeal is pending. Where, however, the effect of lodging an appeal is to stay execution of the judgment, it may not be enforced in Ireland until the appeal is determined. It is uncertain under Irish law whether final judgment given in default of appearance will be considered final and conclusive;

(vi) the U.S. judgment is for a definite sum of money;

(vii) the procedural rules of the U.S. courts and the Irish courts have been observed;

(viii) the judgment is not inconsistent with a judgment of the Irish courts in respect of the same matter;

(ix) the Irish enforcement proceedings are commenced within the limitation period applicable pursuant to the Irish Statute of Limitations 1957 (as amended); and

(x) there is a practical benefit to the party in whose favour the U.S. judgment is made in seeking to have the judgment enforced in the Ireland (such as the existence of assets located in Ireland amenable to enforcement).

Subject to the foregoing, the Irish courts will make a decision on the enforcement of a U.S. judgment on a case by case basis and, if rendered enforceable, the judgment can be enforced in the same way as a domestic judgment. However, it cannot be assured that judgments in civil or commercial matters that have been obtained from U.S. federal or state courts, particularly where the judgment is predicated solely upon U.S. federal securities laws, would be recognised or enforceable in Ireland.

Pursuant to Article 4 of Council Regulation (EC) No 2271/96 of November 22, 1996, as amended by Commission Delegated Regulation (EU) 2018/1100 (the "Blocking Statute"), no judgment of a court or tribunal and no decision of an administrative authority located outside of the European Union giving effect, directly or indirectly, to the laws specified in the annex to the Blocking Statute or to actions based thereon will be recognized or be enforceable in any manner by the courts of Ireland.

Luxembourg

Service of Process

Under Luxembourg law, contractual provisions allowing the service of process against a party to a service agent could be overridden by Luxembourg statutory provisions allowing the valid serving of process against a party in accordance with applicable laws at the domicile of the party.

Enforcement of Judgements

According to Luxembourg case law, a judgment rendered by a court of competent jurisdiction in the United States would be recognised and enforced by a Luxembourg court, without reconsideration of the merits, subject to the following conditions:

a. the judgment of the foreign court must be enforceable (exécutoire) in the country in which it was rendered;

b. the foreign court must have had jurisdiction according to the Luxembourg conflict of jurisdiction rules;

c. the foreign court must have applied to the matter submitted to it the proper law designated by the Luxembourg conflict of laws rules (although some first instance decisions rendered in Luxembourg—which have not been confirmed by the Court of Appeal—no longer apply this condition);

d. the judgment of the foreign court must not have been obtained by fraud, but in compliance with procedural rules of the country in which it was rendered, in particular with the rights of the defendant; and

e. the judgment of the foreign court must not be contrary to Luxembourg international public policy.

Mexico

Each Mexican guarantor is a limited liability company (*sociedad anónima promotora de inversion de capital variable, sociedad financiera de objeto múltiple, entidad no regulada* or a *sociedad de responsabilidad limitada de capital variable*) organized under the laws of Mexico. Some of its officers and directors are non-U.S. residents, and all or a significant portion of the assets of those persons may be, and the most significant portion of the assets of the Mexican guarantor are, located outside the United States. As a result, it may not be possible for investors to effect service of process within the United States upon those persons or to enforce against them or against the Mexican guarantor in U.S. courts judgments predicated upon civil liability provisions of the U.S. federal or state securities laws. We have been advised by our counsel in Mexico, that there is doubt as to the enforceability in original actions in Mexican courts of liabilities predicated solely on the U.S. federal securities laws, and as to the enforceability in Mexican courts of judgments of U.S. courts obtained in actions predicated upon the civil liability provisions of the U.S. federal securities laws.

Service of Process

Personal service of process is considered to be a basic procedural requirement under Mexican law. If, for purposes of proceedings outside of Mexico, service of process is made by mail or other method that is not personal, such service of process does not constitute personal service under Mexican law. The courts of Mexico would not enforce a final judgment based on such process.

Enforcement of Judgments

Any judgment rendered outside Mexico may be enforced by Mexican courts, provided that:

a. all formalities set forth in treaties relating to foreign rogatory letters, to which Mexico is a party, have been complied with;

b. such judgment is strictly for the payment of a certain sum of money and has been rendered in an *in personam* action as opposed to an *in rem* action;

c. the court was competent to resolve the relevant matter in accordance with the rules of international law compatible with those adopted by the Mexican applicable law;

d. service of process was made personally on the obligor or on the appropriate process agent (a court of Mexico would consider the service of process upon the duly appointed agent, by means of a notarial instrument, to be personal service of process meeting procedural requirements of Mexico), provided such service of process is personally made upon the process agent;

e. such judgment is final in the jurisdiction where obtained and there is no recourse against it;

f. the action in respect of which such judgment is rendered is not subject to pending legal proceedings in Mexico, among the parties.

g. such judgment does not contravene Mexican law, public policy (*orden público*) of Mexico, international treaties or agreements binding upon Mexico or generally accepted principles of international law;

h. the applicable procedural requirements under the law of Mexico with respect to the enforcement of foreign judgments (including the issuance of letters rogatory by the competent authority of such jurisdiction requesting enforcement of such judgment and the certification of such judgment as authentic by the corresponding authorities of such jurisdiction in accordance with the laws thereof) are complied with;

i. such judgment is obtained in compliance with legal requirements of the jurisdiction of the court rendering such judgment and in compliance with all legal requirements of the corresponding agreement; and

j. any such foreign courts would enforce final judgments issued by the federal or state courts of Mexico as a matter of reciprocity.

Foreign Currency

In the event that proceedings are brought in Mexico seeking performance of payment obligations denominated in a currency other than Mexican Pesos, pursuant to Article 8 of the Mexican Monetary law (*Ley Monetaria de los Estados Unidos Mexicanos*), each of the Mexican subsidiary guarantors may discharge its obligations by paying any sum due in a currency other than Mexican currency, in Mexican currency at the rate of exchange prevailing in Mexico on the date when payment is made.

The Netherlands

Enforceability of Judgments

The Netherlands does not have a treaty with the United States providing for reciprocal recognition and enforcement of judgments (other than arbitration awards) in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any federal or state court in the United States based on civil liability, would not be directly enforceable in the Netherlands. However, if the party in whose favor such final judgment is rendered brings a new suit in a competent court in the Netherlands, such party may submit to a Dutch court the final judgment that has been rendered in the United States. If the Dutch court finds that (a) the jurisdiction of the court in the federal or state court in the United States has been based on grounds which are internationally acceptable, (b) proper legal procedures have been observed, (c) the final judgment is—according to the law of the jurisdiction of the court – formally capable of being enforced, (d) the final the judgment is not irreconcilable with a decision of a Dutch court rendered between the same parties or with an earlier decision of a foreign court rendered between the same parties in proceedings involving the same cause, provided that earlier decision can be recognized in the Netherlands, and (e) the final judgment does not contravene public policy in the Netherlands, the Dutch court will, in principle, give binding effect to the final judgment which has been rendered in the United States.

Russia

The Russian LLC Guarantor is a limited liability company incorporated under the laws of the Russian Federation. The majority of its assets are currently located in Russia. As a result, it may not be possible to effect service of process upon the Russian LLC Guarantor outside of Russia. Enforcing any foreign court judgments or foreign arbitral awards in respect of the Russian LLC Guarantor outside of Russia would also not seem to be an option.

Service of Process

Service of process in respect of a Russian party must be made to the registered address of such party. Appointment by a Russian party of a third-party agent for service of process is not expressly contemplated by Russian law. In the absence of statutory provisions, relevant practice or case law in the Russian Federation in relation to the service of process through a third-party agent appointed by the party on which process is intended to be served, the validity and effectiveness of such a mechanism remain uncertain.

Enforcement of Civil Liabilities

Judgments rendered by a court in any jurisdiction outside the Russian Federation can be recognised by courts in Russia only (i) if an international treaty providing for the recognition and enforcement of judgments in civil cases exists between the Russian Federation and the country where the judgment is rendered, and (or) (ii) a federal law of the Russian Federation provides for the recognition and enforcement of foreign court judgments. No such federal law has been passed and no such treaty exists, for example, between the United Kingdom and the Russian Federation or between the United States and the Russian Federation for the reciprocal enforcement of foreign court judgments. However, most recent case law suggests that recognition and enforcement may be possible even in the absence of an international treaty, bilateral or multilateral, on the grounds of international comity and reciprocity. In the absence of established court practice, it is not clear to what extent this case law can be applicable to the enforcement of English or U.S. court judgments. In addition, Russian courts have limited experience in the enforcement of foreign court judgments. The limitations described above, including the general statutory grounds set out in Russian legislation for the refusal to recognise and enforce foreign court judgments in the Russian Federation, may significantly delay the enforcement of any such judgment, or completely deprive the plaintiff of effective legal recourse.

Russia is a party to the United Nations (New York) Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). Consequently, Russian courts should generally recognise and enforce in Russia an arbitral award from an arbitral tribunal in the United Kingdom, on the basis of the rules of the New York Convention, subject to qualifications provided for in the New York Convention and compliance with Russian procedural regulations and law. However, it may be difficult to enforce arbitral awards in the Russian Federation due to the inexperience of Russian courts in international commercial transactions, official and unofficial political resistance to the enforcement of such awards against Russian companies in favour of foreign investors, and the inability or unwillingness of Russian courts to enforce such awards. Furthermore, any arbitral award obtained pursuant to arbitration proceedings held outside of Russia may be limited by the mandatory provisions of Russian laws

relating to the exclusive jurisdiction of Russian courts and the application of Russian laws with respect to bankruptcy, winding-up or liquidation of Russian companies. Moreover, in the absence of an international treaty or agreement of the parties stating otherwise, any dispute involving persons subject to sanctions (restrictive measures) or caused by sanctions (restrictive measures) is subject to the exclusive jurisdiction of Russian state courts. Exclusive jurisdiction of Russian state courts also applies where the parties have agreed to the resolution of the relevant dispute in arbitration, but such agreement is incapable of being performed due to application to any party of such dispute sanctions (restrictive measures) which hinder such sanctioned party's access to justice.

In addition, the enforcement of the Russian Subsidiary Guarantee may be limited by statutes of limitation, lapse of time, and by laws relating to bankruptcy, liquidation, administration, arrangement, moratorium, reorganization, or other laws relating to or affecting generally the enforcement of the rights of creditors, and claims may be or become subject to set-off or counterclaim.

Singapore

Singapore does not currently have any arrangement with the United States for reciprocal recognition and enforcement of judgments. Singapore's Choice of Courts Agreement Act ("CCAA") came into force on 1 October 2016. Under the CCAA, a foreign judgment may be recognized and enforced by the Singapore courts if the judgment has effect in the state of the court which has given the foreign judgment, provided that the state is a party to the 2005 Hague Convention on Choice of Court Agreements ("State of Origin") and has ratified it, and the judgment is enforceable in the State of Origin. As of the date of this offering memorandum, the United States, while a party to the 2005 Hague Convention on Choice of Court Agreements, has not ratified the same.

Any judgment obtained in the United States would therefore have to be enforced by action at common law in Singapore by bringing a new suit.

Generally, the following requirements must be satisfied:

(i) the judgment is on a matter of substance which is final and conclusive under the laws of New York and the United States;

(ii) the relevant federal or state court has international jurisdiction (as defined by Singapore law); and

(iii) the judgment must be for a fixed and ascertainable sum of money.

In relation to (i), the U.S. judgment must be final and conclusive in that there must be a final determination of rights between the parties. A judgment is not final and conclusive: (a) if it can be re-opened by the same court or if the court can alter its terms or (b) if there is another body, not being the appellate or supervisory body that can override the decision of the said court.

With regards to (ii), this would be satisfied if that party was present, or resident in the United States at the time of commencement of the foreign proceedings, or if that party had submitted or had agreed to submit to the jurisdiction of the U.S. courts.

In respect of (iii), a judgment must be for the payment of a fixed and ascertainable sum of money, that is, the judgment sum can be derived by simple arithmetical calculation, as opposed to a judgment ordering specific relief such as specific performance or an injunction.

The Singapore courts will however not enforce the judgment if the defendant establishes any of the following defenses:

(i) it was procured by fraud;

(ii) its enforcement would be contrary to public policy in Singapore;

(iii) its enforcement would conflict with an earlier judgment in Singapore or an earlier foreign judgment recognized under the Singapore courts;

(iv) the proceedings in which it was obtained were contrary to natural justice; or

(v) if enforcing the foreign judgment will amount to the direct or indirect enforcement of a foreign penal, revenue or other public law.

South Africa

Choice of law

In any proceedings for the enforcement of the obligations of the Issuer under the Notes and/or the obligations of the guarantors under the guarantees, the South African courts will generally give effect to the choice of foreign law as contemplated in the Notes and the guarantees as the governing law thereof.

Jurisdiction

Subject to the paragraph below, the (i) irrevocable submission under the Notes and the guarantees to the jurisdiction of a foreign court, and (ii) agreement not to claim any immunity to which it or its assets may be entitled, is generally legal, valid, binding and enforceable under the laws of the South Africa. The appointment by the guarantors of an agent within the jurisdiction of a foreign court to accept service of process in respect of the jurisdiction of the foreign courts is generally valid and binding under the laws of the South Africa.

Under South African law, a court will not accept a complete ouster of jurisdiction, although generally it recognises party autonomy and gives effect to choice of law and submission to jurisdiction provisions. A South African court will generally assume jurisdiction provided that (in terms of the "doctrine of effectiveness") there are sufficient jurisdictional connecting factors in respect of the matter brought against the defendant. Proceedings before a court of South Africa may be stayed if the subject matter of the proceedings is concurrently before any other court.

Recognition and enforcement of foreign judgments

Subject to the paragraph below, a judgment rendered by any foreign court of competent jurisdiction against the Issuer in respect of any of its obligations under the Notes and/or the guarantors in respect of their obligations under the guarantees will generally be recognised by the courts of South Africa and will generally be enforced in South Africa against the Issuer and/or the guarantors without the re-examination or re-litigation of any of the matters which are the subject of that judgment.

In cases connected with the mining, production, importation, exportation, refinement, possession, use or sale of or ownership to any matter or material, of whatever nature, whether within, outside, into or from South Africa, the permission of the South African Minister of Trade and Industry is required in terms of the Protection of Businesses Act, 1978 (the "South African Protection of Businesses Act"), before a South African court will give effect to a foreign judgment relating to these matters. In addition, irrespective of whether or not permission from the South African Minister of Trade and Industry is required to enforce a foreign judgment, a South African court will not, in terms of the South African Protection of Businesses Act, enforce a foreign judgment for multiple or punitive damages.

Subject to the above qualifications, a judgment obtained in a court of competent jurisdiction outside South Africa will be recognised and enforced in accordance with the procedures ordinarily applicable under South African law for the recognition and enforcement of foreign judgments; provided (i) the foreign judgment was final and conclusive and is not superannuated, (ii) the recognition and enforcement of the foreign judgment by the South African courts is not contrary to South African public policy and (iii) the foreign court in question had jurisdiction and international competence according to the applicable rules recognised by the laws of South Africa. The principal requirements in regard to South African public policy are that the foreign judgment must not have been obtained by fraudulent or improper means or have been given contrary to natural justice, and must not involve the enforcement of foreign revenue or penal law.

Sweden

It is not established by Swedish judicial precedent or otherwise by Swedish law that a power of attorney or a mandate of agency, including the appointment of a service of process agent, can be made irrevocable and therefore any powers of attorney or mandates of agency issued by a Swedish party can be revoked and will terminate by operation of law and without notice at the bankruptcy or temporal demise of the Swedish party giving such powers.

Pursuant to the provisions of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "2012 Brussels Regulation"), a judgment entered against a company incorporated in Sweden (a "Swedish Party") in the courts of a Member State (as defined therein, i.e. all Member States of the European Union) and which is enforceable in such a Member State, will be directly enforceable in Sweden upon the satisfaction of the formal requirements of the 2012 Brussels Regulation without any declaration of enforceability being required. It should be noted, however, that a party may apply for refusal of recognition or refusal of enforcement, as applicable, in accordance with the 2012 Brussels Regulation. Such an application shall be submitted to the relevant district court (Sw. *tingsrätt*).

Pursuant to the 2012 Brussels Regulation, if a judgment contains a measure or an order which is not known under the laws of the Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought, that measure or order shall, to the extent possible, be adapted to a measure or order known under the laws of that Member State which has equivalent effects attached to it and which pursues similar aims and interests.

Pursuant to the provisions of the 2007 Lugano Convention on the Recognition of Judgments in Civil and Commercial Matters (the "Lugano Convention"), a judgment entered against a Swedish Party in the courts of a Contracting Party (as defined in the Lugano Convention) and which is enforceable in such a Contracting Party, will, provided that a motion for enforcement has been filed and

granted with the relevant district court, be enforceable in Sweden if it meets the formal requirements under the Lugano Convention. Judgments entered against any Swedish party in the courts of a state which is not a member state under the terms of the 2012 Brussels Regulation or a contracting state under the terms of the Lugano Convention, *e.g.*, the United States of America, would not be recognized or enforceable in Sweden as a matter of right without retrial on its merits. Therefore, a final judgment for payment of money rendered by a federal or state court in the United States in civil and commercial matters, whether or not predicated solely upon U.S. federal or state securities laws, or by the courts of any other such state, would not be directly enforceable, either in whole or in part, in Sweden.

In order to enforce any such judgement in Sweden, proceedings must therefore be initiated by way of civil law action on the judgment debt before a court of competent jurisdiction in Sweden, or an administrative tribunal or executive or other public authority of the Kingdom of Sweden. In such an action, a judgment rendered by any federal or state court in the United States, or by the courts of any other such state, may be regarded as evidence of, for example, factual circumstances or the content of U.S. law or other relevant foreign law but the competent Swedish authority may also choose to rehear the dispute ab initio.

Any legal proceedings in the courts of Sweden will be conducted in Swedish and a court or enforcement authority in Sweden may require, as a further condition for admissibility and/or enforceability the translation into Swedish of any relevant document, and assistance from Swedish authorities in the service of process in connection with foreign proceedings might require the observance of certain procedural and other regulations.

Switzerland

Our Swiss counsel has advised us that a U.S. judgment may be recognized and enforced upon request by the courts of Switzerland if certain requirements of the Swiss Federal Act on Private International Law are met, in particular, that:

- the foreign court had jurisdiction;
- the judgment of such foreign court has become final and is no longer subject to ordinary appeal;
- the recognition of the foreign judgment is not manifestly contrary to the public policy or the law in Switzerland;
- the counterparty has been properly served with process according to the law of the state of his/her/its domicile or ordinary residence (if in Switzerland, through judicial aid granted by the Swiss authorities) or the counterparty has unconditionally joined the proceedings;
- the proceedings leading to the judgment have respected the principles of a fair trial (as understood in Switzerland) and, in particular, the counterparty has been granted the right to be heard and the possibility to properly defend his/her/its case; and
- no action between the same parties and on the same subject matter has been commenced or decided first in Swiss court and no judgment between the same parties and on the same subject matter has been first rendered by a foreign court, which judgment may be recognized in Switzerland.

Subject to the foregoing, purchasers of the Notes may be able to enforce in Switzerland judgments in civil and commercial matters obtained from United States federal or state courts; however, we cannot assure you that those judgments will be enforceable. It is doubtful whether a Swiss court would accept jurisdiction and impose civil liability if proceedings were commenced in Switzerland predicated solely upon U.S. federal or state securities laws. In addition, in an action brought in a Swiss court on the basis of U.S. federal or state securities laws, the Swiss courts may not have the requisite power to grant the remedies sought. Awards of punitive damages awarded in original actions outside Switzerland may also not be enforceable in Switzerland.

Subject to the foregoing, investors may be able to enforce in England or Wales judgments in civil and commercial matters that have been obtained from U.S. federal or state courts. However, we cannot assure you that those judgments will be recognized or enforceable in England and Wales. In addition, it is questionable whether an English court would accept jurisdiction and impose civil liability if the original was commenced in England and Wales, instead of the United States, and predicated solely upon U.S. federal securities laws.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of certain U.S. federal income tax considerations relevant to the purchase, ownership and disposition of the Notes issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or foreign tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the "IRS"), in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a holder of the Notes. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the purchase, ownership and disposition of the Notes.

This discussion is limited to holders who hold the Notes as "capital assets" within the meaning of Section 1221 of the Code (generally, property held for investment). In addition, this discussion is limited to persons purchasing the Notes for cash at original issue and at their original "issue price" within the meaning of Section 1273 of the Code (i.e., the first price at which a substantial amount of the Notes is sold to the public for cash). This discussion does not address all U.S. federal income tax consequences relevant to a holder's particular circumstances, including the impact of the Medicare contribution tax on net investment income and the alternative minimum tax. In addition, it does not address consequences relevant to holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- U.S. Holders (as defined below) whose functional currency is not the U.S. dollar;
- persons holding the Notes as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- real estate investment trusts or regulated investment companies;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- S corporations, partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- holders of the Redeemed Notes whose interests in the Redeemed Notes are redeemed in connection with this offering;
- persons deemed to sell the Notes under the constructive sale provisions of the Code; and
- persons subject to special tax accounting rules as a result of any item of gross income with respect to the Notes being taken into account in an applicable financial statement.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds the Notes, the tax treatment of an owner of such entity or arrangement will depend on the status of such owner, the activities of the entity or arrangement and certain determinations made at the owner level. Accordingly, entities or arrangements treated as partnerships for U.S. federal income tax purposes that hold the Notes and the owners in such entities or arrangements should consult their tax advisors regarding the U.S. federal income tax consequences to them.

THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE NOTES ARISING UNDER OTHER U.S. FEDERAL TAX LAWS (INCLUDING ESTATE AND GIFT TAX LAWS), UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

Tax Considerations Applicable to U.S. Holders

Definition of a U.S. Holder

For purposes of this discussion, a "U.S. Holder" is a beneficial owner of a Note that, for U.S. federal income tax purposes, is or is treated as:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

Payments of Stated Interest

Stated interest on a Note generally will be taxable to a U.S. Holder as ordinary income at the time such interest is received or accrued, in accordance with such U.S. Holder's method of tax accounting for U.S. federal income tax purposes.

Original Issue Discount

The Notes offered hereby may be issued with OID for U.S. federal income tax purposes. Generally, a debt instrument will be issued with OID if the excess of the debt instrument's stated redemption price at maturity (which, in the case of the Notes would equal the Notes' stated principal amount) over its "issue price" (as defined above) is equal to or greater than a statutory de minimis amount (generally, one-fourth of one percent of the Note's stated redemption price at maturity multiplied by the number of complete years from its issue date to maturity). In the event the Notes offered hereby are issued with OID, U.S. Holders will generally be required to include such OID in gross income (as ordinary income) for U.S. federal income tax purposes on an annual basis under a constant yield accrual method regardless of their regular method of tax accounting. As a result, U.S. Holders will include any OID in income in advance of the receipt of cash attributable to such income.

The amount of OID includible in income by a U.S. Holder of a Note is the sum of the "daily portions" of OID with respect to the Note for each day during the taxable year or portion thereof in which such U.S. Holder holds such Note ("accrued OID"). A daily portion is determined by allocating to each day in any "accrual period" a pro rata portion of the OID that accrued in such period. The "accrual period" of a Note may be of any length and may vary in length over the term of the Note, provided that each accrual period is no longer than one year and each scheduled payment of principal or stated interest occurs either on the first or last day of an accrual period. The amount of OID that accrues with respect to any accrual period is the excess of (i) the product of the Note's "adjusted issue price" at the beginning of such accrual period and its yield to maturity, determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of such period, over (ii) the amount of stated interest allocable to such accrual period.

OID allocable to a final accrual period is the difference between the amount payable at maturity, other than a payment of stated interest, and the adjusted issue price at the beginning of the final accrual period. Special rules will apply for calculating OID for an initial short accrual period. The "adjusted issue price" of a Note at the beginning of any accrual period is equal to its issue price increased by the accrued OID for each prior accrual period. Under these rules, a U.S. Holder will have to include in income increasingly greater amounts of OID in successive accrual periods.

A U.S. Holder may elect to treat all interest on any Note as OID and calculate the amount includible in gross income under the constant yield method described above. The election is to be made for the taxable year in which a U.S. Holder acquired the Note and may not be revoked without the consent of the IRS. U.S. Holders should consult with your own tax advisors about this election.

Sale or Other Taxable Disposition

A U.S. Holder will recognize gain or loss on the sale, exchange, redemption, retirement or other taxable disposition of a Note. The amount of such gain or loss will generally equal the difference between the amount received for the Note in cash or other property valued at fair market value (less amounts attributable to any accrued but unpaid interest, which will be taxable as interest to the extent not previously included in income) and the U.S. Holder's adjusted tax basis in the Note. A U.S. Holder's adjusted tax basis in a Note generally will be equal to the amount the U.S. Holder paid for the Note, increased by any OID previously included in income with respect to the Note. Any gain or loss will be capital gain or loss, and will be long-term capital gain or loss if the U.S. Holder has held the Note for more than one year at the time of sale or other taxable disposition. Otherwise, such gain or loss will be short-term capital gain or loss. Long-term capital gains recognized by certain non-corporate U.S. Holders, including individuals, generally will be taxable at a reduced rate. The deductibility of capital losses is subject to limitations.

Information Reporting and Backup Withholding

A U.S. Holder may be subject to information reporting and backup withholding when such holder receives payments on a Note, including any accrued OID, or receives proceeds from the sale or other taxable disposition of a Note (including a redemption or retirement of a Note). Certain U.S. Holders are exempt from backup withholding, including corporations and certain tax-exempt organizations. A U.S. Holder will be subject to backup withholding if such holder is not otherwise exempt and:

- the holder fails to furnish the holder's taxpayer identification number, which for an individual is ordinarily his or her social security number;
- the holder furnishes an incorrect taxpayer identification number;
- the applicable withholding agent is notified by the IRS that the holder previously failed to properly report payments of interest or dividends; or
- the holder fails to certify under penalties of perjury that the holder has furnished a correct taxpayer identification number and that the IRS has not notified the holder that the holder is subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. Holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS. U.S. Holders should consult their tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption.

Tax Considerations Applicable to Non-U.S. Holders

Definition of a Non-U.S. Holder

For purposes of this discussion, a "Non-U.S. Holder" is a beneficial owner of a Note that is neither a U.S. Holder nor an entity treated as a partnership for U.S. federal income tax purposes.

Payments of Interest

Interest, including any accrued OID, paid on a Note to a Non-U.S. Holder that is not effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States generally will not be subject to U.S. federal income tax, or withholding tax of 30% (or such lower rate specified by an applicable income tax treaty), provided that:

- the Non-U.S. Holder does not, actually or constructively, own 10% or more of the total combined voting power of all classes of the Issuer's voting stock;
- the Non-U.S. Holder is not a controlled foreign corporation related to the Issuer through actual or constructive stock ownership; and
- either (1) the Non-U.S. Holder certifies in a statement provided to the applicable withholding agent under penalties of perjury that it is not a United States person and provides its name and address; (2) a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business and holds the Note on behalf of the Non-U.S. Holder certifies to the applicable withholding agent under penalties of perjury that it, or the financial institution between it and the Non-U.S. Holder, has received from the Non-U.S. Holder a statement under penalties of perjury that such holder is not a United States person and provides a copy of such statement to the applicable withholding agent; or (3) the Non-U.S. Holder holds its Note directly through a "qualified intermediary" (within the meaning of applicable Treasury Regulations) and certain conditions are satisfied.

If a Non-U.S. Holder does not satisfy the requirements above, such Non-U.S. Holder may be entitled to a reduction in or an exemption from withholding on such interest, including any accrued OID, as a result of an applicable tax treaty. To claim such entitlement, the Non-U.S. Holder must provide the applicable withholding agent with a properly executed IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) claiming a reduction in or exemption from withholding tax under the benefit of an income tax treaty between the United States and the country in which the Non-U.S. Holder resides or is established.

If interest, including any accrued OID, paid to a Non-U.S. Holder is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such interest, including any accrued OID, is attributable), the Non-U.S. Holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that interest, including any accrued OID, paid on a Note is not subject to withholding tax because it is effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States.

Any such effectively connected interest, including any accrued OID, generally will be subject to U.S. federal income tax at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected interest, including any accrued OID, as adjusted for certain items.

The certifications described above must be provided to the applicable withholding agent prior to the payment of interest, including any accrued OID, and must be updated periodically. Non-U.S. Holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

Sale or Other Taxable Disposition

A Non-U.S. Holder will not be subject to U.S. federal income tax on any gain realized upon the sale, exchange, redemption, retirement or other taxable disposition of a Note (such amount excludes any amount allocable to accrued and unpaid interest, which generally will be treated as interest and may be subject to the rules discussed above in "—Payments of Interest") unless:

- the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable); or

- the Non-U.S. Holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a foreign corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

Non-U.S. Holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Payments of interest, including any accrued OID, generally will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder certifies its non-U.S. status as described above under "—Payments of Interest." However, information returns are required to be filed with the IRS in connection with any interest, including any accrued OID, paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of a Note (including a retirement or redemption of the Note) within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the statement described above and does not have actual knowledge or reason to know that such holder is a United States person or the holder otherwise establishes an exemption. Proceeds of a disposition of a Note paid outside the United States and conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such Sections commonly referred to as the Foreign Account Tax Compliance Act, or "FATCA") on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on payments of interest, including any accrued OID, on, or (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, a Note paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United

States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of interest, including any accrued OID, on a Note. While withholding under FATCA would have applied also to payments of gross proceeds from the sale or other disposition of a Note on or after January 1, 2019, proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on these proposed Treasury Regulations until final Treasury Regulations are issued.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in the Notes.

CERTAIN ERISA CONSIDERATIONS

The following is a summary of certain considerations associated with the purchase of the Notes by employee benefit plans that are subject to Title I of the U.S. 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 Code or provisions under any other federal, state, local, non-U.S. or other laws 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" 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 engages in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. In addition, the fiduciary of the ERISA Plan that engages 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 the Notes by an ERISA Plan with respect to which an issuer, an initial purchaser or a guarantor is considered a party in interest or a 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 U.S. Department of Labor has issued prohibited transaction class exemptions, or "PTCEs," that may provide exemptive relief for direct or indirect prohibited transactions resulting from the sale, purchase or 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, although there can be no assurance that all of the conditions of any such exemptions will be satisfied.

Governmental plans, non-U.S. plans and certain church plans, while not subject to the prohibited transaction provisions of ERISA and Section 4975 of the Code, may nevertheless be subject to Similar Laws which may affect their investment in the Notes. Any fiduciary of a governmental, non U.S. or such a church plan considering an investment in the Notes offered hereby should consult with its counsel before purchasing Notes to consider the applicable fiduciary standards and to determine the need for, and, if necessary, the availability of, any exemptive relief under any applicable Similar Laws.

Because of the foregoing, the Notes offered hereby 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 the acquisition and holding of a Note offered hereby, or any interest in a Note offered hereby, each person who authorizes such acquisition and holding and each subsequent transferee will be deemed to have represented and warranted that either (i) no portion of the assets used to acquire or hold the Note offered hereby, or any interest therein, constitutes assets of any Plan or (ii) the acquisition 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 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 offered hereby (and holding the Notes offered hereby) 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 investment and whether an exemption would be applicable to the purchase and holding of the Notes offered hereby.

Purchasers of the Notes have the exclusive responsibility for ensuring that their purchase and holding of the Notes offered hereby complies with the fiduciary responsibility rules of ERISA and does not violate the prohibited transaction rules of ERISA, the Code or applicable Similar Laws. We make no representation as to whether an investment in the Notes offered hereby is appropriate for any Plan in general or whether such investment is appropriate for any particular plan or arrangement.

BOOK-ENTRY SETTLEMENT AND CLEARANCE

The Notes are being offered and sold to persons reasonably believed to be qualified institutional buyers in reliance on Rule 144A ("Rule 144A Notes"). The Notes also may be offered and sold in offshore transactions to non-U.S. persons in reliance on Regulation S ("Regulation S") of the Securities Act ("Regulation S Notes"). Except as set forth below, the Notes will be issued in registered, global form in minimum denominations of $150,000 and integral multiples of $1,000 in excess thereof. The Notes will be issued at the closing of this offering only against payment in immediately available funds.

Rule 144A Notes initially will be represented by one or more Notes in registered, global form without interest coupons (collectively, the "Rule 144A Global Notes"). Regulation S Notes initially will be represented by one or more temporary Notes in registered, global form without interest coupons (collectively, the "Regulation S Temporary Global Notes"). Any Notes sold in the secondary market to institutional accredited investors will be represented by one or more Notes in registered, global form without interest coupons (collectively, the "IAI Global Notes"). The Rule 144A Global Notes, the Regulation S Temporary Global Notes and the IAI Global Notes will be deposited upon issuance with the Trustee, as custodian for DTC, and registered in the name of DTC or its nominee, in each case, for credit to an account of a direct or indirect participant in DTC as described below. Through and including the 40th day after the later of the commencement of this offering and the closing of this offering (such period through and including such 40th day, the "Restricted Period"), beneficial interests in the Regulation S Temporary Global Notes may be held only through the Euroclear System ("Euroclear") and Clearstream Banking, S.A. ("Clearstream") (as indirect participants in DTC), unless transferred to a person that takes delivery through a Rule 144A Global Note in accordance with the certification requirements described below. Within a reasonable time period after the expiration of the Restricted Period, the Regulation S Temporary Global Notes will be exchanged for one or more permanent Notes in registered, global form without interest coupons (collectively, the "Regulation S Permanent Global Notes" and, together with the Regulation S Temporary Global Notes, the "Regulation S Global Notes"; the Regulation S Global Notes, the Rule 144A Global Notes and the IAI Global Notes, collectively, the "Global Notes") upon delivery to DTC of certification of compliance with the transfer restrictions applicable to the Notes and pursuant to Regulation S as provided in the indenture. Beneficial interests in the Rule 144A Global Notes may not be exchanged for beneficial interests in the Regulation S Global Notes at any time except in the limited circumstances described below. See "—Exchanges between Regulation S Notes and Rule 144A Notes."

Except as set forth below, the Global Notes may be transferred, in whole and not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may not be exchanged for definitive Notes in registered certificated form ("Certificated Notes") except in the limited circumstances described below. See "—Exchange of Global Notes for Certificated Notes." Except in the limited circumstances described below, owners of beneficial interests in the Global Notes will not be entitled to receive physical delivery of Notes in certificated form.

Rule 144A Notes (including beneficial interests in the Rule 144A Global Notes) will be subject to certain restrictions on transfer and will bear a restrictive legend as described under "Transfer Restrictions." Regulation S Notes will also bear the legend as described under "Transfer Restrictions." In addition, transfers of beneficial interests in the Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including, if applicable, those of Euroclear and Clearstream), which may change from time to time. See "Plan of Distribution."

Depositary Procedures

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

We understand that DTC is a limited-purpose trust company created to hold securities for its participating organizations (collectively, the "Participants") and to facilitate the clearance and settlement of transactions in those securities between the Participants through electronic book-entry changes in accounts of the Participants.

The Participants include securities brokers and dealers (including the initial purchasers), banks, trust companies, clearing corporations and certain other organizations. Access to DTC's system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the "Indirect Participants"). Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Participants or the Indirect Participants. The ownership interests in, and transfers of ownership interests in, each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants.

We also understand that, pursuant to procedures established by DTC:

(1) upon deposit of the Global Notes, DTC will credit the accounts of the Participants designated by the initial purchasers with portions of the principal amount of the Global Notes; and

(2) ownership of these interests in the Global Notes will be shown on, and the transfer of ownership of these interests will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interest in the Global Notes).

Investors in the Rule 144A Global Notes who are Participants may hold their interests therein directly through DTC. Investors in the Rule 144A Global Notes who are not Participants may hold their interests therein indirectly through organizations (including Euroclear and Clearstream) which are Participants. Investors in the Regulation S Global Notes must initially hold their interests therein through Euroclear or Clearstream, if they are participants in such systems, or indirectly through organizations that are participants. After the expiration of the Restricted Period (but not earlier), investors may also hold interests in the Regulation S Global Notes through Participants in the DTC system other than Euroclear and Clearstream. Euroclear and Clearstream will hold interests in the Regulation S Global Notes on behalf of their participants through customers' securities accounts in their respective names on the books of their respective depositories, which are Euroclear Bank S.A./N.V., as operator of Euroclear, and Citibank, N.A., as operator of Clearstream. All interests in a Global Note, including those held through Euroclear or Clearstream, may be subject to the procedures and requirements of DTC. Those interests held through Euroclear or Clearstream may also be subject to the procedures and requirements of such systems. The laws of some states require that certain persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer beneficial interests in a Global Note to such persons will be limited to that extent. Because DTC can act only on behalf of the Participants, which in turn act on behalf of the Indirect Participants, the ability of a person having beneficial interests in a Global Note to pledge such interests to persons that do not participate in the DTC system, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests.

Except as described below, owners of interests in the Global Notes will not have Notes registered in their names, will not receive physical delivery of Notes in certificated form and will not be considered the registered owners or "holders" thereof under the Indenture for any purpose.

Payments in respect of the principal of, and interest and premium, if any, on, a Global Note registered in the name of DTC or its nominee will be payable to DTC in its capacity as the registered holder under the Indenture. Under the terms of the Indenture, we and the Trustee will treat the persons in whose names the Notes, including the Global Notes, are registered as the owners of the Notes for the purpose of receiving payments and for all other purposes. Consequently, none of us, the Trustee or any agent of us or the Trustee has or will have any responsibility or liability for:

(1) any aspect of DTC's records or any Participant's or Indirect Participant's records relating to or payments made on account of beneficial ownership interests in the Global Notes or for maintaining, supervising or reviewing any of DTC's records or any Participant's or Indirect Participant's records relating to the beneficial ownership interests in the Global Notes; or

(2) any other matter relating to the actions and practices of DTC or any of the Participants or Indirect Participants.

We understand that DTC's current practice, upon receipt of any payment in respect of securities such as the Notes (including principal and interest), is to credit the accounts of the relevant Participants with the payment on the payment date unless DTC has reason to believe that it will not receive payment on such payment date. Each relevant Participant is credited with an amount proportionate to its beneficial ownership of an interest in the principal amount of the relevant security as shown on the records of DTC. Payments by the Participants and the Indirect Participants to the beneficial owners of Notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the Trustee or us. Neither we nor the Trustee will be liable for any delay by DTC or any of the Participants or the Indirect Participants in identifying the beneficial owners of the Notes, and we and the Trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Subject to the transfer restrictions set forth under "Transfer Restrictions," transfers between the Participants will be effected in accordance with DTC's procedures, and will be settled in same-day funds, and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Subject to compliance with the transfer restrictions applicable to the Notes described herein, cross-market transfers between the Participants, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC's rules on behalf of Euroclear or Clearstream, as the case may be, by their respective depositaries; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to

its respective depositary to take action to effect final settlement on its behalf by delivering or receiving interests in the relevant Global Note in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

We understand that DTC will take any action permitted to be taken by a holder of Notes only at the direction of one or more Participants to whose account DTC has credited the interests in the Global Notes and only in respect of such portion of the aggregate principal amount of the Notes as to which such Participant or Participants has or have given such direction. However, if there is an Event of Default under the Notes, DTC reserves the right to exchange the Global Notes for legended Notes in certificated form, and to distribute such Notes to its Participants.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures to facilitate transfers of interests in the Rule 144A Global Notes and the Regulation S Global Notes among participants in DTC, Euroclear and Clearstream, they are under no obligation to perform or to continue to perform such procedures, and may discontinue such procedures at any time. None of us, the Trustee and any of our or their respective agents will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

Exchange of Global Notes for Certificated Notes

A Global Note is exchangeable for Certificated Notes if:

(1) DTC (a) notifies us that it is unwilling or unable to continue as depositary for the Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act and, in either case, the Issuer fails to appoint a successor depositary;

(2) we, at our option, notify the Trustee in writing that we have elected to cause the issuance of the Certificated Notes; *provided* that in no event shall the Regulation S Temporary Global Note be exchanged for Certificated Notes prior to (a) the expiration of the Restricted Period and (b) the receipt of any certificates required under the provisions of Regulation S; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes under the Indenture and DTC shall have requested the issuance of Certificated Notes.

In addition, beneficial interests in a Global Note may be exchanged for Certificated Notes upon prior written notice given to the Trustee by or on behalf of DTC in accordance with the indenture. In all cases, Certificated Notes delivered in exchange for any Global Note or beneficial interests in Global Notes will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depositary (in accordance with its customary procedures) and will bear the applicable restrictive legend referred to in "Transfer restrictions," unless that legend is not required by applicable law. See "Plan of Distribution."

Exchange of Certificated Notes for Global Notes

Certificated Notes may not be exchanged for beneficial interests in any Global Note unless the transferor first delivers to the Trustee a written certificate (in the form provided in the indenture) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Notes. See "Transfer Restrictions."

Exchanges between Regulation S Notes and Rule 144A Notes

Prior to the expiration of the Restricted Period, beneficial interests in the Regulation S Global Note may be exchanged for beneficial interests in the Rule 144A Global Note only if:

(1) such exchange occurs in connection with a transfer of the Notes pursuant to Rule 144A; and

(2) the transferor first delivers to the Trustee a written certificate (in the form provided in the Indenture) to the effect that the Notes are being transferred to a person:

  (a) who the transferor reasonably believes to be a qualified institutional buyer within the meaning of Rule 144A;

  (b) who is purchasing for its own account or the account of a qualified institutional buyer in a transaction meeting the requirements of Rule 144A; and

  (c) in accordance with all applicable securities laws of the states of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Global Note may be transferred to a person who takes delivery in the form of an interest in the Regulation S Global Note, whether before or after the expiration of the Restricted Period, only if the transferor first delivers to the

Trustee a written certificate (in the form provided in the indenture) to the effect that such transfer is being made in accordance with Rule 903 or 904 of Regulation S or in accordance with Rule 144 (if available) and that, if such transfer occurs prior to the expiration of the Restricted Period, the interest transferred will be held immediately thereafter through Euroclear or Clearstream.

Transfers involving exchanges of beneficial interests between the Regulation S Global Notes and the Rule 144A Global Notes will be effected by DTC by means of an instruction originated by the Participants through the DTC Deposit/Withdraw at Custodian system. Accordingly, in connection with any such transfer, appropriate adjustments will be made to reflect a decrease in the principal amount of the Regulation S Global Note and a corresponding increase in the principal amount of the Rule 144A Global Note or vice versa, as applicable. Any beneficial interest in one of the Global Notes that is transferred to a person who takes delivery in the form of an interest in the other Global Note will, upon transfer, cease to be an interest in such Global Note and will become an interest in the other Global Note and, accordingly, will thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interests in such other Global Note for so long as it remains such an interest. The policies and practices of DTC may prohibit transfers of beneficial interests in the Regulation S Global Note prior to the expiration of the Restricted Period.

Certifications by Holders of the Regulation S Temporary Global Notes

A holder of a beneficial interest in the Regulation S Temporary Global Notes must provide Euroclear or Clearstream, as the case may be, with a certificate in the form required by the indenture certifying that the beneficial owner of the interest in the Regulation S Temporary Global Note is either a non-U.S. person or a U.S. person that has purchased such interest in a transaction that is exempt from the registration requirements under the Securities Act, and Euroclear or Clearstream, as the case may be, must provide to the Trustee (or the paying agent if other than the Trustee) a certificate in the form required by the indenture, prior to any exchange of such beneficial interest for a beneficial interest in the Regulation S Permanent Global Notes.

Same Day Settlement and Payment

We will make payments in respect of the Notes represented by the Global Notes (including principal, premium, if any, and interest) by wire transfer of immediately available funds to the accounts specified by DTC or its nominee. We will make all payments of principal, interest and premium, if any, with respect to Certificated Notes by wire transfer of immediately available funds to the accounts specified by the holders of the Certificated Notes or, if no such account is specified, by mailing a check to each such holder's registered address. The Notes represented by the Global Notes are expected to be eligible to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such Notes will, therefore, be required by DTC to be settled in immediately available funds. We expect that secondary trading in any Certificated Notes will also be settled in immediately available funds.

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

TRANSFER RESTRICTIONS

The Notes are subject to restrictions on transfer as summarized below. By purchasing Notes, you will be deemed to have made the following acknowledgments, representations to and agreements with us and the initial purchasers:

(1) You acknowledge that:

- the Notes and the guarantees have not been, and will not be, registered under the Securities Act or any other securities laws and are being offered for resale in transactions that do not require registration under the Securities Act or any other securities laws; and
- unless so registered, the Notes and the guarantees may not be offered, sold or otherwise transferred except under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act or any other applicable securities laws, and in each case in compliance with the conditions for transfer set forth in paragraph 5 below.

(2) You acknowledge that this offering memorandum relates to an offering that is exempt from registration under the Securities Act and may not comply in important respects with SEC rules that would apply to an offering document relating to a public offering of securities.

(3) You represent that you are not an affiliate (as defined in Rule 144 under the Securities Act) of ours, that you are not acting on our behalf and that either:

- you are a qualified institutional buyer (as defined in Rule 144A) and are purchasing Notes for your own account or for the account of another qualified institutional buyer, and you are aware that the initial purchasers are selling the Notes to you in reliance on Rule 144A; or
- you are not a U.S. person (as defined in Regulation S) or purchasing for the account or benefit of a U.S. person, other than a distributor, and you are purchasing Notes in an offshore transaction in accordance with Regulation S.

(4) You acknowledge that neither we nor the initial purchasers nor any person representing us or the initial purchasers have made any representation to you with respect to us or the offering of the Notes, other than the information contained in this offering memorandum. Accordingly, you acknowledge that no representation or warranty is made by the initial purchasers as to the accuracy or completeness of such materials. You represent that you are relying only on this offering memorandum in making your investment decision with respect to the Notes. You agree that you have had access to such financial and other information concerning us and the Notes as you have deemed necessary in connection with your decision to purchase Notes, including an opportunity to ask questions of and request information from us.

(5) You represent that you are purchasing Notes for your own account, or for one or more investor accounts for which you are acting as a fiduciary or agent, in each case not with a view to, or for offer or sale in connection with, any distribution of the Notes in violation of the Securities Act, subject to any requirement of law that the disposition of your property or the property of that investor account or accounts be at all times within your or their control and subject to your or their ability to resell the Notes pursuant to Rule 144A or any other available exemption from registration under the Securities Act. You agree on your own behalf and on behalf of any investor account for which you are purchasing Notes, and each subsequent holder of the Notes by its acceptance of the Notes will agree, that until the end of the Resale Restriction Period (as defined below), the Notes may be offered, sold or otherwise transferred only:

(a) to us or any of our subsidiaries;

(b) under a registration statement that has been declared effective under the Securities Act;

(c) for so long as the Notes are eligible for resale under Rule 144A, to a person the seller reasonably believes is a qualified institutional buyer that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A;

(d) through offers and sales to non-U.S. persons that occur outside the United States within the meaning of Regulation S under the Securities Act;

(e) to an institutional accredited investor (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) that is not a qualified institutional buyer and that is purchasing for its own account or for the account of another institutional accredited investor, in each case in a minimum principal amount of Notes offered hereby of $250,000; or

(f) under the exemption from registration provided by Rule 144 under the Securities Act (if available) or any other available exemption from the registration requirements of the Securities Act,

subject in each of the above cases to any requirement of law that the disposition of the seller's property or the property of an investor account or accounts be at all times within the seller's or account's control and to compliance with any

applicable state securities laws. You will notify any subsequent purchaser, and each subsequent purchaser is required to notify any subsequent purchaser from it, of the resale restrictions set forth in the preceding sentence.

You also acknowledge that to the extent that you hold the Notes through an interest in a global note, the Resale Restriction Period (as defined below) may continue until one year after the Issuer, or any affiliate of the Issuer, was the owner of such Note or an interest in such global note, and so may continue indefinitely.

(6) You also acknowledge that:

- the above restrictions on resale will apply from the issue date of the Notes until the date that is one year (in the case of Rule 144A Notes) after the later of the issue date of the Notes, the issue date of the issuance of any additional Notes and the last date that we or any of our affiliates was the owner of the Notes or any predecessor of the Notes or 40 days (in the case of Regulation S Notes) after the later of the issue date of the Notes offered hereby and when the Notes or any predecessor of the Notes are first offered to persons other than distributors (as defined in Rule 902 of Regulation S) in reliance on Regulation S (the "Resale Restriction Period"), and will not apply after the applicable Resale Restriction Period ends;
- if a holder of Notes offered hereby proposes to resell or transfer Notes offered hereby under clause (e) above before the applicable Resale Restriction Period ends, the seller must deliver to us and the Trustee a letter from the purchaser in the form set forth in the Indenture, which must provide, among other things, that the purchaser is an institutional accredited investor that is acquiring the Notes not for distribution in violation of the Securities Act;
- we and the Trustee reserve the right to require in connection with any offer, sale or other transfer of Notes under clauses (c), (d), (e) and (f) in paragraph 5 above the delivery of an opinion of counsel, certifications and/or other information satisfactory to us and the Trustee; and
- each Note will contain a legend substantially to the following effect:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS [*IN THE CASE OF RULE 144A NOTES:* ONE YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY),] [*IN THE CASE OF REGULATION S NOTES:* 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S], ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF SECURITIES OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. [*IN THE CASE OF REGULATION S NOTES*: BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE

ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.]

BY ITS ACQUISITION OF THIS SECURITY, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (2) THE ACQUISITION AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

- If the Notes are issued with OID, they will bear the following additional legend:

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE.

Holders should contact our at for information regarding the amount of any OID, the issue price, the issue date and the yield to maturity relating to the Notes offered hereby.

(7) With respect to the acquisition, holding and disposition of the Notes, or any interest therein, you represent and warrant that (A) either (i) you are not, and are not acting on behalf of (and for so long as you hold such Notes or any interest therein will not be, and will not be acting on behalf of), (I) an employee benefit plan (as defined in Section 3(3) of ERISA), that is subject to the provisions of part 4 of subtitle B of Title I of ERISA, (II) an individual retirement account or other plan or arrangement to which Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), applies, or (III) any entity whose underlying assets include "plan assets" (within the meaning of 29 C.F.R. Section 2510.3–101 (as modified by Section 3(42) of ERISA)) of any such plan, account or arrangement by reason of any such plan's investment in such entity (each of (I), (II) and (III), a "Benefit Plan") or (IV) a governmental, church or non-U.S. plan which is subject to any federal, state, local, non-U.S. or other laws or regulations that are substantially similar to the fiduciary responsibility or prohibited transaction provisions of ERISA or the provisions of Section 4975 of the Code ("Similar Laws"), and no part of the assets to be used by you to acquire or hold such Notes or any interest therein constitutes the assets of any Benefit Plan or any such governmental, church or non-U.S. plan, or (ii) your acquisition, holding and disposition of such Note, or any interest therein, does not and will not constitute or otherwise result in a non-exempt prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code (or, in the case of a governmental, church or non-U.S. plan, a non-exempt violation of any Similar Laws) and neither we nor any of the initial purchasers or our or their respective affiliates is acting as a fiduciary with respect thereto; and (B) you will not sell or otherwise transfer such Notes or any interest therein otherwise than to a purchaser or transferee that is deemed to make these same representations, warranties and agreements with respect to its purchase and holding of such Note or any interest therein.

(8) You acknowledge that the Issuer, the initial purchasers and others will rely upon the truth and accuracy of the above acknowledgments, representations and agreements. You agree that if any of the acknowledgments, representations or agreements you are deemed to have made by your purchase of Notes is no longer accurate, you will promptly notify us and the initial purchasers. If you are purchasing any Notes as a fiduciary or agent for one or more investor accounts, you represent that you have sole investment discretion with respect to each of those accounts and that you have full power to make the above acknowledgments, representations and agreements on behalf of each account.

PLAN OF DISTRIBUTION

Under the terms and subject to the conditions contained in a purchase agreement, dated the date of this offering memorandum, we have agreed to sell to the initial purchasers, for whom Barclays Capital Inc. is acting as representative, on a several and not joint basis, the following respective principal amount of Notes offered hereby:

Initial Purchasers	Principal Amount of Notes
Barclays Capital Inc.	$
BofA Securities, Inc.	
Citigroup Global Markets Inc.	
Credit Suisse Securities (USA) LLC	
Deutsche Bank Securities Inc.	
Goldman Sachs & Co. LLC	
J.P. Morgan Securities LLC	
Truist Securities, Inc.	
Jefferies LLC	
PNC Capital Markets LLC	
Janney Montgomery Scott LLC	
Total	$ 600,000,000

The purchase agreement provides that the initial purchasers are obligated to purchase all of the Notes offered hereby if any are purchased. The purchase agreement also provides that, if an initial purchaser defaults, the purchase commitments of non-defaulting initial purchasers may be increased or the offering may be terminated. The initial purchasers may offer and sell Notes through certain of their affiliates.

The initial purchasers propose to offer the Notes offered hereby in the United States, Canada, Europe and elsewhere initially at the offering price on the cover page of this offering memorandum and may also offer the Notes offered hereby to selling group members at the offering price less a selling concession. After the initial offering, the offering price may be changed.

The Notes offered hereby have not been and will not be registered under the Securities Act and are being offered and sold only (i) to persons in the United States and to, or for the account or benefit of, U.S. persons, in each case that are reasonably believed to be "qualified institutional buyers" (as defined in Rule 144A) in reliance upon the exemption from the registration requirements of the Securities Act provided by Rule 144A thereunder, and (ii) to non-U.S. persons in offshore transactions in reliance on Regulation S and, in the case of persons in the European Economic Area, in accordance with the Prospectus Directive. Each of the initial purchasers has agreed that, except as permitted by the purchase agreement, it will not offer, sell or deliver the Notes offered hereby (a) as part of its distribution at any time or (b) otherwise until 40 days after the later of the commencement of the offering and the closing date, within the United States or to, or for the account or benefit of, U.S. persons, and it will have sent to each broker/dealer to which it sells Notes offered hereby in reliance on Regulation S during such 40-day period, a confirmation or other notice detailing the restrictions on offers and sales of the Notes within the United States or to, or for the account or benefit of, U.S. persons. Terms used in this paragraph have the meanings given to them by Regulation S. Resales of the notes are restricted as described under "Transfer Restrictions."

In addition, until 40 days after the commencement of the offering, an offer or sale of the Notes offered hereby within the United States by a broker/dealer (whether or not it is participating in the offering), may violate the registration requirements of the Securities Act if such offer or sale is made other than pursuant to Rule 144A.

The Notes offered hereby are offered for sale in those jurisdictions in the United States, Canada, Europe and elsewhere where it is lawful to make such offers.

The Notes offered hereby will not be offered, sold or delivered, directly or indirectly, and this offering memorandum or any other offering material relating to the Notes offered hereby will not be distributed in or from any jurisdiction except under circumstances that will result in compliance with the applicable laws and regulations thereof.

Notice to Certain Canadian Investors

The Notes may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the Notes must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105"), the initial purchasers are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Notice to Certain European Investors

European Economic Area and the United Kingdom

Each initial purchaser has represented and agreed that it has not offered, sold or otherwise made available to and will not offer, sell or otherwise make available any Notes to any retail investor in the EEA or in the UK. For the purposes of this provision, the expression "retail investor" means a person who is one (or more) of the following: (i) a retail client as defined in point (11) of Article 4(1) of MiFID II; or (ii) a customer within the meaning of the Insurance Distribution Directive, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II.

United Kingdom

Each initial purchaser has represented and agreed that (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of any Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

Belgium

The offering of the Notes offered hereby as described in this offering memorandum is not a public offering in Belgium and may not be considered as being an offer of securities made to the public in Belgium by any initial purchaser or investor. The offering of the Notes offered hereby as contemplated herein is an offering for which no prospectus is, must or will be published, in accordance with Article 3.2 of the Prospectus Directive. This offering memorandum and any advertisement in relation with the Notes offered hereby do not constitute a prospectus and are directed and intended only to "qualified investors" as defined under the Prospectus Directive and applicable Belgian law. This offering memorandum and any advertisement in relation therewith may not be directed or distributed, in any form whatsoever, directly or indirectly, to the public in Belgium. The Notes offered hereby will consequently only be available to such "qualified investors" and the initial purchasers of the Notes offered hereby will each have represented and agreed that it is a "qualified investor" within the preceding meaning and that it has not offered, sold, caused to offer or sell, and will not offer, sell, cause to offer or sell, directly or indirectly, the Notes offered hereby to the public in Belgium.

France

The Notes offered hereby may not be offered or sold, directly or indirectly, to the public in France and offers and sales of the Notes offered hereby shall only be made in France to (a) providers of investment services relating to portfolio management for the account of third parties (*personnes fournissant le service d'investissement de gestion de portefeuille pour compte de tiers*) and/or (b) qualified investors (*investisseurs qualifiés*) acting for their own account, all as defined in, and in accordance with, Articles L.411-1, L.411-2, D.411-1, D. 411-2 and D.411-3 of the French Code monétaire et financier. This offering memorandum or any other circular, prospectus, form of application, advertisement, communication or other material relating to the Notes offered hereby will not be distributed or caused to be distributed to the public in France other than to those investors (if any) to whom offers and sales of the Notes offered hereby in France may be made, as described above.

Germany

The offering of the Notes offered hereby is not a public offering in the Federal Republic of Germany. The Notes offered hereby may be offered and sold in the Federal Republic of Germany only in accordance with the provisions of the German Securities Prospectus Act (*Wertpapierprospektgesetz*) (as amended, the "German Securities Prospectus Act''), the Regulation (EU) 2017/1129 of June 14, 2017 (as amended, the "Prospectus Regulation") and any other applicable German law. This offering memorandum has not been and will not be submitted to, nor has it been nor will it be approved by, the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) ("BaFin"). BaFin has not obtained and will not obtain a notification from another competent authority of a member state of the European Union (each a Member State), with which a securities prospectus may have

been filed, pursuant to Article 25 of the Prospectus Regulation. The Notes must not be distributed within Germany by way of a public offer, public advertisement or in any similar manner, and this offering memorandum and any other document relating to the Notes, as well as information contained therein, may not be supplied to the public in Germany or used in connection with any offer for subscription of Notes to the public in Germany. Consequently, in the Federal Republic of Germany, the Notes offered hereby will only be available to, and this offering memorandum and any other offering material in relation to the Notes offered hereby is directed only at, persons who are qualified investors (*qualifizierte Anleger*) within the meaning of Section 2 No. 3 of the German Securities Prospectus Act in connection with Article 2 lit. e of the Prospectus Regulation. Any resale of the Notes in Germany may only be made in accordance with the German Securities Prospectus Act and other applicable laws.

Ireland

The Notes offered hereby may not be offered, placed or underwritten otherwise than in conformity with:

(a) the Prospectus Regulation, the European Union (Prospectus) Regulations 2019 and any rules and guidance issued by the Central Bank of Ireland (the "Central Bank") under Section 1363 of the Companies Act 2014 (as amended, the "Companies Act");

(b) the European Union (Markets in Financial Instruments) Regulations 2017 (as amended, the "MiFID Regulations"), including, without limitation, Regulations 5 (Requirement for authorization (and certain provisions concerning multilateral trading facilities and organized trading facilities)) any codes of conduct made under the MiFID Regulations, and the provisions of the Investor Compensation Act 1998 (as amended));

(c) the Companies Act, the Central Bank Acts 1942 to 2019 (as amended) and any codes of conduct rules made under Section 117(1) of the Central Bank Act 1989 (as amended); and

(d) the Market Abuse Regulation (EU 596/2014) (as amended) and any rules and guidance issued by the Central Bank of Ireland under Section 1370 of the Companies Act.

Luxembourg

The Notes offered hereby may not be offered to the public in or from Luxembourg, as set in the Prospectus Directive and the Luxembourg law of July 10, 2005 having implemented the Prospectus Directive, as amended (the "Prospectus Law"), except that it may, with effect from and including the Relevant Implementation Date, make an offer of the Notes offered hereby to the public in Luxembourg at any time provided that the conditions set in Article 5 of the Prospectus Law are met and complied with.

The Netherlands

In the Netherlands, the Notes offered hereby may only be offered to qualified investors within the meaning of the Prospectus Regulation (as defined below).

Each initial purchaser agrees that it has not offered or sold or caused to be offered or sold, and will not offer or sell or cause to be offered or sold, directly or indirectly, the Notes offered hereby to the public in the Netherlands and has not distributed or caused to be distributed, and will not distribute or cause to be distributed, to the public in the Netherlands, directly or indirectly, this offering memorandum, or any other offering material relating to the Notes offered hereby, and that any offers and sales of the Notes and distributions of the offering memorandum, or any other offering material relating to the Notes offered hereby, have been and will be made in the Netherlands only to qualified investors (as defined in Regulation (EU) 2017/1129 (the "**Prospectus Regulation**").

Russia

This offering memorandum should not be considered as a public offer or advertisement of the Notes offered hereby in Russia and is not an offer, or an invitation to make offers, to sell, purchase, exchange or otherwise transfer any of the Notes offered hereby to any persons in Russia, unless otherwise permitted under Russian law. Neither the Notes offered hereby nor this offering memorandum or other documents relating to them have been or are intended to be registered in Russia, with the Central Bank of the Russia or with any other state bodies that may from time to time be responsible for such registration, and the Notes offered hereby are not intended for ''placement'' or "circulation" in Russia (as defined under Russian law), unless otherwise permitted under Russian law. Any information on the Notes offered hereby in this offering memorandum is intended for, and addressed only to, persons outside of Russia. The Notes offered hereby are not being offered, sold or delivered in Russia or to or for the benefit of any persons (including legal entities) resident, incorporated, established or having their usual residence in Russia or to any person located within the territory of Russia except as may be permitted by Russian law.

Sweden

This offering memorandum is not a prospectus and has not been prepared for the purposes of the regulation (EU) 2017/1129 of the European Parliament and of the council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "Prospectus Regulation") as applied in the relevant EEA jurisdictions. Neither the Swedish Financial Supervisory Authority (*Sw. Finansinspektionen*) nor any other Swedish public body has examined, approved or registered this offering memorandum or will examine, approve or register this offering memorandum. Accordingly, this offering memorandum and the Notes are only being made available according to the applicable exemptions under the Prospectus Regulation and is not being made available to persons whose participation requires a prospectus, registration measures, information or measures other than those prescribed by Swedish law.

Switzerland

The offering of the Notes in Switzerland is exempt from requirement to prepare and publish a prospectus under the Swiss Financial Services Act ("FinSA") because the Notes have a minimum denomination higher than CHF 100,000 (or equivalent in another currency) and the Notes will not be admitted to trading on any trading venue (exchange or multilateral trading facility) in Switzerland. This offering memorandum does not constitute a prospectus pursuant to the FinSA, and no such prospectus has been or will be prepared for or in connection with the offering of the Notes.

Notice to Certain Australian Investors

Each initial purchaser has acknowledged that no prospectus or other disclosure document (as defined in the Corporations Act) in relation to the Notes has been or will be lodged with ASIC or the Australian securities exchange operated by ASX Limited and has represented, warranted and agreed that it:

(a) has not made or invited, and will not make or invite, applications for an offer of the Notes for issue, sale or purchase in Australia (including an offer or invitation which is received by a person in Australia); and

(b) has not distributed or published, and will not distribute or publish, this offering memorandum or any other offering material or advertisement relating to the Notes in Australia, unless:

(i) (A) the minimum aggregate consideration payable by each offeree is at least AU$500,000 (or its equivalent in an alternate currency) (disregarding moneys lent by the offeror or its associates); or

(B) the offer or invitation otherwise does not (other than by reason of section 708(14) or section 708A of the Corporations Act) require disclosure to investors under Part 6D.2 or 7.9 of the Corporations Act;

(ii) the offer is not made to a person in Australia who is a "retail client" for the purposes of Section 761G of the Corporations Act;

(iii) such action complies with all applicable laws, regulations and directives (including, without limitation, the licensing requirements in Chapter 7 of the Corporations Act) of the Commonwealth of Australia; and

(iv) such action does not require any document to be lodged with ASIC.

Notice to Certain Brazilian Investors

The Notes have not been, and will not be, registered with the Brazilian Securities Commission (*Comissão de Valores Mobiliários*). Any public offering or distribution of the Notes in Brazil, as defined under Brazilian laws and regulations, requires prior registration under Law No 6,385, of December 7, 1976, as amended, and Instruction No 400, issued by the CVM on December 29, 2003, as amended. Documents relating to an offering of the Notes by this offering memorandum, as well as information contained in those documents, may not be distributed to the public in Brazil, nor be used in connection with any offer for subscription or sale of the Notes to the public in Brazil. The Notes may not be offered or sold in Brazil, except in circumstances that do not constitute a public offering or distribution under Brazilian laws and regulations. Persons wishing to offer or acquire the Notes within Brazil should consult with their own counsel as to the applicability of registration requirements or any exemption therefrom.

Notice to Certain Hong Kong Investors

The Notes may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether

in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to Notes which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Notice to Certain Japanese Investors

The Notes have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended) (the "FIEA"). The Notes may not be offered or sold, directly or indirectly, in Japan or to or for the benefit of any resident of Japan (including any person resident in Japan or any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to or for the benefit of any resident of Japan, except pursuant to an exemption from the registration requirements of the FIEA and otherwise in compliance with any relevant laws, regulations and ministerial guidelines of Japan.

Notice to Certain Singapore Investors

This offering memorandum has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each initial purchaser has not offered or sold any Notes or caused such Notes to be made the subject of an invitation for subscription or purchase and will not offer or sell such notes or cause such notes to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this offering memorandum or and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of such notes, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275, of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the Notes are subscribed or purchased under Section 275 by a relevant person which is: (i) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (ii) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for six months after that corporation or that trust has acquired the Notes under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A) or Section 276(4)(i)(B), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; (3) by operation of law, (4) as specified in Section 276(7) of the SFA or (5) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018 of Singapore.

Solely for the purposes of its obligations pursuant to sections 309B(1)(a) and 309B(1)(c) of the SFA, we have determined, and hereby notify all relevant persons (as defined in Section 309A of the SFA) that the Notes are "prescribed capital markets products" (as defined in the Securities and Futures (Capital Markets Products) Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

General

We have agreed that we will not offer, sell, contract to sell or otherwise dispose of any debt securities issued or guaranteed by us or any of the guarantors of the Notes offered hereby and having a maturity of more than one year from the date of issue without the prior written consent of Barclays Capital Inc. for a period of 60 days after the date of confirmation of orders with respect to the Notes offered hereby.

We have agreed to indemnify the initial purchasers against liabilities, including liabilities under the Securities Act, or to contribute to payments which they may be required to make in that respect.

The Notes are a new issue of securities for which there currently is no market. The Notes will not be listed on any securities exchange or automated dealer quotation system. The initial purchasers have advised us that they intend to make a market in the Notes offered hereby as permitted by applicable law. They are not obligated, however, to make a market in the Notes offered hereby and any market-making may be discontinued at any time at their sole discretion. Accordingly, no assurance can be given as to the development or liquidity of any market for the Notes offered hereby. The initial purchasers reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

The initial purchasers may engage in over-allotment, stabilizing transactions, and covering transactions in accordance with Regulation M under the Exchange Act:

- over-allotment involves sales in excess of the offering size, which creates a short position for the initial purchasers.
- stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.
- covering transactions involve purchases of the Notes offered hereby in the open market after the distribution has been completed in order to cover short positions.

These stabilizing transactions, covering transactions and penalty bids may cause the price of the Notes offered hereby to be higher than it would otherwise be in the absence of these transactions. These transactions, if commenced, may be discontinued at any time.

We expect that delivery of the Notes offered hereby will be made against payment therefor on or about , 2020, which is the business day following the date of confirmation of orders with respect to the Notes offered hereby (this settlement cycle being referred to as "T+ "). Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes prior to the date that is two business days prior to delivery hereunder will be required, by virtue of the fact that the Notes will settle in T+ , to specify alternative settlement arrangements to prevent a failed settlement. Purchasers of Notes who wish to trade the Notes prior to the date that is two business days prior to their delivery hereunder should consult their own advisors.

The initial purchasers and their affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Certain of the initial purchasers and their affiliates have provided, and/or may provide in the future, investment banking, commercial banking and other financial services for us and our affiliates in the ordinary course of business, for which they have received and will receive customary compensation. Barclays Bank PLC, an affiliate of Barclays Capital Inc., acts as administrative agent and collateral agent under the Senior Secured Credit Facilities and certain affiliates of the initial purchasers act as lenders thereunder. People's United Bank, a lender under the Senior Secured Credit Facilities, is a party to a relationship agreement with Janney Montgomery Scott LLC, an initial purchaser, and may receive a referral fee from Janney Montgomery Scott LLC in connection therewith. In addition, in the ordinary course of their business activities, the initial purchasers and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers, and such investment and securities activities may involve our securities and/or instruments. The initial purchasers and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold (for their own account and for the accounts of their customers), or recommend to clients that they acquire, long and/or short positions in such securities and instruments. To the extent that the initial purchasers or their affiliates have a lending relationship with us, certain of those initial purchasers or their affiliates may hedge their credit exposure to us consistent with their customary risk management policies. The initial purchasers and their affiliates may hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities or the securities of our affiliates, including potentially the Notes offered hereby. Any such credit default swaps short positions could adversely affect future trading prices of the Notes offered hereby. In addition, certain of the initial purchasers and/or their respective affiliates may hold a portion of the Existing 2024 Dollar Notes and/or the Existing 2024 Euro Notes, as applicable, which are being redeemed with the net proceeds of the Notes in connection with the Refinancing Transactions and, as such, such initial purchasers and/or their affiliates will receive a portion of the net proceeds of the Notes.

LEGAL MATTERS

Latham & Watkins LLP, Washington, District of Columbia, represents us in connection with this offering and will pass upon the validity of the Notes offered hereby. Cravath, Swaine & Moore LLP, New York, New York, represents the initial purchasers as to matters of United States federal and New York law.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The financial statements incorporated in this offering memorandum by reference to the Annual Report on Form 10-K of Axalta Coating Systems Ltd. for the year ended December 31, 2019, and the effectiveness of internal control over financial reporting as of December 31, 2019, have been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report incorporated by reference herein.

$600,000,000

Axalta Coating Systems, LLC

% Senior Notes due 2029

Offering Memorandum
, 2020

Joint Book-Running Managers
Barclays
BofA Securities
Citigroup
Credit Suisse
Deutsche Bank Securities
Goldman Sachs & Co. LLC
J.P. Morgan Securities LLC
Truist Securities

Co-Managers
Jefferies
PNC Capital Markets LLC
Janney Montgomery Scott