The information in this preliminary offering memorandum is not complete and may be changed. This preliminary offering memorandum is not an offer to sell these securities and we are not soliciting offers to buy these securities in any jurisdiction where the offer, solicitation or sale is not permitted.

Axalta Coating Systems Dutch Holding B B.V.

€450,000,000 % Senior Notes due 2025

Axalta Coating Systems Dutch Holding B B.V., a private company with limited liability incorporated under the laws of the Netherlands (the "Issuer"), is offering €450,000,000 aggregate principal amount of % Senior Notes due 2025 (the "Notes"). The Notes offered hereby will mature on , 2025. Interest on the Notes offered hereby will accrue from , 2016 and will be payable on each and , commencing , 2017.

The Issuer may, at its option, redeem some or all of the Notes offered hereby at any time on or after , 2019 at the redemption prices set forth in this offering memorandum. At any time prior to , 2019, 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 , 2019, 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, plus a "make-whole" premium. If the Issuer or its restricted subsidiaries sell certain of their assets or if the Issuer experiences specific kinds of changes in control, the Issuer must offer to purchase the Notes offered hereby.

The Notes offered hereby will initially be guaranteed by each of the Issuer's existing and future subsidiaries that is a borrower under or that guarantees obligations under the Senior Secured Credit Facilities (as defined herein). The Notes offered hereby and the guarantees thereof will be the Issuer's and the guarantors' senior unsecured obligations and will rank equally in right of payment with all of the Issuer's and guarantors' existing and future senior debt. The Notes offered hereby and the guarantees thereof 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. In addition, the Notes offered hereby and the guarantees thereof will rank senior in right of payment to all of the Issuer's and guarantors' future subordinated debt and will be structurally subordinated to the liabilities of the Issuer'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 , 2016.

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 qualified institutional buyers under Rule 144A 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 below). For further details about eligible offerees and resale restrictions, see "Transfer Restrictions."

There is currently no public market for the Notes offered hereby. Application will be made to admit the Notes offered hereby to listing on the Official List of the Irish Stock Exchange (the "Official List") and to trading on the Global Exchange Market of the Irish Stock Exchange. The Global Exchange Market is not a regulated market for the purposes of Directive 2004/39/EC. There is no assurance that the Notes offered hereby will be listed on the Official List and admitted to trading on the Global Exchange Market. This offering memorandum comprises "Listing and General Information" for the purposes of the application to the Irish Stock Exchange for the listing of the Notes offered hereby.

The initial purchasers expect to deliver the Notes offered hereby to investors only in book-entry form through the facilities of Euroclear Bank SA/NV and Clearstream Banking, Société anonyme on or about , 2016.

Joint Book-Running Managers

Barclays BofA Merrill Lynch Citigroup Credit Suisse Deutsche Bank Securities

Goldman, Sachs & Co. J.P. Morgan Morgan Stanley UBS Investment Bank

Offering Memorandum dated , 2016.

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 a common depositary for the accounts of Euroclear Bank S.A./N.V. ("Euroclear") and Clearstream Banking, société anonyme ("Clearstream") and registered in the name of the nominee of the common depositary. Beneficial interests in the global certificates will be shown on, and transfers of the global certificates will be effected only through, records maintained by Euroclear, Clearstream and their respective participants, as applicable. After the initial issuance of the global certificates, notes in certificated form will be issued in exchange for the global certificates only as set forth in the indenture that will govern the Notes offered hereby. 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 may 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.

The Irish Stock Exchange takes no responsibility for the contents of this offering memorandum, and makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this offering memorandum.

The Issuer will comply with any undertakings given by the Issuer from time to time to the Irish Stock Exchange in connection with the Notes offered hereby, and the Issuer will furnish to the Irish Stock Exchange all such information as the rules of the Irish Stock Exchange may require in connection with the listing of the Notes offered hereby.

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.

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 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.

NOTICE TO CERTAIN EUROPEAN INVESTORS

European Economic Area

In relation to each member state of the European Economic Area ("EEA") which has implemented the Prospectus Directive (each, a "Relevant Member State"), each initial purchaser has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date"), it has not made and will not make an offer of the Notes

offered hereby to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Notes which has been approved by the competent authority in the Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of the Notes offered hereby in the Relevant Member State at any time:

(a) to any legal entity which is a "qualified investor" as defined in the Prospectus Directive;

(b) to fewer than 150 natural or legal persons (other than "qualified investors" as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant initial purchaser or initial purchasers nominated by the Issuer for any such offer; or

(c) in any other circumstances falling within Article 3(2) of the Prospectus Directive;

provided that no such offer of the Notes offered hereby shall require the publication by the Issuer or any initial purchaser of a prospectus pursuant to Article 3 of the Prospectus Directive or a supplement to a prospectus pursuant to Article 16 of the Prospective Directive.

For the purposes of this restriction, the expression an "offer to the public" in relation to any Notes offered hereby in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes offered hereby to be offered so as to enable an investor to decide to purchase or subscribe to the Notes offered hereby, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC, as amended (including by Directive 2010/73/EU), and as implemented in each Relevant Member State.

Except for any offers of Notes made pursuant to paragraphs (b) or (c) above, each subscriber for or purchaser of the Notes offered hereby in the offering that is located within a Relevant Member State will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of Article 2(1)(e) of the Prospectus Directive. The Issuer, the initial purchasers and their affiliates, and others will rely upon the trust and accuracy of the foregoing representation, acknowledgement and agreement.

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*) and any other applicable German law. 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. 6 of the German Securities Prospectus Act. Any resale of the Notes offered hereby in the Federal Republic of Germany may only be made in accordance with the German Securities Prospectus Act and other applicable laws. The Issuer has not, and does not intend to, file a securities prospectus with the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* or "BaFin") or obtain a notification to BaFin from another competent authority of a Member State of the European Economic Area, with which a securities prospectus may have been filed, pursuant to Section 17(3) of the German Securities Prospectus Act.

Ireland

The Notes offered hereby may not be offered, placed or underwritten otherwise than in conformity with:

(a) the European Communities (Markets in Financial Instruments) Regulations 2007 (Nos. 1 to 3) (as amended, the "MiFID Regulations") including, without limitation, Regulations 7 (Authorisation) and 152 (Restrictions on advertising) thereof, any codes of conduct made under the MiFID Regulations, and the provisions of the Investor Compensation Act 1998 (as amended);

(b) the provisions of the Companies Act 2014 (as amended, the "Companies Act"), the Central Bank Acts 1942—2015 (as amended) and any codes of practice made under Section 117(1) of the Central Bank Act 1989 (as amended); and

(c) 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 the Issuer 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 FMSA (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, the offering memorandum, or any other offering material relating to the Notes offered hereby, and that such offers, sales and distributions have been and will be made in the Netherlands only to qualified investors (as defined in the Act on the Financial Supervision (*Wet op het financieel toezicht*), the "FSMA"). In any offer of Notes offered hereby made to the public in the Netherlands pursuant to an exemption under the FSMA from the requirement to publish a prospectus for offers of securities (other than to qualified investors as defined in the FSMA) and any advertisement relating to such offer, and any document in which the prospect of such offer shall be held out, it shall state that: (A) no prospectus approved by the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiele Markten*) (the "AFM") has been made generally available and (B) such offer is not supervised by the AFM; in such manner as prescribed by the AFM from time to time.

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 in accordance with the prospectus requirements provided for in the Swedish Financial Instruments Trading Act (Sw. *lag (1991:980*) *om handel med finansiella instrument*) nor any other Swedish enactment. 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 may not be made available, nor may the Notes offered hereby otherwise be marketed and offered for sale, in Sweden other than in circumstances that constitute an exemption from the requirement to prepare a prospectus under the Swedish Financial Instruments Trading Act.

Switzerland

The offering of the Notes offered hereby is not a public offering in Switzerland. The Notes offered hereby may not be publicly offered, sold or advertised, directly or indirectly, in, into or from Switzerland.

Neither this offering memorandum nor any other offering or marketing material relating to the Notes offered hereby constitutes a prospectus as such term is understood pursuant to Article 652a and/or Article 1156 of the Swiss Code of Obligations and this offering memorandum or any other offering or marketing material relating to the Notes offered hereby is not subject to the Directive for Notes of Foreign Borrowers of the Swiss Bankers Association. The Notes offered hereby will not be listed on the SIX Swiss Exchange Ltd., and, therefore, the documents relating to the Notes offered hereby, including, but not limited to, this offering memorandum, do not claim to comply with the disclosure standards of the Swiss Code of Obligations and the listing rules of SIX Swiss Exchange Ltd. and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange Ltd.

The Notes offered hereby are being offered in Switzerland by way of a private placement (*i.e.*, to a limited number of selected investors only), without any public advertisement and only to investors who do not purchase the Notes offered hereby with the intention to distribute them to the public. The investors will be individually approached directly from time to time. This offering memorandum, as well as any other offering or marketing material relating to the Notes offered hereby, is personal and confidential and does not constitute an offer to any other person. This offering memorandum, as well as any other material relating to the Notes offered hereby, may only be used by those investors to whom it has been handed out in connection with the offering described herein and may neither directly or indirectly be distributed or made available to other persons without the Issuer's express consent. This offering memorandum, as well as any other offering or marketing material relating to the Notes offered hereby, may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in (or from) Switzerland.

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 an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (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.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Many statements made in this offering memorandum, and 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 Section 27A of the Securities Act 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 and strategies. 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 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 and, particularly, in conditions in the automotive and transportation industries;
- volatility in the capital, credit and commodities markets;
- our inability to successfully execute on our growth strategy;
- risks associated with our non-U.S. operations;

- currency-related risks;
- increased competition;
- risks of the loss 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;
- price increases or interruptions in our supply of raw materials;
- failure to develop and market new products and manage product life cycles;
- litigation and other commitments and contingencies;
- 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 Acquisition (as defined herein);
- unexpected liabilities under any pension plans applicable to our employees;
- risk that the insurance we maintain may not fully cover all potential exposures;
- 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;
- business disruptions, security threats and security breaches;
- our ability to protect and enforce intellectual property rights;
- intellectual property infringement suits against us by third parties;
- our substantial indebtedness;
- our ability to obtain additional capital on commercially reasonable terms;
- 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;
- the risk of impairment charges related to goodwill, identifiable intangible assets and fixed assets;
- ability to recruit and retain the experienced and skilled personnel we need to compete;
- work stoppages, union negotiations, labor disputes and other matters associated with our labor force;
- terrorist acts, conflicts, wars and natural disasters that may materially adversely affect our business, financial condition and results of operations;
- transportation of certain materials that are inherently hazardous due to their toxic nature;
- weather conditions that may temporarily reduce the demand for some of our products;
- reduced demand for some of our products as a result of improved safety features on vehicles and insurance company influence;
- the amount of the costs, fees, expenses and charges related to being a public company and related to the Refinancing Transactions (as defined herein);
- 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 in Axalta Coating Systems Ltd.'s ("ACS Ltd.") Annual Report on Form 10-K for the fiscal year ended December 31, 2015 (the "Annual Report"), which it filed with the SEC on February 29, 2016, and Quarterly Report on Form 10-Q for the quarter ended June 30, 2016, which it filed with the SEC on July 27, 2016; 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

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-GAAP financial measures to clarify and enhance an understanding of past performance: 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. We use certain of these financial measures for business planning purposes and in measuring our performance relative to that of our competitors. We utilize Adjusted EBITDA as the primary measure of segment performance.

EBITDA consists of net income (loss) before interest, taxes, depreciation and amortization. Adjusted EBITDA consists of EBITDA adjusted for (i) non-operating income or expense, (ii) the impact of certain non-cash or other items that are included in net income and EBITDA that we do not consider indicative of our ongoing operating performance and (iii) certain unusual items impacting results in a particular period. We believe that making such adjustments provides investors with meaningful information to understand our operating results and 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 (loss) before income taxes, net income (loss), earnings (loss) per share or any other performance measures derived in accordance with U.S. GAAP as measures of operating performance.

EBITDA and Adjusted EBITDA have important limitations as analytical tools and you should not consider them in isolation or as substitutes for analysis of our results as reported under U.S. GAAP. Some of these limitations are:

- EBITDA and Adjusted EBITDA:
  - do not reflect the significant interest expense on our debt, including the Senior Secured Credit Facilities and the Existing Unsecured 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 EBITDA and Adjusted EBITDA differently than we do, limiting their usefulness as comparative measures.

Because of these limitations, 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 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 (loss) before income taxes, net income (loss), earnings (loss) 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 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 EBITDA and Adjusted EBITDA, see footnote (5) in "Offering Memorandum Summary—Summary Historical and Pro Forma 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 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. For example, some of the adjustments to EBITDA that comprise Adjusted EBITDA as presented in this offering memorandum, and in the documents incorporated by reference herein, would not be allowed under Regulation S-K. See "Offering Memorandum Summary—Summary Historical and Pro Forma Financial Information and Other Data" and our Annual Report and Quarterly Reports for a discussion of our use of EBITDA and Adjusted EBITDA in this offering memorandum, and in the documents incorporated by reference herein, including the reasons that we believe this information is useful to management and investors, and a reconciliation of 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. ("Orr & Boss"), 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 market share are based on sales generated in the relevant market. Except as otherwise noted, market position data is derived from Orr & Boss and/or management estimates.

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

References to emerging markets refer collectively to Latin America (including Mexico) and Asia (excluding Japan).

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®, AudurraTM, Centari®, ChallengerTM, ChemophanTM, Colornet®, Corlar®, Cromax®, Cromax Mosaic®, DuxoneTM, Harmonized Coating TechnologiesTM, Imron®, Imron EliteTM, Imron ExcelProTM, LutophenTM, Nap-Gard®, Nason®, Rival®, Spies Hecker®, Standox®, StollaquidTM, SyntopalTM, SyroxTM, VermeeraTM 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 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.

EXPLANATORY NOTE

On February 1, 2013, ACS Ltd. acquired from E. I. du Pont de Nemours and Company ("DuPont") all of the capital stock, other equity interests and assets of certain entities that, together with their subsidiaries, comprised the DuPont Performance Coatings business ("DPC"), which is referred to herein as the "Acquisition." Following the Acquisition, we renamed our business Axalta Coating Systems ("Axalta"). The purchase price paid to acquire DPC was allocated to the acquired assets and liabilities which were recorded at their estimated fair value as of the Acquisition date. The purchase price for the Acquisition was funded by (i) an equity contribution of $1,350.0 million, (ii) proceeds from a $2,300.0 million Dollar Term Loan facility and a €400.0 million Euro Term Loan facility and (iii) proceeds from the issuance of $750.0 million in senior unsecured notes and €250.0 million in senior secured notes. The financing to fund the purchase price for the Acquisition is referred to herein as the "Financing."

The period from January 1, 2013 through January 31, 2013 is referred to as the "Predecessor" period and reflects the combined results of the operations of the DPC business. The years ended December 31, 2015, 2014 and 2013 are referred to as the "Successor" periods and reflect the consolidated results of operations of Axalta, which include the effects of acquisition accounting commencing on the acquisition date of February 1, 2013 and the effects of the Financing of the Acquisition commencing on February 1, 2013. The pro forma year ended December 31, 2013 reflects the combined historical results of operations of the DPC business for the period from January 1, 2013 through January 31, 2013 and Axalta for the year ended December 31, 2013, as adjusted for the pro forma effects of the Acquisition and the Financing as if they had occurred on January 1, 2013.

This offering memorandum and the documents incorporated by reference herein include historical financial statements and certain financial data of ACS Ltd., the ultimate indirect parent of the Issuer, in lieu of financial statements and financial data of the Issuer. ACS Ltd. does not have any material operating, investing or financing activities, nor any independent assets or operations other than being a holding company for the Issuer. ACS Ltd. does maintain and account for stock-based compensation including the associated expense, proceeds associated with stock option exercises and the stockholders' equity impact of applicable vesting of stock compensation equity awards. However, the consolidated financial results and position of the Issuer are substantially similar to those of ACS Ltd. for the periods for which financial information of ACS Ltd. is presented in this offering memorandum (or incorporated by reference herein). The table below illustrates the differences between the condensed consolidated financial statements of ACS Ltd. on a stand-alone basis and the condensed consolidated financial statements presented (in or incorporated by reference) herein as of and for the six months ended June 30, 2016.

($ in millions)	Axalta Coating Systems Ltd. (stand-alone)	Axalta Coating Systems Ltd. (consolidated)
As of June 30, 2016		
Cash and cash equivalents	$ 53.5	$ 480.1
Restricted cash	—	3.1
Accounts and notes receivable—net	1.1[1]	838.6
Intercompany receivable	1.5[2]	—
Goodwill	—	931.1
Investment in subsidiary	1,118.8[3]	—
Total assets	1,192.2	5,835.8
Total liabilities	5.7[4]	4,581.0
Six Months Ended June 30, 2016		
Cost of goods sold	8.5	1,255.4
Selling, general and administrative expenses	13.5	456.8
Research and development expenses	—	26.7
Other (income) expense	(14.0)[2]	40.8
Equity earnings of consolidated subsidiaries	(86.2)[5]	—
Net income attributable to controlling interests	78.2	78.2

(1) Accounts and notes receivable—net includes amounts related to certain tax-related matters pursuant to indemnification terms.

(2) Amount includes the re-charge of the intrinsic value of stock option awards exercised, as well as restricted stock units and awards that have vested within the period to other indirect wholly owned subsidiaries.

(3) Represents the equity interest of ACS Ltd. in the net assets of the Issuer and its consolidated subsidiaries under the equity method of accounting.

(4) Amount includes balances due to certain ACS Ltd. indirect wholly owned subsidiaries for services paid for or provided by those subsidiaries.

(5) Amount relates to earnings of the Issuer and its consolidated subsidiaries under the equity method of accounting.

INCORPORATION BY REFERENCE

We are incorporating by reference certain information that ACS Ltd. has filed with the SEC under the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The information contained in the documents we are incorporating by reference is considered to be a part of this offering memorandum. Accordingly, we incorporate by reference:

- ACS Ltd.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2015, as filed with the SEC on February 29, 2016;
- The information responsive to Item 10 and Item 13 in Part III of Form 10-K for the fiscal year ended December 31, 2015 provided in ACS Ltd.'s Definitive Proxy Statement pursuant to Section 14(a) of the Exchange Act, as filed with the SEC on March 22, 2016;
- ACS Ltd.'s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016 (the "Q1 Quarterly Report"), as filed with the SEC on April 28, 2016;
- ACS Ltd.'s Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2016 (the "Q2 Quarterly Report" and, together with the Q1 Quarterly Report, the "Quarterly Reports"), as filed with the SEC on July 27, 2016; and
- ACS Ltd.'s Current Reports on Form 8-K, as filed with the SEC on May 5, 2016, May 26, 2016, June 20, 2016, August 1, 2016, August 2, 2016, August 3, 2016, August 17, 2016 and September 8, 2016.

We are also incorporating by reference additional documents that ACS Ltd. files with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this offering memorandum through 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.

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. 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. Information about us, including ACS Ltd.'s SEC filings, is also available on our website at http://www.axaltacs.com; however, information on, or accessible through, our website is not part of this offering memorandum.

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 "ACS Ltd." refers to Axalta Coating Systems Ltd., a Bermuda exempted limited liability company and an indirect parent of the Issuer;
- the terms "Euro" and "€" refer to the currency of the Eurozone;
- the term "Existing Dollar Notes" refers to the Dollar-denominated 4.875% Senior Notes due 2024 issued by Axalta Coating Systems, LLC on August 16, 2016;
- the term "Existing Secured Euro Notes" refers to the Euro-denominated 5.750% Senior Secured Notes due 2021 issued by the Issuer and U.S. Holdings on February 1, 2013;

- the term "Existing Unsecured Euro Notes" refers to the Euro-denominated 4.250% Senior Notes due 2024 issued by Axalta Coating Systems, LLC on August 16, 2016;
- the term "Existing Unsecured Notes" refers collectively to the Existing Dollar Notes and the Existing Unsecured Euro Notes;
- the term "initial purchasers" refers to the firms listed as such under the heading "Plan of Distribution";
- the term the "Issuer" refers to Axalta Coating Systems Dutch Holding B B.V., a private company with limited liability incorporated under the laws of the Netherlands;
- the term "LTM Period" refers to the twelve-month period ended June 30, 2016;
- the term "Refinancing Transactions" refers to (a) the entry into and the effectiveness of the amendment to the credit agreement governing the Revolving Credit Facility (as defined below) on August 1, 2016, (b) the issuance of the Existing Unsecured Notes by Axalta Coating Systems, LLC and the use of proceeds thereof to redeem all of the outstanding Dollar-denominated 7.375% Senior Notes due 2021 issued by the Issuer and U.S. Holdings, and the satisfaction and discharge of the related indenture, on August 16, 2016, (c) the issuance of the Notes offered hereby and the use of proceeds thereof to (i) redeem all of the outstanding Existing Secured Euro Notes and satisfy and discharge the related indenture and (ii) prepay a portion of the outstanding principal borrowings under the Euro Term Loan Facility and (d) the payment of fees and expenses related to the foregoing;
- the term "Senior Secured Credit Facilities" refers to (a) our senior secured term loan facility in the original amount of $2,300.0 million (the "Dollar Term Loan Facility"), (b) our senior secured term loan facility in the original amount of €400.0 million (the "Euro Term Loan Facility" and, together with our Dollar Term Loan Facility, our "Term Loan Facilities") and (c) our multi-currency senior secured revolving facility with commitments of $400.0 million (the "Revolving Credit Facility");
- the terms "U.S." or "United States" refer to the United States of America;
- the terms "U.S. dollar," "dollar" and "$" refer to the currency of the United States;
- the term "U.S. Holdings" refers to Axalta Coating Systems U.S. Holdings, Inc. (f/k/a U.S. Coatings Acquisition Inc.), a corporation incorporated under the laws of the State of Delaware and an indirect wholly owned subsidiary of the Issuer; and
- the terms "we," "us," "our," "its" and "our company" refer to ACS Ltd. and its consolidated subsidiaries;

Certain data in this offering memorandum is presented on an as-adjusted basis to reflect the Refinancing Transactions, as if they occurred on the first day of the referenced period for income statement purposes and the balance sheet date for balance sheet purposes.

For a discussion of EBITDA and Adjusted EBITDA, see "Use of Non-U.S. GAAP Financial Measures" and "Offering Memorandum Summary—Summary Historical and Pro Forma Financial Information and Other Data."

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 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 Dutch Holding B B.V. (the "Issuer") is the issuer of the Notes and is an indirect, wholly owned subsidiary of ACS Ltd. The financial information and notes referenced above are of ACS Ltd.

COMPANY OVERVIEW

We are a leading global manufacturer, marketer and distributor of high performance coatings systems. We generate approximately 90% of our revenue in markets where we hold the #1 or #2 global market position, based on 2014 market information, including the #1 position in our core automotive refinish end-market with approximately a 25% global market share. We have 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 38 manufacturing facilities, 4 technology centers, 46 customer training centers and approximately 12,800 employees allows us to meet the needs of customers in over approximately 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.

Our business is organized into two segments, Performance Coatings and Transportation Coatings, serving four end-markets globally as highlighted below.

Axalta Coating Systems Ltd.

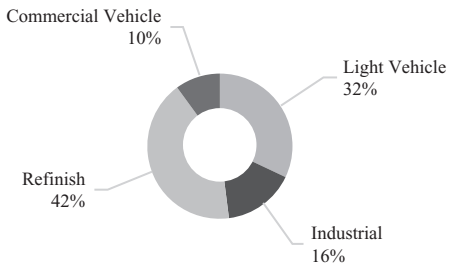
Net Sales: $4,087.2 million

Segments	**Performance Coatings** Net Sales: $2,385.1 million (58.4% of Sales)		**Transportation Coatings** Net Sales: $1,702.1 million (41.6% of Sales)	
End Markets	**Refinish** Net Sales: $1,702.0 million % of Axalta Sales : 41.6%	**Industrial** Net Sales: $683.1 million % of Axalta Sales: 16.8%	**Light Vehicle** Net Sales: $1,310.6 million % of Axalta Sales: 32.0%	**Commercial Vehicle** Net Sales: $391.5 million % of Axalta Sales: 9.6%
Focus Areas	• **Body Shops** • **Independent shops** • **Multi-shop operators** • **Light vehicle dealerships**	• **Electrical Insulation Systems ("EIS")** • **Architectural** • **Oil and gas pipes** • **General Industrial**	• **Automotive Light Vehicles**	• **Heavy duty truck** • **Bus** • **Rail** • **ACE**

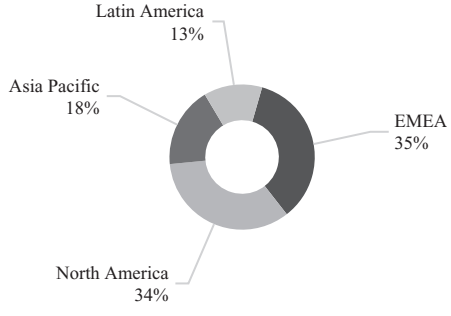
Note: Table above reflects numbers for the year ended December 31, 2015.

Net sales for our four end-markets and four regions for the year ended December 31, 2015 are highlighted below:

Net Sales by End-Market



Net Sales by Geography



Note: Latin America includes Mexico

Performance Coatings

Through our Performance Coatings segment, we provide high-quality liquid and powder coatings solutions to a fragmented and local customer base. 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 as described below.

Refinish End-Market (#1 global market position): We provide waterborne and solventborne coatings to approximately 80,000 independent body shops, dealers and multi-shop operators to facilitate high-quality, efficient automotive collision repairs. Our advanced color matching technology and library of over four million color variations comprise an advanced color system that enables body shops to refinish vehicles regardless of vehicle brand, color, age or original paint supplier.

Industrial End-Market: We provide a wide range of liquid and powder coatings to customers who use them in diverse applications, including industrial machinery, electrical insulation, automotive components, architectural cladding and fittings, appliances, outdoor furniture and oil & gas pipelines. Our coatings are often used under severe operating conditions and require high performance such as high mechanical resistance, corrosion protection, elasticity and colorfastness.

Transportation Coatings

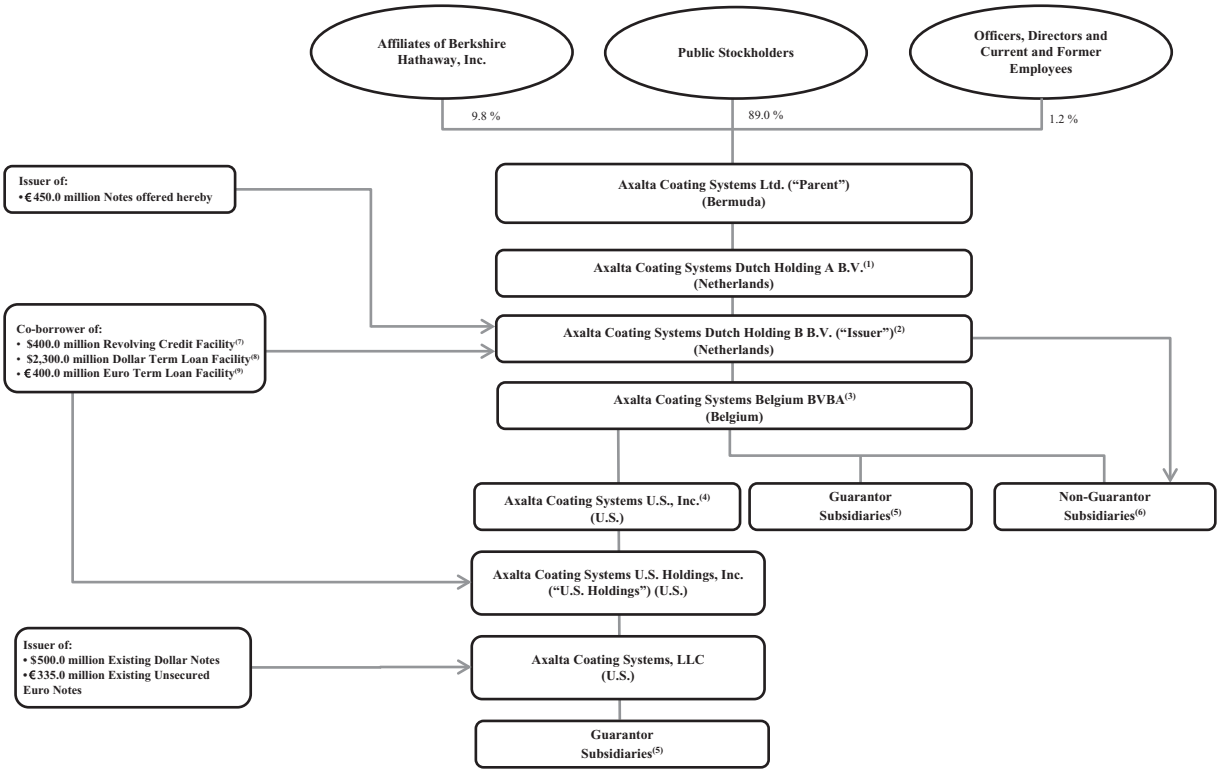
Through our Transportation Coatings segment, we provide advanced coatings technologies to original equipment manufacturers ("OEMs") of light and commercial vehicles. These increasingly global customers require a high level of technical support coupled with cost-effective, environmentally responsible 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 End-Market (#2 global market position): We provide light vehicle OEMs and Tier 1 component suppliers a full range of waterborne and solventborne coatings systems that are a critical, integrated step in the vehicle assembly process. We compete and win new business on the basis of our quality, service and proprietary products that generate significant energy and cost savings for our customers while enhancing productivity and first pass quality. Our global capabilities and focus on technology enable us to provide our global customers with next-generation offerings to enhance appearance, durability and corrosion protection and comply with increasingly strict environmental regulations.

Commercial Vehicle End-Market: We provide liquid coatings to commercial vehicle OEMs, including those in the heavy duty truck ("HDT"), bus, rail and agricultural and construction equipment markets, as well as related markets such as trailers, recreational vehicles and personal sport vehicles. As a leading global supplier in both the HDT and bus markets, we meet the demands of our customers with an extensive offering of over 70,000 colors.

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 A B.V., a private company with limited liability incorporated under the laws of the Netherlands and the direct parent of the Issuer, guarantees the Senior Secured Credit Facilities, but we do not anticipate that Axalta Coating Systems Dutch Holding A B.V. will guarantee the Notes offered hereby.

(2) The Issuer is a co-borrower of the Senior Secured Credit Facilities and guarantees the Existing Unsecured Notes.

(3) Axalta Coating Systems Belgium BVBA does not guarantee the Senior Secured Credit Facilities or the Existing Unsecured Notes, and we anticipate that Axalta Coating Systems Belgium BVBA will not guarantee the Notes offered hereby.

(4) Axalta Coating Systems U.S., Inc. guarantees the Senior Secured Credit Facilities and the Existing Unsecured Notes and will guarantee the Notes offered hereby.

(5) Our current and future wholly owned restricted subsidiaries that guarantee the Senior Secured Credit Facilities will guarantee the Notes offered hereby.

(6) 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 36% of our net sales and approximately 40% of our Adjusted EBITDA. As of June 30, 2016, our non-guarantor subsidiaries represented approximately 29% of our total assets (including trade receivables but excluding intercompany receivables) and had approximately $434.2 million of total indebtedness and liabilities (including trade payables but excluding intercompany payables).

(7) Represents the original amount of the facility. See "Capitalization."
(8) Represents the original amount of the facility. See "Capitalization."
(9) Represents the original amount of the facility. We intend to use the net proceeds from this offering in part to prepay a portion of the outstanding principal borrowings under the Euro Term Loan Facility. See "Use of Proceeds" and "Capitalization."

THE REFINANCING TRANSACTIONS

We intend to use the net proceeds from this offering to fund the redemption of all of the outstanding Existing Secured Euro Notes, to prepay a portion of the outstanding principal borrowings under the Euro Term Loan Facility and to pay related transaction fees and expenses. As of the date of this offering memorandum, there are €250.0 million aggregate principal amount of the Existing Secured Euro Notes outstanding and €388.0 million of outstanding principal borrowings under the Euro Term Loan Facility. The Existing Secured Euro Notes may be called for redemption at our option at a redemption price of 104.313% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to but excluding the redemption date. We have issued a notice of redemption to holders of the Existing Secured Euro Notes, specifying a redemption date for the Existing Secured Euro Notes that is 30 days after the date of such notice. The redemption of the Existing Secured Euro Notes is conditioned upon the closing of this offering. Concurrent with the closing of this offering, we also intend to satisfy and discharge our obligations under the Existing Secured Euro Notes and the related indenture by depositing with the trustee sufficient funds to pay the principal of, and premium and interest on, the Existing Secured Euro Notes to the redemption date.

On August 16, 2016, Axalta Coating Systems, LLC issued the Existing Unsecured Notes, the net proceeds of which were used, in part, to redeem all of the outstanding Dollar-denominated 7.375% Senior Notes due 2021 issued by the Issuer and U.S. Holdings and to satisfy and discharge the related indenture. In addition, prior to the issuance of the Existing Unsecured Notes, we amended the credit agreement governing the Revolving Credit Facility to extend the maturity date of the facility, decrease the interest rate applicable to the Revolving Credit Facility and amend certain financial covenants.

We refer to (i) the entry into and the effectiveness of the amendment to the credit agreement governing the Revolving Credit Facility on August 1, 2016, (ii) the issuance of the Existing Unsecured Notes by Axalta Coating Systems, LLC and the use of proceeds thereof to redeem all of the outstanding Dollar-denominated 7.375% Senior Notes due 2021 issued by the Issuer and U.S. Holdings, and the satisfaction and discharge of the related indenture, on August 16, 2016, (iii) the issuance of the Notes offered hereby and the use of net proceeds thereof to (A) redeem all of the outstanding Existing Secured Euro Notes and satisfy and discharge the related indenture and (B) prepay a portion of the outstanding principal borrowings under the Euro Term Loan Facility and (iv) the payment of fees and expenses related to the foregoing collectively as the "Refinancing Transactions."

COMPANY INFORMATION

Axalta Coating Systems Dutch Holding B B.V. is a private company with limited liability incorporated under the laws of the Netherlands. Our website address is www.axaltacs.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 offered hereby will be governed by an indenture to be entered into by the Issuer, the guarantors party thereto 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, (1) the terms "we," "us" and "our" each refer to the Issuer 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 Unsecured Notes and the Senior Secured Credit Facilities do not include the Issuer's non-guarantor subsidiaries and (2) the term "Issuer" refers to Axalta Coating Systems Dutch Holding B. B.V., a private company with limited liability incorporated under the laws of the Netherlands, and not to any of its subsidiaries or affiliates. 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 Dutch Holding B B.V.
Securities Offered	€450,000,000 aggregate principal amount of % Senior Notes due 2025.
Maturity Date	The Notes offered hereby will mature on , 2025.
Interest	Interest on the Notes offered hereby will be payable semi-annually on and of each year, commencing , 2017. Interest will accrue from and including , 2016.
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 the Issuer's 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 offered hereby. See "Limitations on Validity and Enforceability of the Guarantees" and "Description of Notes—Guarantees." For the twelve months ended June 30, 2016 (the "LTM Period"), our non-guarantor subsidiaries: • represented approximately 36% of our net sales; and • represented approximately 40% of our Adjusted EBITDA. As of June 30, 2016, our non-guarantor subsidiaries: • represented approximately 29% of our total assets (including trade receivables but excluding intercompany receivables); and • had approximately $434.2 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."

Ranking . . . . . The Notes offered hereby 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 the guarantors' existing and future senior indebtedness;
- be effectively subordinated to any of the Issuer's and the guarantors' existing and future secured indebtedness, 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 June 30, 2016, on an as-adjusted basis after giving effect to the Refinancing Transactions:

- we would have had approximately $2,114.5 million of senior secured indebtedness, net, 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 $21.9 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 (x) $400.0 million plus (y) an unlimited amount so long as on a pro forma basis the maximum first lien leverage requirement (as such term is used in the credit agreement governing the Senior Secured Credit Facilities) is satisfied, subject to certain conditions, to which the Notes offered hereby would be effectively subordinated if borrowed; and
- the non-guarantor subsidiaries would have had approximately $434.2 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 Notes offered hereby will be redeemable at the Issuer's option, in whole or in part, at any time on or after , 2019, at the redemption prices set forth in this offering memorandum, together with accrued and unpaid interest, if any, to the date of redemption. See "Description of Notes—Optional Redemption." At any time prior to , 2019, the Issuer may also redeem some or all of the Notes offered hereby at a price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to the date of redemption, plus a "make-whole premium." At any time prior to , 2019, the Issuer may redeem up to 40% of the original principal amount of the Notes offered hereby with the proceeds of certain equity offerings at a redemption price of % of the principal amount of the Notes offered hereby, together with accrued and unpaid interest, if any, to the date of redemption. If at any time holders of not less than 90% of the principal amount of the outstanding Notes accept a change of control offer, we or a third party will have the right to redeem all of the Notes then outstanding at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to but excluding the date of repurchase.
Additional Amounts; Redemption for Taxation Reasons	If payments made by the Issuer or any guarantor are subject to any withholding of taxes by certain relevant tax jurisdictions, subject to certain exceptions, the Issuer and such guarantor are required to pay the additional amounts necessary so that the net amount received by the holders of the Notes offered hereby after the withholding is not less than the amount that they would have received in the absence of the withholding. In the event certain changes in the law of any relevant tax jurisdiction would impose withholding taxes on the payment of the Notes offered hereby, the Issuer may redeem the Notes offered hereby in whole, but not in part, at any time, at a redemption price of 100% of the principal amount, plus accrued and unpaid interest, if any, and additional amounts, if any, to the date of redemption. See "Description of Notes—Redemption for Taxation Reasons" and "Description of Notes—Withholding Taxes."
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. 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 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 offered hereby under an indenture with Wilmington Trust, National Association, as trustee. The indenture will, among other things, limit the ability of the Issuer 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 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 both 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 offered hereby are a new issue of securities, and application will be made to list the Notes offered hereby on the Official List of the Irish Stock Exchange and for the Notes offered hereby to be admitted to trading on the Global Exchange Market of the Irish Stock Exchange. The initial purchasers have advised the Issuer that they currently intend to make a market in the Notes offered hereby. However, they are not obligated to do so, and any market making with respect to the Notes offered hereby may be discontinued without notice.
Listing	Application will be made for the Notes offered hereby to be listed on the Official List of the Irish Stock Exchange and admitted to trading on the Global Exchange Market of the Irish Stock Exchange. However, we cannot assure you that the Notes offered hereby will be listed or will remain listed on that or any other exchange.
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 "Material U.S. Federal Income Tax Consequences."
Use of Proceeds	We intend to use the net proceeds of this offering to fund the redemption of all of the outstanding Existing Secured Euro Notes, to prepay a portion of the outstanding principal borrowings under the Euro Term Loan Facility 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."

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION AND OTHER DATA

The following table sets forth our summary historical and pro forma financial information for the periods and dates indicated. As a result of the Acquisition, we applied acquisition accounting whereby the purchase price paid was allocated to the acquired assets and liabilities at fair value. The financial reporting periods presented are as follows:

- The years ended December 31, 2015 and 2014, the six-month periods ended June 30, 2016 and 2015 and the twelve-month period ended June 30, 2016 ("Successor" periods) reflect the consolidated results of operations of Axalta, which include the effects of acquisition accounting commencing on the acquisition date of February 1, 2013 and the effects of the Financing of the Acquisition commencing on February 1, 2013.
- The pro forma year ended December 31, 2013 reflects the combined historical results of operations of the DPC business for the period from January 1, 2013 through January 31, 2013 and Axalta for the year ended December 31, 2013, as adjusted for the pro forma effects of the Acquisition and the Financing as if they had occurred on January 1, 2013.

The historical results of operations and cash flow data for the six months ended June 30, 2016 and 2015 and the historical balance sheet data as of June 30, 2016 presented below were derived from our Successor unaudited financial statements and the related notes thereto incorporated by reference in this offering memorandum. The historical results of operations and cash flow data for the years ended December 31, 2015 and 2014 and the historical balance sheet data as of December 31, 2015 and 2014 presented below were derived from our Successor audited financial statements and the related notes thereto incorporated by reference in this offering memorandum.

Our historical financial data are not necessarily indicative of our future performance, nor does such data reflect what our financial position and results of operations would have been had we operated as an independent publicly traded company during the periods shown. The unaudited pro forma financial data presented below was derived from our audited financial statements for the year ended December 31, 2013 and the related notes thereto and the audited financial statements of the DPC business for the period from January 1, 2013 through January 31, 2013 and the related notes thereto, all of which are incorporated by reference in this offering memorandum.

The pro forma results for the year ended December 31, 2013 represent the addition of the Predecessor period January 1, 2013 through January 31, 2013 and the Successor year ended December 31, 2013 as well as the pro forma adjustments to reflect the Acquisition and the Financing as if they had occurred on January 1, 2013. This pro forma information has been prepared in a form consistent with Article 11 of Regulation S-X. The pro forma results do not purport to reflect the actual results we would have achieved had the Acquisition been completed as of January 1, 2013 and are not indicative of our future results of operations. See "Unaudited Pro Forma Consolidated and Combined Financial Information" in the Annual Report for more information.

We have also presented summary unaudited consolidated financial data for the twelve-month period ended June 30, 2016, which does not comply with U.S. GAAP (this period is referred to elsewhere in this offering memorandum as the LTM Period). This data has been calculated by subtracting the unaudited statements of operations and cash flow data for the six-month period ended June 30, 2015 from the audited statements of operations and cash flow data for the year ended December 31, 2015 and then adding the unaudited statements of operations and cash flow data for the six-month period ended June 30, 2016 incorporated by reference in this offering memorandum. We have presented this financial data because we believe it provides our investors with useful information to assess our recent performance.

The unaudited pro forma information set forth below is based upon available information and assumptions that we believe are reasonable. The unaudited pro forma information is for illustrative and informational

purposes only and is not intended to represent or be indicative of what our financial condition or results of operations would have been had the above transactions occurred on the dates indicated. The unaudited pro forma information also should not be considered representative of our future financial condition or results of operations. 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 Historical Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report and our consolidated financial statements and related notes incorporated by reference in this offering memorandum.

	Successor		Pro Forma	Successor		
($ in millions)	**Year Ended December 31, 2015**	**Year Ended December 31, 2014**	**Year Ended December 31, 2013**	**Six Months Ended June 30, 2016**	**Six Months Ended June 30, 2015**	**Twelve Months Ended June 30, 2016**
Statement of operations data:						
Net sales	$4,087.2	$4,361.7	$4,277.3	$2,020.7	$2,083.3	$4,024.6
Other revenue	26.1	29.8	36.8	13.0	15.3	23.8
Total revenue	4,113.3	4,391.5	4,314.1	2,033.7	2,098.6	4,048.4
Cost of goods sold[1]	2,597.3	2,897.2	2,909.0	1,255.4	1,329.5	2,523.2
Selling, general and administrative expense[2]	914.8	991.5	1,113.6	456.8	458.5	913.1
Research and development expenses	51.6	49.5	44.2	26.7	25.7	52.6
Amortization of acquired intangibles	80.7	83.8	86.5	40.5	40.1	81.1
Income from operations	468.9	369.5	160.8	254.3	244.8	478.4
Interest expense, net[3]	196.5	217.7	234.8	97.9	99.2	195.2
Other expense, net	111.2	115.0	34.1	40.8	92.5	59.5
Income (loss) before income taxes	161.2	36.8	(108.1)	115.6	53.1	223.7
Provision (benefit) for income taxes	63.3	2.1	(1.3)	34.9	30.7	67.5
Net income (loss)	97.9	34.7	(106.8)	80.7	22.4	156.2
Less: Net income attributable to noncontrolling interests	4.2	7.3	6.6	2.5	2.4	4.3
Net income (loss) attributable to controlling interests	$ 93.7	$ 27.4	$ (113.4)	$ 78.2	$ 20.0	$ 151.9
Balance sheet data (at end of period):						
Cash and cash equivalents	$ 485.0	$ 382.1	$ 459.3	$ 480.1	$ 307.8	
Working capital[4]	1,035.7	926.2	952.2	1,111.7	1,026.7	
Total assets	5,854.2	6,170.7	6,638.3	5,835.8	5,930.8	
Indebtedness	3,441.5	3,614.3	3,822.1	3,353.2	3,559.3	
Total liabilities	4,713.0	5,058.7	5,426.5	4,581.0	4,818.6	
Total shareholders' equity	1,141.2	1,112.0	1,211.8	1,254.8	1,112.2	
Cash flow data:						
Cash flows from (used in):						
Operating activities	$ 399.6	$ 251.4		$ 179.3	$ 5.0	$ 573.9
Investing activities	(164.3)	(178.5)		(67.6)	(56.9)	(175.0)
Financing activities	(74.5)	(123.2)		(108.3)	23.4	(206.2)
Other financial and operating data:						
Capital expenditures	$ (138.1)	$ (188.4)	$ (109.7)	$ (64.8)	$ (56.6)	$ (146.3)
Depreciation and amortization	307.7	308.7	327.3	154.6	150.1	312.2
EBITDA[5]	665.4	563.2	454.0	368.1	302.4	731.1
Adjusted EBITDA[5]	867.2	840.5	731.9	447.4	437.5	877.1
Adjusted EBITDA margin[6]	21.2%	19.3%	17.1%	22.1%	21.0%	21.8%
Cash interest expense[7]						176.7
Net senior secured debt (at end of period)[8]						2,100.5
Total debt (at end of period)						3,353.2
Net total debt (at end of period)[9]						2,873.1
Ratio of net senior secured debt to Adjusted EBITDA[10]						2.39x
Ratio of net total debt to Adjusted EBITDA[11]						3.28x
Ratio of Adjusted EBITDA to cash interest expense[12]						4.96x
Ratio of Adjusted EBITDA minus capital expenditures to cash interest expense[13]						4.14x

(1) In the years ended December 31, 2015 and 2013, the six months ended June 30, 2015 and the LTM Period, cost of goods sold included the impacts of $1.2 million, $103.7 million, $0.5 million and $0.7 million, respectively, attributable to the increases in inventory value resulting from the fair value adjustments associated with our acquisition accounting for inventories.

(2) Selling, general and administrative expense included transition-related and cost-savings initiatives of $64.4 million, $127.1 million, $231.5 million, $16.2 million, $30.1 million and $50.5 million for the years ended December 31, 2015, 2014 and 2013, the Successor six months ended June 30, 2016 and 2015, and the LTM Period, respectively.

(3) In February 2014, we refinanced our borrowings under the term loan facilities of the Senior Secured Credit Facilities. If the refinancing was reflected in the pro forma results for the year ended December 31, 2013, pro forma interest expense would have been reduced by $24.0 million, or $210.8 million.

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

(5) EBITDA consists of net income (loss) before interest, taxes, depreciation and amortization. Adjusted EBITDA consists of EBITDA adjusted for (i) non-operating income or expense, (ii) the impact of certain non-cash or other items that are included in net income and EBITDA that we do not consider indicative of our ongoing operating performance and (iii) certain unusual items impacting results in a particular period. We believe that making such adjustments provides investors with meaningful information to understand our operating results and 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 (loss) before income taxes, net income (loss), earnings (loss) 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 (loss) to EBITDA and Adjusted EBITDA for the periods presented:

($ in millions)	Successor		Pro Forma	Successor		
	Year Ended December 31, 2015	Year Ended December 31, 2014	Year Ended December 31, 2013[a]	Six Months Ended June 30, 2016	Six Months Ended June 30, 2015	Twelve Months Ended June 30, 2016
Net income (loss)	$ 97.9	$ 34.7	$(106.8)	$ 80.7	$ 22.4	$156.2
Interest expense	196.5	217.7	234.8	97.9	99.2	195.2
Provision (benefit) for income taxes	63.3	2.1	(1.3)	34.9	30.7	67.5
Depreciation and amortization	307.7	308.7	327.3	154.6	150.1	312.2
EBITDA	$665.4	$563.2	$ 454.0	$368.1	$302.4	$731.1
Financing fees and debt extinguishment[b]	2.5	6.1	—	2.3	—	4.8
Foreign exchange remeasurement losses[c]	93.7	81.2	34.0	25.5	66.5	52.7
Long-term employee benefit plan adjustments[d]	(0.3)	(0.6)	11.8	1.3	0.4	0.6
Termination benefits and other employee related costs[e]	36.6	18.4	147.8	8.9	18.5	27.0
Consulting and advisory fees[f]	24.7	36.3	54.7	5.6	9.9	20.4
Transition-related costs[g]	(3.4)	101.8	29.3	—	—	(3.4)
Offering and transactional costs[h]	(2.3)	22.3	—	1.4	(3.7)	2.8
Stock-based compensation[i]	30.2	8.0	—	21.6	14.2	37.6
Other adjustments[j]	(5.8)	2.8	2.4	3.7	2.8	(4.9)
Dividends in respect of noncontrolling interest[k]	(4.7)	(2.2)	(5.2)	(1.5)	(4.1)	(2.1)
Management fee expense[l]	—	3.2	3.1	—	—	—
Asset impairment[m]	30.6	—	—	10.5	30.6	10.5
Adjusted EBITDA	$867.2	$840.5	$ 731.9	$447.4	$437.5	$877.1

(a) The Adjusted EBITDA information for the Predecessor period from January 1, 2013 through January 31, 2013 and the pro forma year ended December 31, 2013 excludes the net benefit of $5.7 million, which is comprised of (1) the add-back of corporate allocations from DuPont to DPC for the usage of DuPont's facilities, functions and services; costs for administrative functions and services performed on behalf of DPC by centralized staff groups within DuPont; a portion of DuPont's general corporate expenses; and certain pension and other long-term employee benefit costs, in each case because we believe these costs are not indicative of costs we would have incurred as a standalone company, net of (2) estimated standalone costs based on a corporate function resource analysis that included a standalone executive office, the costs associated with supporting a standalone information technology infrastructure, corporate functions such as legal, finance, treasury, procurement and human resources and certain costs related to facilities management. This resource analysis included anticipated headcount and the associated overhead costs of running these functions effectively as a standalone company of our size and complexity.

(b) In connection with the amendment to the Senior Secured Credit Facilities in February 2014, we recognized $3.1 million of costs. In addition to the credit facility amendment, we also incurred $2.5 million, $3.0 million, $2.3 million and $4.8 million of non-cash pre-tax losses on extinguishment of debt during the years ended December 31, 2015 and 2014, the six months ended June 30, 2016 and the LTM Period, respectively, which resulted directly from the pro-rata write offs of unamortized deferred financing costs and original issue discounts associated with the three separate pay-downs of $100.0 million of principal on the New Dollar Term Loan.

(c) Eliminates foreign exchange gains and losses resulting from the remeasurement of assets and liabilities denominated in foreign currencies, net of gains associated with our foreign currency instruments used to hedge our balance sheet exposures. Exchange losses attributable to the remeasurement of our Venezuelan subsidiary represented $22.7 million for the six months ended June 30, 2016 and $54.8 million for the six months ended June 30, 2015.

(d) Eliminates the non-cash, non-service cost components of employee benefit costs (income) for the successor periods. For the pro forma year ended December 31, 2013, eliminates (1) all U.S. pension and other long-term employee benefit costs that were not assumed as part of the Acquisition and (2) the non-service cost component of employee benefit costs. Additionally, we deducted a pension curtailment gain of $7.3 million recorded during the year ended December 31, 2014.

(e) Represents expenses that are not considered indicative of our ongoing operating performance, primarily related to employee termination benefits and other employee-related costs. Termination benefits include the costs associated with our headcount initiatives for establishment of new roles and elimination of old roles and other costs associated with cost-saving opportunities that were related to our transition to a standalone entity in 2013 and 2014 and our Axalta Way cost-savings initiatives in 2015 and 2016.

(f) Represents fees paid to consultants, advisors and other third-party professional organizations for professional services, which are not considered indicative of our ongoing operating performance. Amounts incurred during 2015 and 2016 primarily relate to our Axalta Way cost-savings initiatives. Amounts incurred during 2013 and 2014 relate to services rendered in conjunction with our transition from DuPont to a standalone entity.

(g) Represents charges associated with the transition from DuPont to a standalone entity, including branding and marketing, information technology related costs, and facility transition costs. The gain in 2015 relates to the settlement of certain indemnity matters during 2015 associated with the Acquisition.

(h) Represents costs associated with the secondary offerings of our common shares by investment funds affiliated with The Carlyle Group ("Carlyle"), our former sponsor, during 2015 and 2016 and costs associated with our initial public offering in November 2014 (the "IPO"), including a $13.4 million pre-tax charge associated with the termination of the management agreement with Carlyle Investment Management, L.L.C., an affiliate of Carlyle, upon the completion of the IPO during 2014. See note (l) below. Additionally, this also includes acquisition-related items, including a $5.4 million gain recognized during the first quarter of 2015 resulting from the remeasurement of our previously held interest in an equity method investee upon the acquisition of a controlling interest, and costs associated with changes in the fair value of contingent consideration associated with our acquisitions, all of which are not considered indicative of our ongoing operating performance.

(i) Represents non-cash costs associated with stock-based compensation, including $8.2 million of expense during the six month period ended June 30, 2015 attributable to the accelerated vesting of all issued and outstanding stock options issued under the Axalta Coating Systems Bermuda Co., Ltd. 2013 Equity Incentive Plan as a result of Carlyle's interest falling below 50% and triggering a liquidity event.

(j) Represents costs for certain unusual or non-operational (gains) and losses, equity investee dividends, indemnity losses (gains) associated with the Acquisition, losses (gains) on sale and disposal of property, plant and equipment, and losses (gains) on foreign currency derivative instruments.

(k) Represents the payment of dividends to our joint venture partners by our consolidated entities that are not wholly owned.

(l) Pursuant to Axalta's management agreement with Carlyle Investment Management, L.L.C., for management and financial advisory services and oversight provided to Axalta and its subsidiaries, Axalta was required to pay an annual management fee of $3.0 million and out-of-pocket expenses. This agreement terminated upon completion of the IPO.

(m) As a result of the currency devaluation in Venezuela, we recorded a non-cash impairment charge relating to a real estate investment of $30.6 million and $10.5 million for the six months ended June 30, 2016 and 2015 (See Note 20 to the condensed consolidated financial statements included in the Q2 Quarterly Report).

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

(7) Cash interest expense is interest expense less non-cash items, including amortization of OID and deferred financing costs for the LTM Period.

(8) Represents total senior secured debt less cash and cash equivalents.

(9) Represents total debt less cash and cash equivalents.

(10) The ratio of net senior secured debt to Adjusted EBITDA is determined by dividing net senior secured debt by Adjusted EBITDA.

(11) The ratio of net total debt to Adjusted EBITDA is determined by dividing net total debt by Adjusted EBITDA.

(12) The ratio of Adjusted EBITDA to cash interest expense is determined by dividing Adjusted EBITDA by cash interest expense for the LTM Period.

(13) The ratio of Adjusted EBITDA minus capital expenditures to cash interest expense is determined by dividing Adjusted EBITDA minus capital expenditures by cash interest expense for the LTM Period.

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 Reports, 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 Offered Hereby

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 June 30, 2016, on an as-adjusted basis after giving effect to the Refinancing Transactions, we would have had total indebtedness, net, of $3,492.1 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 $21.9 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, given current credit constriction, 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 indenture governing the Existing Unsecured Notes and the credit agreement governing the Senior Secured Credit Facilities contain, and the indenture governing the Notes offered hereby 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 Existing Unsecured Notes and the Notes offered hereby, on or before maturity. 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 indenture governing the Existing Unsecured Notes and the credit agreement governing the Senior Secured Credit Facilities contain, and the indenture governing the Notes offered hereby 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 June 30, 2016, on an as-adjusted basis after giving effect to the Refinancing Transactions, the Revolving Credit Facility would have provided for unused commitments of $400.0 million (without giving effect to $21.9 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 (x) $400.0 million plus (y) an unlimited amount so long as on a pro forma basis the maximum first lien leverage requirement (as such term is used in the credit agreement governing the Senior Secured Credit Facilities) is satisfied, 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 indenture governing the Existing Unsecured Notes and the credit agreement governing the Senior Secured Credit Facilities permit, and the indenture governing the Notes offered hereby 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 the indentures) is in excess of $600 million as of June 30, 2016. 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 indenture governing the Existing Unsecured Notes and the credit agreement governing the Senior Secured Credit Facilities restrict, and the indenture governing the Notes offered hereby 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 indenture governing the Existing Unsecured Notes and the credit agreement governing the Senior Secured Credit Facilities contain, and the indenture governing the Notes offered hereby 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 governing the Senior Secured Credit Facilities requires us to maintain a first lien net leverage ratio that does not exceed 5.5:1.00 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) 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 indenture governing the Existing Unsecured Notes, the indenture governing the Notes offered hereby or the credit agreement governing the Senior Secured Credit Facilities 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 governing the Senior Secured Credit Facilities 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 1.00% floor rate of the Senior Secured Credit Facilities), each quarter point change in interest rates would result in a $4.0 million change in annual interest expense on the indebtedness under the Senior Secured Credit Facilities. In the future, we may enter into interest rate swaps that involve the exchange of floating for fixed rate interest payments in order to reduce interest rate volatility. However, it is possible that we will not maintain 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 each of the Issuer's 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 indenture governing the Existing Unsecured Notes permits, and the indenture governing the Notes offered hereby 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 36% of our net sales and approximately 40% of our Adjusted EBITDA. As of June 30, 2016, our non-guarantor subsidiaries represented

approximately 29% of our total assets (including trade receivables but excluding intercompany receivables) and had approximately $434.2 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 under the indenture governing the Notes offered hereby, 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 June 30, 2016, on an as-adjusted basis after giving effect to the Refinancing Transactions, we would have had $2,114.5 million of secured indebtedness, net, and the Revolving Credit Facility would have provided for unused commitments of $400.0 million (without giving effect to $21.9 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. 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 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 governing the Notes offered hereby 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. 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 governing the Notes offered hereby 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 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.

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 Issuer and the guarantors of the Notes offered hereby are incorporated or organized in Australia, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, 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, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, 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 Issuer, 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 and security 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 or security 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 secured and other 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 or the security 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 Dutch entity and will be guaranteed by certain of our subsidiaries that are organized under the laws of Australia, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, 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.

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 our directors and executive officers, the Issuer and certain of the guarantors 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 the Issuer and 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, the Issuer 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."

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 certain of the Issuer's 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. 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 offered hereby 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."

We cannot assure you that the Notes offered hereby will be listed or remain listed on the Irish Stock Exchange.

Although an application will be made to the Irish Stock Exchange for the Notes offered hereby to be listed on the Official List and admitted to trading on the Global Exchange Market of the Irish Stock Exchange, we cannot assure you that the Notes offered hereby will be listed or will remain listed on that or any other exchange. Although no assurance is made as to the liquidity of the Notes offered hereby as a result of the admission to trading on the Global Exchange Market of the Irish Stock Exchange, any failure to be approved for listing or the

delisting (whether or not for an alternative admission to listing on another stock exchange) of the Notes offered hereby from the Official List may have a material effect on the ability of a holder of the Notes offered hereby offered hereby to hold or to resell the Notes offered hereby in the secondary market. Although the initial purchasers have advised us that they intend to make a market in the Notes as permitted by applicable laws and regulations, they are not obliged to do so and may discontinue any market-making activities at any time at their sole discretion and without notice.

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 governing the Notes offered hereby will not be applicable during any period when the Notes offered hereby are rated investment grade by both Moody's and S&P and no default or event of default has occurred and is continuing.

Many of the covenants contained in the indenture governing the Notes offered hereby will not apply to us during any period when the Notes offered hereby are rated investment grade by both Moody's and S&P and no default or event of default has occurred and is continuing under the indenture governing the Notes offered hereby. These covenants 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 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 "Material U.S. Federal Income Tax Consequences."

Transactions in the Notes offered hereby could be subject to the European financial transaction tax, if adopted.

On February 14, 2013, the European Commission published a proposal for a directive on a common financial transaction tax (the "FTT") to be implemented under the enhanced cooperation procedure by eleven

Member States (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) (the "Participating Member States"). However, Estonia has since stated that it will not participate.

The proposed FTT has a very broad scope and could, if introduced in its current form, apply to certain dealings in Notes (including secondary market transactions) in certain circumstances. Primary market transactions referred to in Article 5(c) of Regulation (EC) N° 1287/2006 are exempt. It would call for the Participating Member States to impose a tax of generally at least 0.1% on all such transactions, generally determined by reference to the amount of consideration paid. The mechanism by which the tax would be applied and collected is not yet known, but if the proposed directive or any similar tax is adopted, transactions in the Notes offered hereby could be subject to higher costs, and the liquidity of the market for the Notes offered hereby may be diminished.

Under current proposals, the FTT could apply in certain circumstances to persons both within and outside of the Participating Member States. Generally, it would apply to certain dealings in Notes where at least one party is a financial institution, and at least one party is established in a Participating Member State. A financial institution may be, or be deemed to be, "established" in a Participating Member State in a broad range of circumstances, including (a) by transacting with a person established in a Participating Member State or (b) where the financial instrument which is subject to the dealings is issued in a Participating Member State. The FTT proposal remains subject to negotiation between the participating Member States. It may therefore be altered prior to any implementation, the timing of which remains unclear. Additional EU Member States may decide to participate. In December 2015, a joint statement was issued by Participating Member States (excluding Estonia), indicating an intention to make decisions on the remaining open issues by the end of June 2016 but no decision has been taken so far. Prospective holders of Notes offered hereby are advised to seek their own professional advice in relation to the consequences of the FTT associated with subscribing for, purchasing, holding and disposing of the Notes offered hereby.

USE OF PROCEEDS

We intend to use the net proceeds of this offering (1) to fund the redemption of the Existing Secured Euro Notes and the satisfaction and discharge of the related indenture by irrevocably depositing with the trustee for the Existing Secured Euro Notes funds for the benefit of the holders of the Existing Secured Euro Notes as will be sufficient to redeem the entire outstanding amount of Existing Secured Euro Notes at a redemption price of 104.313% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to but excluding the date on which we will redeem all outstanding Existing Secured Euro Notes, (2) to prepay a portion of the outstanding principal borrowings under the Euro Term Loan Facility and (3) 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 Existing Secured Euro Notes and/or a portion of the Euro Term Loan Facility and may accordingly receive a portion of the proceeds. See "Plan of Distribution."

CAPITALIZATION

The following table sets forth as of June 30, 2016, our cash and cash equivalents and capitalization on:

- an actual basis;
- an as adjusted basis to give effect to (a) the entry into and the effectiveness of the amendment to the credit agreement governing the Revolving Credit Facility on August 1, 2016, (b) the issuance of the Existing Unsecured Notes by Axalta Coating Systems, LLC and the use of proceeds thereof to redeem all of the outstanding Dollar-denominated 7.375% Senior Notes due 2021 issued by the Issuer and U.S. Holdings, and the satisfaction and discharge of the related indenture, on August 16, 2016, and (c) the payment of fees and expenses related to the foregoing transactions as if they had occurred on June 30, 2016; and
- an as further adjusted basis to give effect to the Refinancing Transactions as if they had occurred on June 30, 2016.

This table should be read in conjunction with the information presented under the captions "Offering Memorandum Summary—Summary Historical and Pro Forma 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 and Quarterly Reports and our consolidated financial statements and related notes included or incorporated by reference in this offering memorandum.

The information presented below has been translated into U.S. Dollars using the applicable exchange rate of €0.9046 per U.S. Dollar as at June 30, 2016.

	As of June 30, 2016		
($ in millions)	**Actual**	**As Adjusted**	**As Further Adjusted**
		(Unaudited)	
Cash and cash equivalents	$ 480.1	$ 540.7	$ 540.7
Debt:			
Senior secured credit facilities, consisting of the following[1]:			
Revolving credit facility	—	—	—
Term loan facilities:			
Dollar term loan facility, net	$1,890.0	$1,890.0	$1,890.0
Euro term loan facility, net	420.0	420.0	224.5
Notes, consisting of the following:			
Existing Secured Euro Notes, net[2]	270.6	270.6	—
7.375% Senior Notes due 2021, net[3]	736.6	—	—
Existing Dollar Notes, net[4]	—	489.5	489.5
Existing Unsecured Euro Notes, net[5]	—	364.1	364.1
Euro Notes offered hereby, net[6]	—	—	488.0
Other Indebtedness[7]	36.0	36.0	36.0
Total debt	3,353.2	3,470.2	3,492.1
Total shareholders' equity	1,254.8	1,215.1	1,193.2
Total capitalization	$4,608.0	$4,685.3	$4,685.3

(1) The senior secured credit facilities consist of (a) a revolving credit facility in the original amount of $400.0 million with a five-year maturity, (b) a term loan facility in the original amount of $2,300.0 million with a seven-year maturity and (c) a term loan facility in the original amount of €400.0 million with a seven-year maturity. In connection with the Refinancing Transactions, we (a) amended the credit agreement governing the Revolving Credit Facility to extend the maturity date of the facility, decrease the interest rate applicable

to the Revolving Credit Facility and amend certain financial covenants and (b) intend to prepay a portion of the outstanding principal borrowings under the Euro Term Loan Facility. As of June 30, 2016, we had $1,931.0 million of outstanding principal borrowings under the Dollar Term Loan Facility, not including deferred financing costs and OID, $428.9 million of outstanding principal borrowings under the Euro Term Loan Facility, not including deferred financing costs and OID, and no outstanding borrowings under the Revolving Credit Facility. As of June 30, 2016, we had approximately $378.1 million in additional borrowing capacity available under the Revolving Credit Facility, after giving effect to $21.9 million of outstanding letters of credit.

(2) Consists of €250.0 million in aggregate principal amount of 5.750% senior secured notes due 2021 (the "Existing Secured Euro Notes"), net of deferred financing costs.

(3) Consists of $750.0 million in aggregate principal amount of 7.375% senior unsecured notes due 2021, net of deferred financing costs. On August 16, 2016, we used the net proceeds from the issuance of the Existing Dollar Notes to satisfy and discharge the related indenture.

(4) Consists of $500.0 million in aggregate principal amount of 4.875% senior unsecured notes due 2024 (the "Existing Dollar Notes"), net of original issue discount and deferred financing costs.

(5) Consists of €335.0 million in aggregate principal amount of 4.250% senior unsecured notes due 2024 (the "Existing Unsecured Euro Notes" and, together with the Existing Dollar Notes, the "Existing Unsecured Notes"), net of deferred financing costs.

(6) Represents the approximate U.S. dollar equivalent of €450.0 million as of the date of this offering memorandum, net of deferred financing costs.

(7) Includes indebtedness to fund short-term operational requirements as well as $23.1 million of costs associated estimated costs incurred to construct two properties under two build-to-suit lease arrangements.

DESCRIPTION OF OTHER INDEBTEDNESS

Senior Secured Credit Facilities

On August 1, 2016, the Issuer, as "Dutch Borrower," and its indirect wholly owned subsidiary, U.S. Holdings, as "US Borrower," entered into the third amendment to the credit agreement governing the Senior Secured Credit Facilities (the "Third Amendment"). The Third Amendment amended the credit agreement, originally entered into on February 1, 2013 (as amended and supplemented, the "Credit Agreement"), to (i) extend the maturity of the Revolving Credit Facility thereunder, (ii) decrease the interest rate applicable to the Revolving Credit Facility and (iii) amend the financial covenant applicable to the Revolving Credit Facility. 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 Axalta Coating Systems Dutch Holding A B. V. and the guarantors. The Term Loans will mature on February 1, 2020 and the Revolving Credit Facility will mature on August 1, 2021 (such date, the "Revolving Maturity Date"); provided that if the Term Loans are still outstanding prior to the Revolving Maturity Date, the Revolving Maturity Date shall be accelerated to be the date that is 91 days prior to the date the Term Loans are set to mature. Principal is paid quarterly on both the Dollar Term Loan and the Euro Term Loan based on 1% per annum of the original principal amount with the unpaid balance due at maturity.

The interest rate applicable to the Revolving Credit Facility is the Adjusted Eurocurrency Rate (as defined in the Credit Agreement) plus 2.75% per annum for eurocurrency rate loans and Base Rate (as defined in the Credit Agreement) plus 1.75% per annum for base rate loans, in each case, if the first lien net leverage ratio is greater than 3.00:1.00. Each such interest rate steps-down by 0.25% when the first lien net leverage ratio is less than or equal to 3.00:1.00 and another 0.25% when the first lien leverage ratio is further reduced to less than 2.50:1.00.

The interest rate applicable to Term Loans denominated in Euros is the Adjusted Eurocurrency Rate plus 3.25% if the total net leverage ratio is greater than 4.50:1.00 or 3.00% when the total net leverage ratio is less than or equal to 4.50:1.00%. The interest rates applicable to Term Loans denominated in dollars are (i) for base rate loans, Base Rate plus 2.00% and (ii) for eurocurrency rate loans, the Adjusted Eurocurrency Rate plus 3.00%, in each case, with a 0.25% step-down when the total net leverage ratio is less than 4.50:1.00. The Adjusted Eurocurrency Rate for all term loans is subject to a 1.00% 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 (as defined in the Credit Agreement) 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 $400.0 million plus an additional amount subject to our not exceeding a maximum first lien leverage ratio 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, subject to the make-whole provisions set forth in the credit agreement governing the Senior Secured Credit Facilities. Such indebtedness is subject to mandatory prepayments amounting to the proceeds of asset sales over $25.0 million annually, proceeds from certain debt issuances not otherwise permitted under the credit agreement governing the Senior Secured Credit Facilities and 50% (subject to a step-down to 25.0% or 0% if the First Lien Leverage Ratio falls below 4.25:1 or 3.50:1, respectively) of Excess Cash Flow.

During each of the years ended December 31, 2015 and 2014 and the six months ended June 30, 2016, we voluntarily repaid $100.0 million of the outstanding New Dollar Term Loan.

We are subject to customary negative covenants as well as a financial covenant that is a maximum First Lien Leverage Ratio. 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.

At June 30, 2016, there were no borrowings under the Revolving Credit Facility and letters of credit issued under the Revolving Credit Facility totaled $21.9 million, which reduced the availability under the Revolving Credit Facility. Availability under the Revolving Credit Facility was $378.1 million at June 30, 2016.

Existing Dollar Notes

On August 16, 2016, Axalta Coating Systems, LLC, an indirect wholly owned subsidiary of the Issuer, issued $500.0 million aggregate principal amount of the Existing Dollar Notes.

The Existing Dollar Notes are unconditionally guaranteed on a senior unsecured basis by the Issuer and by those of the Issuer's subsidiaries (other than Axalta Coating Systems, LLC) that borrow under or guarantee obligations under the Senior Secured Credit Facilities.

The indenture governing the Existing Dollar Notes contains covenants that restrict the ability of Axalta Coating Systems, LLC, the Issuer and the other guarantors to, among other things, incur additional debt, make certain payments including payment of dividends or repurchase equity interests of the Issuer, make loans or acquisitions or capital contributions and certain investments, incur certain liens, sell assets, merge or consolidate or liquidate other entities, and enter into transactions with affiliates.

The Existing Dollar Notes were sold at a price of 99.591% of the principal amount thereof and are due August 15, 2024. The Existing Dollar Notes bear interest at 4.875% payable semi-annually on February 15 and August 15.

Commencing on August 15, 2019, we have the option to redeem all or part of the Existing Dollar Notes at the following redemption prices (expressed as percentages of principal amount):

Year	Percentage
2019	103.656%
2020	102.438%
2021	101.219%
2022 and thereafter	100.000%

Upon the occurrence of certain events constituting a change of control, holders of the Existing Dollar Notes have the right to require Axalta Coating Systems, LLC to repurchase all or any part of the Existing Dollar Notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to (but not including) the repurchase date. Axalta Coating Systems, LLC or a third party has the right to redeem the Existing Dollar Notes at 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of redemption following the consummation of certain events constituting a change of control if at least 90.0% of the Existing 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 Dollar Notes and related guarantees is senior unsecured indebtedness of Axalta Coating Systems, LLC, is senior in right of payment to all future subordinated indebtedness of Axalta Coating Systems, LLC and is equal in right of payment to all existing and future senior indebtedness of Axalta Coating Systems, LLC.

Existing Unsecured Euro Notes

On August 16, 2016, Axalta Coating Systems, LLC issued €335.0 million aggregate principal amount of Existing Unsecured Euro Notes.

The Existing Unsecured Euro Notes are unconditionally guaranteed on a senior unsecured basis by the Issuer and by those of the Issuer's subsidiaries (other than Axalta Coating Systems, LLC) that borrow under or guarantee obligations under the Senior Secured Credit Facilities.

The indenture governing the Existing Unsecured Euro Notes contains covenants that restrict the ability of Axalta Coating Systems, LLC, the Issuer and the other guarantors to, among other things, incur additional debt, make certain payments including payment of dividends or repurchase equity interest of the Issuer, make loans or acquisitions or capital contributions and certain investments, incur certain liens, sell assets, merge or consolidate or liquidate other entities, and enter into transactions with affiliates.

The Existing Unsecured Euro Notes were sold at par and are due August 15, 2024. The Existing Unsecured Euro Notes bear interest at 4.250% payable semi-annually on February 15 and August 15.

Commencing on August 15, 2019, we have the option to redeem all or part of the Existing Unsecured Euro Notes at the following redemption prices (expressed as percentages of principal amount):

Year	Percentage
2019	103.188%
2020	102.125%
2021	101.063%
2022 and thereafter	100.000%

Upon the occurrence of certain events constituting a change of control, holders of the Existing Unsecured Euro Notes have the right to require Axalta Coating Systems, LLC to repurchase all or any part of the Existing Unsecured Euro Notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to (but not including) the repurchase date. Axalta Coating Systems, LLC or a third party has the right to redeem the Existing Unsecured Euro Notes at 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of redemption following the consummation of certain events constituting a change of control if at least 90.0% of the Existing Unsecured 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 Euro Notes and related guarantees is senior unsecured indebtedness of Axalta Coating Systems, LLC and is equal in right of payment to all existing and future senior indebtedness of Axalta Coating Systems, LLC.

DESCRIPTION OF NOTES

General

In this description, (1) the terms "we," "us" and "our" each refer to Axalta Coating Systems Dutch Holding B B.V., a private company with limited liability organized under the laws of the Netherlands, and its consolidated Subsidiaries, unless the context otherwise requires and (2) the term "Issuer" refers to Axalta Coating Systems Dutch Holding B B.V., and not to any of its Subsidiaries or Affiliates.

For purposes of this description, the % Senior Unsecured Notes due 2025 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 and, after and for so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted to trading on the Global Exchange Market of the Irish Stock Exchange, may be inspected at the office of the Ireland listing agent appointed by the Issuer.

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 €450 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, ISIN or Common Code, as applicable, 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.

If a holder of Notes has given wire transfer instructions to the Issuer or the paying agent, the paying agent will distribute the payments received in respect of principal of, and, if applicable, interest and premium, if any, on, that holder's Notes in accordance with those instructions. Distribution of all other payments on the Notes will be made at the office or agency of the paying agent unless the Issuer elects to make interest payments through the paying agent by check mailed to the holders of Notes at their addresses set forth in the register of holders.

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 €100,000 and any integral multiple of €1,000 in excess thereof.

The net proceeds of the offering of the Notes sold on the Issue Date will be used by the Issuer (i) to redeem the Existing Secured Notes, (ii) to prepay a portion of the euro-denominated term loans outstanding under the Senior Credit Agreement and (iii) 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 Unsecured 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 Issuer that borrows under or guarantees any obligation under the Senior Credit Agreement.

At June 30, 2016, on a *pro forma* basis after giving effect to the Refinancing Transactions, we would have had total indebtedness, net, of approximately $3,492.1 million, including the Notes, of which approximately $2,114.5 would have been Secured Indebtedness. 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 a de minimis amount 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) $400.0 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."

The Issuer is a holding company with limited direct operations. Substantially all of the operations of the Issuer are conducted through its Subsidiaries. As a result, the Issuer is dependent upon dividends and other payments from its Subsidiaries to generate the funds necessary to meet its outstanding indebtedness service and other obligations and such dividends and other payments may be restricted by law or the instruments governing their indebtedness. Its Subsidiaries may not generate sufficient cash from operations to enable it to make principal and interest payments on its indebtedness, including the Notes. 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 Issuer and its Subsidiaries may Incur, such limitations are subject to a number of significant exceptions.

Guarantees

Each of the Issuer's existing and future Restricted Subsidiaries (other than a Receivables Subsidiary) 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 Unsecured 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 Offered Hereby—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 Issuer will cause each Restricted Subsidiary (unless such Subsidiary is a Receivables Subsidiary or a Subsidiary that is already a Guarantor or obligor) that Incurs or guarantees Indebtedness of the Issuer or any of its Restricted Subsidiaries under the Senior Credit Agreement 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 Issuer designating such Guarantor to be 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; or

(e) 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.

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 Issuer's Subsidiaries that is, or becomes, a guarantor of the Issuer's Obligations under the Senior Credit Agreement (other than a Receivables Subsidiary and a Subsidiary that is already a Guarantor or obligor) will become a Guarantor. For the 12-month period ended June 30, 2016, our Non-Guarantor Subsidiaries represented less than approximately 36% of our net sales and less than approximately 40% of our EBITDA, and as of June 30, 2016, our Non-Guarantor Subsidiaries represented less than approximately 29% of our total assets (including trade receivables but excluding intercompany receivables) and less than approximately 9% 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 , 2025. Each Note will bear interest at the respective rates per annum shown on the front cover of this Offering Memorandum from , 2016, 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 , 2017. 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

As long as the Notes remain outstanding, the Issuer shall, to the extent reasonably practicable and permitted as a matter of law, ensure that there is a paying agent for the Notes in a member state of the European Union (if such a state exists) that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC regarding the taxation of savings income. The Issuer may change the paying agent or registrar under the Indenture without prior notice to the holders of the Notes, and the Issuer 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.

Listing

An application will be made to list the Notes on the Official List of the Irish Stock Exchange and to admit the Notes to trading on the Global Exchange Market thereof. We cannot assure you that the Notes will be admitted to the Official List of the Irish Stock Exchange or to trading on the Global Exchange Market. The Issuer's obligations with respect to listing the Notes are further described under "—Certain Covenants—Listing."

Optional Redemption

On and after , 2019, 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
2019	%
2020	%
2021	%
2022 and thereafter	100.000%

In addition, at any time prior to , 2019, 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 , 2019, upon notice as described under "—Selection and Notice," the Issuer may redeem in the aggregate up to 40.0% of the original aggregate principal amount of the Notes (calculated after giving effect to any issuance of Additional Notes of such series) 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 Issuer) the net cash proceeds thereof are contributed to the common equity capital of the Issuer or used to purchase Capital Stock (other than Disqualified Stock) of the Issuer 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 of such series) must remain outstanding after each such redemption of such series; *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 120 days after the date on which any such Equity Offering is consummated.

At any time, the Issuer or a third party will have the right to redeem the Notes at 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) following the consummation of a Change of Control if at least 90.0% of the applicable series of the Notes outstanding prior to such date of purchase are purchased pursuant to a Change of Control Offer (as defined below) with respect to such Change of Control.

Any redemption of the Notes may, at the Issuer's discretion, be subject to one or more conditions precedent. If any redemption is subject to satisfaction of one or more conditions precedent, any notice in respect of such redemption shall state that, in the Issuer's discretion, the redemption date may 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 such notice may be modified or rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Issuer in its sole discretion) by the redemption date, or by the redemption date so delayed. In addition, such notice of redemption may be extended if such conditions precedent have not been met by providing notice to the noteholders.

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.

Redemption for Taxation Reasons

The Issuer may redeem the Notes, at its option, in whole, but not in part, at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, if any, to (but not including) the date fixed for redemption (a "*Tax 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) and all Additional Amounts (as defined under "—Withholding Taxes"), if any, then due or that will become due on the Tax Redemption Date as a result of the redemption or otherwise, if the Issuer determines in good faith that, as a result of:

(1) any change in, or amendment to, the law or treaties (or any regulations, protocols or rulings promulgated thereunder) of a Relevant Taxing Jurisdiction (as defined under "—Withholding Taxes") affecting taxation; or

(2) any change in official position regarding the application, administration or interpretation of such laws, treaties, regulations, protocols or rulings (including a holding, judgment or order by a government agency or court of competent jurisdiction) (each of the foregoing in clauses (1) and (2), a "*Change in Tax Law*"),

any Payor (as defined under "—Withholding Taxes"), with respect to the Notes or a Guarantee is, or on the next date on which any amount would be payable in respect of the Notes would be, required to pay any Additional Amounts, and such obligation cannot be avoided by taking reasonable measures available to such Payor (including the appointment of a new paying agent or, where such payment would be reasonable, the payment through another Payor); *provided* that no Payor shall be required to take any measures that in the Issuer's good-faith determination would result in the imposition on such person of any legal or regulatory burden or the incurrence by such person of additional costs, or would otherwise result in any adverse consequences to such person.

In the case of any Payor, the Change in Tax Law must become effective on or after the date of this Offering Memorandum. Notwithstanding the foregoing, no such notice of redemption will be given earlier than 90 days prior to the earliest date on which the Payor would be obligated to make such payment of Additional Amounts. Prior to the publication, mailing or delivery of any notice of redemption of the Notes pursuant to the foregoing, the Issuer will deliver to the Trustee, each in a form reasonably acceptable to the Trustee, (a) an Officer's Certificate stating that it is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to its right so to redeem have been satisfied and (b) an opinion of an independent tax

counsel of recognized standing to the effect that the Payor is or would be obligated to pay Additional Amounts as a result of a Change in Tax Law. The Trustee will accept such Officer's Certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, in which event it will be conclusive and binding on the holders.

The foregoing provisions will apply *mutatis mutandis* to the laws and official positions of any jurisdiction in which any successor to a Payor is organized or otherwise considered to be a resident for tax purposes or any political subdivision or taxing authority or agency thereof or therein. The foregoing provisions will survive any termination, defeasance or discharge of the Indenture.

Withholding Taxes

All payments made by the Issuer or any Guarantor or any successor in interest to any of the foregoing (each, a "*Payor*") on or with respect to the Notes or any Guarantee will be made without withholding or deduction for, or on account of, any present or future tax, duty, levy, impost, assessment or other similar governmental charge (collectively, "*Taxes*") unless such withholding or deduction is required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of:

(1) any jurisdiction from or through which payment on the Notes or any Guarantee is made by such Payor, or any political subdivision or governmental authority thereof or therein having the power to tax; or

(2) any other jurisdiction in which a Payor that actually makes a payment on the Notes or its Guarantee is organized or otherwise considered to be a resident for tax purposes, or any political subdivision or governmental authority thereof or therein having the power to tax (each of clauses (1) and (2), a "*Relevant Taxing Jurisdiction*"),

will at any time be required from any payments made with respect to the Notes or any Guarantee, including payments of principal, redemption price, interest or premium, if any, the Payor will pay (together with such payments) such additional amounts (the "*Additional Amounts*") as may be necessary in order that the net amounts received in respect of such payments by the holders or the Trustee, as the case may be, after such withholding or deduction (including any such deduction or withholding from such Additional Amounts), will not be less than the amounts that would have been received in respect of such payments on the Notes or the Guarantees in the absence of such withholding or deduction; *provided*, *however*, that no such Additional Amounts will be payable for or on account of:

(1) any Taxes that would not have been so imposed or levied but for the existence of any present or former connection between the relevant holder (or between a fiduciary, settlor, beneficiary, partner, member or shareholder of, or possessor of power over, the relevant noteholder, if such noteholder is an estate, nominee, trust, partnership, limited liability company or corporation) and the Relevant Taxing Jurisdiction (including being a citizen or resident or national of, or carrying on a business or maintaining a permanent establishment in, or being physically present in, the Relevant Taxing Jurisdiction) but excluding, in each case, any connection arising solely from the acquisition, ownership or holding of such Notes or the receipt of any payment in respect thereof;

(2) any Taxes that would not have been so imposed or levied if the holder of the Note had complied with a reasonable request in writing of the Payor (such request being made at a time that would enable such holder acting reasonably to comply with that request) to make a declaration of nonresidence or any other claim or filing or satisfy any certification, identification, information or reporting requirement for exemption from, or reduction in the rate of, withholding to which it is entitled (*provided* that such declaration of nonresidence or other claim, filing or requirement is required by the applicable law, treaty, regulation or official administrative practice of the Relevant Taxing Jurisdiction as a precondition to exemption from the requirement to deduct or withhold all or a part of any such Taxes);

(3) any Taxes that are payable otherwise than by deduction or withholding from a payment on the Notes or any Guarantee;

(4) any estate, inheritance, gift, sales, excise, transfer, personal property or similar Taxes;

(5) any Taxes that are required to be deducted or withheld on a payment pursuant to the Directive or any law implementing, or introduced in order to conform to, the Directive;

(6) any Taxes imposed in connection with a Note presented for payment by or on behalf of a holder or beneficial owner who would have been able to avoid such Tax by presenting the relevant Note to, or otherwise accepting payment from, another paying agent in a member state of the European Union;

(7) any Taxes imposed pursuant to the Directive, or any law implementing or complying with, or introduced in order to conform to, the Directive;

(8) any Taxes payable under Sections 1471 through 1474 of the Code, as of the date of this Offering Memorandum (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements (including any intergovernmental agreements) entered into pursuant thereto, and any intergovernmental agreements implementing the foregoing (including any legislation or other official guidance relating to such intergovernmental agreements) ("*FATCA*"); or

(9) any combination of the above.

Such Additional Amounts will also not be payable (x) if the payment could have been made without such deduction or withholding if the beneficiary of the payment had presented the Note for payment (where presentation is required) within 30 days after the relevant payment was first made available for payment to the holder or (y) where, had the beneficial owner of the Note been the holder of the Note, such beneficial owner would not have been entitled to payment of Additional Amounts by reason of any of clauses (1) to (9) inclusive above.

The Payor will (i) make any required withholding or deduction and (ii) remit the full amount deducted or withheld to the relevant taxing authority in accordance with applicable law. The Payor will use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each relevant taxing authority imposing such Taxes and will provide such certified copies to the Trustee. If, notwithstanding the efforts of such Payor to obtain such receipts, the same are not obtainable, such Payor will provide the Trustee with other reasonable evidence. Such receipts or other evidence will be made available by the Trustee to holders upon written request.

If any Payor will be obligated to pay Additional Amounts under or with respect to any payment made on the Notes or any Guarantee, then, at least 30 days prior to the date of such payment, the Payor will deliver to the Trustee and the Paying Agent an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount so payable and such other information necessary to enable the Paying Agent to pay Additional Amounts to holders on the relevant payment date (unless such obligation to pay Additional Amounts arises less than 45 days prior to the relevant payment date, in which case the Payor shall deliver such Officer's Certificate and such other information as promptly as practicable after the date that is 30 days prior to the payment date, but no less than five Business Days prior thereto, and otherwise in accordance with the requirements of Euroclear or Clearstream, as applicable).

Wherever in the Indenture, the Notes, any Guarantee or this "Description of Notes" there is mention of, in any context:

(1) the payment of principal;

(2) redemption prices or purchase prices in connection with a redemption or purchase of Notes;

(3) interest; or

(4) any other amount payable on or with respect to any of the Notes or any Guarantee;

such reference shall be deemed to include payment of Additional Amounts as described under this heading to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The Payor will pay any present or future stamp, court or documentary Taxes, or any other excise, property or similar Taxes that arise in any Relevant Taxing Jurisdiction from the execution, delivery, issuance, initial resale, registration or enforcement of any Notes, the Indenture or any other document or instrument in relation thereto (other than a transfer of the Notes other than the initial resale thereof).

The foregoing obligations will survive any termination, defeasance or discharge of the Indenture and will apply *mutatis mutandis* to any jurisdiction in which any successor to a Payor is organized or otherwise considered to be a resident for Tax purposes or any political subdivision or taxing authority or agency thereof or therein.

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 Euroclear Bank S.A./N.V. ("*Euroclear*") and Clearstream Banking, S.A. ("*Clearstream*")) in minimum denominations of €100,000 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 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 Euroclear or Clearstream, as applicable, 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.

For Notes that are represented by global certificates held on behalf of Euroclear or Clearstream, notices may be given by delivery of the relevant notices to Euroclear and Clearstream, as applicable, for communication to entitled account holders in substitution of any mailing. So long as any Notes are listed on the Irish Stock

Exchange or any other securities exchange and admitted for trading on the Global Exchange Market of the Irish Stock Exchange, and to the extent required by the Irish Stock Exchange or such other securities exchange, the Issuer will provide a copy of all notices to the Irish Stock Exchange or such other securities exchange, as applicable, and will publish such notices in a newspaper having general circulation in Ireland (which is expected to be The Irish Times) or, to the extent and in the manner permitted by such rules, posted on the official website of the Irish Stock Exchange (www.ise.ie) or through other methods permitted by such rules. In addition, from the date of the listing particulars relating to the listing of the Notes on the Irish Stock Exchange, copies of the following documents will be provided by the Issuer to the listing agent and available for inspection during usual business hours at the specified office of the listing agent: (a) the Indenture (including the form of Notes); (b) the organizational documents of the Issuer and (c) any documents furnished to the Trustee and the paying agent under the covenant under the heading "—Reports and Other Information."

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 and the Paying Agent, or otherwise in accordance with the procedures of Euroclear or Clearstream, 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 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 telegram, telex, 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 €100,000 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;

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

(11) if at the time of such notice the Notes are listed on the Irish Stock Exchange, or any other securities exchange, and admitted for trading on the Global Exchange Market of the Irish Stock Exchange, to the extent the rules of the Irish Stock Exchange or such other securities exchange so require, cause a notice of the Change of Control Offer to be published in a leading newspaper of general circulation in Ireland (which is expected to be The Irish Times) or, to the extent and in a manner permitted by such rules, post such notice on the official website of the Irish Stock Exchange (www.ise.ie) or through other methods permitted by such rules.

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 Euroclear or Clearstream, as applicable, 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 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 withdrawn under such Change of Control Offer. Additionally, the Issuer will not be required to make a Change of Control Offer if 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 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 its 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. 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 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 Offered Hereby—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 Issuer 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 Issuer and its Subsidiaries taken as a whole to another Person or group may be uncertain. See "Risk Factors—Risks Related to the Notes Offered Hereby—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," may be waived or modified at any time (including after a Change of Control) 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 both Rating Agencies and (ii) no Default has occurred and is continuing under the Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "*Covenant Suspension Event*"), the Issuer and 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"; and

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

In the event that the Issuer 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*") one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then the Issuer 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 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) of the definition of "Permitted Debt." In addition, for purposes of the covenant described under "—Transactions with Affiliates," all agreements and arrangements entered into by the Issuer and any Restricted Subsidiary with an Affiliate of the Issuer during the Suspension Period prior to such Reversion Date will be deemed to have been entered pursuant to clause (1) of the second paragraph of "—Transactions with Affiliates," and 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."

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 Issuer and any Subsidiary of the Issuer 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) (so that the amount available under such clause (c) immediately following such Restricted Payment shall be negative).

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 Issuer 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 Issuer 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 Issuer will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; *provided*, *however*, that the Issuer 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 the Fixed Charge Coverage Ratio for the Issuer 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 ("*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) $300.0 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 Issuer 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 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% 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) or (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% 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 Issuer 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 Unsecured Notes and the guarantees thereof;

(d) Indebtedness (including, without limitation, Capitalized Lease Obligations and mortgage financings as purchase money obligations) Incurred by the Issuer or any of its Restricted Subsidiaries, Disqualified Stock issued by the Issuer 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 Issuer or any Restricted Subsidiary under or pursuant to any "synthetic lease" transactions to on-balance sheet Indebtedness of the Issuer 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) $300.0 million and (y) 5.25% of Consolidated Total Assets, at any one time outstanding;

(e) Indebtedness Incurred by the Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer or any Restricted Subsidiary;

(l) Indebtedness or Disqualified Stock of the Issuer 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) $375.0 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, the aggregate amount of fees, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses incurred in connection with such refinancing (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 Issuer 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 Issuer or a Restricted Subsidiary of Indebtedness or other obligations of the Issuer or any of its Restricted Subsidiaries so long as the Incurrence of such Indebtedness, Disqualified Stock, Preferred Stock or other obligations by the Issuer or such Restricted Subsidiary is permitted under the terms of the Indenture;

(n) the Incurrence by the Issuer 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 unpaid accrued interest and aggregate amount of premiums (including tender premiums), and underwriting discounts, defeasance costs and fees and expenses in connection therewith (subject to the following proviso, "*Refinancing Indebtedness*") prior to its respective maturity; *provided* that any amounts incurred under this clause (n) as Refinancing Indebtedness of Indebtedness originally Incurred pursuant to subclause (y) of any of clauses shall reduce the amount available under such subclause (y) so long as such Refinancing Indebtedness remains outstanding; *provided, further, however,* that such Refinancing Indebtedness:

(1) 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) has a Stated Maturity that is no earlier than the Stated Maturity of the Indebtedness being refunded, refinanced, replaced, redeemed, repurchased or retired;

(3) 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

(4) 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 Issuer 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 Issuer 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 Issuer or any of its Restricted Subsidiaries or merged into or consolidated or amalgamated with the Issuer 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 Issuer would be permitted to Incur at least $1.00 of additional Indebtedness as Ratio Debt; or

(2) the Fixed Charge Coverage Ratio of the Issuer is equal to or greater 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 Issuer 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 Issuer 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) $375.0 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, the aggregate amount of fees, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses Incurred in connection with such refinancing, outstanding at any one time (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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer or any direct or indirect parent of the Issuer 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 Issuer 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 Issuer or any Restricted Subsidiary or Preferred Stock issued by any of its Restricted Subsidiaries to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Notes in accordance with the Indenture;

(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 Issuer or a Restricted Subsidiary as a result of leases entered into by the Issuer or such Restricted Subsidiary or any direct or indirect parent of the Issuer in the ordinary course of business;

(cc) the incurrence by the Issuer 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) $150.0 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, the aggregate amount of fees, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses incurred in connection with such refinancing (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 Issuer 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 Issuer 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) $250.0 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, the aggregate amount of fees, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses incurred in connection with such refinancing (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 Issuer 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 Issuer 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 the Issuer or 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 Issuer 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 Issuer 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 unpaid accrued interest and the aggregate amount of premiums (including tender premiums) and underwriting discounts, defeasance costs and fees, discounts and 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 Issuer 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 Issuer's or any of its Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Issuer (other than (A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(2) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer, including in connection with any merger, 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) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(b) immediately after giving effect to such transaction on a pro forma basis, the Issuer 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 Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clause (1) or (8) 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) 50.0% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) beginning on January 1, 2013 to the end of the Issuer's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case 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 Issuer after the Issue Date from the issue or sale of Equity Interests of the Issuer (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 Issuer 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 Issuer 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 Issuer or any Restricted Subsidiary (other than to the extent such employee stock ownership plan or trust has been funded by the Issuer or any Restricted Subsidiary)) that, in each case, has been converted into or exchanged for Equity Interests in the Issuer or any direct or indirect parent of the Issuer (other than Excluded Equity), *plus*

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

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

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

(C) any distribution or dividend from an Unrestricted Subsidiary, *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 Issuer or a Restricted Subsidiary, in each case after the Issue Date, the Fair Market Value of the Investment of the Issuer 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 (to the extent holders were provided notice in connection with the Asset Sale Offer related thereto that any Excess

Proceeds not accepted by the holders shall constitute Retained Declined Proceeds and such Retained Declined Proceeds will increase the amount available for Restricted Payments under clause (c) of this first paragraph of this covenant to the extent not otherwise applied in accordance with clause (11) of the next paragraph).

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 Issuer or any direct or indirect parent of the Issuer, 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 Issuer or any direct or indirect parent of the Issuer or contributions to the equity capital of the Issuer (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 Issuer or to an employee stock ownership plan or any trust established by the Issuer 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 Issuer or any direct or indirect parent of the Issuer) 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 Issuer or any direct or indirect parent of the Issuer 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 Issuer or any direct or indirect parent of the Issuer held directly or indirectly by any future, present or former employee, officer, director, manager, consultant or independent contractor of the Issuer or any direct or indirect parent of the Issuer or any Subsidiary of the Issuer 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 $40.0 million in any calendar year (with unused amounts in any calendar year being permitted to be carried over for the next two succeeding calendar years up to a maximum of $50.0 million in the aggregate in any calendar year); *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 Issuer from the issuance or sale of Equity Interests (other than Disqualified Stock) of the Issuer or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer), in each case, to any future, present or former employees, officers, directors, managers, consultants or independent contractors of the Issuer or its Restricted Subsidiaries or any

direct or indirect parent of the Issuer 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 Issuer or any of its Restricted Subsidiaries or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer) 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 Issuer or any of its Restricted Subsidiaries or any direct or indirect parent of the Issuer 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 Issuer 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 Issuer 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 Issuer or any of its Restricted Subsidiaries or any direct or indirect parent of the Issuer, in connection with a repurchase of Equity Interests of the Issuer or any direct or indirect parent of the Issuer 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 Issuer 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 Issuer or any direct or indirect parent of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of the Issuer or any direct or indirect parent of the Issuer issued after the Issue Date; *provided*, *however*, that (A) for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock, the Fixed Charge Coverage Ratio of the Issuer is 2.00 to 1.00 or greater 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 Issuer 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 the Issuer's common stock (or the payment of dividends to any direct or indirect parent of the Issuer to fund the payment by any direct or indirect parent of the Issuer of dividends on such entity's common stock) of up to 6.0% per annum of the net cash proceeds received by the Issuer from any public offering of common stock or contributed to the Issuer by any direct or indirect parent of the Issuer from any public offering of common stock, other than public offerings with respect to the Issuer's common stock registered on Form S-4 or S-8 or successor form thereto and other than any public sale constituting Excluded Contributions;

(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) $350.0 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 Issuer 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 or Asset Sale Offer, as the case may be, with respect to the Notes, and have repurchased, redeemed, defeased, acquired or retired all Notes validly tendered and not validly withdrawn in connection with such Change of Control Offer or Asset Sale Offer, as the case may be;

(12) for so long as the Issuer 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 Issuer, Restricted Payments to such direct or indirect parent of the Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer or any of its Subsidiaries);

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

(a) pay amounts equal to the amounts required for Parent or any other direct or indirect parent of the Issuer 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 Parent or any other direct or indirect parent of the Issuer, if applicable, and general corporate operating (including, without limitation, expenses related to auditing and other accounting matters) and overhead costs and expenses of the Issuer or any direct or indirect parent of the Issuer, 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 Issuer and its Subsidiaries;

(b) pay, if applicable, amounts equal to amounts required for Parent or any other direct or indirect parent of the Issuer to pay interest and/or principal on Indebtedness the proceeds of which have been contributed to the Issuer (other than as Excluded Equity) and that has been guaranteed by, and is otherwise considered Indebtedness of, the Issuer 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 Parent or any other direct or indirect parent of the Issuer 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 Unsecured Notes Indenture, (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 Issuer or any of its Restricted Subsidiaries (or any acquisition of or investment in any business, assets or property that will be contributed to the Issuer 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 Issuer or any of its Restricted Subsidiaries to the extent such payments could have been made by the Issuer 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 Issuer to finance, or to any direct or indirect parent of the Issuer for the purpose of paying to any other direct or indirect parent of the Issuer to finance, any Investment that, if consummated by the Issuer 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 Issuer causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Issuer 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 Issuer 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 Issuer 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 Issuer or any direct or indirect parent of the Issuer or any Subsidiary of the Issuer (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 Issuer or any direct or indirect parent of the Issuer or any Subsidiary of the Issuer in connection with such Person's purchase of Equity Interests of the Issuer or any direct or indirect parent of the Issuer; *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 Issuer 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 Issuer or any direct or indirect parent of the Issuer;

(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) $350.0 million and (y) 6.00% of Consolidated Total Assets (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(20) [Reserved]; and

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

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 Issuer's Subsidiaries will be Restricted Subsidiaries. The Issuer 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 Issuer 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 Issuer 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.

Dividend and Other Payment Restrictions Affecting Subsidiaries

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

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

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

(c) sell, lease or transfer any of its properties or assets to the Issuer 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 Issuer 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 Unsecured Notes Indenture, the Existing Unsecured Notes, the guarantees thereof and other documents relating to the Existing Unsecured Notes Indenture, the Existing Unsecured Notes and the related guarantees and other documents relating to the Existing Unsecured Notes Indenture 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 Issuer or any Restricted Subsidiary that was in existence at the time of such acquisition (or at the time it merges with or into the Issuer 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 Issuer 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 Issuer 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 all or substantially all 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 Capitalized Lease Obligations entered into in the ordinary course of business, 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 entered into in the ordinary course of business 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 Issuer, is necessary or advisable to effect such Qualified Receivables Financing;

(11) other Indebtedness, Disqualified Stock or Preferred Stock of the Issuer 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 Issuer or a direct or indirect parent of the Issuer 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 Unsecured Notes Indenture or the Senior Credit Agreement (as determined by the Issuer 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 Issuer or any Restricted Subsidiary in any manner material to the Issuer 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 Issuer 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 Issuer, 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 Issuer or a Restricted Subsidiary to other Indebtedness Incurred by the Issuer 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 Issuer will not, and will not permit any of its Restricted Subsidiaries to, cause or make an Asset Sale, unless:

(1) the Issuer 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 Issuer 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 Issuer'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 Issuer'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 Issuer) of the Issuer 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 Issuer 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 Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer 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 Issuer 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) $150.0 million and (y) 2.50% of Consolidated Total Assets, calculated at the time of the receipt of such Designated Non-cash Consideration (with the Fair

Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value);

shall each be deemed to be Cash Equivalents for the purposes of this clause (2).

Within 365 days after the Issuer's or any Restricted Subsidiary's receipt of the Net Cash Proceeds of any Asset Sale, the Issuer 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 (*provided* that if the Issuer or any Guarantor shall so reduce such Obligations under Pari Passu Indebtedness other than the Notes, the Issuer will (A) reduce Obligations under the Notes as provided under "—Optional Redemption" or through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) ratably with such other 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 Issuer 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; *provided* that if such investment is in the form of the acquisition of Capital Stock of a Person, such acquisition results in such Person becoming a Restricted Subsidiary;

(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 Issuer 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 365 days after the Asset Sale that generated the Net Cash Proceeds, the Issuer 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 365-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*") (x) are prohibited or delayed by applicable local law from being repatriated to the United States or (y) 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 clause (x) of this paragraph shall apply to such amounts so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Issuer hereby agreeing to use reasonable efforts to cause the applicable Foreign Subsidiary to take all actions

reasonably required by the applicable local law, applicable organizational impediments or other impediment to permit such repatriation), and if such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law and is not subject to clause (y) of this paragraph, then such repatriation will be promptly effected and such repatriated Net Cash Proceeds will be applied (whether or not repatriation actually occurs) in compliance with this covenant; *provided*, *further*, that the aggregate amount of such Net Cash Proceeds retained pursuant to clause (y) of this paragraph shall not exceed $200.0 million at any one time outstanding. The time periods set forth in this covenant shall not start until such time as the Net Cash Proceeds may be repatriated (whether or not such repatriation actually occurs).

Pending the final application of any such amount of Net Cash Proceeds, the Issuer 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 any amount of Net Cash Proceeds from any Asset Sale that are not invested or applied as provided and within the time period set forth in the second paragraph of this covenant 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 $75.0 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 $75.0 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 and the Paying Agent or otherwise in accordance with the procedures of Euroclear or Clearstream, as applicable. For Notes that are represented by global certificates held on behalf of Euroclear or Clearstream, such notice may be given by delivery of such notice to Euroclear or Clearstream, as applicable, for communication to entitled account holders in substitution of the aforementioned mailing. The Issuer may satisfy the foregoing obligations with respect to such Net Cash Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Cash 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 Net Cash Proceeds before the aggregate amount of Excess Proceeds exceeds $75.0 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 Paying Agent 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, they 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 €100,000 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 Euroclear and Clearstream); *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 €100,000. 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 Euroclear or Clearstream procedures, as applicable. 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.

Transactions with Affiliates

The Indenture will provide that the Issuer 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 Issuer 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 Issuer or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and

(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 Issuer or any direct or indirect parent of the Issuer, approving such Affiliate Transaction, together with an Officer's Certificate certifying that the Board of Directors of the Issuer or any direct or indirect parent of the Issuer 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 Issuer 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 Issuer and Parent or any other direct or indirect parent of the Issuer; *provided* that Parent or such parent entity shall have no material liabilities and no material assets (other than cash, Cash Equivalents and the Capital Stock of the Issuer) 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 Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or 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) or any transaction or payments contemplated thereby;

(6) [Reserved];

(7) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders 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 Issuer 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;

(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 Issuer and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Issuer or any direct or indirect parent of the Issuer, 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 Issuer;

(11) [Reserved];

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

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

(14) transactions between the Issuer 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 Issuer or any direct or indirect parent of the Issuer; *provided*, *however*, that such director abstains from voting as a director of the Issuer or such direct or indirect parent of the Issuer, 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 Issuer or any direct or indirect parent of the Issuer in good faith;

(19) (i) any employment, consulting, service or termination agreement, or customary indemnification arrangements, entered into by the Issuer or any of its Restricted Subsidiaries with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Issuer or any of its Restricted Subsidiaries (or of any direct or indirect parent of the Issuer to the extent such agreements or arrangements are in respect of services performed for the Issuer 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 Issuer or any of its Restricted Subsidiaries or of any direct or indirect parent of the Issuer 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 Issuer or any of its Restricted Subsidiaries or any direct or indirect parent of the Issuer (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 Issuer or of a Restricted Subsidiary, as appropriate;

(20) investments by Affiliates in Indebtedness or preferred Equity Interests of the Issuer 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 Issuer 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 Issuer or any of its Restricted Subsidiaries of their obligations under the terms of, any registration rights agreement to which they are, or any direct or indirect parent of the Issuer is, a party or becomes a party in the future;

(22) investments by a direct or indirect parent of the Issuer in debt securities of the Issuer 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 Issuer 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 Issuer or any Restricted Subsidiary, as lessee, and any Affiliate of the Issuer, 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 Issuer and its Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth herein.

Liens

The Indenture will provide that the Issuer will not, and will not permit any Guarantor to, directly or indirectly, create, Incur or suffer to exist 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.

Any Lien that is granted to secure the Notes or the applicable Guarantee pursuant to the preceding paragraph 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 paragraph (other than a release as a result of the enforcement of remedies in respect of such Lien or the Obligations secured by such Lien).

Reports and Other Information

The Indenture will provide that so long as any Notes are outstanding, the Issuer 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 Issuer 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 Issuer'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 Issuer 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 Issuer were required to file such reports for any of the following events: (a) significant acquisitions or dispositions, (b) the bankruptcy of the Issuer or a Significant Subsidiary, (c) the acceleration of any Indebtedness of the Issuer or any Restricted Subsidiary having a principal amount in excess of $100.0 million, (d) a change in the Issuer'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 or the Issuer, (f) resignation of a director of the Parent or the Issuer 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 Issuer (as determined by the Issuer in good faith) if the Issuer were a domestic reporting company under the Exchange Act); *provided* that no such current report will be required to be furnished if the Issuer 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 Issuer and its Restricted Subsidiaries, taken as a whole, or if the Issuer 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 Issuer 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, the Issuer 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 Issuer or any direct or indirect parent of the Issuer or on a non-public, password-protected website maintained by the Issuer or any direct or indirect parent of the Issuer or a third party, in each case, within 15 days after the time the Issuer 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 Issuer 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 Issuer 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 Issuer, the Issuer 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 the Issuer has designated certain of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by the first paragraph of this covenant will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, or in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" or other comparable section, of the financial condition and results of operations of the Issuer and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Issuer.

In addition, to the extent not satisfied by the foregoing, the Issuer will agree that, for so long as any Notes are outstanding, the Issuer 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 Issuer, those of (a) any predecessor or successor of the Issuer or any entity meeting the requirements of clause (b) of this paragraph or (b) any direct or indirect parent of the Issuer; *provided* that, if the financial information so furnished relates to such direct or indirect parent of the Issuer, the same is accompanied by consolidating information, which may be posted to the website of the Issuer or any direct or indirect parent of the Issuer or on a non-public, password-protected website maintained by the Issuer or any direct or indirect parent of the Issuer or a third party, that explains in reasonable detail the differences between the information relating to such parent entity (as the case may be), on the one hand, and the information relating to the Issuer 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. We expect to rely upon the second preceding sentence to provide financial statements, information and other documents of a direct or indirect parent of the Issuer following the Issue Date.

The Issuer will be deemed to have satisfied the information and reporting requirements of the first paragraph of this covenant if the Issuer or any direct or indirect parent of the Issuer (a) has filed reports or registration statements containing such information (including 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 Issuer or any direct or indirect parent of the Issuer 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 Issuer 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.

So long as Notes are outstanding the Issuer 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; and

(b) announce by press release or post to the website of the Issuer or any direct or indirect parent of the Issuer or on a non-public, password-protected website maintained by the Issuer or any direct or indirect parent of the Issuer or a third party, which may require a confidentiality acknowledgment (but not restrict the recipients of such information from trading securities of the Issuer 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.

Any person who requests or accesses such financial information or seeks to participate in any conference calls required by this covenant may 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 Issuer 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.

Future Guarantors

If, after the Issue Date, (a) any Restricted Subsidiary of the Issuer (including any newly formed, newly acquired or newly redesignated Restricted Subsidiary, but excluding any Receivables Subsidiary) that is not then a Guarantor guarantees or Incurs any Indebtedness under any Credit Agreement or (b) the Issuer otherwise elects to have any Restricted Subsidiary of the Issuer become a Guarantor, then, in each such case, the Issuer shall cause such Restricted Subsidiary to execute and deliver to the Trustee a supplemental indenture pursuant to which such Restricted Subsidiary shall become a Guarantor under the Indenture providing for a Guarantee by such Restricted Subsidiary 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 the Issuer may not consolidate, merge or amalgamate with or into or wind up into (whether or not 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 any Guarantor) unless:

(1) the Issuer 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 any member of the European Union (as it is constituted on the Issue Date) (the Issuer or such Person, as the case may be, being herein called the "*Successor Company*");

(2) the Successor Company (if other than the Issuer) expressly assumes all the obligations of the Issuer under the Indenture and the Notes pursuant to supplemental indentures or other documents or instruments;

(3) 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;

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

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

(b) the Fixed Charge Coverage Ratio for the Issuer (or a Successor Company to the Issuer, if applicable) and its Restricted Subsidiaries would be equal to or greater than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

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

(6) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation or transfer and such supplemental indentures (if any) comply with the Indenture.

The Successor Company (if other than the Issuer) will succeed to, and be substituted for, the Issuer under the Indenture and the Notes, and (if the Successor Company is other than the Issuer) the Issuer will automatically be released and discharged from its obligations under the Indenture and the Notes. Notwithstanding the foregoing clauses (3) and (4), (a) 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 any Guarantor, (b) the Issuer may merge, consolidate or amalgamate with an Affiliate of the Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing the Issuer in the United States or any territory of the United States or any member of the European Union (as it is constituted on the Issue Date), so long as the principal amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby (unless such increase is permitted by the Indenture), (c) the Issuer may convert into another legal form under the laws of the jurisdiction of organization of the Issuer, (d) the Issuer or any Guarantor may change its name and (e) any Restricted Subsidiary may merge, amalgamate or consolidate with the Issuer; *provided* that the Issuer is the Successor Company in such merger, amalgamation or consolidation.

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 Issuer 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 organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia or, in the case of a Guarantor

organized or existing under the laws or any other jurisdiction, the laws of such jurisdiction or any member of the European Union (as it is constituted on the Issue Date) (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 or transfer 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 Issuer 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, so long as the principal amount of Indebtedness of the Issuer 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 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, (4) a Guarantor may change its name and (5) any Restricted Subsidiary may merge, amalgamate or consolidate 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 organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia or any member of the European Union 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 Issuer, which properties and assets, if held by the Issuer instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

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.

Listing

The Issuer will use all commercially reasonable efforts to list and maintain the listing of the Notes on the Irish Stock Exchange; *provided*, that if (x) the Issuer is unable to list the Notes on the Irish Stock Exchange, (y) maintenance of such listing becomes unduly onerous (as determined by the Issuer in good faith), or (z) the Irish Stock Exchange requires additional financial information from the Issuer or any direct or indirect parent of the Issuer, then the Issuer will, prior to the delisting of the Notes from the Irish Stock Exchange (if then listed on the Irish Stock Exchange), use all commercially reasonable efforts to list and maintain a listing of Notes on another internationally recognized stock exchange (as determined by the Issuer in good faith).

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 Issuer 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 120 days;

(4) the failure by the Issuer or any Restricted Subsidiary to pay the principal amount of any Indebtedness for borrowed money (other than Indebtedness for borrowed money owing to the Issuer 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 Issuer or a Significant Subsidiary;

(6) failure by the Issuer 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 which 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; *provided* that if such default is with respect to less than all series of Notes then outstanding under the Indenture, then only holders of at least 30.0% in principal amount of outstanding Notes of such series shall be required to notify the Issuer in writing of the default in accordance with this paragraph.

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy or insolvency of 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; *provided* that if such Event of Default is with respect to less than all series of Notes then outstanding under the Indenture, then only holders of at least 30.0% in principal amount of outstanding Notes of such series shall be required to declare the principal of, premium, if any, and accrued but unpaid interest, on all Notes to be due and payable in accordance with this paragraph. 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 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 the Notes by notice to the Trustee may, in accordance with "—Amendments and Waivers," 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 reasonably 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.

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. 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 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 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 different and materially adverse relative to the manner 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 or (B) to add co-issuers of the Notes to the extent it does not result in adverse tax consequences to the holders,

(7) to secure the Notes,

(8) to add to the covenants of 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," 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.

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 Issuer or any Subsidiary or any direct or indirect parent of the Issuer, 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 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 have irrevocably deposited or caused to be deposited with the Paying Agent money or European 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 Issuer 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 Issuer 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), (6) (with respect only to Significant Subsidiaries) 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 European 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 European 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 Investment or acquisition, in each case, for which the Issuer or any Subsidiary of the Issuer may not terminate its obligations (or may not do so without incurring significant expense) due to a lack of financing for such Investment or acquisition (whether by merger, consolidation or other business combination or

the acquisition of Capital Stock or otherwise), as applicable, which may be conditional, has been delivered, in each case for purposes of determining:

(1) whether any Indebtedness (including Acquired Indebtedness) that is being incurred in connection with such Investment or acquisition 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 or acquisition 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 or acquisition complies with the covenants or agreements contained in the Indenture or the Notes; and

(4) any calculation of the ratios, 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,

at the option of the Issuer, the date that the definitive agreement for such Investment or acquisition is entered into (the "*Transaction Agreement 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 Issuer elects to use the Transaction Agreement 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 Issuer from the Transaction Agreement Date to the date of consummation of such Investment or acquisition, will not be taken into account for purposes of determining whether any Indebtedness or Lien that is being incurred in connection with such Investment or acquisition or in connection with compliance by the Issuer 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 or acquisition is permitted to be Incurred and (b) until such Investment or acquisition is consummated or such definitive agreements are terminated, such Investment or acquisition 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 or acquisition) that are consummated after the Transaction Agreement Date and on or prior to the date of consummation of such Investment or acquisition and any such transactions (including any incurrence of Indebtedness and the use of proceeds thereof) will be deemed to have occurred on the date the definitive agreements are entered and outstanding thereafter for purposes of calculating any baskets or ratios under the Indenture after the date of such agreement and before the date of consummation of such Investment or acquisition. 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 Agreement Date and not as of any later date as would otherwise be required under the Indenture.

For purposes hereof, the "*Maximum Fixed Repurchase Price*" of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to the Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Issuer.

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.

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 Euroclear or Clearstream, as applicable, shall be sufficiently given if given according to the applicable procedures of Euroclear or Clearstream, as applicable.

In addition, if and for so long as any of the Notes are listed on the Irish Stock Exchange and the rules of the Irish Stock Exchange so require, notices with respect to the Notes listed on the Irish Stock Exchange will be published on the official website of the Irish Stock Exchange or in a leading newspaper having general circulation in Ireland (which is expected to be The Irish Times) or, to the extent and in the manner permitted by such rules, if such publication is not practicable, in an English language newspaper having general circulation in Europe. For so long as any Notes are represented by global certificates, all notices to holders will be delivered to relevant clearing systems, each of which will give such notices to the holders of book-entry interests.

Concerning the Trustee

Wilmington Trust, National Association is the Trustee under the Indenture. We expect to appoint an institution 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.

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."

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 jurisdiction of the court in the federal or state court in the United States has been based on grounds which are internationally acceptable and that proper legal procedures have been observed, the Dutch court will, in principle, give binding effect to the final judgment which has been rendered in the United States unless such judgment contravenes public policy in the Netherlands.

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 Issuer 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 a Restricted Subsidiary organized or existing under the laws of the United States of America, any state thereof or the District of Columbia 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 euro 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 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 , 2019 (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 , 2019 (excluding accrued but unpaid interest to (but not including) the redemption date), computed using a discount rate equal to the Bund Rate plus 50 basis points; over

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

"*Asset Sale*" means:

(1) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets (including by way of a Sale/Leaseback Transaction) of the Issuer 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 Issuer (other than to the Issuer 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 Issuer 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 Issuer 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 $60.0 million;

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

(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 Issuer and its Restricted Subsidiaries;

(n) any Sale/Leaseback Transaction with respect to property constructed or acquired by the Issuer 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 Issuer or any Restricted Subsidiary of the Issuer, 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 Issuer 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.

"*Bund Rate*" means the rate per annum equal to the equivalent yield to maturity as of the date of the relevant redemption notice of the Comparable German Bund Issue, assuming a price for the Comparable German Bund Issue (expressed as a percentage of its principal amount) equal to the Comparable German Bund Price for such relevant date where:

(1) "*Comparable German Bund Issue*" means the German Bundesanleihe security selected by any Reference German Bund Dealer as having a fixed maturity most nearly equal to the period from the date of such redemption notice to , 2019, and that would be used, at the time of selection and in accordance with customary financial practice, in pricing new issues of Euro-denominated corporate debt securities in a principal amount approximately equal to the then outstanding principal amount of the Notes and of a maturity most nearly equal to , 2019; *provided*, however, that, if the period from such date to , 2019 is less than one year, a fixed maturity of one year shall be used;

(2) "*Comparable German Bund Price*" means, with respect to any relevant date, the average of all Reference German Bund Dealer Quotations for such date (which, in any event, must include at least two such quotations), after excluding the highest and lowest such Reference German Bund Dealer Quotations, or, if the Issuer obtain fewer than four such Reference German Bund Dealer Quotations, the average of all such quotations;

(3) "*Reference German Bund Dealer*" means any dealer of German Bundesanleihe securities appointed by the Issuer in good faith; and

(4) "*Reference German Bund Dealer Quotations*" means, with respect to each Reference German Bund Dealer and any relevant date, the average as determined by the Issuer of the bid and offered prices for the Comparable German Bund Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Issuer by such Reference German Bund Dealer at 3:30 p.m. Frankfurt, Germany time on the third Business Day preceding the relevant date.

"*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).

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

"*Cash 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 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 Issuer) 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.

"*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 Issuer representing more than 50.0% of the aggregate ordinary voting power for the election of directors of the Issuer; 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 Issuer 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 both of the 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 each Rating Agency 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 such Person 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 EBITDA" and "Pro Forma 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 such adjustments 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 Issuer 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 Capitalized 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 Capitalized 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 Capitalized 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, 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 transaction, dispositions, recapitalizations, mergers, 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 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 a Guarantor), to the limitation contained in this clause (u));

(v) [Reserved]; 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 Issuer 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 Issuer 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 Issuer 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 Issuer and its Restricted Subsidiaries for which internal financial statements are available immediately preceding such date and held by the Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer and its Restricted Subsidiaries, as shown on the most recent consolidated balance sheet of the Issuer 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 Issuer 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 Capitalized Lease Obligations (other than Indebtedness with respect to a Qualified Receivables Financing or Cash Management Services, if any, or that are otherwise removed in consolidation) and (2) the aggregate amount of all outstanding Disqualified Stock of the Issuer 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 Issuer as of such date *minus* (y) the amount of unrestricted cash and Cash Equivalents that would be stated on the balance sheet of the Issuer and its Restricted Subsidiaries for which internal financial statements are available immediately preceding such date and held by the Issuer 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 Issuer 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 Issuer 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 Issuer or any Restricted Subsidiary (other than, in the case of such Restricted Subsidiary, contributions by the Issuer 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 the Issuer 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.

"*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 Issuer 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 Issuer or any direct or indirect parent of the Issuer, 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 Issuer (if issued by Parent or any other direct or indirect parent of the Issuer) 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."

"*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 Issuer or its Subsidiaries or a direct or indirect parent of the Issuer 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 Issuer or its Subsidiaries or a direct or indirect parent of the Issuer 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 Issuer or any direct or indirect parent of the Issuer, as applicable (other than Disqualified Stock), other than:

(1) public offerings with respect to the Issuer's or such direct or indirect parent's common stock registered on Form S-4 or Form S-8 or successor forms thereto;

(2) issuances to any Subsidiary of the Issuer; and

(3) any such public or private sale that constitutes an Excluded Contribution or Refunding Capital Stock.

"*European Government Obligations*" means any security that is (1) a direct obligation of Ireland, the Netherlands or any country that is a member of the European Union on the date of the Indenture, for the payment of which the full faith and credit of such country is pledged or (2) an obligation of a person controlled or supervised by and acting as an agency or instrumentality of any such country the payment of which is unconditionally guaranteed as a full faith and credit obligation by such country, which, in either case under the preceding clause (1) or (2), is not callable or redeemable at the option of the issuer thereof.

"*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 Issuer 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 Issuer,

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 Issuer or any of its Subsidiaries or a direct or indirect parent of the Issuer (to the extent such employee stock ownership plan or trust has been funded by the Issuer or any Subsidiary or a direct or indirect parent of the Issuer) 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."

"*Existing Secured Notes*" means the 5.750% Senior Secured Notes due 2021 issued by the Issuer and the Existing Secured Notes Issuer.

"*Existing Secured Notes Issuer*" means Axalta Coating Systems U.S. Holdings, Inc. (f/k/a U.S. Coatings Acquisition Inc.), a corporation incorporated under the laws of the state of Delaware, and its successors.

"*Existing Unsecured Notes*" means the 4.250% Senior Notes due 2024 and 4.875% Senior Notes due 2024, each issued by the Existing Unsecured Notes Issuer.

"*Existing Unsecured Notes Indenture*" means the indenture, dated as of August 16, 2016, among the Issuer, the Existing Unsecured Notes Issuer, the guarantors party thereto, Wilmington Trust, National Association, as trustee and collateral agent, and certain other parties party thereto governing the Existing Unsecured Notes, as amended or supplemented from time to time.

"*Existing Unsecured Notes Issuer*" means Axalta Coating Systems, LLC, a limited liability company organized under the laws of the state of Delaware, and its successors.

"*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 Issuer or any direct or indirect parent of the Issuer, whose determination will be conclusive for all purposes under the Indenture and the Notes).

"*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 Issuer 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 Issuer 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 the Issue Date; *provided* that at any time and from time to time after the Issue Date, the Issuer 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 "Capitalized Lease Obligation," "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" 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 Issuer's election, may be specified by the Issuer by written notice to the Trustee from time to time; *provided* that the Issuer 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 Issuer 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, each Restricted Subsidiary of the Issuer that executes (or otherwise becomes a party to) the Indenture on the Issue Date and each other Restricted Subsidiary of the Issuer that Incurs a Guarantee of the Notes; *provided* that upon the release or discharge of such Person from its Guarantee in accordance with the Indenture, such Person automatically ceases 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 Capitalized 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 an operating lease under GAAP as in effect on the Issue Date, 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 practice.

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 practice;

(ii) [Reserved];

(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 Issuer 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 Issuer 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; or

(ix) Capital Stock (other than Disqualified Stock and Preferred Stock).

"*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 Issuer, 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 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 Issuer 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 Issuer 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 Issuer 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 Issuer 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 Issuer, the Issuer 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 Issuer 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 Issuer's equity interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, *however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Issuer's "Investment" in such Subsidiary at the time of such redesignation *less*

(b) the portion (proportionate to the Issuer'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 Issuer 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 Issuer or a Restricted Subsidiary in respect of such Investment and shall be net of any Investment by such Person in the Issuer or any Restricted Subsidiary.

"*Issue Date*" means , 2016.

"*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.

"*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.

"*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 Issuer 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 Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"*Non-Guarantor Subsidiary*" means any Restricted Subsidiary of 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 , 2016.

"*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 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 Issuer.

"*Parent*" refers to Axalta Coating Systems Dutch Holding A B.V., a private company with limited liability organized under the laws of the Netherlands with corporate seat in Amsterdam, the Netherlands, and its successors.

"*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 Issuer 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 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 Issuer (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 Issuer 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 Issuer 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 $15.0 million outstanding at any one time in the aggregate;

(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 Issuer or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization by the Issuer 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 Issuer 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 Issuer 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 Issuer 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) $250.0 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 Issuer 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) $300.0 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 Issuer or any direct or indirect parent of the Issuer, 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 Unsecured 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 Issuer 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 Issuer and its Subsidiaries;

(25) Investments in joint ventures of the Issuer 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) $250.0 million and (y) 4.25% of Consolidated Total Assets;

(26) [Reserved];

(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 Issuer 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 Issuer, the Issuer or any Subsidiary of the Issuer in connection with such officer's or employee's acquisition of Equity Interests of any direct or indirect parent of the Issuer, so long as no cash is actually advanced by the Issuer or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(31) Guarantees of operating leases (for the avoidance of doubt, excluding Capitalized Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Issuer 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 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;

(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 Issuer; *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 Issuer, any Subsidiary of such Person shall be deemed to become a Subsidiary of the Issuer, and any assets of such Person or any Subsidiary of such Person shall be deemed acquired by the Issuer at the time of such merger, amalgamation or consolidation;

(9) Liens on assets at the time the Issuer or any Restricted Subsidiary acquired the assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Issuer 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 Issuer or any Restricted Subsidiary, a Person other than the Issuer 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 Issuer or any Restricted Subsidiary, and any assets of such Person or any such Subsidiary of such Person shall be deemed acquired by the Issuer 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 Issuer 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;

(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 such refinancing of Indebtedness secured by a Lien pursuant to clause (25) hereunder shall reduce the amount of obligations permitted to be secured by Liens pursuant to 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) $375.0 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 any 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 any 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 any of the Guarantors 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 Issuer 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 Issuer 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;

(48) Liens over "personal property" (as defined under the Personal Property Securities Act 2009 (Commonwealth of Australia) (the "*PPSA*")) of that Person provided for by one of the following transactions, provided that the transaction does not secure payment or performance of an obligation: (i) a transfer of an Account or Chattel Paper (as those terms are defined in the PPSA) in respect of which the Issuer or a Guarantor is the transferor, (ii) a Commercial Consignment (as defined in the PPSA) in respect of which the Issuer or a Guarantor is the consignee; (iii) a PPS Lease (as defined in the PPSA) in respect of which the Issuer or a Guarantor is the lessee, or (iv) a transaction referred to in section 12(3) of the PPSA which results in the creation of a "security interest" (as defined in the PPSA) in favor of the Issuer or a Guarantor; and

(49) 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 Incurred pursuant to the definition of "Permitted Debt," any Ratio Debt and, in each case, any refinancing thereof.

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 Issuer 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 Issuer, 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.

"*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 factually 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 Capitalized 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 Issuer or a direct or indirect parent of the Issuer to be the rate of interest implicit in such Capitalized 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 the Issuer 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 EBITDA" and "Pro Forma Adjusted EBITDA" as set forth in footnote (5) to "Offering Memorandum Summary—Summary Historical Combined and Unaudited Pro Forma 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 Issuer (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 factually supportable and 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 Issuer (or any successor thereto) or of any direct or indirect parent of the Issuer 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 Issuer or any direct or indirect parent of the Issuer 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 Issuer and its Restricted Subsidiaries,

(2) all sales of accounts receivable and related assets by the Issuer or any Restricted Subsidiary to the Receivables Subsidiary are made at Fair Market Value (as determined in good faith by the Issuer), and

(3) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Issuer 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 Moody's and S&P and (2) if Moody's or S&P ceases to rate the Notes for reasons outside of the Issuer's control, a "nationally recognized statistical rating organization" within the meaning of Section 3 under the Exchange Act selected by the Issuer or any direct or indirect parent of the Issuer as a replacement agency for 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 90 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 Issuer or any of its Subsidiaries pursuant to which the Issuer or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Receivables Subsidiary (in the case of a transfer by the Issuer 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 Issuer 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 Issuer 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 Issuer (or another Person formed for the purposes of engaging in a Qualified Receivables Financing with the Issuer in which the Issuer or

any Subsidiary of the Issuer or a direct or indirect parent of the Issuer makes an Investment and to which the Issuer or any Subsidiary of the Issuer or a direct or indirect parent of the Issuer transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Issuer and its Subsidiaries or a direct or indirect parent of the Issuer 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 Issuer or any direct or indirect parent of the Issuer (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 Issuer or any other Subsidiary of the Issuer (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 Issuer or any other Subsidiary of the Issuer in any way other than pursuant to Standard Securitization Undertakings, or (iii) subjects any property or asset of the Issuer or any other Subsidiary of the Issuer, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings,

(2) with which neither the Issuer nor any other Subsidiary of the Issuer has any material contract, agreement, arrangement or understanding other than on terms which the Issuer reasonably believes to be no less favorable to the Issuer or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Issuer, and

(3) to which neither the Issuer nor any other Subsidiary of the Issuer 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 Issuer or any direct or indirect parent of the Issuer shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of the Board of Directors of the Issuer or any direct or indirect parent of the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

"*Related Business Assets*" means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; *provided* that any assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary 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 Parent or any other direct or indirect parent of the Issuer 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 Issuer, any of its Subsidiaries or any other direct or indirect parent of the Issuer), or being a holding company parent of the Issuer, any of its Subsidiaries or any other direct or indirect parent of the Issuer or receiving dividends from or other distributions in respect of the Capital Stock of the Issuer, any of its Subsidiaries or any other direct or indirect parent of the Issuer, or having guaranteed any obligations of the Issuer or any Subsidiary thereof, or having made any payment in respect of any of the items for which the Issuer 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 Issuer 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 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 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 Issuer or a Restricted Subsidiary whereby the Issuer or a Restricted Subsidiary transfers such property to a Person and the Issuer or such Restricted Subsidiary leases it from such Person, other than leases between the Issuer 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 the Issuer, the Existing Secured Notes Issuer, 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 Issuer) 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 Issuer) 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 Issuer 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 Issuer 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 Issuer and its Subsidiaries are engaged following the Acquisition on the Issue Date.

"*Standard Securitization Undertakings*" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Issuer or any Subsidiary of the Issuer which the Issuer 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, 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.

"*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.

"*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 Issuer that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Issuer or any direct or indirect parent of the Issuer may designate any Subsidiary of the Issuer (including any existing Subsidiary and any newly acquired or newly formed Subsidiary of 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 Issuer or any other Subsidiary of the Issuer that is not a Subsidiary of the Subsidiary to be so designated; *provided*, *however*, that the Subsidiary to be so designated and its Subsidiaries do not at the time of designation have any Indebtedness pursuant to which the lender has recourse to any of the assets of the Issuer or any of its Restricted Subsidiaries; *provided*, *further*, *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 Board of Directors of the Issuer or any direct or indirect parent of the Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, *however*, that immediately after giving effect to such designation:

(x) (1) the Issuer could Incur $1.00 of additional Indebtedness as Ratio Debt, or

(2) the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries would be equal to or greater than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such designation,

in each case on a Pro Forma Basis taking into account such designation, and (y) no Event of Default shall have occurred and be continuing.

Any such designation by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors of the Issuer or any direct or indirect parent of the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote (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 or collateral 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, Brazil, Canada, France, Germany, Ireland, Luxembourg, Mexico, the Netherlands, Russia, Singapore, 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.

Pursuant to Council Regulation (EC) no. 1346/2000 on insolvency proceedings, last amended by Council Regulation (EC) no. 663/2014 of June 5, 2014 (the "E.U. 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" (as that term is used in Article 3(1) of the E.U. Insolvency Regulation). The determination of where any such company has its "centre of main interests" is a question of fact on which the courts of the different Member States may have differing and even conflicting views.

The term "centre of main interests" is not a static, but rather a facts and circumstances based concept and may hence change from time to time. Although there is a rebuttable presumption under Article 3(1) of the E.U. Insolvency Regulation that a company has its "centre of main interests" in the Member State in which it has its registered office, Preamble 13 of the E.U. Insolvency Regulation states that the "centre of main interests" 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." The European Court of Justice has ruled that a debtor company's "center of main interests" must be determined by attaching greater importance to the place of the company's central administration as the criterion for jurisdiction. Where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions of the company are also taken in that place in a manner that is ascertainable by third parties, the presumption, that the center of the company's main interests is located in that place, shall be irrebuttable. Where a company's central administration is, however, not in the same place as its registered office, the presence of company assets and existence of contracts for the financial exploitation of those assets in a member state other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the above mentioned presumption in general. If a comprehensive assessment of all relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company's actual center of management and supervision and of the management of its interests is located in that other Member State the above mentioned presumption can be rebutted. The factors to be taken into account include, in particular, all places in which the debtor company pursues economic activities and all those in which it holds assets, in so far as they are ascertainable by third parties. The point at which a company's "centre of main interests" is determined is at the time that the relevant insolvency proceedings are opened.

If the centre of main interests of a company is and will remain located in the state in which it has its registered office, the main insolvency proceedings in respect of the company under the E.U. Insolvency

Regulation would be commenced in such jurisdiction, and accordingly a court in such jurisdiction would be entitled to commence the types of insolvency proceedings referred to in Annex A to the E.U. Insolvency Regulation, with these proceedings governed by the *lex fori concursus*, *i.e.*, the local laws of the court opening such main insolvency proceeding. Insolvency proceedings opened in one Member State under the E.U. 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 the E.U. Insolvency Regulations. If the "centre of main interests" of a debtor is in one Member State (other than Denmark) under Article 3(2) of the E.U. Insolvency Regulation, the courts of another Member State (other than Denmark) have jurisdiction to open "territorial proceedings" only in the event that such debtor has an "establishment" (in the meaning of the E.U. Insolvency Regulation) in the territory of such other Member State. The effects of those territorial proceedings are restricted to the assets of the debtor situated in the territory of 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 E.U. Insolvency Regulation. Irrespective of whether the insolvency proceedings are main or territorial proceedings, such proceedings will always, subject to certain exemptions, be governed by the *lex fori concursus*, *i.e.*, the local insolvency law of the court which has assumed jurisdiction for the insolvency proceedings of the debtor.

In the event that any guarantor organized under the laws of Member States of the European Union 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.

The E.U. Insolvency Regulation has been replaced by the Regulation (EU) 2015/848 of the European Parliament and of the Council dated May 20, 2015 (the "New E.U. Insolvency Regulation") which became effective as of June 26, 2015, and which will be applicable to insolvency proceedings opened after June 26, 2017. The E.U. Insolvency Regulation remains applicable to insolvency proceedings opened before that date.

The New E.U. Insolvency Regulation includes, among others, specifications regarding the identification of the center of main interests. Pursuant to Article 3(1) of the New E.U. Insolvency Regulation, the centre of main interests of a company or legal person is presumed to be located in the Member State of the 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 a three-month period prior to the request for the opening of insolvency proceedings. Specifically, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of 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 center of management and supervision and of the management of its interests is located in that other Member State. In this regard, special consideration should be given to creditors and their perception as to where a debtor conducts the administration of its interests. In the event of a shift in the centre of main interests, this may require informing the creditors of the new location from which the debtor is carrying out its activities in due course (*e.g.*, by drawing attention to the change of address in commercial correspondence or otherwise making the new location public through other appropriate means). Another change under the New E.U. Insolvency Regulation focuses on the definition of "establishment" as a prerequisite to open "territorial proceedings" (secondary proceedings). From June 26, 2017 onwards, "establishment" will mean any place of operations where a debtor 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.

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:

(a) the benefits (if any) to the company of entering into the transaction;

(b) the detriment to the company of entering into the transaction; and

(c) 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).

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. 11,105/05 (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 and executions 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 three concomitant events: (a) 180-day stay period for certain actions and enforcement proceedings; (b) 60-day legal term for the presentation of the reorganization plan (the "Reorganization Plan"), which is followed by the voting on the plan; and (c) 15-day legal term to file proofs of claims and/or challenges to the List of Creditors before the Administrator.

Stay Period

All actions and 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 actions and executions, 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 or a partial 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) 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

Notwithstanding the above, the Bankruptcy Court has discretionary powers to "cram down" the Reorganization Plan and grant the Reorganization in certain cases.

Once approved, the Reorganization is granted and court-supervised for at least two years. Non-performance of the Reorganization Plan within this period should result in debtor's liquidation, as a general rule.

Filing of Proofs of Claims

The Acceptance Decision triggers the commencement of a 15-day term for the 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").

Sale of Assets

Article 60 of the Bankruptcy Law provides for the conditions under which "separate productive units and branches" can be sold without succession liability by the debtor.

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 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, with powers 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. 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. Generally 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.

Notwithstanding the foregoing, Brazilian Courts have accepted requests for *recuperação judicial* by foreign entities which are part of a corporate group whose "centre 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 Brazilian courts are unlikely to 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-pack type of arrangement which is brought before the Bankruptcy Court for confirmation.

Creditors that are not subject to a plan under a 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, some categories of creditors or even a group of certain categories. In order to include all creditors of a certain category, 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 enterprises 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 and exceeds the equivalent of 40 minimum wages, the total of which currently equates to BRL31,520; 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 partners 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, therefore, be initiated in Canada and Canadian insolvency law would govern those proceedings. The guarantees of the Canadian guarantor may be subject to review under applicable Canadian federal bankruptcy and insolvency laws and applicable provincial and territorial fraudulent conveyance, assignment and preference laws or comparable provisions of applicable laws if a bankruptcy, insolvency or reorganisation case or lawsuit is commenced by or in respect of the Canadian guarantor. Under these laws, a court could void the obligations under the relevant guarantee or subordinate the guarantee to the Canadian guarantor's other debt, 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;
- intended to incur, or believed that it would incur, debts beyond its ability to pay as they mature or for other fraudulent reasons; or
- had the effect of giving the beneficiaries of the guarantees a preference.

The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred.

Under the Bankruptcy and Insolvency Act (Canada), the Canadian guarantor would be considered insolvent if:

- it is 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 proceedings under Canadian federal bankruptcy and insolvency laws (the ''Bankruptcy / Insolvency Proceedings''), creditors may be stayed or prevented from claiming against a debtor company for any pre-filing debt or obligations without approval from the court supervising the relevant Bankruptcy / Insolvency Proceedings.

Under Canadian bankruptcy and insolvency statutes, a court may grant an order authorizing interim financing 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 whether any creditor affected by the proposed order may be materially prejudiced. The court may provide protections in the face of material prejudice.

However, this power is discretionary, and we cannot predict whether, or to what extent, holders of the Notes offered hereby would be compensated for any delay in payment or loss of value.

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.

France

Insolvency

We conduct part of our business activity in France and, to the extent that the centre of main interests of the Issuer or any of the guarantors is deemed to be in France, it would be subject to French proceedings affecting creditors, including court-assisted proceedings (*mandat ad hoc* or *conciliation* proceedings) and court-administered proceedings being 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*). 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.

Under the European Council Regulation (EC) No. 1346/2000 on insolvency proceedings, if a debtor is located in the European Union (other than Denmark), French courts shall have jurisdiction over the main insolvency proceedings if the debtor's centre of main interests is situated in France. In the case of a debtor which is a legal person, the place of the registered office shall be presumed to be its centre of main interests in the absence of proof to the contrary. In determining whether the centre of main interests of a debtor is in France, French courts will take into account a broad range of factual elements.

The following is a general discussion of 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.

Grace periods

In addition to insolvency laws discussed below, you could, like any other creditors, be subject to Article 1244-1 *et seq*. 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 annually by the French government) or that payments made shall first be allocated to repayment of principal. A court order made under Article 1244-1 *et seq.* 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.

With respect to grace periods under Articles 1244-1 *et seq*. of the French Civil Code, 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, impose grace periods on creditors having participated in the conciliation proceedings (other than the tax and social security administrations) for their claims that were not dealt with in the conciliation agreement.

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 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 insolvency 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. 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. In any event, the debtor retains the right to petition the relevant judge for a grace period under Article 1244-1 *et seq* 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. The order of the president of the court appointing a *mandataire ad hoc* is notified for information purposes to the debtor's auditors.

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. 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 four months (with the *conciliateur* being able to request a one-month extension). 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. In any event, the debtor

retains the right to petition the judge which commenced the conciliation proceedings for a grace period under Article 1244-1 *et seq* of the French Civil Code (see "Grace periods" above), such decision being taken after hearing the *conciliateur*.

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. The court can, 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.

Alternatively, the conciliation agreement may be approved (*homologué*) by the Commercial Court at the request of the debtor, if (i) the debtor is not cash-flow insolvent or the conciliation agreement has the effect of putting an end to the debtor's cash-flow 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, except that in addition:

- 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-proceedings 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 proceedings, judicial reorganization or judicial liquidation proceedings, the payment date of claims benefiting from the New Money Lien may not be rescheduled or written off without their holders' consent;
- the works council or employee representatives 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. The publicly available Court decision approving such agreement will however only disclose the amount of any New Money Lien and the guarantees and security interests granted to secure the same;
- when the debtor is submitted to statutory auditing, the conciliation agreement is transmitted 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 court that commenced the conciliation proceedings for a grace period pursuant to Article 1244-1 *et seq*. of the French Civil Code (see "Grace periods" above), in relation to claims of creditors (other than public creditors) party to the conciliation proceedings that are not already subject to the conciliation agreement, in which case the decision would be taken after having heard the *conciliateur* (provided that the terms of his or her appointment included monitoring the implementation of the agreement, as referred to above); and

- a third party which 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.

If the debtor breaches the terms of the conciliation agreement, any party to it may petition the president of the court 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 forbidden. The commencement of subsequent 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 which is likely to meet the threshold requirements for creditors' consent in safeguard, will be a mandatory preliminary step of accelerated safeguard proceedings or accelerated financial safeguard proceedings, as described below.

In the event of the adoption of a safeguard plan in the context of safeguard proceedings or of a reorganization plan in the context of judicial reorganization proceedings, in either case commenced subsequently to the approval of a conciliation agreement, the court, with respect to claims benefiting from the New Money Lien, will not be able to impose a debt reduction or a payment deferral to a date later than the date on which the plan is adopted.

At the request of the debtor and after the creditors taking part in the conciliation proceedings have been consulted on the matter, the *conciliateur* may be appointed with a mission to organize the partial or total sale of the debtor, in particular through a "plan for the disposal of the business" (*plan de cession*) which 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 *conciliateur* may be directly considered by the court in the context of safeguard, reorganization or 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.

Court-administered Proceedings—Safeguard

A debtor which 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 (except for small companies where the court considers that such appointment is not necessary) appointed 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.

In addition, the court may convert such proceedings into judicial reorganization proceedings (i) after commencement of the proceedings, at the request of the debtor, the administrator, the creditors' representative or the Public Prosecutor, if it appears that the debtor was insolvent (*en état de cessation des paiements*) before commencement of the proceedings, (ii) at any time during the observation period upon its own initiative or upon request of the debtor, the judicial administrator, the creditors' representative or the Public Prosecutor in the case where the debtor is insolvent or (iii) upon request of the debtor, the administrator, the creditors' representative or the Public Prosecutor in case no plan has been adopted by the relevant creditors' committee and, if any, bondholders' assembly (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. At any time during the observation period, the court may also convert such proceedings into liquidation proceedings if the debtor is insolvent and its recovery is manifestly impossible.

During the safeguard proceedings, payment by the debtor of any debts incurred prior to the commencement of the proceedings 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 forgiveness, 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 to debtors whose accounts are not certified by a statutory auditor or prepared by a chartered accountant, and who have 150 employees or less or a turnover of €20 million or less.

In such case, the administrator notifies the proposals for the settlement of debts to the court-appointed creditors' representative, who obtains the agreement of each creditor who filed a claim, regarding the debt remissions and payment times 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 maximum possible length of the plan (ten 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 which 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, if the creditors refuse the proposals that were submitted to them, the court that approves the safeguard plan (*plan de sauvegarde*) can impose on them a uniform rescheduling of their claims (subject to the specific regime of claims benefiting from the New Money Lien) over a maximum period of ten years (except 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 waiver 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 installment 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 exceed the aforementioned thresholds.

The consultation involves the submission of a proposed safeguard plan for consideration by two creditors' committees which 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 (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. Accordingly, a person holding only an economic interest therein will not itself be a member of the committee.

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), 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 which are members of the Credit Institutions Committee or of the Major Suppliers Committee may also prepare an alternative safeguard plan 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 (see below), 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).

Creditors outside the creditors' committees or the Bondholders General Meeting are consulted in accordance with the standard consultation process referred to above.

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 court empowers the court-appointed administrator to convene a shareholders' meeting in order to take corporate resolutions with respect to the modification of the debtor's by-laws (including modifications of its share capital) required by a safeguard plan, the court may order that, under certain conditions, the shareholders' decisions be adopted by a majority vote of the shareholders attending or represented, as long as such shareholders own at least half of the shares with voting rights.

If no proposed safeguard plan whatosever is adopted by the committees, 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 remissions 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 remissions 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 which is the subject of 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:

- which publish consolidated accounts in accordance with Article L. 233-16 of the French Commercial Code; or
- which publish accounts certified by a statutory auditor or established by a certified public accountant and 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.

The regime applicable to standard safeguard proceedings regime is broadly applicable to accelerated safeguard or accelerated financial safeguard proceedings, to the extent compatible with the accelerated timing, since the total duration of accelerated safeguard proceedings is three months and the duration of accelerated financial safeguard proceedings is only one month (unless the court decides to extend it by an additional month).

In particular, the Credit Institutions Committee 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.

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).

While accelerated safeguard proceedings apply to all creditors, 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 any amounts (including interest) relating to debts incurred prior to the commencement of the proceedings, to any creditor to whom the accelerated safeguard or accelerated financial safeguard proceedings (as the case may be) apply. 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.

To be eligible to accelerated safeguard proceedings or accelerated financial safeguard proceedings, the debtor must fulfil the following conditions:

- the debtor must not be cash-flow insolvent for more than 45 days when it initially requested the opening of conciliation;
- 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 which it is not in a position to overcome; and
- the debtor must exceed the thresholds provided for to constitute creditors' committee (see above) or the court shall have authorized such constitution in the opening decision;

- the debtor must have prepared a draft safeguard plan ensuring the continuation of its business as a going concern which 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 assembly, if any, within a maximum of three months following the commencement of accelerated safeguard proceedings (or within a maximum of up to two months following the commencement of accelerated financial safeguard proceedings).

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.

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).

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 (or for conciliation proceedings, as discussed above) within 45 days of becoming insolvent; *de jure* managers (including directors) and, as the case may be, *de facto* managers are exposed to civil liability if it fails to do so.

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 which 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 safeguard proceedings observation period, upon request of the debtor, the court-appointed administrator, the creditors' representative (*mandataire judiciaire*) or the State prosecutor, the court may convert safeguard proceedings into reorganization proceedings or liquidation proceedings if it appears that the debtor was already insolvent at the time of the court decision opening the proceedings. In all cases, 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).

In the event of reorganization, 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 reorganization plan, which is similar to a 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*).

Committees of creditors and a Bondholders General Meeting may be created under the same conditions as in safeguard proceedings (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 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 which 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 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 (iii) the modification of the company's share capital seems to be the only credible way to avoid harm to the national or regional economy and allows the continued operation of the business as a going concern, then following (x) the review of the options for a total or partial sale of the business and at the request of the court-appointed administrator or of the State prosecutor and (y) at least 3 months having 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 increase 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; the minority shareholders have the right to withdraw from the company and request that their shares be purchased 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 which 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*). No maximum time period is provided by law to limit the duration of the judicial liquidation process. 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 for 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:

- an asset sale plan (in which case a court-appointed administrator (*administrateur judiciaire*) will usually be appointed to manage the debtor and organize such sale of the 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
- in practice, 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.

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 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 which is not commonly used in the ordinary course of business and security granted for previously incurred obligations, provisional attachment or seizure measures (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*).
- Transactions which 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 creditor 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 the opening of safeguard, accelerated safeguard or SFA proceedings, since the condition required to commence such proceedings is that the company is not insolvent within the meaning of French law.

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 safeguard or insolvency proceedings triggers the acceleration of the debt (for safeguard or judicial reorganization proceedings) 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 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*) which 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 reorganization 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 "plan for the sale of the business" (*plan de cession*) (which it may do for a period of three months, renewable once); in such case, the acceleration of the obligations will only occur on the date of the court decision adopting the "plan for the sale of the business" 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 which 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 for which recovery is justified 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 which 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 filed within one year of the expiry of the observation period;
- creditors may not pursue any individual legal action against the debtor (or a guarantor of the debtor where such guarantor is a natural person and the proceedings are safeguard, accelerated safeguard or accelerated financial safeguard 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 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, in accordance with the terms of Article 5 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.

In accelerated financial safeguard proceedings, the above rules only apply to the creditors that fall within the scope of the proceedings (see above).

As a general rule, creditors domiciled in France whose debts arose prior to the commencement of 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 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 on whose behalves no claims have 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 judicial 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 proofs of claim.

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 which did not take part in the conciliation proceedings must file their proofs of claim within the aforementioned deadlines.

In accelerated financial safeguard proceedings, debts owed to creditors other than banks, financial institutions or bondholders continue to be payable in the ordinary course.

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 plan for the sale of the business (*plan de cession*) of the debtor in judicial reorganization or judicial liquidation proceedings, 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 court will appoint a liquidator (usually the former creditor's representative) in charge of selling the assets of the debtor and settling the relevant debts in accordance with their ranking. However, in practice, where the sale of the business is considered, the court will usually appoint a court-appointed administrator to manage the debtor during the temporary continuation of the business operations (see above) and to organize the sale of the business process.

If the court adopts a plan for the sale of the business, it can also 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.

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 (see above), post-commencement 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 creditors.

As soon as insolvency proceedings are commenced, any unpaid amount of share capital of the debtor becomes immediately due and payable.

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, in the case of (i) fraud, (ii) interference with the management of the debtor or (iii) if the security or guarantees taken to support the facilities 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 Issuer, 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) 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 Issuer or the guarantors as a result of the fraudulent conveyance.

Germany

Insolvency

Certain guarantors are organized under the laws of Germany and have their registered office in Germany (the "German Guarantors"). In the event of insolvency, insolvency proceedings may, therefore, be initiated in Germany if a German Guarantor was held to have its centre of main interests within the territory of Germany at the time the application for the opening of insolvency (*Insolvenzeröffnungsantrag*) is filed. German insolvency law would then most likely govern those proceedings.

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, *inter alia*, 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 group insolvency concept, which generally means that, despite the economic ties between various entities within one group of companies, there will be one separate insolvency

proceeding for each of the entities if and to the extent there exists an insolvency reason on the part of the relevant entity. Each of these insolvency proceedings will be legally independent from all other insolvency proceedings (if any) within the group. In particular, there is no consolidation of assets and liabilities of a group of companies in the event of insolvency and also no pooling of claims amongst the respective entities of a group. A draft act to facilitate the mastering of group insolvencies (*Entwurf eines Gesetzes zur Erleichterung der Bewältigung von Konzerninsolvenzen*) is under discussion in Germany. However, according to this draft act it is mainly intended to provide for coordination of and cooperation between insolvency proceedings of group companies. The draft act does not provide for a consolidation of the insolvency proceedings of the insolvent group companies, or a consolidation of the assets and liabilities of a group of companies or pooling of claims amongst the respective entities of a group, but rather stipulates 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 insolvency proceedings; (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*). It is currently unclear if and when, and whether in its current or modified form, this bill might be adopted by the German parliament.

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 (*Insolvenzordnung*), 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 as a going concern 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 (*positive Fortführungsprognose*). 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, under 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 if the debtor is likely not to be able to pay its debts as and when they fall due.

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 measures (*vorläufige Maßnahmen*) 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. In addition, the court will generally also appoint a preliminary insolvency administrator (*vorläufiger Insolvenzverwalter*), unless the debtor has petitioned for debtor-in-possession proceedings (*Eigenverwaltung*)—an insolvency process in

which the debtor's management generally remains in charge of administering the debtor's business affairs under the supervision of a custodian (*Sachwalter*)—provided that no circumstances are known which lead to the expectation that debtor in possession status will place the creditors at a disadvantage. Depending on the size of the debtor's business operations, the insolvency court must or may appoint a preliminary creditors' committee (*vorläufiger Gläubigerausschuss*) to form a view on a petition for debtor-in-possession proceedings, or on the profile of the (preliminary) insolvency administrator to be appointed or to suggest a particular individual to be appointed by the court. 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). To ensure that the preliminary creditors' committee reflects the interests of all creditor constituencies, it shall include a representative of the secured creditors, one for the large creditors and one for the small creditors as well as one for the employees. The duties of the preliminary insolvency administrator are, in particular, to safeguard and to preserve the debtor's property (which may include the continuation of the business carried out by the debtor), to verify the existence of an insolvency reason and to assess whether the debtor's net assets will be sufficient to cover the costs of the insolvency proceedings. 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 costs of the insolvency proceedings. If the assets of the debtor are not expected to be sufficient, the insolvency court will only open formal insolvency proceedings if third parties, for instance creditors, advance the costs themselves. In the absence of such advancement, the petition for the 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, but not necessarily, the same person who acted as preliminary insolvency administrator) is appointed by the insolvency court, unless a debtor-in-possession process (*Eigenverwaltung*) is ordered. In the absence of a debtor-in-possession process, 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 head count and amount of insolvency claims) has voted in favor of the proposed individual becoming the insolvency administrator and (ii) the proposed individual being eligible as officeholder, *i.e.* sufficiently qualified, business-experienced and impartial. The insolvency administrator may raise new financial indebtedness and incur other liabilities to continue the debtor's business. 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).

All 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. 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. With some exceptions, secured creditors may not be entitled to enforce their 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*) or 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), 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 value remaining in the insolvency estate (*Insolvenzmasse*) after the security interests 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.

The right of a creditor to preferred satisfaction (*Absonderungsrecht*) may not necessarily prevent the insolvency administrator from using a movable asset that is subject to this right. The insolvency administrator must, however, compensate the creditor for any loss of value resulting from such use.

Other than secured and unsecured creditors, German insolvency law provides for certain creditors to be subordinated by law (including, but not limited to, claims made by shareholders (unless privileged) of the relevant debtor for the repayment of loans or similar claims), while claims of a person who becomes a creditor of the insolvency estate only after the opening of insolvency proceedings (*Massegläubiger*) generally rank senior to the claims of regular, unsecured creditors. 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.

The insolvency estate shall serve to satisfy the liquidated claims held by the personal creditors against the debtor on the date the insolvency proceedings were opened. The following claims of subordinated creditors shall be satisfied ranking below the other claims of insolvency creditors in the order given herein, and in proportion to their amounts if ranking with equal status: (i) interest and penalty payments accrued on the claims of the insolvency creditors from 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 offense binding the debtor to pay money; (iv) claims on the debtor's gratuitous performance of a consideration; and (v) claims for the restitution of shareholder loans (*Gesellschafterdarlehen*) or claims resulting from legal transactions corresponding in economic terms to such a loan.

While in ordinary insolvency proceedings, the value of the German Guarantor's assets will be realized by a piecemeal sale or, as the case may be, by a bulk sale of the entity's business as a going concern, a different approach aiming at the rehabilitation of such entities can be taken based on an insolvency plan (*Insolvenzplan*). Such plan can be submitted by the debtor or the insolvency administrator and requires, among other things and subject to certain exceptions, the consent of the German Guarantor and the consent of each class of creditors in accordance with specific majority rules and the approval of the insolvency court (while a group of dissenting creditors or the debtor can—under certain circumstances—be crammed down). If the debtor is a corporate entity, also the shares or, as the case may be, the membership rights in the debtor can be included in the insolvency plan, e.g., they can be transferred to third parties, including a transfer to creditors based on a debt-to-equity swap. Moreover, if the debtor has filed a petition for the opening of insolvency proceedings based on an insolvency reason other than illiquidity (*i.e.,* imminent illiquidity or over-indebtedness), combined with a petition to initiate such process based on a debtor-in-possession status and can prove that a restructuring of its business is not obviously futile (*offensichtlich aussichtslos*), the court may grant a period of up to three months to submit an insolvency plan for the debtor business before it opens insolvency proceedings (*Schutzschirm*). During this period, the creditors' rights to enforce security may—upon application of the filing debtor—be suspended. Under these circumstances, the insolvency court has to appoint a custodian (*vorläufiger Sachwalter*) to supervise the process. The debtor is entitled to suggest an individual to be appointed as custodian with such suggestion being binding on the insolvency court unless the suggested person is obviously not eligible to become a custodian (*i.e.*, is obviously not competent or impartial).

Hardening Periods and Fraudulent Transfer

Under the German Insolvency Code, the insolvency administrator (or in case of debtor-in-possession proceedings, the custodian) may avoid (*anfechten*) transactions, performances or other acts that are deemed detrimental to insolvency creditors and which were effected prior to the commencement of formal 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. The administrator's right to avoid transactions can, depending on the circumstances, extend to transactions having occurred up to ten years prior to the filing for the commencement of insolvency proceedings.

In the event of insolvency proceedings with respect to the German Guarantors is based on and governed by the insolvency laws of Germany, the payment of any amounts to the holders of the notes could be subject to potential challenges (*i.e.*, clawback rights) by an insolvency administrator under the rules of avoidance as set out in the German Insolvency Code. In the event such a transaction is successfully avoided (*angefochten*), the holders of the notes may not be able to recover any amounts under the notes and may participate in the insolvency proceedings as unsecured creditors. If payments have already been made under notes, any amounts received from a transaction that had been avoided would have to be repaid to the insolvency estate. In this case, the holders of the notes would only have a general unsecured claim under the notes without preference in insolvency proceedings.

In particular, an act (*Rechtshandlung*) or a legal transaction (*Rechtsgeschäft*) (which term includes the granting of a guarantee, the provision of security and the payment of debt) detrimental to the creditors of the debtor 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 (*Befriedigung*) if such act was taken (i) during the last three months prior to the filing of the petition for the opening of insolvency proceedings, provided that the debtor was illiquid (*zahlungsunfähig*) at the time such act was taken and the creditor knew of such illiquidity (or of circumstances that clearly suggest that the debtor was illiquid) at such time, or (ii) after the filing of the petition for the opening of insolvency proceedings, if the creditor knew of the debtor's illiquidity or the filing of such petition (or of circumstances that clearly suggest such illiquidity or filing);
- any act granting an insolvency creditor, or enabling an insolvency creditor to obtain, security or satisfaction (*Befriedigung*) 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 taken during the last month prior to the filing of the petition for the opening of insolvency proceedings or after such filing, (ii) such act was taken 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 taken during the second or third month prior to the filing of the petition for the opening of 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 clearly suggest such detrimental effect);
- a legal transaction 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 it was entered into (i) during the three months prior to the filing of the petition for the opening of insolvency proceedings and the debtor was illiquid at the time of such transaction and the counterparty to such transaction knew of the illiquidity at such time or (ii) after the filing of the petition for the opening of insolvency proceedings and the counterparty to such transaction knew either of the debtor's illiquidity or of such filing at the time of the transaction;
- any act by the debtor without (adequate) consideration (e.g., 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 the petition for the opening of insolvency proceedings;

- any act performed by the debtor during the ten years prior to the filing of the petition for the opening of insolvency proceedings or at any time after the filing, if the debtor acted with the intention of prejudicing its insolvency creditors (*vorsätzliche Gläubigerbenachteiligung*) and the beneficiary of the act knew of such intention at the time of such act;
- any non-gratuitous contract concluded between the debtor and an affiliated party that directly operates to the detriment of the creditors can be voided unless such contract was concluded earlier than two years prior to the filing of the petition for the opening of insolvency proceedings or the other party had no knowledge of the debtor's intention to disadvantage its creditors as of the time the contract was concluded; in relation to corporate entities, the term "affiliated party" includes, subject to certain limitations, members of the management or supervisory board, general partners and shareholders owning more than 25% of the debtor's share capital, persons or companies holding comparable positions that give them access to information about the economic situation of the debtor, and other persons who are spouses, relatives or members of the household of any of the foregoing persons;
- any act that provides security or satisfaction (*Befriedigung*) for a claim of a shareholder for repayment of a shareholder loan or a similar claim if (i) in the case of the provision of security, the act took place during the last ten years prior to the filing of the petition for the opening of insolvency proceedings or after the filing of such petition or (ii) in the case of satisfaction, the act took place during the last year prior to the filing of the petition for the opening of the insolvency proceedings or after the filing of such petition; or
- 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 opening 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 must 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 commencement 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 he or she knew the debtor's imminent illiquidity and that the transaction prejudiced the debtor's creditors. With respect to an "affiliated party", there is a general statutory presumption that such party had "knowledge".

Apart from the examples of an insolvency administrator avoiding transactions according to the German Insolvency Code described above, a creditor who has obtained an enforcement order (*Vollstreckungstitel*) could possibly also avoid any security right or payment performed under the relevant security right according to the German Law of Avoidance (*Anfechtungsgesetz*) outside formal insolvency proceedings. The prerequisites vary to a certain extent from the rules described above and the avoidance periods are calculated from the date when a creditor exercises its rights of avoidance in the courts.

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 below 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 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 or claims resulting from legal transactions corresponding in economic terms to such a loan.

Limitations on Validity and Enforceability of the Guarantees

The granting of guarantees by the German Guarantor will be subject to certain German capital maintenance rules of the German Act regarding Companies with Limited Liability (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) (the "GmbHG") if that German Guarantor is incorporated in Germany in the legal form of a German limited liability company (*Gesellschaft mit beschränkter Haftung*—a "GmbH") or a German limited partnership with a German limited liability company as general partner (*GmbH & Co. KG*). As a general rule, sections 30 and 31 of the GmbHG prohibit a GmbH or, in case of a GmbH & Co. KG, its general partner organized in the form of a GmbH from disbursing its assets to its shareholders to the extent that the amount of the GmbH's net assets (*i.e*., assets minus liabilities and liability reserves) is or would fall below the amount of its stated share capital (*Stammkapital*). Guarantees granted by a GmbH in order to guarantee liabilities of a direct or indirect parent or sister company are considered disbursements under Sections 30 and 31 GmbHG.

Therefore, in order to enable German subsidiaries to grant guarantees to secure liabilities of a direct or indirect parent or sister company without the risk of violating German capital maintenance provisions and limit any potential personal liability of management, it is standard market practice for credit agreements, indentures, guarantees and security documents to contain so-called "limitation language" in relation to subsidiaries incorporated in Germany in the legal form of, *inter alia*, a GmbH and a GmbH & Co. KG. Pursuant to such limitation language, the beneficiaries of the guarantees contractually agree to enforce the guarantees against the German subsidiary if and to the extent payments under any such subsidiary guarantee would not (i) cause a German Guarantor's net assets to fall below the amount of its registered share capital (*Stammkapital*) or (ii) deprive the German Guarantor of the liquidity necessary to fulfill its financial liabilities to its creditors. 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. In addition, subsidiary guarantees in other jurisdictions may be subject to similar limitations.

German capital maintenance rules are subject to evolving case law. We cannot assure you that future court rulings may not further limit the access of shareholders to assets of the German Guarantors, which can negatively affect the ability of the Issuer to make payment on the Notes or of the German Guarantors to make payments on the subsidiary guarantees.

In addition, 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 the Guarantors. 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 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.

Ireland

Irish insolvency law

A certain guarantor is incorporated under the laws of Ireland (the "Irish Guarantor"). Any insolvency proceeding by or against the Irish Guarantor should be based on Irish insolvency laws as it is incorporated in Ireland, maintains its registered office in Ireland and conducts the administration of its interest in Ireland. On this basis, an Irish court would be likely to conclude the Irish Guarantor has its "centre of main interests" in Ireland, within the meaning of Council Regulation (EC) No 1346/2000.

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/security interest, provided the giving of the guarantee 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 indenture, 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.

Mexico

Corporate Guarantees

The Notes offered hereby will be fully and unconditionally guaranteed by certain of our Mexican subsidiaries. The subsidiary guarantees provide a basis for a direct claim against the subsidiary guarantors; however, it is possible that the guarantees of these subsidiaries may not be enforceable under applicable laws. While Mexican law does not prohibit the giving of subsidiary guarantees and, as a result, does not prevent the subsidiary 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 becomes subject to a judicial reorganization proceeding (*concurso mercantil*) or to bankruptcy (*quiebra*), its guarantee may be deemed to have been a fraudulent transfer and declared void based upon the Mexican subsidiary guarantor being deemed not to have received fair consideration in exchange for such guarantee. Under the Mexican Business Reorganization Act (*Ley de Concursos Mercantiles*), if we are declared bankrupt or in *concurso mercantil*, our obligations under the Notes offered hereby, (i) would be converted into Mexican Pesos and then from Mexican Pesos into inflation-adjusted units (*unidades de inversion*, known as UDIs), (ii) would be satisfied at the time claims of all our creditors are satisfied, (iii) would be subject to the outcome of, and priorities recognized in, the relevant proceedings, which differ from those in other jurisdictions such as the United States, including with respect to the treatment of intercompany debt, (iv) would cease to accrue interest from the date the *concurso mercantil* is declared, (v) would not be adjusted to take into account any depreciation of the Mexican Peso against the U.S. Dollar or other currencies occurring after such declaration and (vi) would be subject to certain statutory preferences, including tax, social security and labor claims, and claims of secured creditors (up to the value of the collateral provided to such creditors).

Bankruptcy (*Concurso Mercantil*)

Applicable Bankruptcy Laws

Some guarantors are incorporated under the laws of Mexico and as such, any insolvency proceedings applicable to each such guarantor, including any and all of its assets (in Mexico or abroad), will be subject to applicable Mexican bankruptcy laws. Insolvency proceedings in Mexico are governed by the *Ley de Concursos Mercantiles* (Mexican Business Reorganization Act, or "MBRA").

Concurso Mercantil

The MBRA provides one unique procedure for debtors in financial distress (the *concurso mercantil*) which consists of two separate and generally successive stages: conciliation (or reorganization) and bankruptcy.

The objective of the conciliation stage is to preserve the business of a person declared in *concurso mercantil* through the negotiation and execution of an agreement with its creditors. The conciliation phase is aimed, among others, to provide distressed debtors with means to emerge financially stronger from *concurso mercantil*. On the other hand, the objective of bankruptcy is to sell the assets of the estate to pay the creditors pursuant to the priority afforded by the MBRA to their respective claims.

Declaration of *concurso mercantil* can be requested directly by the debtor, by any of its creditors or by the attorney general (*ministerio público*). If an involuntary petition is filed by a creditor or the attorney general, the *concurso* proceedings must commence as a reorganization (*conciliation*) whereas if the *concurso* is declared pursuant to a voluntary filing by the debtor, proceedings may move directly to liquidation (*bankruptcy*) if so requested by the debtor.

Fraudulent conveyance.

Under applicable provisions of the MBRA, transactions occurring within a gray period (*periodo de retroacción*), which generally comprises the nine months (270 natural days) immediately prior to the date of the ruling declaring the *concurso mercantil,* but which can be extended or reduced by the court, may be subject to challenge by creditors under the fraudulent conveyance (*fraude de acreedores*) theory. Under the MBRA, fraudulent conveyance actions are generally predicated on the basis that the debtor received unfair or inadequate consideration or unduly prejudiced creditors by entering into a certain transaction. It should also be mentioned, however, that certain transactions, including transactions with related parties, are presumed to be fraudulent conveyances (*actos en fraude de acreedores*) unless such debtor can prove that it acted in good faith in so dealing.

In the event any such challenge is successful, the affected transaction may become unenforceable vis-à-vis the bankruptcy estate and the parties party to such transaction (other than the debtor) may be forced to reimburse the estate for any consideration (plus interest) received thereunder and to file a proof of claim as other creditors in order to collect such amounts pursuant to the applicable MBRA provisions.

Recognition and treatment of claims.

As part of the conciliation phase of any *concurso mercantil*, the court will be required to issue a resolution recognizing the claims of the creditors against the debtor and their respective priority. To the extent the *concurso* is commenced directly as a liquidation or moves to liquidation before recognition of claims is finalized, recognition of claims proceedings will continue beyond conciliation and into bankruptcy (as the same is a pre-requisite to liquidation given that only recognized creditors may be paid out of the estate). Pursuant to this resolution, creditors can be categorized in any of five categories:

(i) claims against the estate (which include certain labor claims, administration and other expenses, obligations incurred after the *Concurso* ruling date (either approved by the mediator or approved directly by him/her) and fees of the business reorganization specialists);

(ii) singularly privileged creditors (applicable only to reorganization of individuals as they refer to death and illness related expenses);

(iii) secured creditors (holding an in rem security interest);

(iv) creditors with special privilege, and

(v) unsecured (common) creditors.

The MBRA provides an absolute priority rule stating that no creditor of any given category can be paid until all claims recognized as having a higher category have been paid in full. Creditors secured with a *Fianza* fall in the last category and are treated as unsecured creditors for purposes of the bankruptcy procedure.

Currency of claims.

Upon the effectiveness of a *Concurso* Order: (i) unsecured peso debt is converted into inflationary linked units known as *Unidades de Inversión* ("UDIs") and ceases to accrue interest, (ii) unsecured debt denominated in foreign currency is converted into Mexican pesos and then into UDIs, and ceases to accrue interest, and (iii) secured debt remains in its original currency and continues to bear ordinary interest as provided in the relevant agreement, up to the value of the collateral.

Stay of foreclosure proceedings.

From the date in which the *Concurso* ruling is entered (or before if the court hearing the case grants injunctive relief during the performance of the fact-finding visit) and until the conciliation stage concludes, any and all foreclosure proceedings, attachments, injunctions or similar actions on or upon the debtor's properties and/or rights are stayed. Please note that this does not limit the ability of the creditors to bring action against the debtor and preserve their rights but any proceedings so commenced will have to be stayed before reaching a foreclosure stage and the amount adjudicated thereunder filed as a claim with the *concurso* court (which, differently from other claims, would not be subject to review on its merits but just categorized within the applicable MBRA priority for purposes of payment thereof).

Bankruptcy/Liquidation

Bankruptcy is declared if the debtor requests that procedures be commenced directly as liquidation or if it requests that mediation be terminated and the *concurso* moves to such stage. Bankruptcy may also be declared if the mediator so requests on the grounds that reaching an agreement is not feasible or if mediation expires without the parties being able to reach an Agreement.

In the bankruptcy stage of a *concurso mercantil*, a *síndico* will be appointed by the court, who will proceed to sell the business and/or assets of the debtor to pay its recognized creditors with the proceeds thereof pursuant to the priorities set forth above.

In this stage the debtor is dispossessed of the management of its business and the *síndico* overrides all decision-making bodies of management.

The *síndico* may sell the business of the debtor as an ongoing concern or sell the assets of the estate in groups or individually. As soon as proceeds from these sales are obtained, the *síndico* must start paying recognized creditors pursuant to their priority.

The Netherlands

Fraudulent transfer and its consequences under Dutch law

To the extent that Dutch law applies, a legal act performed by a debtor (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 an insolvency proceeding or otherwise and may be nullified by any of its creditors or its liquidator in bankruptcy, if (i) it performed such acts without an obligation to do so (*onverplicht*), (ii) generally the creditor concerned or, in the case of its bankruptcy, any creditor was prejudiced as a consequence of the act, and (iii) at the time the act was performed both it and (unless the act was for no consideration (*om niet*)) 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 addition, in the case of such a bankruptcy, the liquidator 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 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 (value of the) assets of a debtor to its creditors.

Both insolvency regimes are set forth in the Dutch Bankruptcy Act (*Faillissementswet*).

Re 1: A moratorium of payments can be granted only at the request of the debtor. Upon such request, the court will generally grant a provisional moratorium and appoint an administrator (*bewindvoerder*) who, jointly with the company's management, will be in charge of the company and its business undertakings. A definitive moratorium will generally be granted unless there is an objection by creditors admitted to a vote of creditors which jointly represent either (i) at least one-fourth of the total amount of unsecured claims or (ii) at least one-third of all unsecured creditors.

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 by the court. Consequently, Dutch moratorium of payments proceedings could reduce the recovery of note holders.

Re 2: A debtor can be declared bankrupt by the competent Dutch court either at its own request or at the request of a creditor. When a company is declared bankrupt, the court will appoint a liquidator in bankruptcy proceedings (curator) whose primary task is to liquidate the assets of the company and to distribute the proceeds to the company's creditors on the basis of the relative priority of their respective claims and, to the extent claims of certain creditors have equal priority, in proportion to the amount of such claims.

The bankrupt debtor may offer a composition (*akkoord*) to the unsecured and non-preferential creditors. Such a composition will be binding upon all unsecured and non-preferential creditors, if: (i) it is approved by a simple majority of a meeting of the recognized and admitted unsecured and non-preferential creditors representing at least 50% of the amount of the recognized and admitted unsecured and non-preferential claims; and (ii) it is subsequently ratified by the court. Consequently, Dutch bankruptcy proceedings could reduce the recovery of holders of the Notes offered hereby.

Re 1/2: A composition offered in a moratorium of payments or in bankruptcy proceedings is not binding on preferential and secured creditors.

Subject to certain exceptions, such as fraudulent conveyance (*Actio Pauliana*), holders of Dutch law security rights may generally enforce their rights in respect of the security separately from bankruptcy or moratorium of payments. In that respect a Dutch moratorium or bankruptcy differs from, *e.g.*, Chapter 11 reorganizations in the United States. During bankruptcy or a moratorium of payments, enforcement by the holder of a security right may be suspended by the court, in each case for a maximum period of four months. A holder of security may be prevented from enforcing its security if such enforcement would be contrary to principles of reasonableness and fairness in the circumstances at hand.

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.

Limitation on enforcement

Under Dutch ultra vires rules, a legal entity (or its trustee in bankruptcy) may avoid any guarantee or security granted by it (or any other agreement entered into by it), if by granting that guarantee or security (or entering into that other agreement) it exceeded its objects and the beneficiary of the guarantee or security (or the other party to the agreement) knew or should have known (without investigation) that the objects were exceeded.

The objects of a Dutch legal entity are set out in its articles of association. To provide maximum comfort that granting guarantees and security do not exceed the entity's objects, it is recommended that the articles of association expressly provide (and, where necessary, be amended to provide) that the entity may grant guarantees and security in respect of another (legal) person's obligations.

However, there is case law to the effect that the scope of a entity's objects cannot be determined solely on the basis of its articles of association, but that all circumstances must be taken into account. Thus, guarantees or security which are expressly permitted by the articles of association may nonetheless exceed an entity's objects if it is detrimental to the entity's corporate interests. What an entity's corporate interests require, will depend on the circumstances. Case law suggests that in relation to granting guarantees and security in respect of the debts of a group company of the entity concerned, two questions may be particularly relevant:

(a) when determining whether granting a guarantee or creating security violates the entity's objects, the entity's interests in the guarantee or security is to be taken into account, but weight may also be put to the interests of the group of which the entity is a member. How much weight may be put to the interests of the group, is influenced by the degree of interrelatedness between the group members: the more the group is interwoven, the more weight may be put to the interest of the group.

(b) the mere fact that an entity grants a guarantee or creates security for debts which exceed its financial capacity, does not necessarily imply that the guarantee or security violates its objects. Weight is to be put to the benefit which the entity may enjoy as a result of the guarantee or security. The relevant benefits may be direct, but also may be indirect and may include specific or general benefits which the entity enjoys as a result of it being a member of the relevant group. If there are such benefits, the guarantee or security will generally be valid, unless it is foreseeable that the guarantee or security will put the continued existence of the entity at risk or the guarantee or security disproportionally prejudices the entity in any other way.

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 jurisdiction of the court in the federal or state court in the United States has been based on grounds which are internationally acceptable and that proper legal procedures have been observed, and if recognition and/or enforcement of 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 a dispute that is about the same subject matter and that is based on the same cause, provided that earlier decision can be recognized in the Netherlands, the Dutch court will, in principle, give binding effect to the final judgment which has been rendered in the United States unless such judgment contravenes public policy in the Netherlands.

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 give shareholders (participants) of the Russian LLC Guarantor the right to challenge the guarantee.

The Russian Subsidiary Guarantee may be declared void if it violates the public order, is fictitious or sham. The Russian Guarantee may also be challenged if it violates the law, is executed through error, material delusion, through lack of power or without the required consent of a third party.

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 guarantee provided by a Russian LLC Guarantor 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, 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.

In addition, 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. 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.

Bankruptcy

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 bankruptcy 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 itself may, and sometimes is obliged to, file for its bankruptcy.

Russian insolvency legislation provides for four major stages of the bankruptcy proceedings, some of which are mandatory and some are optional. Russian law also recognizes amicable settlements as a possible outcome of bankruptcy proceedings. Generally, the bankruptcy 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 bankruptcy. 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 bankruptcy proceedings. The information on commencement of the bankruptcy proceedings is published in the official newspaper and is available on the Internet. All creditors must, within 30 days, present their claims to the debtor. However, as a matter of Russian law, commencement of the bankruptcy 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 bankruptcy management stage (*konkursnoe proizvodstvo*). A bankruptcy manager (*konkursniy upravlyaushiy*) will replace the management of the debtor (if the management remained before the commencement of the bankruptcy 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 bankruptcy legislation.

Russian law also recognizes amicable agreements (*mirovoe soglashenie*) as a possible outcome of bankruptcy 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 bankruptcy 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 ranking list 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 ranking list 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 current claims.

Claims of creditors that are not included into the ranking list 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 satisfied only after the satisfaction of the claims of the previous order of priority. In addition to a bankruptcy claim, there are other claims which the debtor may make, i.e., those which have arisen after the commencement of the stages of bankruptcy proceedings. These claims have super-priority in relation to bankruptcy unsecured claims. Russian bankruptcy 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 without mutual consideration and on disadvantageous terms, or transactions wilfully aimed at causing harm to creditors generally; 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.

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 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 subject to 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;

(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

(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;

provided that the Singapore Company was insolvent when it entered into the transaction or became insolvent as a result of the transaction. Where the transaction was entered into with a person who is an associate of the Singapore Company (otherwise than by reason only of being its employee), the requirement that the Singapore Company was insolvent at the time of the transaction or became insolvent as a result of the transaction shall be presumed to be satisfied 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 it 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, preferential debts are required to be paid in priority to all other debts other than those secured by a fixed charge. 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);

(c) retrenchment benefits under employment contracts;

(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 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 such extended period as is allowed by the court.

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

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, 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 Collection 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 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 the debtor or a creditor files a petition for the opening of insolvency proceedings based on an application for commencement of enforcement proceedings and the threat of insolvency (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, it 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 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. 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.

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 (unless they have a segregation right (*Aussonderungsrecht*)), 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 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 creditors 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. Certain privileges can further result for the Swiss government and its subdivisions based on specific provisions of federal law. 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.

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 credit agreements, notes, guarantees, security documents and other up-stream or cross-stream obligations to contain 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 reflecting the requirement that payments under the guarantee may not cause the Swiss Guarantor to incur a liability which would exceed its freely disposable equity, 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).

Generally, any guarantee is enforced in accordance with its terms under Swiss law. Unconditional and irrevocable guarantees within the meaning of Article 111 of the Swiss Code of Obligations are typically due and payable upon request of the beneficiaries or their representative.

United Kingdom

English 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 should be based on English insolvency laws as they are all incorporated in England, maintain their registered offices and conduct the administration of their respective interests on a regular basis in England and Wales. On the basis of those factors, an English court would be likely to conclude that the English Guarantors have the "centre of main interests" in England, within the meaning of Council Regulation (EC) No 1346/2000.

An administrator can be appointed by a company, its directors or the holder of a "qualifying floating charge" and different procedures apply according to the identity of the appointer. Once appointed, the administrator must perform his functions with the objective of: (a) rescuing such company as a going concern; (b) achieving a better result for such company's creditors as a whole than would be likely if such company were wound up (without first being in administration); or (c) realizing property in order to make a distribution to one or more secured or preferential creditors. The administrator must perform his functions in the interests of such company's creditors as a whole. He may only perform his functions in pursuit of the objective stated in (c) if he believes that it is not reasonably practicable to achieve the objectives stated in (a) or (b). In addition, an administrator is given wide powers to conduct the business and, subject to certain requirements under the Insolvency Act 1986, dispose of the property of a company in administration. During the administration, no proceedings or other legal process may be commenced or continued against the debtor, except with leave of the court or consent of the administrator. If an English Guarantor were to commence administration proceedings, the Notes and the guarantees by such guarantors could not be enforced while the relevant company was in administration.

In addition to administration, the English courts have power under English insolvency law to wind-up a company that is unable to pay its debts (under Section 123 of the Insolvency Act). Any creditor, the company, the directors of the company or any of the company's 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.

As indicated above, the shareholders and creditors of a 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 the court for such a stay.

Any interest accruing under or in respect of the Notes for any period after commencement of administration or liquidation proceedings could only be recovered by holders of the Notes from any surplus remaining after payment of all other debts proved for in the proceeding and interest accrued but unpaid up to the date of the commencement of the proceeding.

Under English insolvency law, a liquidator or administrator of an English company could apply to the court for an order to set aside a guarantee if such liquidator or administrator believes that the creation of such guarantee constituted a preference. There will only be a preference if, at the time of the transaction or as a result

of the transaction, the English company was or becomes unable to pay its debt (as defined in the UK Insolvency Act 1986 (as amended)). The transaction can be challenged if the English company enters into liquidation or administration proceedings within a period of six months (if the beneficiary of 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 guarantee. A transaction will constitute a factual preference if it 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. If the court determines that the transaction constituted such a preference, the court has very wide powers for restoring the position to what it would have been if that preference had not been given. However, for the court to do so, it must be shown that in deciding to give the factual preference the English company was influenced by a desire to produce the preferential effect. In any proceedings, it is for the administrator or liquidator to demonstrate that the English company was insolvent at the relevant time and that the company was influenced by a desire to produce the preferential effect, unless the beneficiary of the transaction was a concerned person, in which case there is a presumption that the company was influenced by a desire to produce the preferential effect and the connected person must demonstrate in such proceedings that there was no such influence.

Under English insolvency law, if a company goes into liquidation or administration, the liquidator or administrator of a company may apply to the court to rescind a transaction entered into by a company at undervalue if such company is unable to pay its debts (as defined in the relevant English statute) at the time of, or as a consequence of, the transaction and enters into liquidation or administration within two years after the completion of the transaction. Where a transaction is between connected persons, the insolvency of the English company is presumed unless the contrary is shown. A transaction might be so challenged if it involved a gift by the relevant company or otherwise enters into a transaction with that person on terms which provide for the relevant company to receive no consideration, or if the relevant company received consideration the value of which, in money or money's worth is of significantly lower value than the benefit given. A court generally will not intervene, however, if the relevant company has entered into a transaction in good faith for the purposes of continuing its business and if there were reasonable grounds for believing the transaction would benefit that company. An administrator or liquidator may apply to a court to set aside an extortionate credit transaction entered into by a company up to three years before such company entered into administration or went into liquidation. A transaction is extortionate if, having regards to the risk accepted by the person providing the credit to the company, the terms of it require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the credit or otherwise grossly contravene ordinary principles of fair dealing. There is no requirement for the transaction, subject to challenge as an extortionate credit transaction, to have taken place when the company was insolvent or resulted in the company becoming insolvent.

Where it can be shown that a transaction was at an undervalue and was made for the purposes of putting assets beyond the reach of a person who is making, or may make, a claim against a company, or of otherwise prejudicing the interests of a person in relation to the claim, 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 and is not therefore limited to, unlike a transaction at an undervalue, liquidators or other insolvency officers.

A transaction, subject to challenge as a transaction defrauding creditors, can take place at any time. It does not need to have occurred within a specified time period before the onset of insolvency, nor does the company need to be insolvent as a result of the transaction. There can be no assurance that the provision of the guarantees provided by the English Guarantors will not be challenged by a liquidator or administrator or that a court would support our analysis. If a court voided any guarantee provided by the English Guarantors as a result of a fraudulent transfer, or held it unenforceable for any other reason, you would cease to have any claim in respect of the applicable guarantee provided by an English Guarantor. If a court limits the amount payable by an English Guarantor under its guarantee or if such English Guarantor otherwise has insufficient available assets, then you would not be entitled to payment of the full face amount of such guarantee.

United States

Certain subsidiaries are organized under the laws 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 U.S. federal bankruptcy laws and comparable provisions of state fraudulent transfer or conveyance laws, the Notes offered hereby or any guarantee could be voided (that is, cancelled) as a fraudulent transfer or conveyance if a court determined that the Issuer, at the time it issued the Notes offered hereby, or any guarantor, at the time it issued the guarantee (or, in some jurisdictions, when payment becomes due under the guarantee), (i) issued the Notes offered hereby or incurred the guarantee with actual intent of hindering, delaying or defrauding creditors or (ii) the Issuer or a guarantor, as applicable, received less than reasonably equivalent value or fair consideration in return for either issuing the Notes offered hereby or incurring the guarantee and, in the case of (ii) only, one of the following is also true at the time thereof:

- the Issuer or any guarantor, as applicable, was insolvent or rendered insolvent by reason of the issuance of the Notes offered hereby or the incurrence of the guarantee;
- the issuance of the Notes offered hereby or the incurrence of the guarantee left the Issuer or such guarantor, as applicable, with an unreasonably small amount of capital to carry on our or its business; or
- the Issuer or such guarantor intended to, or believed that such Issuer or guarantor would, incur debts beyond the Issuer's or such guarantor's ability to pay such debts as they mature.

A U.S. court would likely find that the Issuer or a guarantor did not receive reasonably equivalent value or fair consideration for the Notes offered hereby or such guarantee if the Issuer or such guarantor 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 the Issuer or a guarantor 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 the Issuer or any guarantor 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 the Issuer or any guarantor.

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).

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;

(2) is issued by a competent court after due service of process on the debtor or on a properly appointed agent for service of process, which services must be made in accordance with Brazilian laws;

(3) is not subject to appeal (*res judicata*);

(4) is authenticated by a Brazilian consulate in the country in which it was issued and is accompanied by a sworn translation into Portuguese; and

(5) is not contrary to national sovereignty, public policy, good morals or public morality.

If any suit is brought against an entity domiciled in Brazil, service of process must be carried out in accordance with Brazilian law.

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 and 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 de Grande Instance*) 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 French international public policy (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 would 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 would be conditional upon a number of factors, including the following:

- the judgment being final under U.S. federal or state law;
- the U.S. court having had jurisdiction over the original proceeding under German law;
- the defendant having had the chance to defend herself or himself against an unduly or untimely served complaint;
- the judgment of the U.S. court being consistent with the judgment of a German court or a recognized judgment of a foreign court handed down before the judgment of the U.S. court;
- the matter (*Verfahren*) resulting in the judgment of the U.S. court being consistent with the matter (*Verfahren*) pending before a German court, provided that such German matter (*Verfahren*) was pending before a German court prior to the U.S. court entered its judgment;

- the enforcement of the judgment by the U.S. court being compatible with the substantial foundations of German law, in particular with the civil liberties (*Grundrechte*) guaranteed by virtue of the German Constitution (*Grundgesetz*); and
- generally, the guarantee of reciprocity.

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, 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 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.

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 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. 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;

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. 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;

d. 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;

e. such judgment does not contravene Mexican law, public policy of Mexico, international treaties or agreements binding upon Mexico or generally accepted principles of international law;

e. 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;

f. such judgment is final in the jurisdiction where obtained;

g. the action in respect of which such judgment is rendered is not the subject matter of a lawsuit among the same parties, pending before a Mexican court;

h. any such foreign courts would enforce final judgments issued by the federal or state courts of Mexico as a matter of reciprocity; and

i. the action in respect of which such judgment is rendered is not subject to legal proceedings in Mexico, among the parties.

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), the guarantor may discharge its obligations by paying any sum due 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 the jurisdiction of the court in the federal or state court in the United States has been based on grounds which are internationally acceptable and that proper legal procedures have been observed, and if recognition and/or enforcement of 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 a dispute that is about the same subject matter and that is based on the same cause, provided that earlier decision can be recognized in the Netherlands, the Dutch court will, in principle, give binding effect to the final judgment which has been rendered in the United States unless such judgment contravenes public policy in the Netherlands.

Service of Process

Under Dutch law, it is probably not possible to appoint a foreign process agent for a writ of summons to be brought before a Dutch court.

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 or enforce any foreign court judgments or foreign arbitral awards in respect of the Russian LLC Guarantor outside of Russia.

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 are likely to 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 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, and no relevant federal law on enforcement of foreign court judgments has been adopted in Russia. 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.

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. 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.

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.

- 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 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.

MATERIAL NETHERLANDS TAX CONSEQUENCES

The following is intended as general information only, and it does not present any comprehensive or complete description of all aspects of Dutch tax law which could be of relevance to a holder of the Notes offered hereby (a "Noteholder"). For Dutch tax purposes, a Noteholder may include an individual who or entity that does not have the legal title of the Notes, but to whom nevertheless the Notes offered hereby are attributed based either on such individual or entity owning a beneficial interest in the Notes offered hereby or based on specific statutory provisions. These include statutory provisions pursuant to which the Notes offered hereby are attributed to an individual who is, or who has directly or indirectly inherited from a person who was, the settlor, grantor or similar originator of a trust, foundation or similar entity that holds the Notes offered hereby.

Prospective Noteholders should consult their tax adviser regarding the tax consequences of any purchase, ownership or disposal of the Notes offered hereby.

The following summary is based on the Dutch tax law as applied and interpreted by Dutch tax courts and as published and in effect on the date hereof, without prejudice to any amendments introduced at a later date and implemented with or without retroactive effect.

For the purpose of this paragraph, "Dutch Taxes" shall mean taxes of whatever nature levied by or on behalf of the Netherlands or any of its subdivisions or taxing authorities. The Netherlands means the part of the Kingdom of the Netherlands located in Europe.

Withholding Tax

Any payments made under the Notes will not be subject to withholding or deduction for, or on account of, any Dutch Taxes.

Taxes on income and capital gains

This paragraph does not describe the possible Dutch tax considerations or consequences that may be relevant to a Noteholder:

- who is an individual and for whom the income or capital gains derived from the Notes offered hereby are attributable to employment activities, the income from which is taxable in the Netherlands;
- who has, or that has, a (fictitious) substantial interest in the Issuer within the meaning of chapter 4 of the Dutch Income Tax Act 2001 (*Wet inkomstenbelasting 2001*). Generally, a substantial interest in the Issuer arises if the Noteholder, alone or – in case of an individual – together with his partner, owns or holds certain rights over (including rights to, directly or indirectly, acquire) shares representing, directly or indirectly, five percent or more of the total issued and outstanding capital of the Issuer or of the issued and outstanding capital of any class of shares;
- that is an entity which is, pursuant to the Dutch Corporate Income Tax Act 1969 (*Wet op de vennootschapsbelasting 1969*) (the "CITA"), not subject to Dutch corporate income tax or is in full or in part exempt from Dutch corporate income tax (such as qualifying pension funds); or
- that is an investment institution (*beleggingsinstelling*) as described in Section 6a or 28 CITA.

Residents in the Netherlands

The description of certain Dutch tax consequences in this paragraph is only intended for the following Noteholders:

- individuals who are resident or deemed to be resident in the Netherlands for Dutch income tax purposes ("Dutch Individuals"); and
- entities that are subject to the CITA and are resident or deemed to be resident in the Netherlands for corporate income tax purposes ("Dutch Corporate Entities").

Dutch Individuals engaged or deemed to be engaged in an enterprise or in miscellaneous activities

Dutch Individuals are generally subject to income tax at statutory progressive rates with a maximum of 52 percent with respect to any benefits derived or deemed to be derived from the Notes offered hereby (including any capital gains realized on the disposal thereof) that are either attributable to an enterprise from which a Dutch Individual derives profits, whether as an entrepreneur (*ondernemer*) or pursuant to a co-entitlement to the net worth of such enterprise (other than as an entrepreneur or a shareholder), or attributable to miscellaneous activities, (*resultaat uit overige werkzaamheden*), including, without limitation, activities which are beyond the scope of active portfolio investment activities.

Dutch Individuals not engaged or deemed to be engaged in an enterprise or in miscellaneous activities

Generally, a Dutch Individual who holds the Notes offered hereby (i) that are not attributable to an enterprise from which he derives profits as an entrepreneur or pursuant to a co-entitlement to the net worth of such enterprise other than as an entrepreneur or a shareholder, or (ii) from which he derives benefits which are not taxable as benefits from miscellaneous activities (*overige werkzaamheden*), will be subject annually to an income tax imposed on a fictitious yield on such Notes. The Notes held by such Dutch Individual will be taxed under the regime for savings and investments (*inkomen uit sparen en beleggen*). Irrespective of the actual income or capital gains realized, the annual taxable benefit of all the assets and liabilities of a Dutch Individual that are taxed under this regime, including the Notes hereby, is set at a fixed amount. The fixed amount equals 4 percent of the fair market value of the assets reduced by the liabilities and measured, in general, exclusively at the beginning of every calendar year. The tax rate under the regime for savings and investments is a flat rate of 30 percent.

Pursuant to the Dutch Tax Bill 2016, as adopted on 22 December 2015, the regime for savings and investments will be amended as at 1 January 2017.

Dutch Corporate Entities

Dutch Corporate Entities are generally subject to corporate income tax at the statutory rate of 25 percent with respect to any benefits derived or deemed to be derived (including any capital gains realized on the disposal thereof) of the Notes offered hereby. A reduced rate applies to the first EUR 200,000 of taxable profits.

Non-residents in the Netherlands

A Noteholder other than a Dutch Individual or Dutch Corporate Entity will not be subject to any Dutch Taxes on income or capital gains in respect of the ownership and disposal of the Notes offered hereby, except if:

- the Noteholder, whether an individual or not, derives profits from an enterprise, whether as entrepreneur (*ondernemer*) or pursuant to a co-entitlement to the net worth of such enterprise other than as an entrepreneur or a shareholder, which enterprise is, in whole or in part, carried on through a permanent establishment (*vaste inrichting*) or a permanent representative (*vaste vertegenwoordiger*) in the Netherlands, to which the Notes offered hereby are attributable;
- the Noteholder is an individual and derives benefits from miscellaneous activities (*overige werkzaamheden*) carried out in the Netherlands in respect of the Notes offered hereby, including (without limitation) activities which are beyond the scope of active portfolio investment activities;
- the Noteholder is not an individual and is entitled to a share in the profits of an enterprise or a co-entitlement to the net worth of enterprise, other than by way of the holding of securities, which enterprise is effectively managed in the Netherlands and to which enterprise the Notes offered hereby are attributable; or

- if the Noteholder is an individual and is entitled to a share in the profits of an enterprise, other than by way of the holding of securities, which enterprise is effectively managed in the Netherlands and to which enterprise the Notes offered hereby are attributable.

If any of these exceptions apply and the non-resident Noteholder will be subject to Dutch Taxes, the same rates as described above for Dutch residents apply.

Gift tax or inheritance tax

No Dutch gift tax or inheritance tax is due in respect of any gift of the Notes offered hereby by, or inheritance of the Notes offered hereby on the death of, a Noteholder, except if:

- at the time of the gift or death of the Noteholder, the Noteholder is resident, or is deemed to be resident, in the Netherlands; or
- the Noteholder passes away within 180 days after the date of the gift of the Notes offered hereby and is not, or not deemed to be, at the time of the gift, but is, or deemed to be, at the time of his death, resident in the Netherlands; or
- the gift of the Notes offered hereby is made under a condition precedent and the Noteholder is resident, or is deemed to be resident, in the Netherlands at the time the condition is fulfilled.

For purposes of Dutch gift or inheritance tax, an individual who is of Dutch nationality will be deemed to be resident in the Netherlands if he has been resident in the Netherlands at any time during the ten years preceding the date of the gift or his death. For purposes of Dutch gift tax, any individual, irrespective of his nationality, will be deemed to be resident in the Netherlands if he has been resident in the Netherlands at any time during the 12 months preceding the date of the gift.

Other taxes

No other Dutch Taxes, including turnover tax and taxes of a documentary nature, such as capital tax, stamp or registration tax or duty, are payable by or on behalf of a Noteholder by reason only of the issue, acquisition or transfer of the Notes offered hereby.

Residency

Subject to the exceptions above, a Noteholder will not become resident, or deemed resident, in the Netherlands for tax purposes, or become subject to Dutch Taxes, by reason only of the Issuer's performance, or the Noteholder's acquisition (by way of issue or transfer to it), holding and/or disposal of the Notes offered hereby.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following discussion is a summary of certain U.S. federal income tax consequences relevant to the purchase, ownership and disposition of the Notes offered hereby, but does not purport to be a complete analysis of all potential tax effects. This discussion is limited to consequences relevant to a U.S. holder (as defined below). This discussion is based upon the Internal Revenue Code of 1986, as amended (the "Code"), United States Treasury Regulations issued thereunder ("Treasury Regulations"), Internal Revenue Service ("IRS") rulings and pronouncements and judicial decisions now in effect, all of which are subject to change at any time. Any such change may be applied retroactively in a manner that could adversely affect a holder of the Notes offered hereby. We have not sought and do not intend to seek any rulings from the IRS regarding the matters discussed below. There can be no assurance that the IRS will not take positions concerning the tax consequences of the purchase, ownership or disposition of the Notes offered hereby that are different from those discussed below or that any such positions would not be sustained.

This discussion does not address all of the U.S. federal income tax consequences that may be relevant to a holder's particular circumstances or to holders subject to special rules under U.S. federal income tax laws, such as:

- banks, thrifts and other financial institutions;
- controlled foreign corporations and passive foreign investment companies;
- U.S. expatriates;
- insurance companies;
- dealers in securities or currencies and traders in securities that have elected the mark-to-market method of accounting for their securities;
- entities treated as partnerships or other pass-through entities for U.S. federal income tax purposes or investors in such entities;
- U.S. holders (as defined below) whose functional currency is not the United States dollar;
- holders subject to the alternative minimum tax;
- tax-exempt organizations;
- regulated investment companies and real estate investment trusts; and
- persons holding the Notes offered hereby as part of a straddle, hedge, conversion transaction or other integrated transaction.

For purposes of this discussion, a "U.S. holder" is a beneficial owner of a Note who or that is for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States, any of its states or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- trust that (i) 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 (ii) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

In the case of a holder of the Notes offered hereby that is treated as a partnership for U.S. federal income tax purposes, the tax treatment of an owner of such entity generally will depend upon the tax status of the owner and

the activities of the entity. Owners of an entity that is treated as a partnership for U.S. federal income tax purposes holding the Notes offered hereby should consult their own tax advisors as to the tax consequences of the entity's purchase, ownership and disposition of the Notes offered hereby.

In addition, this discussion is limited to persons purchasing the Notes offered hereby for cash at original issue and at their respective "issue price" within the meaning of Section 1273 of the Code (*i.e.*, the first price at which a substantial amount of the Notes offered hereby are sold to investors for cash, excluding sales to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers) and deals only with Notes offered hereby held as capital assets within the meaning of Section 1221 of the Code. Moreover, the effect of other U.S. federal tax laws (such as estate and gift tax laws), the unearned income Medicare contribution tax or any applicable, state, local or non-U.S. tax laws is not discussed.

Persons considering the purchase of the Notes offered hereby should consult their own advisors concerning the application of U.S. federal income, estate and gift tax laws, as well as the laws of any state, local or non-U.S. taxing jurisdiction, to their particular situations.

Stated Interest

Stated interest on a Note (including any additional amounts paid in respect of withholding tax and without reduction for any amounts withheld) will generally be taxable to a U.S. holder as ordinary income at the time it is paid or accrued in accordance with the U.S. holder's regular method of accounting for U.S. federal income tax purposes.

A U.S. holder of a Note that uses the cash method of accounting for U.S. federal income tax purposes and that receives a payment of stated interest will be required to include in ordinary income the U.S. dollar value of the Euro interest payment (translated at the "spot rate" on the date such payment is received) regardless of whether the payment is in fact converted to U.S. dollars. A cash method U.S. holder will not recognize exchange gain or loss with respect to the receipt of such payment, but may have exchange gain or loss attributable to the actual disposition of the Euros so received.

A U.S. holder of a Note that uses the accrual method of accounting for U.S. federal income tax purposes will be required to include in income the U.S. dollar value of the amount of stated interest income in Euros that has accrued with respect to the Note during an accrual period. The U.S. dollar value of such accrued stated interest income will be determined by translating such income at the average rate of exchange for the accrual period or, with respect to an accrual period that spans two taxable years, at the average rate for the partial period within each taxable year. A U.S. holder of a Note may elect, however, to translate such accrued stated interest income using the rate of exchange on the last day of the accrual period or, with respect to an accrual period that spans two taxable years, using the rate of exchange on the last day of the portion of the accrual period within each taxable year. If the last day of an accrual period is within five business days of the date of receipt of the accrued stated interest, a U.S. holder may instead translate such interest at the "spot rate" on the date of receipt. The above election will apply to other obligations held by the U.S. holder and may not be changed without the consent of the IRS. A U.S. holder of a Note that uses the accrual method of accounting for U.S. federal income tax purposes will recognize exchange gain or loss with respect to accrued stated interest income on the date such interest is received. The amount of exchange gain or loss recognized will equal the difference, if any, between the U.S. dollar value of the Euro payment received (translated at the "spot rate" on the date such payment is received) in respect of such accrual period and the U.S. dollar value of stated interest income that has accrued during such accrual period (as determined above), regardless of whether the payment is in fact converted to U.S. dollars. Such gain or loss will generally constitute ordinary income or loss and will generally be treated as U.S. source income or as an offset to U.S. source income, respectively.

Original Issue Discount

The Notes 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 debt instrument's stated redemption price at maturity multiplied by the number of complete years from its issue date to maturity). In the event the Notes 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 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.

OID, if any, on the Notes will be determined for any accrual period in Euros and then translated into U.S. dollars in accordance with either of the two alternative methods described above in the third paragraph under "— Stated Interest."

A U.S. holder of a Note will recognize exchange gain or loss when OID is paid (including, upon the disposition of a Note, the receipt of proceeds that include amounts attributable to OID previously included in income) to the extent of the difference, if any, between the U.S. dollar value of the Euro payment received (translated at the "spot rate" on the date such payment is received) and the U.S. dollar value of the accrued OID, as determined in the manner described above. For these purposes, all receipts on a Note will be viewed:

- first, as payments of stated interest payable on the Note;
- second, as receipts of previously accrued OID (to the extent thereof), with payments considered made for the earliest accrual periods first; and
- third, as the receipt of principal.

Exchange gain or loss generally will be treated as ordinary income or loss and generally will be treated as U.S. source income or as an offset to U.S. source income, respectively.

Foreign Tax Credit

Interest (including any OID) on a Note generally will be foreign source "passive category income" for purposes of computing the foreign tax credit allowable to U.S. holders under U.S. federal income tax laws. Any

non-U.S. withholding taxes paid at the rate applicable to a U.S. holder may be eligible for foreign tax credits (or, at such holder's election, deductions in lieu of such credits) for U.S. federal income tax purposes, subject to applicable limitations and conditions. The calculation of foreign tax credits involves the application of complex rules that depend on a U.S. holder's particular circumstances. U.S. holders should consult their tax advisors regarding the creditability or deductibility of any withholding taxes.

Sale or Other Taxable Disposition of the Notes

U.S. holders must recognize taxable 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, if any, between the amount received for the Note in cash or other property valued at fair market value (less amounts attributable to accrued but unpaid interest which, if not previously included in income, will be taxable as interest income) and such U.S. holder's adjusted tax basis of the Note. The amount realized by a U.S. holder of a Note generally will be based on the U.S. dollar value of the foreign currency received translated at the "spot rate" on the date of disposition, except any portion that is attributable to accrued yet unpaid interest, which portion will be taxed as discussed above under "—Stated Interest" to the extent not previously so taxed. In the case of a Note that is traded on an established securities market, as defined in the applicable Treasury Regulations, a cash basis U.S. holder and, if it so elects, an accrual basis U.S. holder, will determine the U.S. dollar value of the amount realized by translating such amount at the "spot rate" on the settlement date of the disposition.

A U.S. holder's adjusted tax basis in a Note generally will be the U.S. holder's cost of the Note, increased by any OID previously accrued by such U.S. holder with respect to such Note. If a U.S. holder uses foreign currency to purchase a Note, the cost of the Note will generally be the U.S. dollar value of the foreign currency purchase price by translating such amount at the "spot rate" on the date of purchase. However, in the case of a Note that is traded on an established securities market, a cash basis U.S. holder and, if it so elects, an accrual basis U.S. holder, will generally determine the U.S. dollar value of the cost of such Note by translating the amount paid at the "spot rate" on the settlement date of the purchase. The conversion of U.S. dollars to foreign currency and the immediate use of that currency to purchase a Note generally will not result in taxable gain or loss for a U.S. holder.

The special election available to accrual basis U.S. holders in regard to the purchase and sale of Notes traded on an established securities market, which is discussed in the preceding paragraphs, must be applied consistently to all debt instruments from year to year and cannot be changed without the consent of the IRS.

Subject to the discussion of exchange gain or loss below, gain or loss recognized upon the sale, exchange, redemption, retirement or other taxable disposition of a Note will generally constitute capital gain or loss and will be long-term capital gain or loss if such Note was held for more than one year. Such gain or loss will generally be treated as U.S. source. Long-term capital gains of non-corporate holders are generally eligible for reduced rates of taxation. The deductibility of capital losses is subject to certain limitations.

Upon the sale, exchange, redemption, retirement, repurchase or other taxable disposition of a Note, a U.S. holder may recognize gain or loss that is attributable to fluctuations in currency exchange rates with respect to the principal amount of such Note. For these purposes, the principal amount of a Note is the U.S. holder's foreign currency purchase price of the Note. Gain or loss attributable to fluctuations in exchange rates with respect to the principal amount of such Note generally will equal the difference between (i) the U.S. dollar value of the principal amount of the Note, determined on the date such payment is received for the Note or such Note is disposed of and (ii) the U.S. dollar value of the principal amount of the Note, determined on the date the U.S. holder acquired such Note (or, in each case, on the settlement date, if the Notes are traded on an established securities market and the holder is either a cash basis U.S. holder or an electing accrual basis U.S. holder). Such gain or loss will be treated as ordinary income or loss and generally will be treated as U.S. source income or as an offset to U.S. source income, respectively. In addition, exchange gain or loss may be realized with respect to accrued and unpaid stated interest and accrued OID, as discussed under "—Stated Interest" or "—Original Issue

Discount," as applicable. However, upon a sale, exchange, redemption, retirement or other taxable disposition of a Note, a U.S. holder will realize exchange gain or loss with respect to principal, accrued interest and accrued OID only to the extent of the total gain or loss realized on the disposition.

Exchange Gain or Loss with Respect to Foreign Currency

A U.S. holder will have a tax basis in any foreign currency received as interest or upon the sale, exchange, redemption, retirement or other taxable disposition of a Note, equal to the U.S. dollar value thereof at the "spot rate" on the date the interest is received or, in the case of a payment received in consideration of the sale or other taxable disposition, the date used to compute exchange gain or loss with respect to such disposition (as discussed under "—Sale or Other Taxable Disposition of the Notes"). Any gain or loss realized by a U.S. holder on a sale or other disposition of the foreign currency, including their exchange for U.S. dollars, will be ordinary income or loss and generally will be income from sources within the United States for foreign tax credit purposes.

Information Reporting and Backup Withholding

Information reporting requirements may apply to payments of stated interest (including the accrual of OID, if any) on the Notes and to the proceeds of the sale or other disposition (including a retirement or redemption) of a Note paid to a U.S. holder unless such U.S. holder is an exempt recipient, and, when required, provides evidence of such exemption. In addition, backup withholding may apply to such payments if the U.S. holder fails to provide a taxpayer identification number or a certification that it is not subject to backup withholding.

Backup withholding is not an additional tax and 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.

Tax Return Disclosure Requirement Relating to Reportable Transactions and Specified Foreign Financial Assets

Treasury Regulations meant to require the reporting of certain tax shelter transactions cover certain transactions generally not regarded as tax shelters, including certain foreign currency transactions. Under the Treasury Regulations, certain transactions are required to be reported to the IRS, including, in certain circumstances, a sale, exchange, retirement or other taxable disposition of a foreign currency note or foreign currency received in respect of a foreign currency note to the extent that any such sale, exchange, retirement or other taxable disposition results in a tax loss in excess of a threshold amount. U.S. holders of Notes should consult their tax advisors to determine the tax return obligations, if any, with respect to an investment in the Euro Notes, including any requirement to file IRS Form 8886 (Reportable Transaction Disclosure Statement).

Individuals that own "specified foreign financial assets" with an aggregate value in excess of certain thresholds generally are required to file an information report (IRS Form 8938) with respect to such assets with their tax returns. The Notes generally will constitute specified foreign financial assets subject to these reporting requirements, unless the Notes are held in an account at certain financial institutions. Under certain circumstances, an entity may be treated as an individual for purposes of these rules.

U.S. holders are urged to consult their tax advisors regarding the application of the foregoing disclosure requirements to their ownership of the Notes, including the significant penalties for non-compliance.

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

General

Notes sold to non-U.S. persons outside the United States in offshore transactions (as defined in Regulation S under the U.S. Securities Act ("Regulation S")) in reliance on Regulation S will initially be represented by one or more global notes in registered form without interest coupons attached (the "Regulation S Global Notes"). The Regulation S Global Notes representing the Notes (the "Euro Regulation S Global Notes") will be deposited, on the issue date, with, or on behalf of, a common depositary for the accounts of Euroclear and Clearstream and registered in the name of the nominee of the common depositary.

Notes sold to "qualified institutional buyers" (as defined in Rule 144A under the U.S. Securities Act ("Rule 144A")) in reliance on Rule 144A will initially be represented by one or more global notes in registered form without interest coupons attached (the "144A Global Notes" and, together with the Regulation S Global Notes, the "Global Notes"). The 144A Global Notes representing the Notes (the "Euro 144A Global Notes" and, together with the Euro Regulation S Global Notes, the "Euro Global Notes"), will be deposited, on the issue date, with, or on behalf of, a common depositary for the accounts of Euroclear and Clearstream and registered in the name of the nominee of the common depositary.

Ownership of beneficial interests in the 144A Global Notes ("144A Book-Entry Interests") and ownership interest in the Regulation S Global Notes (the "Regulation S Book-Entry Interests" and, together with the 144A Book-Entry Interests, the "Book-Entry Interests") will be limited to persons that have accounts with Euroclear or Clearstream or persons that hold interests through such participants and has to be in accordance with applicable transfer restrictions set forth in the indenture governing the Notes and in any applicable securities laws of any state of the United States or of any other jurisdiction, as described under "Notice to Investors" and under "Transfer Restrictions." Book-Entry Interests will be shown on, and transfers thereof will be effected only through, records maintained in book-entry form by Euroclear and Clearstream and their participants pursuant to customary procedures and subject to the applicable rules and procedures established by Euroclear or Clearstream and their respective participants. Except under the limited circumstances described below, owners of beneficial interests in the Global Notes will not be entitled to receive definitive notes in registered form ("Definitive Registered Notes"). Instead, Euroclear and Clearstream will credit on their respective book-entry registration and transfer systems a participant's account with the interest beneficially owned by such participant. The laws of some jurisdictions, including certain states of the United States, may require that certain purchasers of the Notes securities take physical possession of such Notes securities in definitive form. The foregoing limitations may impair your ability to own, transfer, pledge or grant any other security interest in Book-Entry Interests.

So long as the Notes are held in global form, holders of Book-Entry Interests will not be considered the owners or "holders" of Global Notes for any purpose. So long as the Notes are held in global form the common depositary for Euroclear or Clearstream (including its nominees), will be considered the sole holders of Global Notes for all purposes under the indenture governing the Notes. As such, participants must rely on the procedures of Euroclear or Clearstream, as applicable, and indirect participants must rely on the procedures of Euroclear, Clearstream and the participants through which they own Book-Entry Interests to transfer their interests in or to exercise any rights of holders under the indenture governing the Notes. Neither we nor the trustee nor any of our respective agents will have any responsibility or be liable for any aspect of the records relating to the Book-Entry Interests. You can find information about certain other restrictions on the transferability of the Notes under "— Issuance of Definitive Registered Notes."

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 the Notes in certificated form and will not be considered the registered owners or holders thereof under the indenture governing the Notes for any purpose.

The Issuer, the trustee, the registrar, the transfer agent, the paying agent and any of their respective agents have not and will not have any responsibility or liability: (1) for any aspect of the records of Euroclear,

Clearstream or any participant or indirect participant relating to Book-Entry Interests or for maintaining, supervising or reviewing any of the records of Euroclear, Clearstream or any participant or indirect participant relating to Book-Entry Interests, or for payments made by Euroclear, Clearstream or any participant or indirect participant relating to Book-Entry Interests or (2) for Euroclear, Clearstream or any participant or indirect participant. The Notes will be issued in denominations of €100,000 and in integral multiples of €1,000 in excess thereof. We will not impose any fees or other charges in respect of the Notes; however, owners of the Book-Entry Interests may incur fees normally payable in respect of the maintenance and operation of accounts in Euroclear or Clearstream.

Issuance of Definitive Registered Notes

Under the terms of the indenture governing the Notes, owners of Book-Entry Interests will receive Definitive Registered Notes only in the following circumstances: (1) if Euroclear or Clearstream notifies the Issuer that it is unwilling or unable to continue to act as depositary and a successor depositary is not appointed by the Issuer within 120 days or (2) if the owner of a Book-Entry Interest requests such exchange in writing delivered through Euroclear or Clearstream following an event of default which results in action by the trustee pursuant to the enforcement provisions under the indenture governing the Notes.

In any such events described in clauses (1) or (2) the Issuer will issue Definitive Registered Notes, registered in the name or names and issued in any approved denominations, requested by or on behalf of Euroclear or Clearstream (in accordance with their respective customary procedures and certain certification requirements and based upon directions received from participants reflecting the beneficial ownership of the Book-Entry Interests). The Definitive Registered Notes will bear a restrictive legend with respect to certain transfer restrictions, unless that legend is not required by the Indenture or by applicable law.

In the case of the issue of Definitive Registered Notes, the holder of a Definitive Registered Note may transfer such Definitive Registered Note by surrendering it to the registrar. In the event of a partial transfer or a partial redemption of one Definitive Registered Note, a new Definitive Registered Note will be issued to the transferee in respect of the part transferred, and a new Definitive Registered Note will be issued to the transferor or the holder, as applicable in respect of the balance of the holding not transferred or redeemed, provided that a Definitive Registered Note with respect to Notes will only be issued in denominations of €100,000 or in integral multiples of €1,000 in excess thereof.

If Definitive Registered Notes are issued and a holder thereof claims that such Definitive Registered Notes have been lost, destroyed or wrongfully taken, or if such Definitive Registered Notes are mutilated and are surrendered to the registrar or at the office of a transfer agent, we will issue, and the trustee or an authenticating agent appointed by the trustee will authenticate, a replacement.

We or the trustee may require a holder requesting replacement of a Definitive Registered Note to furnish an indemnity bond sufficient in the judgment of both the trustee and us to protect us, the trustee or the paying agent appointed pursuant to the indenture governing the Notes from any loss which any of them may suffer if a Definitive Registered Note is replaced. We may charge for expenses in replacing a Definitive Registered Note.

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

Definitive Registered Notes may be transferred and exchanged for Book-Entry Interests only in accordance with the indenture governing the Notes and, if required, only after the transferor first delivers to the transfer agent a written certification (in the form provided in the Indenture) to the effect that such transfer will comply with the transfer restrictions applicable to such Notes. See “Transfer Restrictions.”

To the extent permitted by law, the Issuer, the trustee, the paying agent, the transfer agent and the registrar shall be entitled to treat the registered holder of any Global Note as the absolute owner thereof and no person will be liable for treating the registered holder as such. Ownership of the Global Notes will be evidenced through registration from time to time at the registered office of the Registrar, and such registration is a means of evidencing title to the Notes. The Issuer will not impose any fees or other charges in respect of the Notes; however, holders of the Book-Entry Interests may incur fees normally payable in respect of the maintenance and operation of accounts in Euroclear or Clearstream.

Redemption of Global Notes

In the event any Global Note (or any portion thereof) is redeemed, the common depositary for Euroclear and Clearstream, as applicable, or its nominee, will distribute the amount received by it in respect of the Global Note so redeemed to the holders of the Book-Entry Interests in such Global Note from the amount received by it in respect of the redemption of such Global Note. The redemption price payable in connection with the redemption of such Book-Entry Interests will be equal to the amount received by Euroclear or Clearstream, as applicable, in connection with the redemption of such Global Note (or any portion thereof). We understand that under existing practices of Euroclear and Clearstream, if fewer than all of the Notes are to be redeemed at any time, Euroclear and Clearstream will credit their respective participants' accounts on a proportionate basis (with adjustments to prevent fractions), by lot or on such other basis as they deem fair and appropriate.

Payments on Global Notes

Payments of amounts owing in respect of the Global Notes (including principal, premium, interest) will be made by us to the principal paying agent. The principal paying agent will, in turn, make such payments to the common depository for Euroclear and Clearstream or the nominee for which will distribute such payments to participants in accordance with their respective procedures. We will make payments of all such amount without deduction or withholding for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature except as may be required by law.

Under the terms of the indenture governing the Notes, we and the trustee will treat the registered holder of the Global Notes, which will initially be the nominee of the common depositary for Euroclear and Clearstream, as the owner thereof for the purpose of receiving payments and for all other purposes. Consequently, neither we nor the trustee or any of our respective agents has or will have any responsibility or liability for:

- any aspects of the records of Euroclear, Clearstream or any participant or indirect participant relating to or payments made on account of a Book-Entry Interest, for any such payments made by Euroclear, Clearstream or any participant or indirect participant, or for maintaining, supervising or reviewing the records of Euroclear, Clearstream or any participant or indirect participant relating to or payments made on account of a Book-Entry Interest; or
- Euroclear, Clearstream or any participant or indirect participant.

We expect that payments by participants to owners of Book-Entry Interests held through such participants will be governed by standing customer instructions and customary practices, as is now the case with securities held for the accounts of customers registered in "street name." Payments by participants to owners of Book-Entry Interests held through participants are the responsibility of such participants, as is now the case with securities held for the accounts of customers registered in "street name."

Currency and Payment for the Global Notes

The principal of, premium, if any, and interest on, and all other amounts payable in respect of, the Notes, will be paid to holders of interests in such Notes (the "Euroclear/Clearstream Holders") through Euroclear and Clearstream in euro.

Notwithstanding the payment provisions described above, Euroclear/Clearstream Holders may elect to receive payments in respect of the Euro Global Notes in U.S. dollars.

If so elected, a Euroclear/Clearstream Holder may receive payments of amounts payable in respect of its interest in the Euro Global Notes in U.S. dollars in accordance with Euroclear or Clearstream's customary procedures, which include, among other things, giving to Euroclear or Clearstream, as appropriate, a notice of such holder's election. All costs of conversion resulting from any such election will be borne by such holder. All costs of conversion resulting from any such election will be borne by such holder.

Action by Owners of Book-Entry Interests

Euroclear and Clearstream have advised us that they will take any action permitted to be taken by a holder of the Notes only at the direction of one or more participants to whose account the Book-Entry Interests in the Global Notes are credited and only in respect of such portion of the aggregate principal amount of Notes as to which such participant or participants has or have given such direction. Euroclear and Clearstream will not exercise any discretion in the granting of consents, waivers or the taking of any other action in respect of the Global Notes. However, if there is an event of default under the Notes, each of Euroclear and Clearstream reserves the right to exchange the Global Notes for Definitive Registered Notes in certificated form, and to distribute such Definitive Registered Notes to their respective participants, as described in the subsection "— Issuance of Definitive Registered Notes."

Transfers

Transfers between participants in Euroclear and Clearstream will be effected in accordance with Euroclear and Clearstream rules and will be settled in immediately available funds. If a holder requires physical delivery of Definitive Registered Notes for any reason, including to sell Notes to persons in jurisdictions that require physical delivery of securities or to pledge such Notes, such holder must transfer its interests in the Global Notes in accordance with the normal procedures of Euroclear and Clearstream and in accordance with the procedures set forth in the Indenture.

The Global Notes will bear a legend to the effect set for in "Transfer Restrictions." Book-Entry Interests in the Global Notes will be subject to the restrictions on transfer discussed in "Transfer Restrictions."

Exchanges between 144A Global Notes and Regulation S Global Notes

144A Book-Entry Interests may be transferred to a person who takes delivery in the form of Regulation S Book-Entry Interests only upon delivery by the transferor of a written certification (in the form provided in the indenture governing the Notes) to the effect that such transfer is being made in accordance with Regulation S under the U.S. Securities Act. Until the expiration of 40 days after the later of the commencement of the offering of the Notes and the Issue Date, ownership of Regulation S Book-Entry Interests will be limited to persons other than U.S. persons, and any sale or transfer of such interest to U.S. persons shall not be permitted during such periods unless such resale or transfer is made pursuant to Rule 144A. Regulation S Book-Entry Interests may be transferred to a person who takes delivery in the form of 144A Book-Entry Interests only upon delivery by the transferor of a written certification (in the form provided in the Indenture) to the effect that such transfer is being made to a person who the transferor reasonably believes is a QIB within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A as described under "Transfer Restrictions" and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction.

Definitive Registered Notes may be transferred and exchanged for Book-Entry Interests in a Global Note only as described under "Description of Notes—Transfer and Exchange" and, if required, only if the transferor first delivers to the registrar and the transfer agent 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."

Information Concerning Euroclear and Clearstream

All Book-Entry Interests will be subject to the operations and procedures of Euroclear and/or Clearstream, as applicable. We provide the following summaries of those operations and procedures solely for the convenience of investors. The operations and procedures of each settlement system are controlled by that settlement system and may be changed at any time. Neither we, the trustee, nor the initial purchasers are responsible for those operations or procedures. The Issuer and each guarantor understand as follows with respect to Euroclear and Clearstream: we expect that the Notes will be accepted for clearance through the facilities of Euroclear and Clearstream. The international securities identification numbers and common codes numbers for the Notes are set forth under "Listing and General Information—Clearing Information."

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

Because Euroclear and Clearstream can only act on behalf of participants, who in turn act on behalf of indirect participants and certain banks, the ability of an owner of a beneficial interest to pledge such interest to persons or entities that do not participate in Euroclear or Clearstream systems, or otherwise take actions in respect of such interest, may be limited by the lack of a definitive certificate for that interest. The laws of some jurisdictions require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests to such persons may be limited. In addition, owners of beneficial interests through the Euroclear or Clearstream systems will receive distributions attributable to the 144A Global Notes only through Euroclear or Clearstream participants.

Global Clearance and Settlement under the Book-Entry System

The Notes represented by the Global Notes are expected to be listed on the Official List of the Irish Stock Exchange and admitted for trading on the Global Exchange Market of the Irish Stock Exchange. The Issuer expects that secondary trading in any certified Notes will also be settled in immediately available funds. We expect that the Notes will be accepted for clearance through the facilities of Euroclear or Clearstream. Transfers of Book-Entry Interests in the Global Notes between participants in Euroclear or Clearstream will be effected in the ordinary way in accordance with their respective rules and operating procedures. The following description of the operations and procedures of Euroclear and Clearstream is provided solely as a matter of convenience.

Although Euroclear and Clearstream currently follow the procedures described herein in order to facilitate transfers of interests in the Global Notes among participants in Euroclear or Clearstream, as the case may be, they are under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued or modified at any time. None of us, any guarantor, the trustee or the paying agent will have any responsibility for the performance by Euroclear or Clearstream or their respective participants or indirect participants, of their respective obligations under the rules and procedures governing their operations.

Initial Settlement

Initial settlement for the Notes will be made in euro. Book-Entry Interests owned through Euroclear or Clearstream accounts will follow the settlement procedures applicable to conventional Eurobonds in registered form. Book-Entry Interests will be credited to the securities custody accounts of Euroclear and Clearstream holders on the business day following the settlement date against payment for value on the settlement date.

Secondary Market Trading

The Book-Entry Interests will trade through participants of Euroclear or Clearstream and will settle in same-day funds. Since the purchase determines the place of delivery, it is important to establish at the time of trading of any Book-Entry Interests where both the purchaser's and the seller's accounts are located to ensure that settlement can be made on the desired value date.

Special Timing Considerations

You should be aware that investors will only be able to make and receive deliveries, payments and other communications involving Notes through Euroclear or Clearstream on days when those systems are open for business.

In addition, because of time-zone differences, there may be complications with completing transactions involving Euroclear or Clearstream on the same business day as in the United States. U.S. investors who wish to transfer their interests in the Notes, or to receive or make a payment or delivery of Notes, on a particular day, may find that the transactions will not be performed until the next business day in Brussels if Euroclear is used, or Luxembourg if Clearstream is used.

TRANSFER RESTRICTIONS

The Notes offered hereby are subject to restrictions on transfer as summarized below. By purchasing the Notes offered hereby, you will be deemed to have made the following acknowledgements, representations to and agreements with us and the initial purchasers:

(1) You acknowledge that:

- the Notes offered hereby and the related guarantees have not been 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 offered hereby and the related 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 may be requested to 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 under the Securities Act) and are purchasing the Notes offered hereby 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 offered hereby to you in reliance on Rule 144A; or
- you are not a U.S. person (as defined in Regulation S under the Securities Act) or purchasing for the account or benefit of a U.S. person, other than a distributor, and you are purchasing the Notes offered hereby 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 offered hereby, 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 offered hereby. You agree that you have had access to such financial and other information concerning us and the Notes offered hereby as you have deemed necessary in connection with your decision to purchase the Notes offered hereby, including an opportunity to ask questions of and request information from us.

(5) You represent that you are purchasing the Notes offered hereby 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 offered hereby 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 offered hereby 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 the Notes, offered hereby and each subsequent holder of the Notes offered hereby by its acceptance of the Notes offered hereby will agree, that until the end of the Resale Restriction Period (as defined below), the Notes offered hereby 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 offered hereby 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 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 or account's control and to compliance with any applicable state securities laws.

You also acknowledge that to the extent that you hold the Notes offered hereby 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 closing date until the date that is one year (in the case of Rule 144A notes) after the later of the closing date, the closing 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 offered hereby or any predecessor of the Notes offered hereby or 40 days (in the case of Regulation S notes) after the later of the closing date and when the Notes offered hereby 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 applicable 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 offered hereby under clauses (d), (e) and (f) 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 COMPANY 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 COMPANY'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.

(7) If the Notes offered hereby 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). HOLDERS

SHOULD CONTACT OUR AT FOR INFORMATION REGARDING: (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.

(8) You represent and warrant that either (i) no portion of the assets used by you to acquire or hold the Notes offered hereby constitutes assets of any employee benefit plan subject to Title I of The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), any plan, account or other arrangement that is 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"), or an entity whose underlying assets are considered to include "plan assets" of any such plan, account or arrangement or (ii) the acquisition and holding of the Notes offered hereby by you 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.

(9) You acknowledge that we, 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 the Notes offered hereby is no longer accurate, you will promptly notify us and the initial purchasers. If you are purchasing any Notes offered hereby 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 , 2016, we have agreed to sell to the initial purchasers, for whom Barclays Bank PLC 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 Bank PLC	
Merrill Lynch International	
Citigroup Global Markets Inc.	
Credit Suisse Securities (USA) LLC	
Deutsche Bank Securities Inc.	
Goldman, Sachs & Co.	
J.P. Morgan Securities plc	
Morgan Stanley & Co. LLC	
UBS Limited	
Total	€450,000,000

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 under the Securities Act) 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 under the Securities Act 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 under the Securities Act. 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

This document constitutes an "exempt offering document" as defined in and for the purposes of applicable Canadian securities laws. No prospectus has been filed with any securities commission or similar regulatory authority in Canada in connection with the offer and sale of the Notes offered hereby. No securities commission or similar regulatory authority in Canada has reviewed or in any way passed upon this document or on the merits of the Notes offered hereby and any representation to the contrary is an offence.

Canadian investors are advised that this document has been prepared in reliance on section 3A.3 of National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105"). Pursuant to section 3A.3 of NI 33-105, this document is exempt from the requirement that the issuer and the initial purchasers in the offering provide Canadian investors with certain conflicts of interest disclosure pertaining to "connected issuer" and/or "related issuer" relationships as would otherwise be required pursuant to subsection 2.1(1) of NI 33-105.

The offer and sale of the Notes offered hereby in Canada is being made on a private placement basis only and is exempt from the requirement that the issuer prepares and files a prospectus under applicable Canadian securities laws. Any resale of the Notes offered hereby acquired by a Canadian investor in this offering must be made in accordance with applicable Canadian securities laws, which may vary depending on the relevant jurisdiction, and which may require resales to be made in accordance with Canadian prospectus requirements, a statutory exemption from the prospectus requirements, in a transaction exempt from the prospectus requirements or otherwise under a discretionary exemption from the prospectus requirements granted by the applicable local Canadian securities regulatory authority. These resale restrictions may under certain circumstances apply to resales of the Securities outside of Canada.

Each Canadian investor who purchases the Notes offered hereby will be deemed to have represented to the issuer, the initial purchasers and to each dealer from whom a purchase confirmation is received, as applicable, that the investor (i) is purchasing as principal, or is deemed to be purchasing as principal in accordance with applicable Canadian securities laws, for investment only and not with a view to resale or redistribution; (ii) is an "accredited investor" as such term is defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* ("NI 45-106") or, in Ontario, as such term is defined in section 73.3(1) of the *Securities Act* (Ontario); and (iii) is a "permitted client" as such term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Any discussion of taxation and related matters contained in this document does not purport to be a comprehensive description of all of the tax considerations that may be relevant to a Canadian investor when deciding to purchase the Notes offered hereby and, in particular, does not address any Canadian tax considerations. No representation or warranty is hereby made as to the tax consequences to a resident, or deemed resident, of Canada of an investment in the Notes offered hereby or with respect to the eligibility of the Notes offered hereby for investment by such investor under relevant Canadian federal and provincial legislation and regulations.

Securities legislation in certain of the Canadian jurisdictions provides certain purchasers of securities pursuant to an offering memorandum, including where the distribution involves an "eligible foreign security" as such term is defined in Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* and in Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions*, as applicable, with a remedy for damages or rescission, or both, in addition to any other

rights they may have at law, where the offering memorandum, or other offering document that constitutes an offering memorandum, and any amendment thereto, contains a "misrepresentation" as defined under applicable Canadian securities laws. These remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed under, and are subject to limitations and defences under, applicable Canadian securities legislation. In addition, these remedies are in addition to and without derogation from any other right or remedy available at law to the investor.

Upon receipt of this document, each Canadian investor hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the Notes offered hereby described herein (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *Par la réception de ce document, chaque investisseur canadien confirme par les présentes qu'il a expressément exigé que tous les documents faisant foi ou se rapportant de quelque manière que ce soit à la vente des valeurs mobilières décrites aux présentes (incluant, pour plus de certitude, toute confirmation d'achat ou tout avis) soient rédigés en anglais seulement.*

Notice to Certain European Investors

European Economic Area

In relation to each Relevant Member State, each initial purchaser has represented and agreed that with effect from and including the Relevant Implementation Date, it has not made and will not make an offer of the Notes to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Notes which has been approved by the competent authority in the Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of the Notes in the Relevant Member State at any time:

(a) to any legal entity which is a "qualified investor" as defined in the Prospectus Directive;

(b) to fewer than 150 natural or legal persons (other than "qualified investors" as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant initial purchaser or initial purchasers nominated by the Issuer for any such offer; or

(c) in any other circumstances falling within Article 3(2) of the Prospectus Directive;

provided that no such offer of the Notes shall require the publication by the Issuer or any initial purchaser of a prospectus pursuant to Article 3 of the Prospectus Directive or a supplement to a prospectus pursuant to Article 16 of the Prospective Directive.

For the purposes of this restriction, the expression an "offer to the public" in relation to any Notes offered hereby in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes offered hereby to be offered so as to enable an investor to decide to purchase or subscribe to the Notes offered hereby, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC, as amended (including by Directive 2010/73/EU), and as implemented in each Relevant Member State.

Except for any offers of Notes made pursuant to paragraphs (b) or (c) above, each subscriber for or purchaser of the Notes offered hereby in the offering that is located within a member state of the EEA will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of Article 2(1)(e) of the Prospectus Directive. The Issuer, the initial purchasers and their affiliates, and others will rely upon the trust and accuracy of the foregoing representation, acknowledgement and agreement.

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*) and any other applicable German law. 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. 6 of the German Securities Prospectus Act. Any resale of the Notes offered hereby in the Federal Republic of Germany may only be made in accordance with the German Securities Prospectus Act and other applicable laws. The Issuer has not, and does not intend to, file a securities prospectus with the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* or "BaFin") or obtain a notification to BaFin from another competent authority of a Member State of the European Economic Area, with which a securities prospectus may have been filed, pursuant to Section 17(3) of the German Securities Prospectus Act.

Ireland

The Notes offered hereby may not be offered, placed or underwritten otherwise than in conformity with:

(a) the European Communities (Markets in Financial Instruments) Regulations 2007 (Nos. 1 to 3) (as amended, the "MiFID Regulations") including, without limitation, Regulations 7 (Authorisation) and 152 (Restrictions on advertising) thereof, any codes of conduct made under the MiFID Regulations, and the provisions of the Investor Compensation Act 1998 (as amended);

(b) the provisions of the Companies Act 2014 (as amended, the "Companies Act"), the Central Bank Acts 1942—2015 (as amended) and any codes of practice made under Section 117(1) of the Central Bank Act 1989 (as amended); and

(c) 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 FMSA (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 such offers, sales and distributions have been and will be made in the Netherlands only to qualified investors (as defined in the Act on the Financial Supervision (*Wet op het financieel toezicht*), the "FSMA"). In any offer of Notes offered hereby made to the public in the Netherlands pursuant to an exemption under the FSMA from the requirement to publish a prospectus for offers of securities (other than to qualified investors as defined in the FSMA) and any advertisement relating to such offer, and any document in which the prospect of such offer shall be held out, it shall state that: (A) no prospectus approved by the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiele Markten*) (the "AFM") has been made generally available and (B) such offer is not supervised by the AFM; in such manner as prescribed by the AFM from time to time.

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 in accordance with the prospectus requirements provided for in the Swedish Financial Instruments Trading Act (Sw. *lag (1991:980*) *om handel med*

finansiella instrument) nor any other Swedish enactment. 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 may not be made available, nor may the Notes offered hereby otherwise be marketed and offered for sale, in Sweden other than in circumstances that constitute an exemption from the requirement to prepare a prospectus under the Swedish Financial Instruments Trading Act.

Switzerland

The offering of the Notes offered hereby is not a public offering in Switzerland. The Notes offered hereby may not be publicly offered, sold or advertised, directly or indirectly, in, into or from Switzerland.

Neither this offering memorandum nor any other offering or marketing material relating to the Notes offered hereby constitutes a prospectus as such term is understood pursuant to Article 652a and/or Article 1156 of the Swiss Code of Obligations and this offering memorandum or any other offering or marketing material relating to the Notes offered hereby is not subject to the Directive for Notes of Foreign Borrowers of the Swiss Bankers Association. The Notes will not be listed on the SIX Swiss Exchange Ltd., and, therefore, the documents relating to the Notes offered hereby, including, but not limited to, this offering memorandum, do not claim to comply with the disclosure standards of the Swiss Code of Obligations and the listing rules of SIX Swiss Exchange Ltd. and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange Ltd.

The Notes offered hereby are being offered in Switzerland by way of a private placement (*i.e.*, to a limited number of selected investors only), without any public advertisement and only to investors who do not purchase the Notes offered hereby with the intention to distribute them to the public. The investors will be individually approached directly from time to time. This offering memorandum, as well as any other material relating to the Notes offered hereby, is personal and confidential and does not constitute an offer to any other person. This offering memorandum, as well as any other offering or marketing material relating to the Notes offered hereby, may only be used by those investors to whom it has been handed out in connection with the offering described herein and may neither directly or indirectly be distributed or made available to other persons without the Issuer's express consent. This offering memorandum, as well as any other offering or marketing material relating to the Notes offered hereby, may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in (or from) Switzerland.

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.

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 offered hereby have not been, and will not be, registered with the Securities and Exchange Commission of Brazil (*CVM—Comissão de Valores Mobiliários*). 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.

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 Bank PLC 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 offered hereby are a new issue of securities, and application will be made to list the Notes offered hereby on the Official List of the Irish Stock Exchange and for the Notes offered hereby to be admitted to trading on the Global Exchange Market of the Irish Stock Exchange. 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 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 , 2016, which is the tenth business day following the date of confirmation of orders with respect to the Notes offered hereby (this settlement cycle being referred to as "T+10"). Under Rule 15c6-1 of the SEC under the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes offered hereby on the date of confirmation of orders with respect to the Notes offered hereby or the next six succeeding business days will be required, by virtue of the fact that the Notes offered hereby initially will settle in T+10, to specify an alternative settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of the Notes offered hereby who wish to trade the Notes offered hereby before their delivery should consult their own advisor.

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 or their affiliates may hold a portion of the Existing Secured Euro Notes and/or the Euro Term Loan Facility and may accordingly receive a portion of the proceeds from this offering. In addition, 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 acts as administrative agent and collateral agent under the Senior Secured Credit Facilities and certain affiliates of the initial purchasers act as lenders thereunder. 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, they 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 or short positions could adversely affect future trading prices of the Notes offered hereby.

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. The initial purchasers have been represented by Cravath, Swaine & Moore LLP, New York, New York.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The financial statements incorporated in this offering circular by reference to the Annual Report on Form 10-K for the year ended December 31, 2015, and the effectiveness of internal control over financial reporting as of December 31, 2015 have been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report incorporated by reference herein.

LISTING AND GENERAL INFORMATION

Listing

Application will be made to list the Notes offered hereby on the Official List of the Irish Stock Exchange and for the Notes offered hereby to be admitted to trading on the Global Exchange Market of the Irish Stock Exchange. The Issuer will use its commercially reasonable efforts to obtain and, for so long as the Notes offered hereby are outstanding, maintain the listing of such Notes offered hereby on the Official List of the Irish Stock Exchange or, if at any time the Issuer determines that it will not obtain or maintain such listing on the Official List of the Irish Stock Exchange, then the Issuer will, prior to the delisting of the Notes offered hereby from the Irish Stock Exchange (if then listed on the Irish Stock Exchange), use all commercially reasonable efforts to list and maintain a listing of Notes offered hereby on another internationally recognized stock exchange (as determined by the Issuer in good faith).

If, and for so long as, the Notes offered hereby are listed on the Irish Stock Exchange, copies of the following documents may be inspected and obtained at the specified office of the listing agent in Ireland during normal business hours on any weekday:

- the organizational documents of the Issuer and each of the guarantors; and
- the indenture relating to the Notes offered hereby (which includes the guarantees and the form of the Notes).

We will maintain a paying and transfer agent for the Notes offered hereby in London, the United Kingdom. We reserve the right to vary such appointments and we will publish notice of any such change of appointment on the official website of the Irish Stock Exchange at www.ise.ie.

If listed on the Irish Stock Exchange, application may be made to the Irish Stock Exchange to have the Notes offered hereby de-listed from the Irish Stock Exchange, including if necessary to avoid any new withholding taxes arising because of the listing.

So long as the Notes remain offered hereby listed, the Notes offered hereby will be freely transferable and negotiable in accordance with the rules of the Irish Stock Exchange.

We estimate the expenses relating to admission of the Notes offered hereby to the Official List of the Irish Stock Exchange and to trading on the Global Exchange Market of the Irish Stock Exchange to be approximately €11,000.

Authorizations

The creation and issue of the Notes offered hereby has been authorized by resolutions of the managing directors of the Issuer on September 11, 2016. The guarantees have been authorized by resolutions of the board of directors, board of managers or the equivalent governing body, as applicable, of certain guarantors dated on or around September 9, 2016.

No Material Adverse Change

Except as disclosed in this offering memorandum, there has been no material adverse change in our financial position since December 31, 2015, the date of the last audited financial statements of ACS Ltd. incorporated by reference in this offering memorandum.

No Litigation

Except as disclosed in this offering memorandum, we have not been involved in any legal or arbitration proceedings against or affecting us and we are not aware of any pending or threatened proceedings of such kind occurring in the last twelve months which is or may be material to our financial position or profitability. See "Business—Legal Proceedings" in the Annual Report.

Legal Information—Issuer

The Issuer, Axalta Coating Systems Dutch Holding B B.V. (f/k/a/ Flash Dutch 2 B.V.), is a private company with limited liability registered under the laws of the Netherlands on August 29, 2012. The address of its registered office is at Prins Bernhardplein 200, 1097 JB, Amsterdam, the Netherlands. Axalta Coating Systems Dutch Holding B B.V. has an issued and paid up share capital of EUR 18,000 comprised of 18,000 shares with a par value of EUR 1 each.

Legal Information—Guarantors

Axalta Coating Systems Australia Pty Ltd (f/k/a DuPont Performance Coatings Australia Pty Ltd.) is a proprietary company registered under the laws of Australia on May 22, 2012. The address of its registered office is TMF Corporate Services (Aust) Pty Limited c/- TMF Level 16, 2012 Elizabeth Street, Sydney, New South Wales 2000. Axalta Coating Systems Australia Pty Ltd has an authorized share capital of 37,600,002 shares of ordinary stock with a par value of A$1.00 each.

Axalta Coating Systems Brasil Ltda. (f/k/a DPC Brasil—Performance Coatings Indústria e Comércio de Tintas Automotivas e Industriais Ltda.) is a limited liability company (*sociedade empresaria limitada*) organized under the laws of Brazil on March 7, 2012. The address of its registered office is Avenida Lindomar Gomes de Oliveira No. 463, Cumbica, City of Guarulhos, State of São Paulo. Axalta Coating Systems Brasil Ltda. has a share capital of R$137,195,833.00 comprised of 137,195,833 quotas with the par value of R$1.00 each.

Axalta Coating Systems Canada Company (f/k/a DuPont Performance Coatings Canada Company) is an unlimited company incorporated and existing under the laws of Nova Scotia, Canada on May 4, 2012. The address of its registered office is 1300—1969 Upper Water Street, Purdy's Wharf Tower II, Halifax, NS, B3J 3R7. Axalta Coating Systems Canada Company has an authorized share capital of an unlimited number of common shares without nominal or par value.

Axalta Coating Systems France Holding SAS is a limited liability company (*société par actions simplifiée*) organized under the laws of France, having its registered office at 1, allée de Chantereine, 78711 Mantes-la-Ville and registered with the Trade and Companies Register (*Registre du Commerce et des Sociétés*) under number 790 636 294 RCS Versailles.

Axalta Coating Systems Germany Beteiligungs GmbH is a limited liability company (*Gesellschaft mit beschränkter Haftung*) registered under the laws of the Federal Republic of Germany on December 9, 2015. The address of its registered office is Horbeller Straße 15, 50858 Cologne, Germany. Axalta Coating Systems Germany Beteiligungs GmbH has a share capital of EUR 25,000 comprised of one share with a par value of EUR 25,000.

Axalta Coating Systems Verwaltungs GmbH (f/k/a Flash German Co GmbH) is a limited liability company (*Gesellschaft mit beschränkter Haftung*) registered under the laws of the Federal Republic of Germany on June 8, 2012. The address of its registered office is Horbeller Straße 15, 50858 Cologne, Germany. Axalta Coating Systems Verwaltungs GmbH has a share capital of EUR 25,000 comprised of 25,000 shares with a par value of EUR 1 each.

Axalta Coating Systems Deutschland Holding GmbH & Co. KG (f/k/a Germany Coatings GmbH & Co. KG) is a limited partnership with a limited liability company as general partner (*GmbH & Co. KG*) registered under the laws of the Federal Republic of Germany on December 18, 2012. The address of its registered office is Horbeller Straße 15, 50858 Cologne, Germany.

Axalta Coating Systems Germany GmbH & Co KG (f/k/a Axalta Coating Systems Germany GmbH) is a limited partnership with a liability company as a general partner (*GmbH & Co. KG*) registered under the laws of the Federal Republic of Germany on January 14, 2016. The address of its registered office is Christbusch 25, 42285 Wuppertal, Germany.

Spies Hecker GmbH is a limited liability company (*Gesellschaft mit beschränkter Haftung*) registered under the laws of the Federal Republic of Germany on December 21, 1978. The address of its registered office is Horbeller Str. 17, 50858 Cologne, Germany. Spies Hecker GmbH has a share capital of EUR 255,650 comprised of 1 share with a par value of EUR 255,650.

Standox GmbH is a limited liability company (*Gesellschaft mit beschränkter Haftung*) registered under the laws of the Federal Republic of Germany on March 18, 1998. The address of its registered office is Christbusch 45, 42285 Wuppertal, Germany. Standox GmbH has a share capital of EUR 255,650 comprised of 1 share with a par value of EUR 255,650.

Axalta Coating Systems Logistik Germany GmbH & Co. KG is a limited partnership with a liability company as a general partner (*GmbH & Co. KG*) registered under the laws of the Federal Republic of Germany on May 13, 2014. The address of its registered office is Horbeller Straße 15, 50858 Cologne, Germany.

Axalta Coating Systems Ireland Limited is a private company limited by shares existing under the laws of Ireland, having its registered office at Atlantic Avenue, Westpark Business Campus, Shannon, Co Clare, Ireland and registered with the Registrar of Companies of Ireland under number 573107.

Axalta Coating Systems Luxembourg Holding S.à r.l. (f/k/a Flash Lux Co S.à r.l.) is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg on August 28, 2012. The address of its registered office is 10A, rue Henri M. Schnadt L-2530 Luxembourg, Grand Duchy of Luxembourg, and it is registered with the Luxembourg trade and companies register under registration number B171370.

Axalta Coating Systems Luxembourg Holding 2 S.à r.l. (f/k/a Luxembourg Coatings S.à r.l.) is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg on November 30, 2012. The address of its registered office is 10A, rue Henri M. Schnadt L-2530Luxembourg, Grand Duchy of Luxembourg, and it is registered with the Luxembourg trade and companies register under registration number B173385.

Axalta Coating Systems Finance 1 S.à r.l. (f/k/a Lux FinCo Coatings S.à r.l.) is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg on November 30, 2012. The address of its registered office is 10A, rue Henri M. Schnadt L-2530Luxembourg, Grand Duchy of Luxembourg, and it is registered with the Luxembourg trade and companies register under registration number B173442.

Axalta Coating Systems Finance 2 S.à r.l. (f/k/a Lux FinCo Coatings 2 S.à r.l.) is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg on January 4, 2013. The address of its registered office is 10A, rue Henri M. Schnadt L-2530Luxembourg, Grand Duchy of Luxembourg, and it is registered with the Luxembourg trade and companies register under registration number B 174719.

Axalta Coating Systems Finance 3 S.à r.l. is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg on November 19, 2014. The address of its registered office is 10A, rue Henri M. Schnadt L-2530, and it is registered with the Luxembourg trade and companies register under registration number B 192339.

Axalta Coating Systems Mexico, S. de R.L. de C.V. (f/k/a DuPont Performance Coatings México, S. de R.L. de C.V.) is a limited liability company (*Sociedad de Responsabilidad Limitada de Capital Variable*) incorporated under the laws of Mexico on December 25, 1956. The address of its registered office is Mexico City. Axalta Coating Systems Mexico, S. de R.L. de C.V. has variable and unlimited capital stock.

Axalta Coating Systems Servicios México, S. de R.L. de C.V. (f/k/a DuPont Performance Coatings Servicios México, S. de R.L. de C.V.) is a limited liability company (*Sociedad de Responsabilidad Limitada de Capital Variable*) incorporated under the laws of Mexico on December 13, 1999. The address of its registered office is Mexico City. Axalta Coating Systems Servicios México, S. de R.L. has variable and unlimited capital stock.

Axalta Coating Systems EMEA Holding B.V. (f/k/a DuPont Performance Coatings EMEA Holding B.V.) is a private limited liability company registered under the laws of the Netherlands on April 24, 2012. The address of its registered office is Sir Rowland Hillstraat 8, 4004JT Tiel. Axalta Coating Systems EMEA Holding B.V. has an issued and paid up share capital of EUR 1,000 comprised of 1,000 shares with a par value of EUR 1 each.

Axalta Coating Systems LA Holding II B.V. (f/k/a DuPont Performance Coatings LA Holding II B.V.) is a private limited liability company registered under the laws of Netherlands on May 21, 2012. The address of its registered office is Voltastraat 1, 4004KA Tiel. Axalta Coating Systems LA Holding II B.V. has an authorized share capital of EUR 90,000 comprised of 90,000 shares with a par value of EUR 1 each.

Axalta Coating Systems Asia Holding B.V. (f/k/a DuPont Performance Coatings Asia Holding B.V.) is a private limited liability company registered under the laws of the Netherlands on May 21, 2012. The address of its registered office is Voltastraat 1, 4004KA Tiel. Axalta Coating Systems Asia Holding B.V. has an authorized share capital of EUR 90,000 comprised of 90,000 shares with a par value of EUR 1 each.

Axalta Coating Systems Dutch Holding 1 B.V. (f/k/a Dutch Coatings Co. 2 B.V.) is a private company with limited liability registered under the laws of the Netherlands on December 21, 2012. The address of its registered office is Voltastraat 1, 4004KA Tiel. Axalta Coating Systems Dutch Holding 1 B.V. has an issued share capital of EUR 1,000 comprised of 1,000 shares with a par value of EUR 1 each.

Axalta Coating Systems Dutch Holding 2 B.V. (f/k/a Dutch Coatings Co. 3 B.V.) is a private company with limited liability registered under the laws of the Netherlands on December 21, 2012. The address of its registered office is Voltastraat 1, 4004KA Tiel. Axalta Coating Systems Dutch Holding 2 B.V. has an issued share capital of EUR 1,000 comprised of 1,000 shares with a par value of EUR 1 each.

Axalta Coating Systems Benelux B.V. is a private company with limited liability registered under the laws of the Netherlands on 27 November, 1998. The address of its registered office is Sir Rowland Hillstraat 8, 4004 JT Tiel, The Netherlands. Axalta Coating Systems Benelux B.V. has an issued and paid share capital of EUR 18,000 comprised of 400 shares with a par value of EUR 45 each.

Metalak B.V. is a private limited liability company incorporated under the laws of the Netherlands on 8 January, 1987. The address of its registered office is Sir Rowland Hillstraat 8, 4004 JT Tiel, The Netherlands. Metalak B.V. has an issued and paid up share capital of EUR 45,000 comprised of 1,000 shares with a par value of EUR 45 each.

Limited Liability Company "Axalta Coating Systems Rus" (f/k/a DuPont Performance Coatings Rus LLC) is a limited liability company incorporated under the laws of Russia on June 1, 2012, under primary state registration number (OGRN) 1127746488495. The address of its registered office is Moscow, Russia. Limited Liability Company "Axalta Coating Systems Rus" has a share capital of 150,000 Russian Roubles.

Axalta Coating Systems Singapore Holding Pte. Ltd. (f/k/a DuPont Performance Coatings Singapore Holding Pte. Ltd.) is a limited private company incorporated under the laws of Singapore on May 11, 2012. The address of its registered office is 1 Robinson Road, #15-02, AIA Tower, Singapore 048542. Axalta Coating Systems Singapore Holding Pte. Ltd. has an issued and paid-up capital of $292,833,668.43 comprising 90,099,680 ordinary shares.

Axalta Coating Systems Scandinavia Holding AB (f/k/a Sweden Coatings Co. AB) is a limited liability company registered under the laws of Sweden on December 7, 2012. The address of its registered office is P.O. Box 84, 425 02 Hisings Kärra. Axalta Coating Systems Scandinavia Holding AB has an authorized share capital of SEK 50,000 comprised of 50,000 shares.

Axalta Powder Coating Systems Nordic AB (f/k/a DuPont Powder Coatings Scandinavia AB) is a limited liability company registered under the laws of the Sweden on August 8, 1936. The address of its registered office is P.O. Box 520, 593 25 Västervik. Axalta Powder Coating Systems Nordic AB has an authorized share capital of SEK 10,000,000 comprised of 100,000 shares.

Axalta Coating Systems Sweden AB (f/k/a DuPont Performance Coatings Scandinavia AB) is a limited liability company registered under the laws of Sweden on July 23, 1946. The address of its registered office is P.O. Box 84, 425 02 Hisings Kärra. Axalta Coating Systems Sweden AB has an authorized share capital of SEK 5,500,000 comprised of 55,000 shares.

Axalta Coating Systems Switzerland Sàrl (f/k/a DuPont Performance Coatings (Switzerland) Sàrl) is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of Switzerland on June 7, 2012. The address of its registered office is Rue du Cardinal-Journet 7, 1217 Meyrin, Switzerland. Axalta Coating Systems Switzerland Sàrl has a share capital of CHF 20,000 comprised of 200 shares (*parts*) with a nominal value of CHF 100 each.

Axalta Coating Systems International Sàrl (f/k/a DuPont Russian Coatings (Suisse) Sàrl) is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of Switzerland on January 19, 2006. The address of its registered office is Rue du Cardinal-Journet 7, 1217 Meyrin, Switzerland. Axalta Coating Systems International Sàrl has a share capital of CHF 22,000 comprised of 220 shares (*parts*) with a nominal value of CHF 100 each.

Axalta Polymer Powders Switzerland Sàrl (f/k/a DuPont Polymer Powders Switzerland Sàrl) is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws Switzerland on October 24, 2000. The address of its registered office is Rue St-Joseph 25, 1630 Bulle, Switzerland. Axalta Polymer Powders Switzerland Sàrl has a share capital of CHF 900,000 comprised of 9,000 shares (*parts*) with a nominal value of CHF 100 each.

Axalta Coating Systems International Holding GmbH is a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws Switzerland on December 14, 2015. The address of registered office is Uferstrasse 90, 4057 Basel. Axalta Coating Systems International Holding GmbH has a share capital of CHF 20,000 comprised of 200 shares (*parts*) with a nominal value of CHF 100 each.

Axalta Coating Systems GmbH is a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws Switzerland on January 1, 2016. The address of registered office is Uferstrasse 90, 4057 Basel. Axalta Coating Systems GmbH has a share capital of CHF 20,000 comprised of 200 shares (*parts*) with a nominal value of CHF 100 each.

Axalta Coating Systems UK Limited (f/k/a DuPont Performance Coatings (U.K.) Ltd.) is a private limited company formed under the laws of the United Kingdom on March 31, 1988. The address of its registered office is Unit 1 Quadrant Park, Mudells, Welwyn Garden City, Hertfordshire AL7 1FS, United Kingdom. Axalta Coating Systems UK Limited has an authorized share capital of 58,164,294 ordinary shares with a par value of £1 each.

Axalta Powder Coating Systems UK Limited (f/k/a DuPont Powder Coatings UK Limited) is a private limited company formed under the laws of the United Kingdom on September 28, 1972. The address of its registered office is Unit 1 Quadrant Park, Mudells, Welwyn Garden City, Hertfordshire AL7 1FS, United Kingdom. Axalta Powder Coating Systems UK Limited has an authorized share capital of 1,000,000 ordinary shares with a par value of £1 each.

Axalta Coating Systems UK Holding Limited (f/k/a Coatings Co (UK) Limited) is a private limited company formed under the laws of the United Kingdom on December 13, 2012. The address of its registered office is Unit 1 Quadrant Park, Mudells, Welwyn Garden City, Hertfordshire AL7 1FS, United Kingdom. Axalta Coating Systems UK Holding Limited has an authorized share capital of 3 ordinary shares with a par value of £1 each.

Axalta Coating Systems UK (2) Limited is a private limited company formed under the laws of the United Kingdom on December 12, 2013. The address of its registered office is Unit 1 Quadrant Park, Mudells, Welwyn Garden City, Hertfordshire AL7 1FS, United Kingdom. Axalta Coating Systems UK (2) Limited has an authorized share capital of 3 ordinary shares with a par value of £1 each.

Axalta Coating Systems, LLC (f/k/a DuPont Performance Coatings, LLC) is a limited liability company formed under the laws of Delaware on April 17, 2012. The address of its registered office is Corporation Trust Center, 1029 Orange Street, Wilmington, Delaware.

Axalta Coating Systems U.S., Inc. (f/k/a Coatings Co. U.S. Inc.) is a corporation incorporated under the laws of Delaware on October 12, 2012. The address of its registered office is Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware. Axalta Coating Systems U.S., Inc. has an authorized share capital of 1,000 shares of common stock with a par value of $0.01 each.

Axalta Coating Systems IP Co. LLC (f/k/a U.S. Coatings IP Co. LLC) is a limited liability company formed under the laws of Delaware on December 20, 2012. The address of its registered office is Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware.

Axalta Coating Systems U.S. Holdings, Inc. (f/k/a U.S. Coatings Acquisition Inc.) is a corporation incorporated under the laws of Delaware on December 20, 2012. The address of its registered office is Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware. Axalta Coating Systems U.S. Holdings, Inc. has an authorized share capital of 1000 shares of common stock with a par value $0.01 per share.

Coatings Foreign IP Co. LLC is a limited liability company formed under the laws of Delaware on January 10, 2013. The address of its registered office is Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware.

ChemSpec USA, LLC is a limited liability company formed under the laws of Delaware on October 15, 2015. The address of its registered office is 1675 S. State Street, Suite B, in the City of Dover, County of Kent, Delaware 19901.

Axalta Powder Coating Systems USA, LLC (f/k/a Axalta Powder Coating Systems USA, Inc. f/k/a DuPont Powder Coatings USA Inc.) is a limited liability company formed under the laws of Delaware on February 29, 2016. The address of its registered office is Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware.

Axalta Coating Systems USA Holdings, Inc. is a corporation incorporated under the laws of Delaware on June 21, 2016. The address of its registered office is Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware. Axalta Coating Systems USA Holdings, Inc. has an authorized share capital of 1,000 shares of common stock with a par value $0.01 per share.

The guarantors are wholly owned subsidiaries (whether directly or indirectly held) of ACS Ltd.

Clearing Information

The Notes offered hereby have been accepted for clearance through Euroclear and Clearstream. The CUSIP for the Notes sold in reliance on Regulation S is and the CUSIP for the Notes sold in reliance on Rule 144A is . The international securities identification number for the Notes sold in reliance on Regulation S is and the international securities identification number for the Notes sold pursuant to Rule 144A is .

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Axalta Coating Systems Dutch Holding B B.V.

€450,000,000 % Senior Notes due 2025

Offering Memorandum
, 2016

Joint Book-Running Managers

Barclays
BofA Merrill Lynch
Citigroup
Credit Suisse
Deutsche Bank Securities
Goldman, Sachs & Co.
J.P. Morgan
Morgan Stanley
UBS Investment Bank