

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

Current Report

**Pursuant To Section 13 or 15 (d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) — **December 9, 2014**

ENVESTNET, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction)

001-34835
(State or other jurisdiction)

20-1409613
(I.R.S. Employer of Incorporation
Identification No.)

35 East Wacker Drive, Suite 2400
Chicago, Illinois
(Address of principal executive offices)

60601
(Zip Code)

Registrant's telephone number, including area code: **(312) 827-2800**

Not applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

Underwriting Agreement

On December 9, 2014, Envestnet, Inc. (the "Company") entered into an Underwriting Agreement (the "Underwriting Agreement") with Stifel, Nicolaus & Company, Incorporated, Credit Suisse Securities (USA) LLC and BMO Capital Markets Corp., as representatives of the several underwriters named in Schedule I to the Underwriting Agreement (collectively, the "Underwriters") relating to the issuance and sale of \$150.0 million in aggregate principal amount of the Company's 1.75% Convertible Notes due 2019 (the "Notes") in a public offering pursuant to the Company's Registration Statement on Form S-3 (File No. 333-197145) and related prospectus, including a prospectus supplement, filed with the Securities and Exchange Commission (the "Offering"). In addition, the Company granted the Underwriters a 30-day option to purchase up to an additional \$22.5 million in aggregate principal amount of the Notes to cover over-allotments, if any. The closing of the issuance and sale of the Notes occurred on December 15, 2014.

The Company received net proceeds of approximately \$145.1 million from the Offering, which are expected to be used for general corporate purposes, including for selective strategic investments through acquisitions, alliances or other transactions.

The Underwriting Agreement contains customary representations and warranties of the parties and indemnification and contribution provisions under which the Company, on one hand, and the Underwriters, on the other, have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

Several of the Underwriters and their respective affiliates have in the past and may in the future engage in investment banking or other transactions of a financial nature with the Company, including the provision of certain advisory services and the making of loans to the Company and its affiliates, for which they have received or will receive customary compensation. An affiliate of BMO Capital Markets Corp. is the administrative agent with respect to the Company's credit facility and received customary fees in connection therewith. In addition, affiliates of certain of the Underwriters are lenders under the Company's credit facility.

A copy of the Underwriting Agreement is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference. The foregoing summary description of the Underwriting Agreement is qualified in its entirety by the terms of the Underwriting Agreement.

Indenture and Notes

The Notes were issued pursuant to the Indenture, dated as of December 15, 2014 (the "Base Indenture"), among the Company and U.S. Bank National Association, as trustee ("Trustee"), as amended and supplemented by the First Supplemental Indenture, dated as of December 15, 2014 (the "First Supplemental Indenture"), by and among the Company and the Trustee, setting forth the specific terms applicable to the Notes. The Base Indenture, as amended and supplemented by the First Supplemental Indenture, is referred to herein as the "Indenture." The Notes will mature on December 15, 2019, unless earlier purchased or converted, and interest is payable on the Notes on each June 15 and December 15 commencing on June 15, 2015.

The Notes are the Company's general unsecured obligations, subordinated in right of payment to the Company's obligations under its credit facility. The Notes rank equally in right of payment with all of the Company other existing and future senior indebtedness and rank senior in right of payment to all the Company future subordinated obligations.

Holders may surrender their Notes for conversion at any time prior to the close of business on the business day immediately preceding July 1, 2019 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2015 (and only during such calendar quarter), if the last reported sale price of the Company's common stock, for at least 20 trading days (whether or not consecutive) in the period of 30 consecutive trading days ending on the last trading day of the calendar quarter immediately preceding the calendar quarter in which the conversion occurs, is more than 130% of the conversion price of the Notes in effect

2

on each applicable trading day; (2) during the five consecutive business-day period following any five consecutive trading-day period in which the trading price for the Notes for each such trading day is less than 98% of the last reported sale price of the Company common stock on such date multiplied by the then-current conversion rate; or (3) upon the occurrence of specified corporate events described in the Indenture. On or after July 1, 2019 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may surrender their Notes for conversion at any time, regardless of the foregoing circumstances. Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election, as described in the Indenture.

The initial conversion rate for the Notes is 15.9022 shares of the Company's common stock per \$1,000 principal amount of Notes, which is equivalent to an initial conversion price of approximately \$62.88 per share. The initial conversion rate is subject to adjustment upon the occurrence of certain events but will not be adjusted for any accrued and unpaid interest.

Upon the occurrence of a fundamental change, holders may require the Company to purchase some or all of their Notes for cash at a price equal to 100% of the principal amount of the Notes being purchased, plus accrued and unpaid interest, if any. The Company may not redeem the Notes prior to their maturity.

The Indenture contains customary terms and covenants and events of default. If an Event of Default (as defined in the Indenture) occurs and is continuing, the Trustee or the holders of at least 25% in principal amount of the then outstanding Notes may declare by written notice 100% of the principal of and accrued and unpaid interest, if any, on all the Notes to be due and payable.

A copy of the Base Indenture and, the Supplemental Indenture (including the form of Note) are filed as Exhibits 4.1 and 4.2, respectively, to this Form 8-K and are incorporated herein by reference. The foregoing summary description of the Indenture is qualified in its entirety by the terms of the Indenture.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

- 1.1 Underwriting Agreement, dated December 9, 2014, by and among Envestnet, Inc. and Stifel, Nicolaus & Company, Incorporated, Credit Suisse Securities (USA) LLC and BMO Capital Markets Corp., as representatives of the several underwriters named therein.
- 4.1 Indenture, dated as of December 15, 2014, by and between Envestnet, Inc. and U.S. Bank National Association.
- 4.2 First Supplemental Indenture, dated as of December 15, 2014, by and between Envestnet, Inc. and U.S. Bank National Association.
- 5.1 Opinion of Mayer Brown LLP.
- 12.1 Computation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Fixed Charges and Preferred Stock Dividends.
- 23.1 Consent of Mayer Brown LLP (included in Exhibit 5.1).

3

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ENVESTNET, INC.

By: /s/ Peter D'Arrigo
Name: Peter D'Arrigo
Title: Chief Financial Officer

\$150,000,000

ENVESTNET, INC.

1.75% Convertible Notes due 2019

Underwriting Agreement

December 9, 2014

Stifel, Nicolaus & Company, Incorporated
 One Montgomery Street, Suite 3700
 San Francisco, California 94104

Credit Suisse Securities (USA) LLC
 11 Madison Avenue
 New York, New York 10010

BMO Capital Markets Corp.
 3 Times Square, 27th Floor
 New York, New York 10036

As representatives of the several Underwriters
 named in Schedule I hereto

Ladies and Gentlemen:

Investnet, Inc., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions stated herein, to sell to the Underwriters named in Schedule I hereto (the "Underwriters"), for whom Stifel, Nicolaus & Company, Incorporated, Credit Suisse Securities (USA) LLC and BMO Capital Markets Corp. are acting as representatives (the "Representatives" or "you"), the respective principal amounts set forth in said Schedule I of \$150,000,000 aggregate principal amount of the Company's 1.75% Convertible Notes due 2019 (the "Firm Securities") and, at the election of the Underwriters, up to \$22,500,000 aggregate principal amount of the Company's 1.75% Convertible Notes due 2019 (the "Optional Securities"). The Firm Securities and the Optional Securities that the Underwriters elect to purchase pursuant to Section 2 hereof are herein collectively called the "Securities." The Securities are to be issued pursuant to an indenture to be dated as of December 15, 2014, as supplemented by the First Supplemental Indenture, to be dated as of December 15, 2014 (together, the "Indenture"), between the Company and U.S. Bank National Association, as trustee (the "Trustee").

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as you deem advisable after this Agreement has been executed and delivered and the Indenture has been qualified under the Trust Indenture Act of 1939, as amended, and the rules and regulations promulgated thereunder (the "Trust Indenture Act").

The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") an automatic shelf registration statement on Form S-3 (File No. 333-197145), which contains a base prospectus (the "Base Prospectus"), to be used in connection with the public offering and sale of debt securities, including the Securities, and other securities of the Company

under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "Securities Act"), in accordance with Rule 415 under the Securities Act. Such registration statement, including the financial statements, exhibits and schedules thereto, in the form in which it became effective under the Securities Act pursuant to Rule 462(e) promulgated thereunder, including any required information deemed to be a part thereof at the time of effectiveness pursuant to Rule 430B under the Securities Act, is called the "Registration Statement." The term "Prospectus" shall mean the final prospectus supplement relating to the Securities, together with the Base Prospectus, that is first filed with the Commission pursuant to Rule 424(b) under the Securities Act after the Applicable Time (as defined in Section 1(iii) hereof). The term "Preliminary Prospectus" shall mean any preliminary prospectus supplement relating to the Securities, together with the Base Prospectus, that is first filed with the Commission pursuant to Rule 424(b) under the Securities Act. Any reference herein to the Registration Statement, the Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents that are incorporated by reference therein or are deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act prior to the Applicable Time. All references in this Agreement to the Registration Statement, the Preliminary Prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" (or other references of like import) in the Registration Statement, the Prospectus or the Preliminary Prospectus shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement, the Prospectus or the Preliminary Prospectus, as the case may be, prior to the Applicable Time; and all references in this Agreement to amendments or supplements to the Registration Statement, the Prospectus or the Preliminary Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Exchange Act"), which is or is deemed to be incorporated by reference in the Registration Statement, the Prospectus or the Preliminary Prospectus, as the case may be, after the Applicable Time.

1. The Company represents and warrants to, and agrees with, each of the Underwriters that:

(i) The Registration Statement and any post-effective amendment thereto, each in the form heretofore delivered to you, has become effective under the Securities Act in such form; no other document with respect to the Registration Statement or any document incorporated by reference in Base Prospectus has been filed with the Commission from the date of filing the Registration Statement through the date hereof; any request on the part of the Commission for additional information has been complied with; and no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued and no proceeding for that purpose has been initiated or, to the Company's knowledge, threatened by the Commission;

(ii) No order preventing or suspending the use of any Preliminary Prospectus or any "issuer free writing prospectus" as defined in Rule 433 under the Securities Act (an "Issuer Free Writing Prospectus") has been issued by the Commission; and each Preliminary

Prospectus, at the time of filing thereof, conformed in all material respects to the requirements of the Securities Act and the rules and regulations of the Commission thereunder, and did not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information (as defined below) or relating to that part of the Registration Statement that constitutes the Statement of Eligibility (Form T-1) of the Trustee under the Trust Indenture Act;

(iii) For the purposes of this Agreement, the “Applicable Time” is 7:21 p.m. (New York City time) on the date of this Agreement. The Preliminary Prospectus, taken together with the information listed on Schedule II(a) hereto (collectively, the “Pricing Disclosure Package”), as of the Applicable Time, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; and each Issuer Free Writing Prospectus listed on Schedule II(a) hereto did not, as of its date of issue, conflict with the information contained in the Registration Statement, the Preliminary Prospectus or the Prospectus, as in existence on such date;

(iv) The documents incorporated by reference in the Preliminary Prospectus and the Prospectus, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act, and the rules and regulations of the Commission thereunder, and none of such incorporated documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(v) The Company satisfies the requirements set forth in General Instruction I of Form S-3; the Registration Statement is an “automatic shelf registration statement,” as defined in Rule 405 under the Securities Act, that automatically became effective not more than three years prior to the Applicable Time; the Company has not received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to use of the automatic shelf registration statement form and the Company has not otherwise ceased to be eligible to use the automatic shelf registration form;

(vi) The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will conform, in all material respects to the requirements of the Securities Act and the rules and regulations of the Commission thereunder and do not and will not, as of the applicable effective date as to each part of the Registration Statement and the applicable effective date of any amendment thereto and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, taken together, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information or relating to that part of the Registration Statement that constitutes the Statement of Eligibility (Form T-1) of the Trustee under the Trust Indenture Act;

3

(vii) Neither the Company nor any of its subsidiaries has sustained since the date of the latest audited financial statements included or incorporated by reference in the Pricing Disclosure Package any material loss or interference with its business, direct or contingent, including from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as described or contemplated in the Pricing Disclosure Package; and, since the respective dates as of which information is given in the Registration Statement and the Pricing Disclosure Package, (i) the Company and its subsidiaries have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction; (ii) the Company has not purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock (iii) there has not been any change in the capital stock, short-term debt or long-term debt of the Company or any of its subsidiaries, taken as a whole, other than, in the case of clauses (i), (ii) and (iii), changes described or contemplated in the Pricing Disclosure Package; and (iv) there has not been any material adverse change in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole (a “Material Adverse Effect”);

(viii) The Company and its subsidiaries have good and marketable title to all property owned by them which is material to the business of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as are described in the Pricing Disclosure Package or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries, in each case except as described in the Pricing Disclosure Package;

(ix) The Company and its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (“Environmental Laws”), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; there are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(x) The Company (i) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with corporate power and corporate authority to own its properties and conduct its business as described in the

4

Pricing Disclosure Package, and (ii) has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except in the case of clause (ii), where the failure to be so qualified or in good standing would not have a Material Adverse Effect; and each subsidiary of the Company (x) has been duly incorporated or formed, as the case may be, and is validly existing as a corporation or limited liability company, as applicable, in good standing under the laws of its jurisdiction of incorporation or formation, with the company power and authority to own its properties and conduct its business as described in the Pricing Disclosure Package, and (y) has been duly qualified as a foreign corporation or limited liability company for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except in the case of clause (y), where the failure to be so qualified or in good standing would not have a Material Adverse Effect;

(xi) The Company has an authorized capitalization as set forth in the Pricing Disclosure Package under the captions “Capitalization” and “Description of Capital Stock” and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable and conform in all material respects to the description of the Company’s common stock, par value \$0.005 per share (the “Stock”) contained in the Pricing Disclosure Package and Prospectus under the captions “Capitalization” and “Description of Capital Stock”; and all of the issued shares of capital stock of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and (except for directors’ qualifying shares) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims;

(xii) (a) At the time of filing the Registration Statement, (b) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (c) as of the Applicable Time, the Company was and is a “well known seasoned issuer” as defined in Rule 405 under the Securities Act.

(xiii) The performance by the Company with its obligations under this Agreement and the consummation of the transactions herein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, except for any such conflicts, breaches, violations or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (B) will not violate any of the provisions of the Certificate of Incorporation or Bylaws of the Company, or the organizational documents of any subsidiary, (C) will not violate any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, except for any such violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (D) will not require any consent, approval, authorization, order, registration or

5

qualification of or with any court, governmental agency or body or third party, except for (x) such consents, approvals, authorizations, orders, registrations or qualifications that have been or will be (in the case of the Statement of Eligibility (Form T-1) of the Trustee under the Trust Indenture Act) obtained or made and are in full force and effect, (y) such approval as may be required by the Financial Industry Regulatory Authority (“FINRA”) of the underwriting terms and arrangements, and (z) such consents, approvals, authorizations, orders, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Underwriters;

(xiv) Neither the Company nor any of its subsidiaries is (A) in violation of its Certificate of Incorporation, Bylaws or other organizational documents or (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, except in the case of clause (B), to the extent that such default would not have a Material Adverse Effect;

(xv) The statements set forth (A) in the Pricing Disclosure Package and Prospectus under the caption “Description of Capital Stock,” insofar as they purport to constitute a summary of the terms of the Stock, (B) in the Pricing Disclosure Package and Prospectus under the captions “Description of Notes” and “Description of the Debt Securities,” insofar as they purport to constitute a summary of the terms of the Securities or the Indenture, and (C) in the Pricing Disclosure Package and Prospectus under the captions “Certain U.S. Federal Income Tax Considerations” and “Underwriting,” and in the Company’s Annual Report on Form 10-K for the year ended December 31, 2013 under the caption “Business—Regulation,” insofar as they purport to describe the provisions of the laws, matters and documents referred to therein, fairly summarize in all material respects such terms, laws, matters and documents; and the Securities and the Indenture will be in substantially the respective forms filed or incorporated by reference, as the case may be, as exhibits to the Registration Statement.

(xvi) Other than as set forth in the Pricing Disclosure Package, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject which (A) if determined adversely to the Company or any of its subsidiaries or any officer or director, would individually or in the aggregate reasonably be expected to have a Material Adverse Effect or materially adversely affect the power or ability of the Company to perform its obligations under this Agreement or to consummate the transactions contemplated by the Preliminary Prospectus or (B) are required to be described in the Registration Statement or the Prospectus and are not so described; and, to the Company’s knowledge, no such proceedings are threatened by governmental authorities or threatened by others;

(xvii) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof, will not be required to register as an “investment company” under the Investment Company Act of 1940, as amended (the “Investment Company Act”);

6

(xviii) At the time of filing the Registration Statement the Company was not and is not, as of the date hereof, an “ineligible issuer,” as defined under Rule 405 under the Securities Act;

(xix) KPMG LLP, who have audited certain financial statements of the Company and its subsidiaries, are independent certified public accountants with respect to the Company as required by the Securities Act and the rules and regulations of the Commission thereunder and the Public Company Accounting Oversight Board (United States); PricewaterhouseCoopers LLP, who have audited the financial statements of the Wealth Management Solutions (“WMS”) division of Prudential Investments, and delivered their report with respect to the audited combined financial statements of WMS incorporated by reference in the Pricing Disclosure Package, were independent certified public accountants with respect to WMS under Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants, and its rulings and interpretations as of the date of such report; and KPMG LLP, who have audited the financial statements of Placemark Holdings, Inc. (“Placemark”), and delivered their report with respect to the audited consolidated financial statements of Placemark incorporated by reference in the Pricing Disclosure Package, were independent certified public accountants with respect to Placemark under Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants, and its rulings and interpretations as of the date of such report;

(xx) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by the Company’s principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States (“GAAP”) and the Commission’s rules and guidelines applicable thereto; and except as disclosed in the Pricing Disclosure Package, the Company’s internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting;

(xxi) Since the date of the latest audited financial statements included in the Pricing Disclosure Package, there has been no change in the Company’s internal control over financial reporting that has materially and adversely affected, or is reasonably likely to materially and adversely affect, the Company’s internal control over financial reporting;

(xxii) The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company’s principal executive officer and principal financial officer by others within those entities; and except as disclosed in the Pricing Disclosure Package, such disclosure controls and procedures are effective;

(xxiii) This Agreement has been duly authorized, executed and delivered by the Company;

7

(xxiv) The Indenture has been duly authorized by the Company and duly qualified under the Trust Indenture Act and, at the Time of Delivery, will have been duly executed and delivered by the Company and will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law);

(xxv) The Securities have been duly authorized and, at the Time of Delivery, will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and will be in the form contemplated by, and entitled to the benefits of, the Indenture;

(xxvi) The shares of Stock issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon such conversion, will be validly issued and will be fully paid and non-assessable; no holder of such shares will be subject to personal liability by reason of being such a holder; and the issuance of such shares upon such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company;

(xxvii) Neither the Company nor any of its subsidiaries or affiliates, nor any director, officer, or employee, nor, to the Company's knowledge, any agent or representative of the Company or of any of its subsidiaries or affiliates, has taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage; and the Company and its subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws;

(xxviii) The Company and its subsidiaries own or possess, or can acquire on commercially reasonable terms, adequate rights to use all material patents, patent rights, licenses, inventions, copyrights, know how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names and other intellectual property rights, moral rights

and other rights (collectively, "Intellectual Property Rights") used or employed by them in connection with, or necessary for the conduct of, the business now operated by them;

(xxix) (A) There are no rights of third parties to any of the Intellectual Property Rights owned by the Company or its subsidiaries (other than Intellectual Property Rights licensed or granted by the Company in the ordinary course of its business); (B) there is no infringement, misappropriation, breach, default or other violation (1) by the Company or its subsidiaries of any of the Intellectual Property Rights of third parties or (2) to the Company's knowledge, by third parties of any of the Intellectual Property Rights of the Company or its subsidiaries; and (C) there is no pending, or to the Company's knowledge, threatened action, suit, proceeding or claim by others (1) challenging the Company's or any subsidiary's rights in or to, or the validity, enforceability or scope of, any of their Intellectual Property Rights, or (2) that the Company or any subsidiary infringes, misappropriates or otherwise violates or conflicts with any Intellectual Property Rights of others, except in each case covered by clauses (A), (B) and (C) such as would not, if determined adversely to the Company or any of its subsidiaries, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(xxx) The financial statements, including the notes thereto, and the supporting schedules included in the Pricing Disclosure Package present fairly, in all material respects, the financial position at the dates indicated and the results of operations and cash flows for the periods indicated of the Company and its consolidated subsidiaries; except as otherwise stated in the Pricing Disclosure Package, such financial statements have been prepared in conformity with GAAP applied on a consistent basis throughout the periods involved; and the supporting schedules, if any, included in the Pricing Disclosure Package present fairly the information required to be stated therein. The historical financial data set forth or included in the Pricing Disclosure Package under the captions "Prospectus Supplement Summary — Summary Consolidated Financial Data", "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" present fairly in all material respects the information included therein. No other financial statements or supporting schedules are required to be included in the Registration Statement. The other financial information included in the Pricing Disclosure Package presents fairly in all material respects the information included therein and has been prepared on a basis consistent with that of the financial statements that are included in the Pricing Disclosure Package and the books and records of the respective entities presented therein. The pro forma financial statements of the Company and its subsidiaries and the related notes thereto incorporated by reference in the Pricing Disclosure Package present fairly the information contained therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly presented on the basis described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein;

(xxxi) The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are, in the Company's reasonable judgment, prudent and customary in the businesses in which they are engaged; neither the Company nor any of its subsidiaries has been refused any insurance coverage sought or applied for; and neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to renew its existing insurance

coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except as described in the Preliminary Prospectus;

(xxxii) The Company is in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act of 2002, as amended, and all rules and regulations promulgated thereunder currently in effect and with which the Company is required to comply;

(xxxiii) Except as described in the Pricing Disclosure Package, the Company has not sold, issued or distributed any shares of common stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans or pursuant to outstanding options, rights or warrants;

(xxxiv) There are no statutes, regulations, contracts or other documents which are required to be described in the Registration Statement, the Preliminary Prospectus or the Prospectus or to be filed as an exhibit to the Registration Statement which have not been described or filed as required;

(xxxv) All United States federal tax returns and state tax returns required to be filed by the Company and its subsidiaries in all jurisdictions in which the Company or its subsidiaries are incorporated or formed or are qualified to do business have been timely and duly filed, or the Company and its subsidiaries have requested and received extensions thereof, other than those filings being contested in good faith, and except where the failure to file would not have a Material Adverse Effect. Other than as disclosed in the Pricing Disclosure Package, there are no tax returns of the Company and its subsidiaries that are currently being audited by state, local or federal taxing authorities or agencies (and with respect to which the Company or its subsidiaries has received notice). All material taxes, including withholding taxes, penalties and interest, assessments, fees and other charges due or claimed to be due to such entities (and with respect to which the Company or its subsidiaries have received notice), have been paid, other than those being contested in good faith and for which adequate reserves have been provided or those currently payable without penalty or interest;

(xxxvi) The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder, and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Employee Benefit Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator to which the Company or any of its subsidiaries is a party with respect to the Employee Benefit Laws is pending or, to the knowledge of the Company, threatened;

(xxxvii) No material labor dispute with the employees of the Company or any of its subsidiaries exists, except as described in the Preliminary Prospectus, or, to the knowledge of the Company, is imminent;

10

(xxxviii) Except as disclosed in the Pricing Disclosure Package, there are no contracts, agreements or understandings between the Company or its subsidiaries and any person (A) that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or other like payment in connection with this offering; or (B) granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act;

(xxxix) None of the outstanding shares of Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company; there are no persons with registration or other similar rights to have securities of the Company registered under the Securities Act other than as disclosed in the Pricing Disclosure Package; there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in the Pricing Disclosure Package; and the description of the Company’s stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, included in the Pricing Disclosure Package fairly presents the information required to be shown with respect to such plans, arrangements, options and rights;

(xxxx) Neither the Company nor any of its subsidiaries, nor any director, officer, or employee thereof, nor, to the Company’s knowledge, any agent, affiliate or representative of the Company or any of its subsidiaries, is an individual or entity (“Person”) that is, or is owned or controlled by a Person that is (A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority (collectively, “Sanctions”) or (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan and Syria); the Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person (x) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions or (y) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise); and the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions;

(xxxxi) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of jurisdictions where the Company and the Subsidiaries conduct business, the applicable

11

rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened;

(xxxxii) The Company and its subsidiaries possess all certificates, authorizations, registrations and permits issued by the appropriate federal, state, self-regulatory organization or foreign regulatory authorities necessary to conduct their respective businesses, except where the failure to possess any such certificate, authorization, registration or permit would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization, registration or permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a Material Adverse Effect, except as described in the Preliminary Prospectus;

(xxxxiii) Other than Envestnet Asset Management, Inc., Envestnet Portfolio Solutions, Inc., Portfolio Management Consultants, Inc. and ERS, Inc. (collectively, the “RIAs”), each of which is registered with the Commission as an investment adviser, and Portfolio Brokerage Services, Inc. (“PBSI”) which is registered with the Commission as a broker-dealer, neither the Company nor any of its subsidiaries (A) is or has been registered or (B) is required or has been required to be registered or (C) as a result of the transaction contemplated by this Agreement, will be required to register, as an investment adviser under the Investment Advisers Act of 1940, as amended (the “IAA”), as a commodity trading advisor, a commodity pool operator or a futures commission merchant under the Commodity Exchange Act of 1936, as amended, as a broker or a dealer under the Exchange Act or under the Blue Sky or securities laws of any applicable jurisdiction or the rules and regulations thereunder, except for such registration under the Blue Sky or securities laws of any applicable jurisdiction or the rules and regulations thereunder the failure of which to have been complied with would not reasonably be expected to have a Material Adverse Effect;

(xxxxiv) Each of the RIAs (A) is duly registered as an investment adviser under the IAA and the rules, regulations and interpretations of the Commission thereunder and has been duly registered from the time such registration has been required, and such registration is, and has been from the time such registration was required, effective and in good standing, (B) is duly qualified as an investment adviser under the securities laws and the rules and regulations thereunder of each jurisdiction in which the conduct of its business requires such qualification, except to the extent that the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect; (C) has filed a Form ADV, including without limitation a firm brochure disclosing information required by Form ADV Part 2A, with the Commission in accordance with the IAA, which Form at the time of filing was, as amended and supplemented as of the date hereof is in effect pursuant to the requirements of the IAA and the rules, regulations and interpretations of the Commission thereunder and accurate and complete in all material respects; (D) has

amended such brochure supplements, and delivered such amended brochure supplements to clients from time to time in compliance with the requirements of the IAA and the rules promulgated thereunder, and all such brochure supplements are accurate and complete as of the date hereof, and were accurate and complete at the time of delivery to each client, in all material respects; (E) has (x) obtained all other necessary approvals, (y) made all filings, including reports and other documents and (z) made all disclosures and delivered all documents to be delivered to its clients, as required by the IAA and the rules, regulations and interpretations of the Commission thereunder and all applicable regulatory authorities to conduct its business, except for where the failure to do so would not reasonably be expected to have a Material Adverse Effect; (F) has not received any notification from any applicable regulatory authority to the effect that any additional approvals from such regulatory authority are needed to be obtained by the RIA in any case where it could be reasonably expected that the RIA would in fact be required either to obtain any such additional approvals or cease or otherwise limit engaging in certain business, except for such cessations or limitations of business which would not reasonably be expected to have a Material Adverse Effect; (G) has maintained in all material respects all books and other records required by the IAA and the rules, regulations and interpretations of the Commission thereunder, and, to the extent applicable, the Investment Company Act and the rules promulgated thereunder, and each of such reports and other documents at the time created was, as amended and supplemented as of the date hereof is, and after consummation of the transactions contemplated hereby shall be, accurate and complete in all material respects; and (H) is in compliance in all material respects with the requirements of the IAA and the rules, regulations and interpretations of the Commission thereunder and all other applicable investment adviser laws and regulations of each jurisdiction which are applicable to such RIA, and has filed all notices required to be filed thereunder;

(xxxxv) PBSI is registered as a broker-dealer with the Commission, is a member in good standing of FINRA and all other self-regulatory organizations (“SROs”) of which it is or is required to be a member and is duly registered or qualified as a broker-dealer in each jurisdiction where the conduct of its business requires such registration or qualification, and such registrations, memberships or qualifications have not been suspended, revoked or rescinded and remain in full force and effect. All persons associated with PBSI are duly registered with FINRA, each SRO, and each jurisdiction where the association of such persons with PBSI requires such registration, and such registrations have not been suspended, revoked or rescinded and remain in full force and effect, except to the extent that the failure to be so registered would not reasonably be expected to have a Material Adverse Effect. The business activities engaged in by PBSI are limited to retailing corporate equity securities over-the-counter, as set forth on its Form BD as filed with the Commission and enumerated in its FINRA membership agreement, and do not involve the handling of customer funds or securities and PBSI is not party to a clearing agreement. The broker-dealer operations of PBSI have been conducted in compliance with all material requirements of the Exchange Act, the rules and regulations of the Commission, FINRA and any other applicable state securities regulatory authority or self-regulatory organization including, but not limited to (i) establishing financial and operational controls and supervisory procedures in material compliance with all applicable legal and regulatory requirements and (ii) maintaining required minimum net capital and net capital in excess of levels that may require “early warning” notice to the Commission, FINRA or any other self-regulatory organization;

(xxxxvi) Neither PBSI nor any person associated with PBSI is or has been subject to statutory disqualification, as that term is defined in Section 3(a)(39) of the Exchange Act, or a disqualification, as that term is defined in Article III, Section 4 of the FINRA By-Laws;

(xxxxvii) PBSI has not submitted any early warning notice to the Commission or FINRA and has not had any restriction on its business activities imposed upon it based upon the sufficiency of its net capital;

(xxxxviii) PBSI has (A) filed all reports, registrations, statements and certifications, together with any amendments required to be made prior to the date hereof with (i) the Commission, (ii) FINRA and (iii) any other applicable state securities regulatory authority or self-regulatory organization and (B) obtained all necessary regulatory approvals that may be required in connection with the sale of the Securities contemplated hereby;

(xxxxix) Each investment advisory agreement to which any of the RIAs is a party is, and following the consummation of the transactions contemplated by the Agreement will be, a valid and legally binding obligation of such RIA and is in compliance with the applicable provisions of the IAA and the rules, regulations and interpretations of the Commission thereunder, and the applicable RIA is not, and following the consummation of the transactions contemplated by the Agreement will not be, in breach or violation of or in default under any such investment advisory agreement, except to the extent that any such noncompliance, breach, violation or default would not, individually or in the aggregate, have a Material Adverse Effect; and

(xxxxx) Each entity for which any of the RIAs acts as investment adviser and, to the best knowledge of the RIAs, each entity for which the RIAs acts as subadviser and, in each case, which is required to be registered with the Commission as an investment company under the Investment Company Act (a “RIC”) is, and at the time of consummation of the transactions contemplated herein will be, duly registered with the Commission as an investment company under the Investment Company Act and to the best knowledge of the Company, each RIC has been operated in compliance in all material respects with the Investment Company Act and the rules and regulations thereunder and to the best knowledge of the Company, there are no facts with respect to any such RIC that are likely to have a Material Adverse Effect; and, to the best knowledge of the Company, each RIC’s registration statement complies in all material respects with the provisions of the Securities Act, the Investment Company Act and the rules and regulations thereunder and does not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

2. Subject to the terms and conditions herein set forth, (a) the Company agrees to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the purchase price set forth in Schedule I, the aggregate principal amount of Firm Securities set forth opposite their respective names in Schedule I and (b) in the event and to the extent that the Underwriters shall exercise the election to purchase Optional Securities as provided below, the Company agrees to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the purchase price set forth in clause (a) of this Section 2, that portion of the number of Optional Securities as to which such election shall have been exercised.

The Company hereby grants to the Underwriters the right to purchase at their election up to \$22,500,000 aggregate principal amount of Optional Securities, at the purchase price set forth in the paragraph above, for the sole purpose of covering over-allotments. Any such election to purchase Optional Securities may be exercised only by written notice from the Representatives to the Company, given within a period of 30 calendar days after the date of this Agreement and setting forth the aggregate principal amount of Optional Securities to be purchased and the date on which such Optional Securities are to be delivered, as determined by you but in no event earlier than the First Time of Delivery (as defined in Section 4 hereof) or, unless you and the Company otherwise agree in writing, earlier than two or later than ten business days after the date of such notice.

3. Upon the authorization by you of the release of the Firm Securities, the several Underwriters propose to offer the Firm Securities for sale upon the terms and conditions set forth in the Prospectus.

4. (a) The Securities to be purchased by each Underwriter hereunder shall be in such authorized denominations and registered in such names as the Representatives may request upon at least forty-eight hours' prior notice to the Company shall be delivered to the Representatives through the facilities of DTC, for the account of such Underwriter, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the account specified by the Company to the Representatives at least forty-eight hours in advance. The Company will cause the certificates representing the Securities to be made available for checking and packaging at least twenty-four hours prior to the Time of Delivery (as defined below) with respect thereto at the office of DTC or its designated custodian (the "Designated Office"). The time and date of such delivery and payment shall be, with respect to the Firm Securities, 9:30 a.m., New York City time, on December 15, 2014 or such other time and date as the Representatives and the Company may agree upon in writing, and, with respect to the Optional Securities, 9:30 a.m., New York City time, on the date specified by the Representatives in the written notice given by the Representatives of the Underwriters' election to purchase such Optional Securities, or such other time and date as the Representatives and the Company may agree upon in writing. Such time and date for delivery of the Firm Securities is herein called the "First Time of Delivery," such time and date for delivery of the Optional Securities, if not the First Time of Delivery, is herein called the "Second Time of Delivery," and each such time and date for delivery is herein called a "Time of Delivery."

(b) The documents to be delivered at each Time of Delivery by or on behalf of the parties hereto pursuant to Section 8 hereof, including the cross receipt for the Securities and any additional documents requested by the Underwriters pursuant to Section 8(m) hereof, will be delivered at the offices of Sidley Austin LLP, at One South Dearborn, Chicago, Illinois 60603 (the "Closing Location"), and the Securities will be delivered at the Designated Office, all at such Time of Delivery. A meeting will be held at the Closing Location at 3:00 p.m., New York City time, on the New York Business Day immediately preceding such Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto.

5. The Company agrees with each of the Underwriters:

(a) To comply with the requirements of Rule 430B under the Securities Act; to prepare the Prospectus in a form approved by you and to file such Prospectus pursuant to Rule 424(b) under the Securities Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement; to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Time of Delivery to

15

which you reasonably object after notice thereof; to advise you, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any amendment or supplement to the Prospectus has been filed and to furnish you with copies thereof; to file promptly all material required to be filed by the Company with the Commission pursuant to Rule 433(d) under the Securities Act; to advise you, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus in respect of the Securities, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus relating to the Securities or suspending any such qualification, to promptly use its commercially reasonable efforts to obtain the withdrawal of such order;

(b) Promptly from time to time to take such action as you may reasonably request to qualify the Securities for offering and sale under the securities laws of such jurisdictions as you may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Securities, *provided* that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in any jurisdiction in which it is not otherwise subject to taxation on the date hereof;

(c) Prior to 10:00 a.m., New York City time, on the New York Business Day next succeeding the date of this Agreement (or such later time as may be agreed to by the Company and the Representatives on behalf of the Underwriters) and from time to time, to furnish the Underwriters with written and electronic copies of the Prospectus in New York City in such quantities as you may reasonably request, and, if the delivery of a prospectus in the reasonable opinion of counsel for the Underwriters (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) is required at any time prior to the expiration of nine months after the time of issue of the Prospectus in connection with the offering or sale of the Securities and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) is delivered, not misleading, or, if, in the reasonable opinion of counsel for the Underwriters, for any other reason it shall be necessary during such same period to amend or supplement the Prospectus in order to comply with the Securities Act, to notify you and upon your request to prepare and furnish without charge to each Underwriter, and to any dealer in securities as many written and electronic copies as you may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance and in case any Underwriter is required to deliver a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) in connection with sales of any of the Securities at any time nine months or more after the time of issue of the Prospectus, upon your request but at the expense of such Underwriter, to prepare and deliver to such Underwriter as many written and electronic copies as you may request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the Securities Act;

(d) To make generally available to its securityholders as soon as practicable (which may be satisfied by filing with EDGAR), but in any event not later than sixteen months after the effective

16

date of the Registration Statement (as defined in Rule 158(c) under the Securities Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158);

(e) During the period commencing on the date hereof and continuing to and including the date 90 days after the date of the Prospectus, not to (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, pledge, hypothecate or otherwise transfer or dispose of, directly or indirectly, any shares of Stock beneficially owned (as such term is used in Rule 13d-3 under the Exchange Act) or any other securities so owned convertible into or exercisable or exchangeable for Stock or (2) enter into any swap, hedge or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Stock or such other securities, in cash or otherwise or (3) file any registration statement with the Commission relating to the offering of any shares of Stock or any securities convertible into or exercisable or exchangeable for Stock, without the prior written consent of you on behalf of the Underwriters (other than (a) the grant of options to purchase shares of Stock, restricted shares or restricted stock units pursuant to the Company's existing employee benefit plans or the issuance of shares of Stock upon the exercise of any option issued pursuant to the Company's employee benefit plans (or the filing of a registration statement on Form S-8 to register shares of Stock issuable under such plans), (b) the issuance by the Company of shares of Stock upon the exercise of a warrant or the conversion of a security outstanding on the date hereof, (c) the issuance by the Company of shares of Stock in an amount up to 10% of the Company's outstanding shares of Stock in connection with a merger, acquisition or other transaction and (d) the issuance by the Company of shares of Stock pursuant to any pre-existing contractual obligation of the Company identified in the Registration Statement); *provided* that if (i) during the last 17 days of the 90-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs; or (ii) prior to the expiration of the 90-day restricted period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the 90-day period, then the restrictions imposed by this Section 5(e) shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event; and the Company agrees to promptly notify the Representatives of any earnings release, news or event that

may give rise to an extension of the initial 90-day restricted period;

(f) To furnish to its stockholders as soon as practicable after the end of each fiscal year an annual report (including a balance sheet and statements of income, stockholders' equity and cash flows of the Company and its consolidated subsidiaries certified by independent public accountants) and, as soon as practicable after the end of each of the first three quarters of each fiscal year (beginning with the fiscal quarter ending after the effective date of the Registration Statement), to make available to its stockholders consolidated summary financial information of the Company and its subsidiaries for such quarter in reasonable detail; *provided, however*, that the Company may satisfy the requirements of this subsection by making such reports or information available on its website or by electronically filing such information through EDGAR as long as such posting or filing complies with the Exchange Act;

(g) During a period of three years from the effective date of the Registration Statement, to furnish to the Representatives copies of all reports or other communications (financial or other) furnished to stockholders, and to deliver to the Representatives (i) as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission or any

17

national securities exchange on which any class of securities of the Company is listed; and (ii) such additional information concerning the business and financial condition of the Company as the Representatives may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its stockholders generally or to the Commission), *provided* that, if any such information would, if disclosed, result in a violation of Regulation FD, then such disclosure would be conditioned upon the Representatives agreeing to keep such information confidential and *provided, further*, that any information or documents available on EDGAR shall be considered furnished for purposes of this Section 5(g);

(h) To pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act;

(i) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Securities remain unsold by the Underwriters, the Company will prior to the Renewal Deadline, if it has not already done so and is eligible to do so, file a new shelf registration statement relating to the Securities, in a form reasonably satisfactory to the Representatives, and will use its reasonable best efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline. The Company will take all other action reasonably necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the expired registration statement relating to the Securities. References herein to the Registration Statement shall include such new shelf registration statement;

(j) To prepare a final term sheet (the "Final Term Sheet"), in the form set forth in Schedule III hereto, reflecting the final terms of the Securities, in form and substance satisfactory to the Representatives, and file such Final Term Sheet as an "issuer free writing prospectus" pursuant to Rule 433 under the Securities Act prior to the close of business two business days after the date hereof; *provided* that the Company shall furnish the Representatives with copies of any such Final Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representatives or counsel to the Underwriters shall object;

(k) To at all times and from time to time reserve and keep available, free from preemptive rights, out of its authorized but unissued Stock that is not committed for any other purpose, for the purpose of issuance upon conversion of Securities, a number of shares of Stock equal to the product of (a) the Maximum Conversion Rate (as defined in the Indenture) and (b) the aggregate principal amount of Outstanding Notes (as defined in the Indenture) divided by \$1,000; and

(l) Between the date hereof and the First Time of Delivery, or the Second Time of Delivery, if applicable, to use its commercially reasonable efforts to maintain the listing of the shares of Stock issuable upon conversion of the Securities on the New York Stock Exchange (the "NYSE").

6. (a) The Company represents and agrees that, without the prior consent of the Representatives, it has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Securities Act; and each Underwriter represents and agrees that, without the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Securities that would constitute a free writing prospectus; any such free writing prospectus the use of which has been consented to by the Company and the Representatives is listed on Schedule II(a) hereto;

18

(b) The Company has complied and will comply with the requirements of Rule 433 under the Securities Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending; and the Company represents that it has satisfied and agrees that it will satisfy the conditions under Rule 433 under the Securities Act to avoid a requirement to file with the Commission any electronic road show;

(c) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus would conflict with the information in the Registration Statement, the Pricing Disclosure Package or the Prospectus, will give prompt notice thereof to the Representatives and, if requested by the Representatives, will prepare and furnish without charge to each Underwriter an Issuer Free Writing Prospectus or other document which will correct such conflict; *provided, however*, that this representation and warranty shall not apply to any statements or omissions in an Issuer Free Writing Prospectus made in reliance upon and in conformity with the Underwriter Information.

7. The Company covenants and agrees with the several Underwriters that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Securities under the Securities Act and all other expenses in connection with the preparation, printing, reproduction and filing of the Registration Statement, any Preliminary Prospectus, any Issuer Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any agreement among Underwriters, this Agreement, the Blue Sky survey, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities; (iii) the expenses in connection with the qualification of the Securities for offering and sale under state securities laws as provided in Section 5(b) hereof, including the reasonable fees and disbursements of one counsel in each jurisdiction for the Underwriters in connection with such qualification and in connection with the Blue Sky survey (which shall not exceed \$5,000); (iv) all fees and expenses in connection with listing the shares of Stock issuable upon conversion of the Securities on the NYSE; (v) the filing fees incident to, and the fees and disbursements of counsel for the Underwriters in connection with, any required review by FINRA of the terms of the sale of the Securities (which fees and disbursements of counsel shall not exceed \$5,000); (vi) the cost of preparing stock certificates, if applicable; (vii) the cost and charges of any transfer agent or registrar; (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show; and (ix) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section 7, and Sections 9 and 12 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, stock transfer taxes on resale of any of the Securities by them, and any advertising expenses connected with any offers they may make.

8. The obligations of the Underwriters hereunder, as to the Securities to be delivered at each Time of Delivery, shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company herein are, at and as of such Time of Delivery, true

and correct, the condition that the Company shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Securities Act within the applicable time period prescribed for such filing by the rules and regulations under the Securities Act and in accordance with Section 5(a) hereof; all material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act shall have been filed with the Commission within the applicable time period prescribed for such filing by Rule 433; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; no stop order suspending or preventing the use of the Prospectus or any Issuer Free Writing Prospectus shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to your reasonable satisfaction;

(b) Sidley Austin LLP, counsel for the Underwriters, shall have furnished to you such written opinion or opinions, dated such Time of Delivery, in form and substance satisfactory to you, with respect to the matters you may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

(c) Mayer Brown LLP, outside counsel for the Company, shall have furnished to you their written opinion in the form attached hereto as Annex I, dated such Time of Delivery;

(d) Shelly O'Brien, General Counsel of the Company, shall have furnished to you her written opinion in the form attached hereto as Annex II, dated such Time of Delivery;

(e) On the date of the Prospectus at a time prior to the execution of this Agreement and also at each Time of Delivery, KPMG LLP, independent certified public accountants with respect to the Company, shall have furnished to you a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you;

(f) On the date of the Prospectus at a time prior to the execution of this Agreement and also at each Time of Delivery, PricewaterhouseCoopers LLP, independent certified public accountants with respect to WMS, shall have furnished to you a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you;

(g) On the date of the Prospectus at a time prior to the execution of this Agreement and also at each Time of Delivery, KPMG LLP, independent certified public accountants with respect to Placemark, shall have furnished to you a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you;

(h) (i) Neither the Company nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Pricing Disclosure Package any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Disclosure Package, and (ii) since the respective dates as of which information is given in the Pricing Disclosure Package there shall not have been any change in the capital stock, short-term debt or long-term debt of the Company or any of its subsidiaries or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in the Pricing Disclosure Package, the effect of which, in any such case described in clause (i) or (ii), is in your judgment so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities

being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus;

(i) On or after the Applicable Time there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the NYSE; (ii) a suspension or material limitation in trading in the Company's securities on the NYSE; (iii) a general moratorium on commercial banking activities declared by either Federal or New York authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in your judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus;

(j) The shares of Stock issuable on conversion of the Securities shall have been approved for listing, subject to notice of issuance, on the NYSE;

(k) The Company shall have obtained and delivered to the Underwriters executed copies of a lock-up agreement from each of the persons listed on Schedule IV hereto substantially in the form attached hereto as Annex III, and such agreements shall be in full force and effect;

(l) The Company shall have complied with the provisions of Section 5(c) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement; and

(m) The Company shall have furnished or caused to be furnished to you at such Time of Delivery certificate of officers of the Company reasonably satisfactory to you as to the accuracy of the representations and warranties of the Company herein at and as of such Time of Delivery, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to such Time of Delivery and as to such other matters as you may reasonably request, and the Company shall have furnished or caused to be furnished certificates as to the matters set forth in subsections (a) and (h)(i) of this Section 8 and as to the absence, since the respective dates as of which information is given in the Pricing Disclosure Package, of any material adverse change in the capital stock, short-term debt or long-term debt of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in the Pricing Disclosure Package.

9. (a) The Company will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package or the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, any "road show" (as defined in Rule 433 under the Securities Act) not constituting an Issuer Free Writing Prospectus (a "Non-Prospectus Road Show") or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and will reimburse each Underwriter for any legal or

other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package or the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, or Non-Prospectus Road Show, in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein, it being understood that the only information furnished to the Company for such use is the information contained in the thirteenth and fourteenth paragraphs under the caption “Underwriting” in the Preliminary Prospectus and the concession figure appearing in the fourth paragraph and the information contained in the thirteenth, fourteenth and fifteenth paragraphs under the caption “Underwriting” in the Prospectus (the “Underwriter Information”).

(b) Each Underwriter, severally but not jointly, will indemnify and hold harmless the Company, each of its directors and each of its officers who signed the Registration Statement against any losses, claims, damages or liabilities to which any of them may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus or Non-Prospectus Road Show, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus or Non-Prospectus Road Show, in reliance upon and in conformity with the Underwriter Information; and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party under such subsection, except to the extent that the indemnifying party has been materially prejudiced by such failure. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of

22

which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the net proceeds from the offering (net of underwriting discounts and commissions but before deducting any other expenses) (the “Net Proceeds”) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriters on the other and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters’ obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the Company under this Section 9 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Securities Act and each

23

affiliate of any Underwriter (within the meaning of Rule 405 under the Securities Act, including, without limitation, the officers, directors, partners and members of each such Underwriter and its broker-dealer affiliates; and the obligations of the Underwriters under this Section 9 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company within the meaning of the Securities Act.

10. (a) If any Underwriter shall default in its obligation to purchase the Securities which it has agreed to purchase hereunder at a Time of Delivery, you may in your discretion arrange for you or another party or other parties to purchase such Securities on the terms contained herein. If within thirty-six hours after such default by any Underwriter you do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to you to purchase such Securities on such terms. In the event that, within the respective prescribed periods, you notify the Company that you have so arranged for the purchase of such Securities, or the Company notifies you that it has so arranged for the purchase of such Securities, you or the Company shall have the right to postpone such Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration

Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in your opinion may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Securities.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate principal amount of such Securities which remains unpurchased does not exceed one-eleventh of the aggregate principal amount of all the Securities to be purchased at such Time of Delivery, then the Company shall have the right to require each non-defaulting Underwriter to purchase the aggregate principal amount of Securities which such Underwriter agreed to purchase hereunder at such Time of Delivery and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the aggregate principal amount of Securities which such Underwriter agreed to purchase hereunder) of the Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate principal amount of such Securities which remains unpurchased exceeds one-eleventh of the aggregate principal amount of all the Securities to be purchased at such Time of Delivery, or if the Company shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Securities of a defaulting Underwriter or Underwriters, then this Agreement (or, with respect to the Second Time of Delivery, the obligations of the Underwriters to purchase and of the Company to sell the Optional Securities) shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Company, except for the expenses to be borne by the Company and the Underwriters as provided in Section 7 hereof and the indemnity and contribution agreements in Section 9 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

24

11. The respective indemnities, agreements, representations, warranties and other statements of the Company and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Securities.

12. If this Agreement shall be terminated pursuant to Section 10 hereof, the Company shall not then be under any liability to any Underwriter except as provided in Sections 7 and 9 hereof; but, if for any other reason (other than the failure of the condition set forth in Section 8(i)(i), (iii), (iv) or (v)), any Securities are not delivered by or on behalf of the Company as provided herein, the Company will reimburse the Underwriters through you for all out-of-pocket expenses approved in writing by you, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Securities not so delivered, but the Company shall then be under no further liability to any Underwriter except as provided in Sections 7 and 9 hereof.

13. In all dealings hereunder, you shall act on behalf of each of the Underwriters, the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by the Representatives and any action under this Agreement taken by the Representatives jointly will be binding upon all the Underwriters.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail or facsimile transmission to each of the Representatives in care of Stifel, Nicolaus & Company, Incorporated, One Montgomery Street, Suite 3700, San Francisco, CA 94104, Attn: Syndicate Department, Facsimile: (415) 364-2799, Credit Suisse Securities (USA) LLC, 11 Madison Avenue, New York, NY 10010, Attn: LCD-IBD, and BMO Capital Markets Corp., 3 Times Square, 27th Floor, New York, NY 10036, Attn: Legal Department, Facsimile: (212) 702-1205; and if to the Company shall be delivered or sent by mail or facsimile transmission to the address of the Company set forth on the cover of the Registration Statement, Attn: Secretary, Facsimile: (312) 827-2801 (with copies to those parties specified thereon); and if to any officer or director of the Company that has delivered a lock-up agreement described in Section 8(k) hereof shall be delivered or sent by mail to his or her respective address provided in Schedule IV hereto or such other address as such stockholder, officer or director provides in writing to the Company. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

14. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Company and, to the extent provided in Sections 9 and 11 hereof, the officers and directors of the Company and each person who controls the Company or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the

25

Securities from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

15. Time shall be of the essence of this Agreement. As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business and "New York Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

16. The Company acknowledges and agrees that (i) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other, (ii) in connection therewith and with the process leading to such transaction each Underwriter is acting solely as a principal and not the agent or fiduciary of the Company, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) or any other obligation to the Company except the obligations expressly set forth in this Agreement and (iv) the Company has consulted its own legal and financial advisors to the extent it deemed appropriate. The Company agrees that it will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to it, in connection with such transaction or the process leading thereto.

17. The Company acknowledges that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriters' research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriters' investment banking divisions. The Company acknowledges that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

18. This Agreement supersedes all prior agreements and understandings (whether written or oral) between or among the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

19. THIS AGREEMENT AND ANY MATTERS RELATED TO THIS TRANSACTION SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAWS OF THE STATE OF NEW YORK. The Company agrees that any suit or proceeding arising in respect of this Agreement or your engagement will be tried exclusively in the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court

26

located in The City and County of New York and the Company agrees to submit to the jurisdiction of, and to venue in, such courts.

20. The Company and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

21. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

22. Notwithstanding anything herein to the contrary, the Company is authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company relating to that treatment and structure, without the Underwriters imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

23. If any term or other provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions of this Agreement shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

24. Except as otherwise expressly provided herein, the provisions of this Agreement may be amended or waived at any time only by the written agreement of the parties hereto. Any waiver, permit, consent or approval of any kind or character on the part of any such holders of any provision or condition of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in writing. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[signature page follows]

27

If the foregoing is in accordance with your understanding, please sign and return to us six counterparts hereof, and upon the acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof shall constitute a binding agreement among each of the Underwriters and the Company. It is understood that your acceptance of this letter on behalf of each of the Underwriters is pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company for examination upon request, but without warranty on your part as to the authority of the signers thereof.

Please indicate your acceptance of this Agreement as of the date first written above by signing in the space provided below.

Very truly yours,

ENVESTNET, INC.

By: /s/ Shelly O'Brien

Name: Shelly O'Brien

Title: General Counsel and
Secretary

Signature Page to Underwriting Agreement

Accepted as of the date hereof:

STIFEL, NICOLAUS & COMPANY, INCORPORATED

By: /s/ John Katzenmeyer

Name: John Katzenmeyer

Title: Managing Director

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Brian Gudofsky

Name: Brian Gudofsky

Title: Managing Director

BMO CAPITAL MARKETS CORP.

By: /s/ Paul S. Rosica

Name: Paul S. Rosica

Title: Managing Director

SCHEDULE I

The initial public offering price of the Securities shall be 100% of the principal amount thereof, plus accrued interest, if any, from December 15, 2014.

The purchase price to be paid by the Underwriters for the Securities shall be 97% of the principal amount thereof, plus accrued interest, if any, from December 15, 2014.

Underwriter	Principal Amount of Firm Securities to be Purchased	Principal Amount of Optional Securities to be Purchased if Maximum Option Exercised
Stifel, Nicolaus & Company, Incorporated	\$ 45,000,000	\$ 6,750,000
Credit Suisse Securities (USA) LLC	45,000,000	6,750,000
BMO Capital Markets Corp.	37,500,000	5,625,000
Sandler O'Neill & Partners, L.P.	7,500,000	1,125,000
Sterne, Agee & Leach, Inc.	7,500,000	1,125,000
William Blair & Company, L.L.C.	7,500,000	1,125,000
Total	\$ 150,000,000	\$ 22,500,000

Schedule I-1

SCHEDULE II

(a) Issuer Free Writing Prospectuses

Final Term Sheet, in the form attached as Schedule III

(b) Additional documents incorporated by reference

None

(c) Information other than the Preliminary Prospectus or the Final Term Sheet that comprises the Pricing Disclosure Package

None

Schedule II-1

SCHEDULE III

Filed Pursuant to Rule 433
Registration Statement No. 333-197145

PRICING TERM SHEET
Dated December 9, 2014

Investnet, Inc.
1.75% Convertible Notes due 2019

The information in this pricing term sheet relates to Investnet, Inc.'s offering (the "Offering") of its 1.75% Convertible Notes due 2019 (the "Notes") and should be read together with the preliminary prospectus supplement dated December 8, 2014 (including the documents incorporated by reference therein and the base prospectus dated July 1, 2014 in respect thereof) relating to the Offering (the "Preliminary Prospectus Supplement"). The information in this pricing term sheet supersedes the information in the Preliminary Prospectus Supplement to the extent that it is inconsistent therewith. Terms used but not defined herein have the meanings ascribed to them in the Preliminary Prospectus Supplement.

Issuer:	Investnet, Inc. (NYSE: ENV)
Securities Offered:	1.75% Convertible Notes due 2019
Offering Size:	\$150,000,000 aggregate principal amount (or \$172,500,000 aggregate principal amount if the underwriters exercise their over-allotment option in full)
Public Offering Price:	100% of the principal amount, plus accrued interest, if any, from the Settlement Date
Underwriting Discount:	3.00% of the principal amount

Use of Proceeds:	The Issuer estimates that the net proceeds from the sale of the Notes, after deducting underwriting discounts and offering expenses, will be approximately \$145.1 million or approximately \$166.9 million assuming the underwriters exercise their over-allotment option in full. The Issuer intends to use the proceeds from the Offering for general corporate purposes, including for selective strategic investments through acquisitions, alliances or other transactions. See “Use of Proceeds” in the Preliminary Prospectus Supplement.
Trade Date:	December 10, 2014
Settlement Date:	December 15, 2014
Maturity:	December 15, 2019, unless earlier purchased or converted
Interest Rate:	1.75% per year payable semiannually in arrears in cash
Interest Payment Dates:	June 15 and December 15, beginning June 15, 2015
No Redemption:	The Issuer may not redeem the Notes prior to maturity and no sinking fund is provided with respect to the Notes.

Schedule III-1

NYSE Last Reported Sale Price on December 9, 2014:	\$47.46 per share of the Issuer’s common stock (the “Common Stock”)
Initial Conversion Rate:	15.9022 shares of Common Stock per \$1,000 principal amount of Notes
Initial Conversion Price:	Approximately \$62.88 per share of Common Stock
Conversion Premium:	Approximately 32.5% above the NYSE Last Reported Sale Price on December 9, 2014
Adjustment to Conversion Rate upon Conversion in Connection with a Make-Whole Fundamental Change:	The following table sets forth the number of additional shares (as defined under “Description of Notes—Adjustment to the Conversion Rate Upon Conversion in Connection with a Make-whole Fundamental Change” in the Preliminary Prospectus Supplement) to be received per \$1,000 principal amount of Notes for each stock price and effective date set forth below:

Effective Date	Stock Price													
	\$47.46	\$50.00	\$55.00	\$60.00	\$62.88	\$65.00	\$75.00	\$85.00	\$100.0	\$115.00	\$130.00	\$150.00	\$175.00	\$200.00
December 15, 2014	5.1681	4.5984	3.6903	2.9969	2.6700	2.4597	1.7034	1.2171	0.7700	0.5081	0.3452	0.2115	0.0979	0.0458
December 15, 2015	5.1681	4.6396	3.6637	2.9258	2.5812	2.3607	1.5804	1.0934	0.6627	0.4220	0.2785	0.1653	0.0699	0.0291
December 15, 2016	5.1681	4.6072	3.5541	2.7681	2.4058	2.1760	1.3814	0.9079	0.5139	0.3099	0.1964	0.1120	0.0402	0.0130
December 15, 2017	5.1681	4.5180	3.3599	2.5111	2.1274	1.8875	1.0890	0.6502	0.3241	0.1784	0.1071	0.0591	0.0152	0.0016
December 15, 2018	5.1681	4.2736	2.9544	2.0164	1.6090	1.3620	0.6110	0.2768	0.0963	0.0447	0.0271	0.0163	0.0012	0.0000
December 15, 2019	5.1681	4.0978	2.2796	0.7645	0.0011	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- If the stock price is between two stock prices in the table or the effective date is between two effective dates in the table, the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year.
- If the stock price is greater than \$200.00 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.
- If the stock price is less than \$47.46 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.

Notwithstanding the foregoing, in no event will the conversion rate exceed 21.0703 per \$1,000 principal amount of Notes, subject to adjustment in the same manner as the conversion rate as set forth under “Description of Notes—Conversion Rate Adjustments” in the Preliminary Prospectus Supplement.

CUSIP/ISIN:	29404K AA4 / US29404KAA43
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Schedule III-2

Joint Book-Running Managers:	Stifel, Nicolaus & Company, Incorporated Credit Suisse Securities (USA) LLC BMO Capital Markets Corp.
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Co-Managers:	Sandler O’Neill & Partners, L.P. Sterne, Agee & Leach, Inc. William Blair & Company, L.L.C.
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Additional Information:	The Issuer has been advised by the underwriters that, prior to entering into the underwriting agreement relating to the offering, on December 9, 2014, one of the underwriters purchased, on behalf of the underwriting syndicate, 11,538 shares of the Issuer’s common stock at a weighted average price of \$47.35 per share in stabilizing transactions
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The Issuer has filed a registration statement including a prospectus and a preliminary prospectus supplement with the Securities and Exchange Commission, or SEC, for the offering to which this communication relates. Before you invest, you should read the prospectus and preliminary prospectus supplement in that registration statement and other documents the Issuer has filed with the SEC for more complete information about the Issuer and this offering. You may obtain these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the Issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus and the preliminary prospectus supplement if you request them by contacting Stifel, Nicolaus & Company, Incorporated, Attention: Syndicate, One Montgomery Street, Suite 3700, San Francisco, California 94104, by telephone at (415) 364-2720 or by email to

syndprospectus@stifel.com; or by contacting Credit Suisse Securities (USA) LLC, Attention: Prospectus Department, One Madison Avenue, New York, NY 10010, by telephone at (800) 221-1037, or by email to newyork.prospectus@credit-suisse.com; or by contacting BMO Capital Markets Corp., Attention: Equity Syndicate Department, 3 Times Square, 27th Floor, New York, NY 10036, by telephone at (800) 414-3627 or by email to bmoprospectus@bmo.com.

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Schedule III-3

SCHEDULE IV

Name	Address
Judson Bergman	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Ross Chapin	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Cynthia Egan	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Gates Hawn	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
James Johnson	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Charles Roame	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Yves Sisteron	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Bill Crager	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Pete D'Arrigo	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Scott Grinis	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Matthew Majoros	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Josh Mayer	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Shelly O'Brien	35 East Wacker Drive, Suite 2400, Chicago, IL 60601
Brandon Thomas	35 East Wacker Drive, Suite 2400, Chicago, IL 60601

Schedule IV-1

ENVESTNET, INC., Issuer
To
U.S. BANK NATIONAL ASSOCIATION, Trustee
INDENTURE
Dated as of December 15, 2014
Subordinated Debt Securities

TABLE OF CONTENTS

		Page
ARTICLE 1	DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	1
Section 1.1	Definitions	1
Section 1.2	Compliance Certificates and Opinions	9
Section 1.3	Form of Documents Delivered to Trustee	10
Section 1.4	Acts of Holders	10
Section 1.5	Notice to Holders of Securities; Waiver	12
Section 1.6	Language of Notices	13
Section 1.7	Conflict with Trust Indenture Act	13
Section 1.8	Effect of Headings and Table of Contents	13
Section 1.9	Successors and Assigns	13
Section 1.10	Separability Clause	14
Section 1.11	Benefits of Indenture	14
Section 1.12	Governing Law	14
Section 1.13	Legal Holidays	14
Section 1.14	Counterparts	14
Section 1.15	Judgment Currency	14
Section 1.16	No Security Interest Created	15
Section 1.17	Limitation on Individual Liability	15
Section 1.18	Jury Trial Waiver	15
Section 1.19	U.S.A. Patriot Act	16
ARTICLE 2	SECURITIES FORMS	16
Section 2.1	Forms Generally	16
Section 2.2	Form of Trustee's Certificate of Authentication	16
Section 2.3	Securities in Global Form	16
ARTICLE 3	THE SECURITIES	17
Section 3.1	Amount Unlimited; Issuable in Series	17
Section 3.2	Currency; Denominations	21
Section 3.3	Execution, Authentication, Delivery and Dating	21
Section 3.4	Temporary Securities	23
Section 3.5	Registration, Transfer and Exchange	23
Section 3.6	Mutilated, Destroyed, Lost and Stolen Securities	26

TABLE OF CONTENTS
(continued)

		<u>Page</u>
Section 3.7	Payment of Interest and Certain Additional Amounts; Rights to Interest and Certain Additional Amounts Preserved	27
Section 3.8	Persons Deemed Owners	28
Section 3.9	Cancellation	29
Section 3.10	Computation of Interest; Calculations	29
Section 3.11	CUSIP Numbers	29
ARTICLE 4	SATISFACTION AND DISCHARGE OF INDENTURE	30
Section 4.1	Satisfaction and Discharge	30
Section 4.2	Defeasance and Covenant Defeasance	31
Section 4.3	Application of Trust Money	34
ARTICLE 5	REMEDIES	35
Section 5.1	Events of Default	35
Section 5.2	Acceleration of Maturity; Rescission and Annulment	36
Section 5.3	Collection of Indebtedness and Suits for Enforcement by Trustee	37
Section 5.4	Trustee May File Proofs of Claim	38
Section 5.5	Trustee May Enforce Claims without Possession of Securities or Coupons	39
Section 5.6	Application of Money Collected	39
Section 5.7	Limitations on Suits	40
Section 5.8	Unconditional Right of Holders to Receive Principal and any Premium, Interest and Additional Amounts	40
Section 5.9	Restoration of Rights and Remedies	40
Section 5.10	Rights and Remedies Cumulative	41
Section 5.11	Delay or Omission Not Waiver	41
Section 5.12	Control by Holders of Securities	41
Section 5.13	Waiver of Past Defaults	41
Section 5.14	Waiver of Usury, Stay or Extension Laws	42
Section 5.15	Undertaking for Costs	42
ARTICLE 6	THE TRUSTEE	42
Section 6.1	Certain Duties and Responsibilities	42
Section 6.2	Certain Rights of Trustee	43
Section 6.3	Notice of Defaults	45
Section 6.4	Not Responsible for Recitals or Issuance of Securities	45

TABLE OF CONTENTS
(continued)

		<u>Page</u>
Section 6.5	May Hold Securities	46
Section 6.6	Money Held in Trust	46
Section 6.7	Compensation and Reimbursement	46
Section 6.8	Corporate Trustee Required; Eligibility	47

Section 6.9	Resignation and Removal; Appointment of Successor	47
Section 6.10	Acceptance of Appointment by Successor	48
Section 6.11	Merger, Conversion, Consolidation or Succession to Business	50
Section 6.12	Appointment of Authenticating Agent	50
Section 6.13	Preferential Collection of Claims Against Company	51
ARTICLE 7	HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY	51
Section 7.1	Company to Furnish Trustee Names and Addresses of Holders	51
Section 7.2	Preservation of Information; Communications to Holders	52
Section 7.3	Reports by Trustee	52
Section 7.4	Reports by Company	52
ARTICLE 8	CONSOLIDATION, AMALGAMATIONS, MERGER AND SALES	53
Section 8.1	Company May Consolidate, Etc., Only on Certain Terms	53
Section 8.2	Successor Person Substituted for Company	54
ARTICLE 9	SUPPLEMENTAL INDENTURES	54
Section 9.1	Supplemental Indentures without Consent of Holders	54
Section 9.2	Supplemental Indentures with Consent of Holders	55
Section 9.3	Execution of Supplemental Indentures	56
Section 9.4	Effect of Supplemental Indentures	57
Section 9.5	Reference in Securities to Supplemental Indentures	57
Section 9.6	Conformity with Trust Indenture Act	57
Section 9.7	Effect on Senior Indebtedness	57
Section 9.8	Notice of Supplemental Indenture	57
ARTICLE 10	COVENANTS	57
Section 10.1	Payment of Principal, any Premium, Interest and Additional Amounts	57
Section 10.2	Maintenance of Office or Agency	58
Section 10.3	Money for Securities Payments to Be Held in Trust	59
Section 10.4	Additional Amounts	60
Section 10.5	Corporate Existence	62

TABLE OF CONTENTS
(continued)

		<u>Page</u>
Section 10.6	Waiver of Certain Covenants	62
Section 10.7	Company Statement as to Compliance; Notice of Certain Defaults	62
ARTICLE 11	REDEMPTION OF SECURITIES	63
Section 11.1	Applicability of Article	63
Section 11.2	Election to Redeem; Notice to Trustee	63
Section 11.3	Selection by Trustee of Securities to be Redeemed	63
Section 11.4	Notice of Redemption	64
Section 11.5	Deposit of Redemption Price	65
Section 11.6	Securities Payable on Redemption Date	65

Section 11.7	Securities Redeemed in Part	66
ARTICLE 12	SINKING FUNDS	66
Section 12.1	Applicability of Article	66
Section 12.2	Satisfaction of Sinking Fund Payments with Securities	67
Section 12.3	Redemption of Securities for Sinking Fund	67
ARTICLE 13	REPAYMENT AT THE OPTION OF HOLDERS	67
Section 13.1	Applicability of Article	67
ARTICLE 14	SECURITIES IN FOREIGN CURRENCIES	68
Section 14.1	Applicability of Article	68
ARTICLE 15	MEETINGS OF HOLDERS OF SECURITIES	68
Section 15.1	Purposes for Which Meetings May Be Called	68
Section 15.2	Call, Notice and Place of Meetings	68
Section 15.3	Persons Entitled to Vote at Meetings	69
Section 15.4	Quorum; Action	69
Section 15.5	Determination of Voting Rights; Conduct and Adjournment of Meetings	70
Section 15.6	Counting Votes and Recording Action of Meetings	70
ARTICLE 16	SUBORDINATION OF SECURITIES	71
Section 16.1	Agreement to Subordinate	71
Section 16.2	Default on Senior Indebtedness	71
Section 16.3	Liquidation; Dissolution; Bankruptcy	71
Section 16.4	Subrogation	73
Section 16.5	Trustee to Effectuate Subordination	73
Section 16.6	Notice by the Company	74

TABLE OF CONTENTS
(continued)

	<u>Page</u>	
Section 16.7	Rights of the Trustee; Holders of Senior Indebtedness	74
Section 16.8	Subordination May Not Be Impaired	75
Section 16.9	Rights of Trustee as Holder of Senior Indebtedness; Preservation of Trustee's Rights	75

INDENTURE, dated as of December 15, 2014 (the "Indenture"), between Envestnet, Inc., a company duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company"), having its principal executive office located at 35 East Wacker Drive, Suite 2400, Chicago, Illinois 60606 and U.S. Bank National Association, a national banking association, as Trustee (hereinafter called the "Trustee"), having its Corporate Trust Office located at 190 South LaSalle Street, 10th Floor, MK-IL-SLTR, Chicago, IL 60603, Attention: Global Corporate Trust and Escrow Services.

RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its subordinated unsecured debentures, notes or other evidences of indebtedness (hereinafter called the "Securities"), unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, to be issued in one or more series and to have such other provisions as shall be fixed as hereinafter provided.

The Company has duly authorized the execution and delivery of this Indenture. All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders (as herein defined) thereof, it is mutually covenanted and agreed, for the benefit of each other, and for the equal and proportionate benefit of all Holders of the Securities or of any series thereof and any Coupons (as herein defined) as follows:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions.

Except as otherwise expressly provided in or pursuant to this Indenture or unless the context otherwise requires, for all purposes of this Indenture:

- (1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States of America and, except as otherwise herein expressly provided, the terms “generally accepted accounting principles” or “GAAP” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States of America at the date or time of such computation

(4) the words “herein,” “hereof,” “hereto” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(5) the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both,” not “either A or B but not both”). Certain terms used principally in certain Articles hereof are defined in those Articles.

“Act,” when used with respect to any Holders, has the meaning specified in Section 1.4(1).

“Additional Amounts” means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes, assessments or other governmental charges imposed on Holders specified therein and which are owing to such Holders.

“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 the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have the meanings correlative to the foregoing.

“Applicable Procedures” means, with respect to any payment, tender, redemption, transfer, exchange or conversion of or for beneficial interests in any global Security, the rules and procedures of the Depository that apply to such payment, tender, redemption, transfer, exchange or conversion.

“Authenticating Agent” means any Person authorized by the Trustee pursuant to Section 6.12 to act on behalf of the Trustee to authenticate Securities of one or more series.

“Authorized Newspaper” means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are Legal Holidays in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.

“Authorized Officer” means, when used with respect to the Company, the Chairman of the Board of Directors, a Vice Chairman, the President, the Chief Financial Officer, the Chief Investment Officer, the Chief Accounting Officer, the General Counsel or the Secretary, of the Company.

“Bearer Security” means any Security in the form established pursuant to Section 2.1 which is payable to bearer.

“Board of Directors” means the board of directors of the Company or any committee of that board duly authorized to act generally or in any particular respect for the Company hereunder.

“Board Resolution” means a copy of one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, delivered to the Trustee.

“Business Day,” with respect to any Place of Payment or other location, means, unless otherwise specified with respect to any Securities pursuant to Section 3.1, any day other than a Saturday, Sunday or other day on which banking institutions in such Place of Payment or other location are authorized or obligated by law, regulation or executive order to close.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including Preferred Stock, but excluding any debt securities convertible into such equity.

“Capitalized Lease Obligation” means an obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with generally accepted accounting principles, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with such principles.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, as amended, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Common Stock” in respect of any Corporation means Capital Stock of any class or classes (however designated) which has no preference as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Corporation, and which is not subject to redemption by such Corporation.

“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person, and any other obligor upon the Securities.

“Company Request” and “Company Order” mean, respectively, a written request or order, as the case may be, signed in the name of the Company by an Authorized Officer, and delivered to the Trustee.

“Conversion Event” means the cessation of use of (i) a Foreign Currency both by the government of the country or the confederation which issued such Foreign Currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, or (ii) any currency unit or composite currency for the purposes for which it was established.

“Corporate Trust Office” means the principal corporate trust office of the Trustee at which at any particular time its corporate trust business with respect to this Indenture shall be administered, which office at the date of original execution of this Indenture is located at 190 South LaSalle Street, 10th Floor, MK-IL-SLTR, Chicago, IL 60603, Attention: Global Corporate Trust and Escrow Services.

“Corporation” includes corporations and limited liability companies and, except for purposes of Article 8, associations, companies and business trusts.

“Coupon” means any interest coupon appertaining to a Bearer Security.

“Currency,” with respect to any payment, deposit or other transfer in respect of the principal of or any premium or interest on or any Additional Amounts with respect to any Security, means Dollars or the Foreign Currency, as the case may be, in which such payment, deposit or other transfer is required to be made by or pursuant to the terms hereof or such Security and, with respect to any other payment, deposit or transfer pursuant to or contemplated by the terms hereof or such Security, means Dollars.

3

“CUSIP number” means the alphanumeric designation assigned to a Security by Standard & Poor’s Ratings Service, CUSIP Service Bureau.

“Defaulted Interest” has the meaning specified in Section 3.7.

“Depository Custodian” means the Trustee as custodian with respect to the global Securities or any successor entity thereto.

“Dollars” or “\$” means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

“Event of Default” has the meaning specified in Section 5.1.

“Foreign Currency” means any currency, currency unit or composite currency, including, without limitation, the euro, issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

“Government Obligations” means securities which are (i) direct obligations of the United States of America or the other government or governments which issued the Foreign Currency in which the principal of or any premium or interest on such Security or any Additional Amounts in respect thereof shall be payable, in each case where the payment or payments thereunder are supported by the full faith and credit of such government or governments or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such other government or governments, in each case where the timely payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government or governments, and which, in the case of (i) or (ii), are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of or other amount with respect to any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of or other amount with respect to the Government Obligation evidenced by such depository receipt.

“Holder,” in the case of any Registered Security, means the Person in whose name such Security is registered in the Security Register and, in the case of any Bearer Security, means the bearer thereof and, in the case of any Coupon, means the bearer thereof.

“Indebtedness” means, with respect to any Person, (i) the principal of and any premium and interest on (a) indebtedness of such Person for money borrowed and (b) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all Capitalized Lease Obligations of such Person; (iii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (i) through (iii) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit); (v) all

4

obligations of the type referred to in clauses (i) through (iv) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable as obligor, guarantor or otherwise; (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured; and (vii) any amendments, modifications, refundings, renewals or extensions of any indebtedness or obligation described as Indebtedness in clauses (i) through (vi) above.

“Indenture” means this instrument as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, with respect to any Security, by the terms and provisions of such Security and any Coupon appertaining thereto established pursuant to Section 3.1 (as such terms and provisions may be amended pursuant to the applicable provisions hereof).

“Independent Public Accountants” means accountants or a firm of accountants that, with respect to the Company and any other obligor under the Securities or the Coupons, are independent public accountants within the meaning of the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder, who may be the independent public accountants regularly retained by the Company or who may be other independent public accountants. Such accountants or firm shall be entitled to rely upon any Opinion of Counsel as to the interpretation of any legal matters relating to this Indenture or certificates required to be provided

hereunder.

“Indexed Security” means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

“Interest,” with respect to any Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity and, when used with respect to a Security which provides for the payment of Additional Amounts pursuant to Section 10.4, includes such Additional Amounts.

“Interest Payment Date,” with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Judgment Currency” has the meaning specified in Section 1.15.

“Legal Holidays” has the meaning specified in Section 1.13.

“Lien” means any mortgage, pledge, lien, security interest or other encumbrance.

“Maturity,” with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as provided in or pursuant to this Indenture, whether at the Stated Maturity or by declaration of acceleration, notice of redemption or repurchase, notice of option to elect repayment or otherwise, and includes the Redemption Date.

“New York Banking Day” has the meaning specified in Section 1.15.

“Office” or “Agency”, with respect to any Securities, means an office or agency of the Company maintained or designated in a Place of Payment for such Securities pursuant to Section 10.2 or any other office or agency of the Company maintained or designated for such Securities pursuant to Section 10.2 or,

5

to the extent designated or required by Section 10.2 in lieu of such office or agency, the Corporate Trust Office of the Trustee.

“Officer’s Certificate” means a certificate signed by an Authorized Officer that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be an employee of or counsel for the Company or other counsel who shall be reasonably acceptable to the Trustee, that, if required by the Trust Indenture Act, complies with the requirements of Section 314(e) of the Trust Indenture Act.

“Original Issue Discount Security” means a Security issued pursuant to this Indenture which provides for declaration of an amount less than the principal face amount thereof to be due and payable upon acceleration pursuant to Section 5.2.

“Outstanding,” when used with respect to any Securities, means, as of the date of determination, all such Securities theretofore authenticated and delivered under this Indenture, except:

- (1) any such Security theretofore cancelled by the Trustee or the Security Registrar or delivered to the Trustee or the Security Registrar for cancellation;
- (2) any such Security for whose payment at the Maturity thereof money in the necessary amount has been theretofore deposited pursuant hereto (other than pursuant to Section 4.2) with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities and any Coupons appertaining thereto, provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (3) any such Security with respect to which the Company has effected defeasance pursuant to the terms hereof, except to the extent provided in Section 4.2;
- (4) any such Security which has been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, unless there shall have been presented to the Trustee proof satisfactory to it that such Security is held by a bona fide purchaser in whose hands such Security is a valid obligation of the Company; and
- (5) any such Security converted or exchanged as contemplated by this Indenture into Common Stock of the Company or other securities, if the terms of such Security provide for such conversion or exchange pursuant to Section 3.1;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders of Securities for quorum purposes, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that pursuant to the terms of such Original Issue Discount Security would be declared (or shall have been declared to be) due and payable upon a declaration of acceleration thereof pursuant to Section 5.2 at the time of such determination, and (ii) the principal amount of any Indexed Security that may be counted in making such determination and that shall be deemed Outstanding for such purposes shall be equal to the principal face amount of such Indexed Security at original issuance,

6

unless otherwise provided in or pursuant to this Indenture, and (iii) the principal amount of a Security denominated in a Foreign Currency shall be the Dollar equivalent, determined on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent on the date of original issuance of such Security of the amount determined as provided in (i) above) of such Security, and (iv) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making any such determination or relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which shall have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee (A) the pledgee’s right so to act with respect to such Securities and (B) that the pledgee is not the Company or any other obligor upon the Securities or any Coupons appertaining thereto or an Affiliate of the Company or such other obligor.

“Paying Agent” means any Person authorized by the Company to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, any Security or any Coupon on behalf of the Company.

“Person” means any individual, Corporation, partnership, joint venture, joint-stock company, trust, unincorporated organization or government or any agency or

political subdivision thereof.

“Place of Payment,” with respect to any Security, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to such Security are payable as provided in or pursuant to this Indenture or such Security.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same Indebtedness as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a lost, destroyed, mutilated or stolen Security or any Security to which a mutilated, destroyed, lost or stolen Coupon appertains shall be deemed to evidence the same Indebtedness as the lost, destroyed, mutilated or stolen Security or the Security to which a mutilated, destroyed, lost or stolen Coupon appertains.

“Preferred Stock” in respect of any Corporation means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Corporation, over shares of Capital Stock of any other class of such Corporation.

“Redemption Date,” with respect to any Security or portion thereof to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture or such Security.

“Redemption Price,” with respect to any Security or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or pursuant to this Indenture or such Security.

“Registered Security” means any Security established pursuant to Section 2.1 which is registered in a Security Register.

“Regular Record Date” for the interest payable on any Registered Security on any Interest Payment Date therefor means the date, if any, specified in or pursuant to this Indenture or such Security as the “Regular Record Date”.

7

“Required Currency” has the meaning specified in Section 1.15.

“Responsible Officer” means any officer within the corporate trust department or the Trustee, including vice president, any assistant vice president, any assistant secretary, assistant treasurer, any trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers who at the time shall have responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Security” or “Securities” means any note or notes, bond or bonds, debenture or debentures, or any other evidences of Indebtedness, as the case may be, authenticated and delivered under this Indenture; provided, however, that, if at any time there is more than one Person acting as Trustee under this Indenture, “Securities,” with respect to any such Person, shall mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

“Security Register” and “Security Registrar” have the respective meanings specified in Section 3.5.

“Senior Indebtedness” means, with respect to the Securities of any particular series, all Indebtedness of the Company outstanding at any time, except (a) the Securities of such series, (b) Indebtedness as to which, by the terms of the instrument creating or evidencing the same, it is provided that such Indebtedness is subordinated to or *pari passu* with the Securities of such series, (c) Indebtedness of the Company to an Affiliate of the Company, (d) interest accruing after the filing of a petition initiating any proceeding referred to in Section 5.1(7) and Section 5.1(c)(8) unless such interest is an allowed claim enforceable against the Company in a proceeding under federal or state bankruptcy laws and (e) trade accounts payable.

“Special Record Date” for the payment of any Defaulted Interest on any Registered Security means a date fixed by the Company pursuant to Section 3.7.

“Stated Maturity,” with respect to any Security or any installment of principal thereof or interest thereon or any Additional Amounts with respect thereto, means the date established by or pursuant to this Indenture or such Security as the fixed date on which the principal of such Security or such installment of principal or interest is, or such Additional Amounts are, due and payable.

“Subsidiary” means, in respect of any Person, any Corporation, limited or general partnership or other business entity of which at the time of determination more than 50% of the voting power of the shares of its Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries of such Person or (iii) one or more Subsidiaries of such Person.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended, and any reference herein to the Trust Indenture Act or a particular provision thereof shall mean such Act or provision, as the case may be, as amended or replaced from time to time or as supplemented from time to time by rules or regulations adopted by the Commission under or in furtherance of the purposes of such Act or provision, as the case may be.

8

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such with respect to one or more series of Securities pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean each Person who is then a Trustee hereunder; provided, however, that if at any time there is more than one such Person, “Trustee” shall mean each such Person and as used with respect to the Securities of any series shall mean the Trustee with respect to the Securities of such series.

“U.S. Depository” or “Depository” means, with respect to any Security issuable or issued in the form of one or more global Securities, the Person designated as U.S. Depository or Depository by the Company in or pursuant to this Indenture, which Person must be, to the extent required by applicable law or regulation, a clearing agency registered under the Securities Exchange Act of 1934, as amended, and, if so provided with respect to any Security, any successor to such Person. If at any time there is more than one such Person, “U.S. Depository” or “Depository” shall mean, with respect to any Securities, the qualifying entity which has been appointed with respect to such Securities.

“United States,” except as otherwise provided in or pursuant to this Indenture or any Security, means the United States of America (including the states thereof and the District of Columbia), its territories and possessions and other areas subject to its jurisdiction.

“Vice President,” when used with respect to the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after

the title "Vice President".

Section 1.2 Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents or any of them is specifically required by any provision of this Indenture relating to such particular application or request, the certificate or opinion may be combined with the certificate or opinion described above in this Section 1.2.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that the individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and
- (4) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

9

Section 1.3 Form of Documents Delivered to Trustee

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, provided that such officer, after reasonable inquiry, has no reason to believe and does not believe that the Opinion of Counsel with respect to the matters upon which his certificate or opinion is based is erroneous. Any such Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, provided that such counsel, after reasonable inquiry, has no reason to believe and does not believe that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture or any Security, they may, but need not, be consolidated and form one instrument.

Section 1.4 Acts of Holders.

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or pursuant to this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. If, but only if, Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article 15, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 315 of the Trust Indenture Act) conclusive in favor of the Trustee, the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 15.6.

Without limiting the generality of this Section 1.4, unless otherwise provided in or pursuant to this Indenture, a Holder, including a U.S. Depository that is a Holder of a global Security, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other Act provided in or pursuant to this Indenture to be made, given or taken by Holders, and a U.S. Depository that is a Holder of a global Security may provide its proxy or proxies

10

to the beneficial owners of interests in any such global Security through such U.S. Depository's standing instructions and customary practices.

The Company shall fix a record date for the purpose of determining the Persons who are beneficial owners of interest in any permanent global Security held by a U.S. Depository entitled under the procedures of such U.S. Depository to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other Act provided in or pursuant to this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other Act, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other Act shall be valid or effective if made, given or taken more than 90 days after such record date.

(2) The fact and date of the execution by any Person of any such instrument or writing referred to in this Section 1.4 may be proved in any reasonable manner; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(3) The ownership, principal amount and serial numbers of Registered Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, shall be proved solely and conclusively by the Security Register. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(4) The ownership, principal amount and serial numbers of Bearer Securities held by any Person, and the date of the commencement and the date of the

termination of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depository, by any trust company, bank, banker or other depository reasonably acceptable to the Company, wherever situated, if such certificate shall be deemed by the Company and the Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depository, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Trustee to be satisfactory. The Trustee and the Company may assume that such ownership of any Bearer Security continues until (i) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (ii) such Bearer Security is produced to the Trustee by some other Person, or (iii) such Bearer Security is surrendered in exchange for a Registered Security, or (iv) such Bearer Security is no longer Outstanding. The ownership, principal amount and serial numbers of Bearer Securities held by the Person so executing such instrument or writing and the date of the commencement and the date of the termination of holding the same may also be proved in any other manner which the Company and the Trustee deem sufficient.

(5) If the Company shall solicit from the Holders of any Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may at its option (but is not obligated to), by Board Resolution, fix in advance a record date for the determination of Holders of Registered Securities entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given

11

before or after such record date, but only the Holders of Registered Securities of record at the close of business on such record date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders of Registered Securities shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

(6) Any request, demand, authorization, direction, notice, consent, waiver or other Act by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee, any Security Registrar, any Paying Agent or the Company in reliance thereon, whether or not notation of such Act is made upon such Security. Section 1.5 Notices, etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(2) the Company by the Trustee or any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, or sent by overnight air courier guaranteeing next day delivery to the Company addressed to the attention of its Treasurer, with a copy to the attention of its General Counsel, at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.5 Notice to Holders of Securities: Waiver.

Except as otherwise expressly provided in or pursuant to this Indenture, where this Indenture provides for notice to Holders of Securities of any event,

(1) such notice shall be sufficiently given to Holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each Holder of a Registered Security affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice; and

(2) such notice shall be sufficiently given to Holders of Bearer Securities, if any, if published in an Authorized Newspaper in The City of New York and, if such Securities are then listed on any stock exchange outside the United States, in an Authorized Newspaper in such city as the Company shall advise the Trustee that such stock exchange so requires, on a Business Day at least twice, the first such publication to be not earlier than the earliest date and the second such publication not later than the latest date prescribed for the giving of such notice.

In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities

12

or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice mailed to Holders of Registered Securities as provided above.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption or repurchase) to a Holder of a global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with Applicable Procedures.

Section 1.6 Language of Notices.

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 1.7 Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with any duties under any required provision of the Trust Indenture Act imposed hereon by Section 318(c) thereof, such required provision shall control.

Section 1.8 Effect of Headings and Table of Contents.(1)

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.9 Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

(1) NTD: Is a TIA cross reference table needed?

13

Section 1.10 Separability Clause.

In case any provision in this Indenture, any Security or any Coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11 Benefits of Indenture.

Nothing in this Indenture, any Security or any Coupon, express or implied, shall give to any Person, other than the parties hereto and holders of Senior Indebtedness, any Security Registrar, any Paying Agent, any Authenticating Agent and their successors hereunder and the Holders of Securities or Coupons, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 Governing Law.

This Indenture, the Securities and any Coupons shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made or instruments entered into and, in each case, performed wholly in said state.

Section 1.13 Legal Holidays.

Unless otherwise specified in or pursuant to this Indenture or any Securities, in any case where any Interest Payment Date, Stated Maturity or Maturity of any Security, or the last date on which a Holder has the right to convert or exchange Securities of a series that are convertible or exchangeable, shall not be a Business Day (each, a "Legal Holiday") at any Place of Payment, then (notwithstanding any other provision of this Indenture, any Security or any Coupon other than a provision in any Security or Coupon that specifically states that such provision shall apply in lieu hereof) payment need not be made at such Place of Payment on such date, and such Securities need not be converted or exchanged on such date but such payment may be made, and such Securities may be converted or exchanged, on the next succeeding day that is a Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or at the Stated Maturity or Maturity or on such last day for conversion or exchange, and no interest shall accrue on the amount payable on such date or at such time for the period from and after such Interest Payment Date, Stated Maturity, Maturity or last day for conversion or exchange, as the case may be, to such next succeeding Business Day.

Section 1.14 Counterparts.

This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 1.15 Judgment Currency.

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or premium or interest, if any, or Additional Amounts on the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking

14

procedures the Trustee could purchase in The City of New York the requisite amount of the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which a final unappealable judgment is given and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with clause (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a Legal Holiday in The City of New York or a day on which banking institutions in The City of New York are authorized or obligated by law, regulation or executive order to be closed.

Section 1.16 No Security Interest Created

Nothing in this Indenture or in any Securities, express or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect in any jurisdiction where property of the Company or its Subsidiaries is or may be located.

Section 1.17 Limitation on Individual Liability.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, shareholder, officer or director, as such, past, present or future, of the Company, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture

and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, shareholders, officers or directors, as such, of the Company, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, shareholder, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Security.

Section 1.18 Jury Trial Waiver.

EACH OF THE COMPANY, THE TRUSTEE, AND EACH HOLDER OF A SECURITY, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

15

Section 1.19 U.S.A. Patriot Act.

The Company acknowledges that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each Person that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

ARTICLE 2

SECURITIES FORMS

Section 2.1 Forms Generally.

Each Registered Security, Bearer Security, Coupon and temporary or permanent global Security issued pursuant to this Indenture shall be in the form established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by or pursuant to this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the officers executing such Security or Coupon as evidenced by their execution of such Security or Coupon.

Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall be issuable in registered form without Coupons and shall not be issuable upon the exercise of warrants.

Definitive Securities and definitive Coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers of the Company executing such Securities or Coupons, as evidenced by their execution of such Securities or Coupons.

Section 2.2 Form of Trustee's Certificate of Authentication.

Subject to Section 6.12, the Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By _____

Authorized Signatory

Section 2.3 Securities in Global Form

Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall not be issuable in temporary or permanent global form. If Securities of a series shall be issuable in global form, any such Security may provide that it or any number of such Securities shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of

16

Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges. Any endorsement of any Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or in the Company Order to be delivered pursuant to Section 3.3 or Section 3.4 with respect thereto. Subject to the provisions of Section 3.3 and, if applicable, Section 3.4, the Trustee shall deliver and redeliver, in each case at the Company's expense, any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order. If a Company Order pursuant to Section 3.3 or Section 3.4 has been, or simultaneously is, delivered, any instructions by the Company with respect to a Security in global form shall be in writing but need not be accompanied by or contained in an Officer's Certificate and need not be accompanied by an Opinion of Counsel.

Notwithstanding the provisions of Section 3.7, unless otherwise specified in or pursuant to this Indenture or any Securities, payment of principal of, any premium and interest on, and any Additional Amounts in respect of, any Security in temporary or permanent global form shall be made to the Person or Persons specified therein.

Notwithstanding the provisions of Section 3.8 and except as provided in the preceding paragraph, the Company, the Trustee and any agent of the Company or the Trustee shall treat as the Holder of such principal amount of Outstanding Securities represented by a global Security (i) in the case of a global Security in registered form, the Holder of such global Security in registered form, or (ii) in the case of a global Security in bearer form, the Person or Persons specified pursuant to Section 3.1.

Neither the Trustee nor any agent of the Company or the Trustee shall have responsibility for any actions taken or not taken by the Depository. The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Depository Custodian with respect to the global Securities. The Company has entered into a letter of representations with the Depository in the form provided by the Depository and the Trustee and each agent of the Company or the Trustee are hereby authorized to act in accordance with such letter and Applicable Procedures.

ARTICLE 3

THE SECURITIES

Section 3.1 Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series. The Securities of each series shall be subordinated in right of payment to all Senior Indebtedness with respect to such series as provided in Article 16.

With respect to any Securities to be authenticated and delivered hereunder, there shall be established in or pursuant to a Board Resolution and set forth in an Officer's Certificate, or established in one or more indentures supplemental hereto,

- (1) the title of such Securities and the series in which such Securities shall be included;
- (2) any limit upon the aggregate principal amount of the Securities of such title or the Securities of such series which may be authenticated and delivered under this Indenture

17

(except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 3.3, Section 3.5, Section 9.5 or Section 11.7, upon repayment in part of any Registered Security of such series pursuant to Article 13, upon surrender in part of any Registered Security for conversion into Common Stock of the Company or exchange for other securities pursuant to its terms, or pursuant to or as contemplated by the terms of such Securities);

(3) if such Securities are to be issuable as Registered Securities, as Bearer Securities or alternatively as Bearer Securities and Registered Securities, and whether the Bearer Securities are to be issuable with Coupons, without Coupons or both, and any restrictions applicable to the offer, sale or delivery of the Bearer Securities and the terms, if any, upon which Bearer Securities may be exchanged for Registered Securities and vice versa;

(4) if any of such Securities are to be issuable in global form, when any of such Securities are to be issuable in global form and (i) whether such Securities are to be issued in temporary or permanent global form or both, (ii) whether beneficial owners of interests in any such global Security may exchange such interests for Securities of the same series and of like tenor and of any authorized form and denomination, and the circumstances under which any such exchanges may occur, if other than in the manner specified in Section 3.5, and (iii) the name of the Depository or the U.S. Depository, as the case may be, with respect to any such global Security;

(5) if any of such Securities are to be issuable as Bearer Securities or in global form, the date as of which any such Bearer Security or global Security shall be dated (if other than the date of original issuance of the first of such Securities to be issued);

(6) if any of such Securities are to be issuable as Bearer Securities, whether interest in respect of any portion of a temporary Bearer Security in global form payable in respect of an Interest Payment Date therefor prior to the exchange, if any, of such temporary Bearer Security for definitive Securities shall be paid to any clearing organization with respect to the portion of such temporary Bearer Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date;

(7) the date or dates, or the method or methods, if any, by which such date or dates shall be determined, on which the principal of such Securities is payable;

(8) the rate or rates at which such Securities shall bear interest, if any, or the method or methods, if any, by which such rate or rates are to be determined, the date or dates, if any, from which such interest shall accrue or the method or methods, if any, by which such date or dates are to be determined, the Interest Payment Dates, if any, on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on Registered Securities on any Interest Payment Date, whether and under what circumstances Additional Amounts on such Securities or any of them shall be payable, the notice, if any, to Holders regarding the determination of interest on a floating rate Security and the manner of giving such notice, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(9) if in addition to or other than the Corporate Trust Office, the place or places where the principal of, any premium and interest on or any Additional Amounts with respect to such Securities shall be payable, any of such Securities that are Registered Securities may be

18

surrendered for registration of transfer or exchange, any of such Securities may be surrendered for conversion or exchange and notices or demands to or upon the Company in respect of such Securities and this Indenture may be served, the extent to which, or the manner in which, any interest payment or Additional Amounts on a global Security on an Interest Payment Date, will be paid and the manner in which any principal of or premium, if any, on any global Security will be paid;

(10) whether any of such Securities are to be redeemable at the option of the Company and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities may be redeemed, in whole or in part, at the option of the Company;

(11) whether the Company is obligated to redeem or purchase any of such Securities pursuant to any sinking fund or analogous provision or at the option of any Holder thereof and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities so redeemed or purchased;

(12) the denominations in which any of such Securities that are Registered Securities shall be issuable if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any of such Securities that are Bearer Securities shall be issuable if other than the denomination of \$5,000;

(13) whether the Securities of the series will be convertible into shares of Common Stock of the Company and/or exchangeable for other securities, whether or not issued by the Company, and, if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, and any deletions from or modifications or additions to this Indenture to permit or to facilitate the issuance of such convertible or exchangeable Securities or the administration thereof;

(14) if other than the principal amount thereof, the portion of the principal amount of any of such Securities that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2 or the method by which such portion is to be determined;

(15) if other than Dollars, the Foreign Currency in which payment of the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities shall be payable;

(16) if the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities are to be payable, at the election of the Company or a Holder thereof or otherwise, in Dollars or in a Foreign Currency other than that in which such Securities are stated to be payable, the date or dates on which, the period or periods within which, and the other terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the Currency in which such Securities are stated to be payable and the Currency in which such Securities or any of them are to be paid pursuant to such election, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of Securities denominated or payable, at the election of the Company or a Holder thereof or otherwise, in a Foreign Currency;

19

(17) whether the amount of payments of principal of, any premium or interest on or any Additional Amounts with respect to such Securities may be determined with reference to an index, formula or other method or methods (which index, formula or method or methods may be based, without limitation, on one or more Currencies, commodities, equity securities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;

(18) the relative degree, if any, to which Securities of such series shall be senior to or be subordinated to other series of Securities or other Indebtedness of the Company in right of payment, whether such other series of Securities or other Indebtedness is outstanding or not;

(19) any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to any of such Securities, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(20) whether either or both of Section 4.2(2) relating to defeasance or Section 4.2(3) relating to covenant defeasance shall not be applicable to the Securities of such series, or any covenants in addition to those specified in Section 4.2(3) relating to the Securities of such series which shall be subject to covenant defeasance, and any deletions from, or modifications or additions to, the provisions of Article 4 in respect of the Securities of such series;

(21) whether any of such Securities are to be issuable upon the exercise of warrants, and the time, manner and place for such Securities to be authenticated and delivered;

(22) if any of such Securities are to be issuable in global form and are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(23) if there is more than one Trustee, the identity of the Trustee and, if not the Trustee, the identity of each Security Registrar, Paying Agent or Authenticating Agent with respect to such Securities; and

(24) any other terms of such Securities and any other deletions from or modifications or additions to this Indenture in respect of such Securities.

All Securities of any one series and all Coupons, if any, appertaining to Bearer Securities of such series shall be substantially identical except as to Currency of payments due thereunder, denomination and the rate of interest thereon, or method of determining the rate of interest, if any, Maturity, and the date from which interest, if any, shall accrue and except as may otherwise be provided by the Company in or pursuant to the Board Resolution and set forth in the Officer's Certificate or in any indenture or indentures supplemental hereto pertaining to such series of Securities. The terms of the Securities of any series may provide, without limitation, that the Securities shall be authenticated and delivered by the Trustee on original issue from time to time upon written order of persons designated in the Officer's Certificate or supplemental indenture and that such persons are authorized to determine, consistent with such Officer's Certificate or any applicable supplemental indenture, such terms and conditions of the Securities of such series as are specified in such Officer's Certificate or supplemental indenture. All Securities of any one series need not be issued at the same time and, unless otherwise so provided, a series may be reopened for issuances of additional Securities of such series or to establish additional terms of such series of Securities. No Officer's Certificate may affect the Trustee's own rights, duties or

20

immunities under this Indenture or otherwise with respect to any series of Securities except as it may agree in writing.

If any of the terms of the Securities of any series shall be established by action taken by or pursuant to a Board Resolution, the Board Resolution shall be delivered to the Trustee at or prior to the delivery of the Officer's Certificate setting forth the terms of such series.

Section 3.2 Currency: Denominations.

Unless otherwise provided in or pursuant to this Indenture, the principal of, any premium and interest on and any Additional Amounts with respect to the Securities shall be payable in Dollars. Unless otherwise provided in or pursuant to this Indenture, Registered Securities denominated in Dollars shall be issuable in registered form without Coupons in denominations of \$1,000 and any integral multiple thereof, and the Bearer Securities denominated in Dollars shall be issuable in the denomination of \$5,000. Securities not denominated in Dollars shall be issuable in such denominations as are established with respect to such Securities in or pursuant to this Indenture.

Section 3.3 Execution, Authentication, Delivery and Dating

Securities shall be executed on behalf of the Company by its Chairman of the Board, a Vice Chairman, its President, Chief Financial Officer, Chief Investment Officer or Chief Accounting Officer and attested by its Secretary. Coupons shall be executed on behalf of the Company by the Chief Financial Officer or Chief Accounting Officer of the Company. The signature of any of these officers on the Securities or any Coupons appertaining thereto may be manual or facsimile.

Securities and any Coupons appertaining thereto bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities and Coupons or did not hold such offices at the date of original issuance of such Securities or Coupons.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities, together with any Coupons appertaining thereto, executed by the Company, to the Trustee for authentication and, provided that the Board Resolution and Officer's Certificate or supplemental indenture or indentures with respect to such Securities referred to in Section 3.1 and a Company Order for the authentication and delivery of such Securities have been delivered to the Trustee, the Trustee in accordance with the Company Order and subject to the provisions hereof and of such Securities shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities and any Coupons appertaining thereto, the Trustee shall be entitled to receive, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon,

(1) A copy of the resolution or resolutions of the Board of Directors in or pursuant to which the terms and form of the Securities were established, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect as of the date of such certificate, and if the terms and form of such Securities are established by an Officer's Certificate pursuant to general authorization of the Board of Directors, such Officer's Certificate;

(2) an executed supplemental indenture, if any;

21

(3) an Officer's Certificate delivered in accordance with Section 1.2; and

(4) an Opinion of Counsel to the effect that:

(a) the form or forms and terms of such Securities and Coupons, if any, have been established in conformity with the provisions of this Indenture;

(b) all conditions precedent to the authentication and delivery of such Securities and Coupons, if any, appertaining thereto, have been complied with and that such Securities and Coupons, when completed by appropriate insertions and attested by duly authorized officers of the Company, delivered by duly authorized officers of the Company to the Trustee for authentication pursuant to this Indenture, and authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, this Indenture and such Securities will constitute legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be subject to or limited by bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance, fraudulent transfer or other similar laws relating to or affecting creditors' rights generally, and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) and will entitle the Holders thereof to the benefits of this Indenture; such Opinion of Counsel need express no opinion as to the availability of equitable remedies;

(c) all laws and requirements in respect of the execution and delivery by the Company of such Securities and Coupons, if any, have been complied with; and

(d) this Indenture has been qualified under the Trust Indenture Act; and

(5) an Officer's Certificate stating that all conditions precedent to the execution, authentication and delivery of such Securities and Coupons, if any, appertaining thereto, have been complied with and that, to the best knowledge of the Persons executing such certificate, no event which is, or after notice or lapse of time would become, an Event of Default with respect to any of the Securities shall have occurred and be continuing.

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel and an Officer's Certificate at the time of issuance of each Security, but such opinion and certificate, with appropriate modifications, shall be delivered at or before the time of issuance of the first Security of such series. After any such first delivery, any separate written request by an Authorized Officer of the Company or any person designated in writing by an Authorized Officer that the Trustee authenticate and deliver Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Indenture relating to authentication and delivery of such Securities continue to have been complied with.

The Trustee shall not be required to authenticate or to cause an Authenticating Agent to authenticate any Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

Each Registered Security shall be dated the date of its authentication. Each Bearer Security and any Bearer Security in global form shall be dated as of the date specified in or pursuant to this Indenture.

22

No Security or Coupon appertaining thereto shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for in Section 2.2 or Section 6.12 executed by or on behalf of the Trustee or by the Authenticating Agent by the manual signature of one of its authorized officers. Such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Except as permitted by Section 3.6 or Section 3.7, the Trustee shall not authenticate and deliver any Bearer Security unless all Coupons appertaining thereto then matured have been detached and cancelled.

Section 3.4 Temporary Securities.

Pending the preparation of definitive Securities, the Company may execute and deliver to the Trustee and, upon Company Order, the Trustee shall authenticate and deliver, in the manner provided in Section 3.3, temporary Securities in lieu thereof which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form or, if authorized in or pursuant to this Indenture, in bearer form with one or more Coupons or without Coupons and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Company executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Such temporary Securities may be in global form.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions thereof, if temporary Securities are issued, the Company shall cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities of the same series and containing terms and provisions that are identical to those of any temporary Securities, such temporary Securities shall be exchangeable for such definitive Securities upon surrender of such temporary Securities at an Office or Agency for such Securities, without charge to any Holder thereof. Upon surrender for cancellation of any one or more temporary Securities (accompanied by any unmatured Coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series and containing identical terms and provisions; provided, however, that no definitive Bearer Security, except as provided in or pursuant to this Indenture, shall be delivered in exchange for a temporary Registered Security; and provided, further, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in or pursuant to this Indenture. Unless otherwise provided in or pursuant to this Indenture with respect to a temporary global Security, until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 3.5 Registration, Transfer and Exchange.

With respect to the Registered Securities of each series, if any, the Company shall cause to be kept a register (each such register being herein sometimes referred to as the "Security Register") at an Office or Agency for such series in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the

registration of the Registered Securities of such series and of transfers of the Registered Securities of such series. Such Office or Agency shall be the "Security Registrar" for that series of Securities. Unless otherwise specified in or pursuant to this Indenture or the Securities, the Trustee shall be the initial Security Registrar for each series of Securities. The Company shall have the right to remove and replace from time to time the Security Registrar for any series of Securities; provided that no such removal or replacement shall be effective until a successor Security Registrar with respect to such series of Securities shall have been appointed by the Company and shall have accepted such appointment by the Company. In the event that the Trustee shall not be or shall cease to be Security

Registrar with respect to a series of Securities, it shall have the right to examine the Security Register for such series at all reasonable times. There shall be only one Security Register for each series of Securities.

Upon surrender for registration of transfer of any Registered Security of any series at any Office or Agency for such series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series denominated as authorized in or pursuant to this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.

At the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series containing identical terms and provisions, in any authorized denominations, and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any Office or Agency for such series. Whenever any Registered Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive.

If provided in or pursuant to this Indenture, with respect to Securities of any series, at the option of the Holder, Bearer Securities of such series may be exchanged for Registered Securities of such series containing identical terms, denominated as authorized in or pursuant to this Indenture and in the same aggregate principal amount, upon surrender of the Bearer Securities to be exchanged at any Office or Agency for such series, with all unmatured Coupons and all matured Coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured Coupon or Coupons or matured Coupon or Coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company and the Trustee in an amount equal to the face amount of such missing Coupon or Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to any Paying Agent any such missing Coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; provided, however, that, except as otherwise provided in Section 10.2, interest represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such series located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such Office or Agency for such series in exchange for a Registered Security of such series and like tenor after the close of business at such Office or Agency on (i) any Regular Record Date and before the opening of business at such Office or Agency on the next succeeding Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such Office or Agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date or proposed date of payment, as the case may be (or, if such Coupon is so surrendered with such Bearer Security, such Coupon shall be returned to the Person so surrendering the Bearer Security), and interest or Defaulted Interest, as the case may be, shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

If provided in or pursuant to this Indenture with respect to Securities of any series, at the option of the Holder, Registered Securities of such series may be exchanged for Bearer Securities upon such terms and conditions as may be provided in or pursuant to this Indenture with respect to such series.

Whenever any Securities are surrendered for exchange as contemplated by the immediately preceding two paragraphs, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise provided in or pursuant to this Indenture, any global Security shall be exchangeable for definitive Securities only if (i) the Depository is at any time unwilling, unable or ineligible to continue as depository and a successor depository is not appointed by the Company within 90 days of the date the Company is so informed in writing, (ii) the Company executes and delivers to the Trustee a Company Order to the effect that such global Security shall be so exchangeable, or (iii) an Event of Default has occurred and is continuing with respect to the Securities. If the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities as the result of an event described in clause (i), (ii) or (iii) of the preceding sentence, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Securities in such form and denominations as are required by or pursuant to this Indenture, and of the same series, containing identical terms and in aggregate principal amount equal to the principal amount of such global Security, executed by the Company. On or after the earliest date on which such interests may be so exchanged, such global Security shall be surrendered from time to time by the U.S. Depository or such other Depository as shall be specified in the Company Order with respect thereto, and in accordance with instructions given to the Trustee and the U.S. Depository or such other Depository, as the case may be (which instructions shall be in writing), as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or in part, for definitive Securities as described above without charge. The Trustee shall authenticate and make available for delivery, in exchange for each portion of such surrendered global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such global Security to be exchanged, which (unless such Securities are not issuable both as Bearer Securities and as Registered Securities, in which case the definitive Securities exchanged for the global Security shall be issuable only in the form in which the Securities are issuable, as provided in or pursuant to this Indenture) shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as shall be specified by the beneficial owner thereof, but subject to the satisfaction of any certification or other requirements to the issuance of Bearer Securities; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities of the same series to be redeemed and ending on the relevant Redemption Date; and provided, further, that (unless otherwise provided in or pursuant to this Indenture) no Bearer Security delivered in exchange for a portion of a global Security shall be mailed or otherwise delivered to any location in the United States. Promptly following any such exchange in part, such global Security shall be returned by the Trustee to such Depository or the U.S. Depository, as the case may be, or such other Depository or U.S. Depository referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a global Security after the close of business at the Office or Agency for such Security where such exchange occurs on or after (i) any Regular Record Date for such Security and before the opening of business at such Office or Agency on the next succeeding Interest Payment Date, or (ii) any Special Record Date for such Security and before the opening of business at such Office or Agency on the related proposed date for payment of interest or Defaulted Interest, as the case may be, interest shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but shall be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such global Security shall be payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

Every Registered Security presented or surrendered for registration of transfer or for exchange or redemption shall (if so required by the Company or the Security Registrar for such Security) be duly

endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar for such Security duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange, or redemption of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge and any other expenses (including fees and expenses of the Trustee) that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, Section 9.5 or Section 11.7 not involving any transfer.

Except as otherwise provided in or pursuant to this Indenture, the Company shall not be required (i) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of Securities of like tenor and the same series under Section 11.3 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Registered Security selected for redemption in whole or in part, except in the case of any Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security selected for redemption except, to the extent provided with respect to such Bearer Security, that such Bearer Security may be exchanged for a Registered Security of like tenor and the same series, provided that such Registered Security shall be immediately surrendered for redemption with written instruction for payment consistent with the provisions of this Indenture or (iv) to issue, register the transfer of or exchange any Security which, in accordance with its terms, has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

Section 3.6 Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security or a Security with a mutilated Coupon appertaining to it is surrendered to the Trustee, subject to the provisions of this Section 3.6, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons appertaining thereto corresponding to the Coupons, if any, appertaining to the surrendered Security.

If there be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or Coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or Coupon has been acquired by a bona fide purchaser, the Company shall execute and, upon the Company's request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen Coupon appertains with all appurtenant Coupons not destroyed, lost or stolen, a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons appertaining thereto corresponding to the Coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Coupon appertains.

Notwithstanding the foregoing provisions of this Section 3.6, in case any mutilated, destroyed, lost or stolen Security or Coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or Coupon; provided, however, that payment of principal of, any premium or interest on or any Additional Amounts with respect to any Bearer Securities shall, except as otherwise provided in Section 10.2, be payable only at an Office or Agency for such Securities located outside the United States and, unless otherwise provided in or

pursuant to this Indenture, any interest on Bearer Securities and any Additional Amounts with respect to such interest shall be payable only upon presentation and surrender of the Coupons appertaining thereto.

Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security, with any Coupons appertaining thereto issued pursuant to this Section 3.6 in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen Coupon appertains shall constitute a separate obligation of the Company, whether or not the destroyed, lost or stolen Security and Coupons appertaining thereto or the destroyed, lost or stolen Coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series and any Coupons, if any, duly issued hereunder.

The provisions of this Section 3.6, as amended or supplemented pursuant to this Indenture with respect to particular Securities or generally, shall be exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Coupons.

Section 3.7 Payment of Interest and Certain Additional Amounts; Rights to Interest and Certain Additional Amounts Preserved

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, and are punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered as of the close of business on the Regular Record Date for such interest.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, but shall not be punctually paid or duly provided for, on any Interest Payment Date for such Registered Security (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed by the Company in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Registered Security, the Special Record Date therefor and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this Clause provided. The Special Record Date for the payment of such Defaulted Interest shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 12 days after notification to the Trustee of the proposed payment. The Trustee shall, in the name and at the expense of the Company, cause notice of the proposed payment of

such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of such Registered Security (or a Predecessor Security thereof) at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company cause a similar notice to be published at least once in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Security may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such payment shall be deemed practicable by the Trustee.

Unless otherwise provided in or pursuant to this Indenture or the Securities of any particular series pursuant to the provisions of this Indenture, at the option of the Company, interest on Registered Securities that bear interest may be paid by mailing a check to the address of the Person entitled thereto as such address shall appear in the Security Register or by transfer to an account maintained by the payee with a bank located in the United States.

Subject to the foregoing provisions of this Section and Section 3.5, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

In the case of any Registered Security of any series that is convertible into shares of Common Stock of the Company or exchangeable for other securities, which Registered Security is converted or exchanged after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Registered Security with respect to which the Stated Maturity is prior to such Interest Payment Date), interest with respect to which the Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion or exchange, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Registered Security (or one or more predecessor Registered Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Registered Security which is converted or exchanged, interest with respect to which the Stated Maturity is after the date of conversion or exchange of such Registered Security shall not be payable.

Section 3.8 Persons Deemed Owners

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Registered Security is registered in the Security Register as the owner of such Registered Security for the purpose of receiving payment of principal of, any premium and (subject to Section 3.5 and Section 3.7) interest on and any Additional Amounts with respect to such Registered Security and for all other purposes whatsoever, whether or not any payment with respect to such Registered Security shall be overdue, and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

28

The Company, the Trustee and any agent of the Company or the Trustee may treat the bearer of any Bearer Security or the bearer of any Coupon as the absolute owner of such Security or Coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not any payment with respect to such Security or Coupon shall be overdue, and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

No Holder of any beneficial interest in any global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such global Security, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 3.9 Cancellation

All Securities and Coupons surrendered for payment, redemption, registration of transfer, exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Coupons, as well as Securities and Coupons surrendered directly to the Trustee for any such purpose, shall be cancelled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be cancelled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by or pursuant to this Indenture. All cancelled Securities and Coupons held by the Trustee shall be disposed of by the Trustee in accordance with its normal operating procedures.

Section 3.10 Computation of Interest; Calculations

Except as otherwise provided in or pursuant to this Indenture or in any Security, interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months. The Company shall be responsible for making calculations called for under the Securities and this Indenture, including but not limited to determination of interest, Additional Amounts, Redemption Price, premium, if any, conversion and adjustments with respect thereto, and any other amounts payable on the Securities. The Company will make the calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Company will provide a schedule of its calculations to the Trustee when requested by the Trustee, and the Trustee is entitled to rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder of the Securities upon the written request of such Holder.

Section 3.11 CUSIP Numbers

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee may use "CUSIP" numbers in notices as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

29

ARTICLE 4

SATISFACTION AND DISCHARGE OF INDENTURE

Section 4.1 Satisfaction and Discharge.

Upon the direction of the Company by a Company Order, this Indenture shall cease to be of further effect with respect to any series of Securities specified in such Company Order and any Coupons appertaining thereto, and the Trustee, on receipt of a Company Order, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when

(1) either

(a) all Securities of such series theretofore authenticated and delivered and all Coupons appertaining thereto (other than (i) Coupons appertaining to Bearer Securities of such series surrendered in exchange for Registered Securities of such series and maturing after such exchange whose surrender is not required or has been waived as provided in Section 3.5, (ii) Securities and Coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6, (iii) Coupons appertaining to Securities of such series called for redemption and maturing after the relevant Redemption Date whose surrender has been waived as provided in Section 11.7, and (iv) Securities and Coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

(b) all Securities of such series(c) s and, in the case of (i) or (ii) below, any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation (i) have become due and payable, or

(i) will become due and payable at their Stated Maturity within one year, or

(ii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose, money in the Currency in which such Securities are payable in an amount sufficient to pay and discharge the entire indebtedness on such Securities and any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and any Additional Amounts with respect to such Securities and any Coupons appertaining thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Outstanding Securities of such series and any Coupons appertaining thereto; and

30

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture as to such series have been complied with.

In the event there are Securities of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of such series as to which it is Trustee and if the other conditions thereto are met.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any series of Securities, the obligations of the Company to the Trustee under Section 6.7 and, if money shall have been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section, the obligations of the Company and the Trustee with respect to the Securities of such series under Section 3.5, Section 3.6, Section 4.3, Section 10.2 and Section 10.3, with respect to the payment of Additional Amounts, if any, with respect to such Securities as contemplated by Section 10.4 (but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to Section 4.1(b)), and with respect to any rights to convert or exchange such Securities into Common Stock of the Company or other securities shall survive.

Section 4.2 Defeasance and Covenant Defeasance.

(1) Unless pursuant to Section 3.1, either or both of (i) defeasance of the Securities of or within a series under clause (2) of this Section 4.2 shall not be applicable with respect to the Securities of such series or (ii) covenant defeasance of the Securities of or within a series under clause (3) of this Section 4.2 shall not be applicable with respect to the Securities of such series, then such provisions, together with the other provisions of this Section 4.2 (with such modifications thereto as may be specified pursuant to Section 3.1 with respect to any Securities), shall be applicable to such Securities and any Coupons appertaining thereto, and the Company may at its option by Board Resolution, at any time, with respect to such Securities and any Coupons appertaining thereto, elect to have Section 4.2(2) or Section 4.2(3) be applied to such Outstanding Securities and any Coupons appertaining thereto upon compliance with the conditions set forth below in this Section 4.2.

(2) Upon the Company's exercise of the above option applicable to this Section 4.2(2) with respect to any Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Securities and any Coupons appertaining thereto on the date the conditions set forth in clause (4) of this Section 4.2 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by such Outstanding Securities and any Coupons appertaining thereto, which shall thereafter be deemed to be "Outstanding" only for the purposes of clause (5) of this Section 4.2 and the other Sections of this Indenture referred to in clauses (i) and (ii) below, and to have satisfied all of its other obligations under such Securities and any Coupons appertaining thereto and this Indenture insofar as such Securities and any Coupons appertaining thereto are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Securities and any Coupons appertaining thereto to receive, solely from the trust fund described in clause (4) of this Section 4.2 and as more fully set forth in such clause, payments in respect of the principal of (and premium, if any) and interest, if any, on, and Additional Amounts, if any, with respect to, such Securities and any Coupons appertaining thereto when such payments are due, and any rights of such Holder to convert such

31

Securities into Common Stock of the Company or exchange such Securities for other securities, (ii) the obligations of the Company and the Trustee with respect to such Securities under Section 3.5, Section 3.6, Section 10.2 and Section 10.3 and with respect to the payment of Additional Amounts, if any, on such Securities as contemplated by Section 10.4 (but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to Section 4.2(a) below), and with respect to any rights to convert such Securities into Common Stock of the Company or exchange such Securities for other securities, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 4.2 The Company may exercise its option under this Section 4.2(2) notwithstanding the prior exercise of its option under clause (3) of this Section 4.2 with respect to such Securities and any Coupons appertaining thereto.

(3) Upon the Company's exercise of the option to have this Section 4.2(3) apply with respect to any Securities of or within a series, the Company shall be released from its obligations under any covenant applicable to such Securities specified pursuant to Section 3.1(20), with respect to such Outstanding Securities and

any Coupons appertaining thereto on and after the date the conditions set forth in clause (4) of this Section 4.2 are satisfied (hereinafter, “covenant defeasance”), and such Securities and any Coupons appertaining thereto shall thereafter be deemed to be not “Outstanding” for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with any such covenant, but shall continue to be deemed “Outstanding” for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Securities and any Coupons appertaining thereto, the Company may omit to comply with, and shall have no liability in respect of, any term, condition or limitation set forth in any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 5.1(4) or Section 5.1(9) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities and Coupons appertaining thereto shall be unaffected thereby.

(4) The following shall be the conditions to application of clause (2) or (3) of this Section 4.2 to any Outstanding Securities of or within a series and any Coupons appertaining thereto:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.8 who shall agree to comply with the provisions of this Section 4.2 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities and any Coupons appertaining thereto, (1) an amount in Dollars or in such Foreign Currency in which such Securities and any Coupons appertaining thereto are then specified as payable at Stated Maturity, or (2) Government Obligations applicable to such Securities and Coupons appertaining thereto (determined on the basis of the Currency in which such Securities and Coupons appertaining thereto are then specified as payable at Stated Maturity) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Securities and any Coupons appertaining thereto, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized

32

Independent Public Accountant expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on such Outstanding Securities and any Coupons appertaining thereto at the Stated Maturity of such principal or installment of principal or premium or interest and (z) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities and any Coupons appertaining thereto on the days on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities and any Coupons appertaining thereto.

(b) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities and any Coupons appertaining thereto shall have occurred and be continuing on the date of such deposit and, with respect to defeasance only, at any time during the period ending on the 123rd day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(d) In the case of an election under clause (2) of this Section 4.2, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from the Internal Revenue Service a letter ruling, or there has been published by the Internal Revenue Service a Revenue Ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the Holders of such Outstanding Securities and any Coupons appertaining thereto will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.

(e) In the case of an election under clause (3) of this Section 4.2, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Outstanding Securities and any Coupons appertaining thereto will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(f) The Company shall have delivered to the Trustee an Opinion of Counsel to the effect that, after the 123rd day after the date of deposit, all money and Government Obligations (or other property as may be provided pursuant to Section 3.1) (including the proceeds thereof) deposited or caused to be deposited with the Trustee (or other qualifying trustee) pursuant to this clause (4) to be held in trust will not be subject to any case or proceeding (whether voluntary or involuntary) in respect of the Company under any Federal or State bankruptcy, insolvency, reorganization or other similar law, or any decree or order for relief in respect of the Company issued in connection therewith.

33

(g) The Company shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance under clause (2) or (3) of this Section 4.2 (as the case may be) have been complied with.

(h) Notwithstanding any other provisions of this Section 4.2(4), such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.1.

(5) Unless otherwise specified in or pursuant to this Indenture or any Security, if, after a deposit referred to in Section 4.2(4)(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 3.1 or the terms of such Security to receive payment in a Currency other than that in which the deposit pursuant to Section 4.2(4)(a) has been made in respect of such Security, or (b) a Conversion Event occurs in respect of the Foreign Currency in which the deposit pursuant to Section 4.2(4)(a) has been made, the indebtedness represented by such Security and any Coupons appertaining thereto shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, on, and Additional Amounts, if any, with respect to, such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the Currency in which such Security becomes payable as a result of such election or Conversion Event based on (x) in the case of payments made pursuant to clause (a) above, the applicable market exchange rate for such Currency in effect on the second Business Day prior to each payment date, or (y) with respect to a Conversion Event, the applicable market exchange rate for such Foreign Currency in effect (as nearly as feasible) at the time of the Conversion Event.

The Company shall pay and indemnify the Trustee (or other qualifying trustee, collectively for purposes of this Section 4.2(5) and Section 4.3, the “Trustee”) against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited pursuant to this Section 4.2 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities and any Coupons appertaining thereto.

Anything in this Section 4.2 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in clause (4) of this Section 4.2 which, in the opinion of a nationally recognized Independent Public Accountant expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Section 4.2.

Section 4.3 Application of Trust Money.

Subject to the provisions of the last paragraph of Section 10.3, all money and Government Obligations (or other property as may be provided pursuant to Section 3.1) (including the proceeds thereof) deposited with the Trustee pursuant to Section 4.1 or Section 4.2 in respect of any Outstanding Securities of any series and any Coupons appertaining thereto shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and any Coupons appertaining thereto and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities and any

34

Coupons appertaining thereto of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any; but such money and Government Obligations need not be segregated from other funds except to the extent required by law.

ARTICLE 5

REMEDIES

Section 5.1 Events of Default.

“Event of Default,” wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be 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), unless such event is specifically deleted or modified in or pursuant to the supplemental indenture, Board Resolution or Officer’s Certificate establishing the terms of such series pursuant to this Indenture:

- (1) default in the payment of any interest on any Security of such series, or any Additional Amounts payable with respect thereto, when such interest becomes or such Additional Amounts become due and payable, and continuance of such default for a period of 30 days; or
- (2) default in the payment of the principal of or any premium on any Security of such series, or any Additional Amounts payable with respect thereto, when such principal or premium becomes or such Additional Amounts become due and payable at their Maturity; or
- (3) default in the deposit of any sinking fund payment when and as due by the terms of a Security of such series; or
- (4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Securities (other than a covenant or warranty a default in the performance or the breach of which is elsewhere in this Section specifically dealt with or which has been expressly included in this Indenture solely for the benefit of a series of Securities other than such series), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail or by overnight air courier guaranteeing next day delivery, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or
- (5) if any event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any Indebtedness of the Company (including an Event of Default under any other series of Securities), whether such Indebtedness now exists or shall hereafter be created or incurred, shall happen and shall consist of default in the payment of more than \$50,000,000 in principal amount of such Indebtedness at the maturity thereof (after giving effect to any applicable grace period) or shall result in such Indebtedness in principal amount in excess of \$50,000,000 becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and such default shall not be cured or such acceleration shall not be rescinded or annulled within a period of 30 days after there shall have been given, by registered or certified mail or by overnight air courier guaranteeing next day delivery, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such

35

series, a written notice specifying such event of default and requiring the Company to cause such default to be cured or to cause such acceleration to be rescinded or annulled or to cause such Indebtedness to be discharged and stating that such notice is a “Notice of Default” hereunder; or

- (6) the Company shall fail within 60 days to pay, bond or otherwise discharge any uninsured judgment or court order for the payment of money in excess of \$50,000,000, which is not stayed on appeal or is not otherwise being appropriately contested in good faith; or
- (7) the entry by a court having competent jurisdiction of:
 - (a) a decree or order for relief in respect of the Company in an involuntary proceeding under any applicable bankruptcy, insolvency, reorganization (other than a reorganization under a foreign law that does not relate to insolvency) or other similar law and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or
 - (b) a decree or order adjudging the Company to be insolvent, or approving a petition seeking reorganization (other than a reorganization under a foreign law that does not relate to insolvency), arrangement, adjustment or composition of the Company and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or
 - (c) a final and non-appealable order appointing a custodian, receiver, liquidator, assignee, trustee or other similar official of the Company or of any substantial part of the property of the Company or ordering the winding up or liquidation of the affairs of the Company; or
- (8) the commencement by the Company of a voluntary proceeding under any applicable bankruptcy, insolvency, reorganization (other than a reorganization under a foreign law that does not relate to insolvency) or other similar law or of a voluntary proceeding seeking to be adjudicated insolvent or the consent by the Company to the entry of a decree or order for relief in an involuntary proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or to the commencement of any insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization, arrangement, adjustment or composition of the Company or relief under any applicable law, or the consent by the Company to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or similar official of the Company or any substantial part of the property of the Company or the making by the Company of an assignment for the benefit of creditors, or the taking of corporate action by the Company in furtherance of any such

action; or

- (9) any other Event of Default provided in or pursuant to this Indenture with respect to Securities of such series.

Section 5.2 Acceleration of Maturity; Rescission and Annulment

If an Event of Default with respect to Securities of any series at the time Outstanding (other than an Event of Default specified in clause (7) or (8) of Section 5.1) occurs and is continuing, then the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of such series may declare the principal of all the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, to be due and payable immediately, by a notice in writing to the Company

36

(and to the Trustee if given by the Holders), and upon any such declaration such principal or such lesser amount shall become immediately due and payable.

If an Event of Default specified in clause (7) or (8) of Section 5.1 occurs, all unpaid principal of and accrued interest on the Outstanding Securities of that series (or such lesser amount as may be provided for in the Securities of such series) shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder of any Security of that series.

At any time after a declaration of acceleration with respect to the Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than a majority in principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

- (1) the Company has paid or deposited with the Trustee a sum of money sufficient to pay
 - (a) all overdue installments of any interest on and Additional Amounts with respect to all Securities of such series and any Coupon appertaining thereto,
 - (b) the principal of and any premium on any Securities of such series which have become due otherwise than by such declaration of acceleration and interest thereon and any Additional Amounts with respect thereto at the rate or rates borne by or provided for in such Securities,
 - (c) to the extent that payment of such interest or Additional Amounts is lawful, interest upon overdue installments of any interest and Additional Amounts at the rate or rates borne by or provided for in such Securities, and
 - (d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 6.7; and
- (2) all Events of Default with respect to Securities of such series, other than the non-payment of the principal of, any premium and interest on, and any Additional Amounts with respect to Securities of such series which shall have become due solely by such declaration of acceleration, shall have been cured or waived as provided in Section 5.13. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee

The Company covenants that if:

- (1) default is made in the payment of any installment of interest on or any Additional Amounts with respect to any Security or any Coupon appertaining thereto when such interest or Additional Amounts shall have become due and payable and such default continues for a period of 30 days, or
- (2) default is made in the payment of the principal of or any premium on any Security or any Additional Amounts with respect thereto at their Maturity, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities

37

and any Coupons appertaining thereto, the whole amount of money then due and payable with respect to such Securities and any Coupons appertaining thereto, with interest upon the overdue principal, any premium and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest and Additional Amounts at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount of money as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due to the Trustee under Section 6.7.

If the Company fails to pay the money it is required to pay the Trustee pursuant to the preceding paragraph forthwith upon the demand of the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the money so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and any Coupons appertaining thereto and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities and any Coupons appertaining thereto, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series and any Coupons appertaining thereto vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or such Securities or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy.

Section 5.4 Trustee May File Proofs of Claim

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities of any series or the property of the Company or such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any overdue principal, premium, interest or Additional Amounts) shall be entitled and empowered, by intervention in such proceeding or otherwise,

- (1) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of any applicable series, of the principal and any premium, interest and Additional Amounts owing and unpaid in respect of the Securities and any Coupons appertaining thereto and to file such other

papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or counsel) and of the Holders of Securities or any Coupons appertaining thereto allowed in such judicial proceeding, and

(2) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities or any Coupons to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities or any Coupons, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other

amounts due the Trustee under Section 6.7. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.7 hereof out of the estate in any such proceeding, shall be unpaid for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or any Coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities or Coupons or the rights of any Holder thereof or holder of Senior Indebtedness, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security or any Coupon or holder of Senior Indebtedness in any such proceeding. The Trustee may vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' committee or other similar committee.

Section 5.5 Trustee May Enforce Claims without Possession of Securities or Coupons

All rights of action and claims under this Indenture or any of the Securities or Coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or Coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery or judgment, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, shall be for the ratable benefit of each and every Holder of the Securities or Coupons in respect of which such judgment has been recovered.

Section 5.6 Application of Money Collected.

Any money or property collected by the Trustee pursuant to this Article and after an Event of Default any money or other property distributable in respect of the Company's obligations under this Indenture shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, or any premium, interest or Additional Amounts, upon presentation of the Securities or Coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 6.7;

SECOND: To the holders of Senior Indebtedness to the extent required by Article 16;

THIRD: To the payment of the amounts then due and unpaid upon the Securities and any Coupons for principal and any premium, interest and Additional Amounts in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and Coupons for principal and any premium, interest and Additional Amounts, respectively;

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

Section 5.7 Limitations on Suits.

No Holder of any Security of any series or any Coupons appertaining thereto shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of such series;
- (2) the Holders of not less than 25% in principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee such security or indemnity as is reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of security or indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of such series; it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture or any Security to affect, disturb or prejudice the rights of any other such Holders or Holders of Securities of any other series, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 5.8 Unconditional Right of Holders to Receive Principal and any Premium, Interest and Additional Amounts

Notwithstanding any other provision in this Indenture, the Holder of any Security or Coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of, any premium and (subject to Section 3.5 and Section 3.7) interest on, and any Additional Amounts with respect to such Security or payment of such Coupon, as the case may be, on the respective Stated Maturity or Maturities therefor specified in such Security or Coupon (or, in the case of redemption, on the Redemption Date or, in the case of repayment at the option of such Holder if provided in or pursuant to this Indenture, on the date such repayment is due) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

Section 5.9 Restoration of Rights and Remedies.

If the Trustee or any Holder of a Security or a Coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and

each such Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and each such Holder shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Coupons in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to each and every Holder of a Security or a Coupon is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security or Coupon to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to any Holder of a Security or a Coupon may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by such Holder, as the case may be.

Section 5.12 Control by Holders of Securities.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series and any Coupons appertaining thereto, provided that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture or with the Securities of such series, or involve the Trustee in personal liability,
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (3) such direction is not unduly prejudicial to the rights of the other Holders of Securities of such series not joining in such action.

Section 5.13 Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series on behalf of the Holders of all the Securities of such series and any Coupons appertaining thereto may waive any past default hereunder with respect to such series and its consequences, except a default

- (1) in the payment of the principal of, any premium or interest on, or any Additional Amounts with respect to, any Security of such series or any Coupons appertaining thereto, or
- (2) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

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 this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 5.14 Waiver of Usury, Stay or Extension Laws

The Company covenants that (to the extent that it may lawfully do so) it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company expressly waives (to the extent that it may lawfully do so) all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.15 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.15 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on or Additional Amounts, if any, with respect to any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date, and, in the case of repayment, on or after the date for repayment) or for the enforcement of the right, if any, to convert or exchange any Security into Common Stock or other securities in accordance with its terms.

ARTICLE 6

THE TRUSTEE

Section 6.1 Certain Duties and Responsibilities.

- (1) Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(2) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

42

(3) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

(a) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(b) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series, determined as provided in Sections 1.1, 1.4 and 5.12, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(c) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(4) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 6.2 Certain Rights of Trustee.

Subject to Sections 315(a) through 315(d) of the Trust Indenture Act:

(1) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or a Company Order or Officer's Certificate (in each case, other than delivery of any Security, together with any Coupons appertaining thereto, to the Trustee for authentication and delivery pursuant to Section 3.3 which shall be sufficiently evidenced as provided therein except in the case of an exchange) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence shall be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(4) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in

43

respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by or pursuant to this Indenture at the request or direction of any of the Holders of Securities of any series or any Coupons appertaining thereto pursuant to this Indenture, unless such Holders shall have offered to the Trustee such security or indemnity as is reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction and only to the extent required by the terms of this Indenture;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, or inquire as to the performance by the Company of any of their covenants in this Indenture, but the Trustee, in its discretion, may, but shall not be obligated to make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Company, personally or by agent or attorney;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(8) the Trustee shall not be liable for any action taken or error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved that the Trustee was negligent or engaged in willful misconduct;

(9) the Authenticating Agent, Paying Agent, Depository Custodian and Security Registrar shall have the same rights, privileges, protections, immunities, benefits, protections and rights to compensation, reimbursement and indemnification as the Trustee set forth hereunder; and

(10) the Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not supersede; and

(11) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with an Act of the Holders hereunder, and, to the extent not so provided herein, with respect to any act requiring the Trustee to exercise its own discretion, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture or any Securities, unless it shall be proved that, in connection with any such action taken, suffered or omitted or any such act, the Trustee was negligent or engaged in willful misconduct.

(12) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder.

44

(13) The Trustee shall not be required to take notice or be deemed to have notice of any Default or Event of Default hereunder unless the Trustee shall be specifically notified in writing of such Default or Event of Default by the Company or by the Holders of at least 25% of the aggregate principal amount of the Securities by written notice of such event sent to the Trustee in accordance with Section 12.02, and such notice references the Securities and this Indenture.

(14) In no event shall the Trustee be responsible or liable for any special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(15) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, or other unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

(16) The permissive rights or powers of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee.

Section 6.3 Notice of Defaults.

Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series entitled to receive reports pursuant to Section 7.3(3), notice of such default hereunder actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived; provided, however, that the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the best interest of the Holders of Securities and Coupons of such series; and provided, further, that in the case of any default of the character specified in Section 5.1(5) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 6.4 Not Responsible for Recitals or Issuance of Securities

The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, and in any Coupons shall be taken as the statements of the Company and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or the Coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof. The Trustee shall not be

45

responsible for any statement in any document in connection with the sale of Securities issued under this Indenture.

Section 6.5 May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other Person that may be an agent of the Trustee or the Company, in its individual or any other capacity, may become the owner or pledgee of Securities or Coupons and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights it would have if it were not the Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other Person.

Section 6.6 Money Held in Trust.

Except as provided in Section 4.3 and Section 10.3, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and shall be held uninvested. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed to in writing with the Company.

Section 6.7 Compensation and Reimbursement.

The Company agrees:

- (1) to pay to the Trustee from time to time such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by the Trustee hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
- (2) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture or arising out of or in connection with the acceptance or administration of the trust or trusts hereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee's negligence or willful misconduct; and
- (3) to indemnify the Trustee and its agents, officers, directors and employees for, and to hold them harmless against, any loss, damage, claims, liability or expense including taxes and reasonable attorneys' fees and expenses (other than taxes based upon, measured or determined by income of the Trustee), incurred without negligence or willful misconduct on their part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their rights, powers or duties hereunder, except to the extent that any such loss, damage, claims, liability or expense was due to the Trustee's negligence or willful misconduct.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a Lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, and premium or interest on or any Additional Amounts with respect to Securities or any Coupons appertaining thereto.

To the extent permitted by law, any compensation or expense incurred by the Trustee after a default specified in or pursuant to Section 5.1 is intended to constitute an expense of administration under

46

any then applicable bankruptcy or insolvency law. "Trustee" for purposes of this Section 6.7 shall include any predecessor Trustee but the negligence or willful misconduct of any Trustee shall not affect the rights of any other Trustee under this Section 6.7.

The provisions of this Section 6.7 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee and shall apply with equal force and effect to the Trustee in its capacity as Authenticating Agent, Depository Custodian, Paying Agent or Security Registrar.

Section 6.8 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder that is a Corporation organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, that is eligible under Section 310(a)(1) of the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 (or, in the case of a Trustee included in a bank holding company system, the related bank holding company shall have), and that is subject to supervision or examination by Federal or state authority. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article. However, in the event that the Trustee acquires any conflicting interest as described in the TIA (as in effect at such time), it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign.

Section 6.9 Resignation and Removal; Appointment of Successor.

- (1) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 6.10.
- (2) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.
- (3) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and the Company.
- (4) If at any time:
 - (a) the Trustee shall fail to comply with the obligations imposed upon it under Section 310(b) of the Trust Indenture Act with respect to Securities of any series after written request therefor by the Company or any Holder of a Security of such series who has been a bona fide Holder of a Security of such series for at least six months, or
 - (b) the Trustee shall cease to be eligible under Section 6.8 and shall fail to resign after written request therefor by the Company or any such Holder, or
 - (c) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or

47

any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (i) the Company, by or pursuant to a Board Resolution, may remove the Trustee with respect to all Securities or the Securities of such series, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

- (5) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of such series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 6.10. If, within one year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.10, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by Section 6.10, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.
- (6) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Registered Securities, if any, of such series as their names and addresses appear in the Security Register and, if Securities of such series are issued as Bearer Securities, by publishing notice of such event once in an Authorized Newspaper in each Place of Payment located outside the United States. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

- (7) In no event shall any retiring Trustee be liable for the acts or omissions of any successor Trustee hereunder.

Section 6.10 Acceptance of Appointment by Successor.

- (1) Upon the appointment hereunder of any successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges, shall execute and deliver an

48

instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 10.3, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 6.7.

(2) Upon the appointment hereunder of any successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities of that or those series to which the appointment of such successor Trustee relates other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Securities of that or those series to which the appointment of such successor Trustee relates and subject to Section 10.3 shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, subject to its claim, if any, provided for in Section 6.7.

(3) Upon request of any Person appointed hereunder as a successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (1) or (2) of this Section, as the case may be.

(4) No Person shall accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person shall be qualified and eligible under this Article.

49

Section 6.11 Merger, Conversion, Consolidation or Succession to Business

Any Corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Corporation acquiring all or substantially all of the corporate trust business of the Trustee shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.12 Appointment of Authenticating Agent

The Trustee may appoint one or more Authenticating Agents acceptable to the Company with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of that or those series issued upon original issue, exchange, registration of transfer, partial redemption or partial repayment or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent must be acceptable to the Company and, except as provided in or pursuant to this Indenture, shall at all times be a corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Section.

Any Corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Corporation succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, provided such Corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall (i) mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Registered Securities, if any, of the series with respect to which such Authenticating Agent shall serve, as their names and addresses appear in the Security Register, and (ii) if Securities of the series are issued as Bearer Securities, publish notice of such appointment at least once in an Authorized Newspaper in the place where such successor

50

Authenticating Agent has its principal office if such office is located outside the United States. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section. If the Trustee makes such payments, it shall be entitled to be reimbursed for such payments, subject to the provisions of Section 6.7.

The provisions of Section 3.8, Section 6.4 and Section 6.5 shall be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed with respect to one or more series of Securities pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By _____ as
Authenticating Agent

By _____
Authorized Signatory

If all of the Securities of any series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested in writing (which writing need not be accompanied by or contained in an Officer's Certificate by the Company), shall appoint in accordance with this Section an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Securities.

Section 6.13 Preferential Collection of Claims Against Company. The Trustee is subject to TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

ARTICLE 7

HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders.

In accordance with Section 312(a) of the Trust Indenture Act, the Company shall furnish or cause to be furnished to the Trustee

51

(1) semi-annually with respect to Securities of each series not later than May 1 and November 1 of the year or upon such other dates as are set forth in or pursuant to the Board Resolution or indenture supplemental hereto authorizing such series, a list, in each case in such form as the Trustee may reasonably require, of the names and addresses of Holders as of the applicable date, and

(2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished, provided, however, that so long as the Trustee is the Security Registrar no such list shall be required to be furnished.

Section 7.2 Preservation of Information; Communications to Holders.

The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

Every Holder of Securities or Coupons, by receiving and holding the same, agrees with the Company and the Trustee that none of the Company, the Trustee, any Paying Agent or any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 312(c) of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

Section 7.3 Reports by Trustee.

(1) Within 60 days after September 15 of each year commencing with the first September 15 following the first issuance of Securities pursuant to Section 3.1, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit, pursuant to Section 313(c) of the Trust Indenture Act, a brief report dated as of such September 15 with respect to any of the events specified in said Section 313(a) which may have occurred since the later of the immediately preceding September 15 and the date of this Indenture.

(2) The Trustee shall transmit the reports required by Section 313(a) of the Trust Indenture Act at the times specified therein.

(3) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and 313(d) of the Trust Indenture Act.

(4) The Trustee also shall comply with TIA Section 313(b)(2) to the extent applicable.

Section 7.4 Reports by Company.

The Company, pursuant to Section 314(a) of the Trust Indenture Act, shall:

(1) file with the Trustee, within 15 days after the Company actually files the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as

52

amended; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934, as amended, in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company, with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates), other than with respect to Section 6.2.

ARTICLE 8

CONSOLIDATION, AMALGAMATIONS, MERGER AND SALES

Section 8.1 Company May Consolidate, Etc., Only on Certain Terms

The Company shall not consolidate or amalgamate with or merge into any other Person (whether or not affiliated with the Company), or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to any other Person (whether or not affiliated with the Company), and the Company shall not permit any other Person (whether or not affiliated with the Company) to consolidate or amalgamate with or merge into the Company or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to the Company; unless:

(1) in case the Company shall consolidate or amalgamate with or merge into another Person or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to any Person, the Person formed by such consolidation or amalgamation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company as an entirety or substantially as an entirety shall be a Corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia, or any other country which is on the date of this Indenture a member of the Organization of Economic Cooperation and Development, and shall expressly assume, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by the successor Person and delivered to the Trustee the due and punctual payment of the principal of, any premium and interest on and any Additional Amounts with respect to all the Securities and the performance of every obligation in this Indenture and the

53

Outstanding Securities on the part of the Company to be performed or observed and shall provide for conversion or exchange rights in accordance with the provisions of the Securities of any series that are convertible or exchangeable into Common Stock or other securities;

(2) immediately after giving effect to such transaction and treating any Indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default or event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and

(3) either the Company or the successor Person shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.2 Successor Person Substituted for Company.

Upon any consolidation or amalgamation by the Company with or merger of the Company into any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety to any Person in accordance with Section 8.1, the successor Person formed by such consolidation or amalgamation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease, the predecessor Person shall be released from all obligations and covenants under this Indenture, the Securities and the Coupons.

ARTICLE 9

SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures without Consent of Holders

Without the consent of any Holders of Securities or Coupons, the Company (when authorized by or pursuant to a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, for any of the following purposes:

(1) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company contained herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (as shall be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Company; or

(3) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of, any premium or interest on or any Additional Amounts with respect to Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be exchanged for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated form, provided any such

54

action shall not adversely affect the interests of the Holders of Outstanding Securities of any series or any Coupons appertaining thereto in any material respect; or

(4) to establish the form or terms of Securities of any series and any Coupons appertaining thereto as permitted by Section 2.1 and Section 3.1; or

(5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.10; or

(6) to cure any ambiguity or to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not adversely affect the interests of the Holders of Securities of

any series then Outstanding or any Coupons appertaining thereto in any material respect as set forth in an Officer's Certificate; or

- (7) to add to, delete from or revise the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of Securities, as herein set forth; or
- (8) to add any additional Events of Default with respect to all or any series of Securities (as shall be specified in such supplemental indenture); or
- (9) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Article 4, provided that any such action shall not adversely affect the interests of any Holder of an Outstanding Security of such series and any Coupons appertaining thereto or any other Outstanding Security or Coupon in any material respect as set forth in an Officer's Certificate; or
- (10) to secure the Securities; or
- (11) to make provisions with respect to conversion or exchange rights of Holders of Securities of any series; or
- (12) to amend or supplement any provision contained herein or in any supplemental indenture, provided that no such amendment or supplement shall materially adversely affect the interests of the Holders of any Securities then Outstanding as set forth in an Officer's Certificate.

Section 9.2 Supplemental Indentures with Consent of Holders

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture (voting as separate classes), by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by or pursuant to a Company's Board Resolution) and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture or of the Securities of such series; provided, however, that no such supplemental indenture, without the consent of the Holder of each Outstanding Security affected thereby, shall

55

- (1) change the Stated Maturity of the principal of, or any premium or installment of interest on or any Additional Amounts with respect to, any Security, or reduce the principal amount thereof or the rate (or modify the calculation of such rate) of interest thereon or any Additional Amounts with respect thereto, or any premium payable upon the redemption thereof or otherwise, or change the obligation of the Company to pay Additional Amounts pursuant to Section 10.4 (except as contemplated by Section 8.1(1) and permitted by Section 9.1(1)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2 or the amount thereof provable in bankruptcy pursuant to Section 5.4, change the redemption provisions or adversely affect the right of repayment at the option of any Holder as contemplated by Article 13, or change the Place of Payment, Currency in which the principal of, any premium or interest on, or any Additional Amounts with respect to any Security is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date or, in the case of repayment at the option of the Holder, on or after the date for repayment), or
- (2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the requirements of Section 15.4 for quorum or voting, or
- (3) modify any of the provisions of this Indenture relating to the subordination of the Securities in respect thereof in a manner adverse to Holders of Senior Indebtedness, or to Holders of Securities, or
- (4) modify any of the provisions of this Section, Section 5.13 or Section 10.6, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, or
- (5) make any change that adversely affects the right to convert or exchange any Security into or for Common Stock of the Company or other securities (whether or not issued by the Company), cash or property in accordance with its terms.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which shall have been included expressly and solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof. The Company shall cause notice of any supplemental indenture to be given to Holders promptly following its execution.

Section 9.3 Execution of Supplemental Indentures

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trust created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 315 of the Trust Indenture Act) shall be fully

56

protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and an Officer's Certificate stating that all conditions precedent to the execution of such supplemental indenture have been fulfilled. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.4 Effect of Supplemental Indentures

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of a Security theretofore or thereafter authenticated and delivered hereunder and of any Coupon appertaining thereto shall be bound thereby.

Section 9.5 Reference in Securities to Supplemental Indentures

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of

any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 9.6 Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 9.7 Effect on Senior Indebtedness.

No supplemental indenture shall directly or indirectly modify or eliminate the provisions of Article 16 in any manner which might terminate or impair the subordination of the Securities of any series to Senior Indebtedness with respect to such series without the prior written consent of the holders of such Senior Indebtedness.

Section 9.8 Notice of Supplemental Indenture.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to Section 9.2, the Company shall transmit to the Holders of Outstanding Securities of any series affected thereby a notice setting forth the substance of such supplemental indenture.

ARTICLE 10

COVENANTS

Section 10.1 Payment of Principal, any Premium, Interest and Additional Amounts.

The Company covenants and agrees for the benefit of the Holders of the Securities of each series that it will duly and punctually pay the principal of, any premium and interest on and any Additional Amounts with respect to the Securities of such series in accordance with the terms thereof, any Coupons appertaining thereto and this Indenture. Any interest due on any Bearer Security on or before the Maturity thereof, and any Additional Amounts payable with respect to such interest, shall be payable only

57

upon presentation and surrender of the Coupons appertaining thereto for such interest as they severally mature.

Section 10.2 Maintenance of Office or Agency.

The Company shall maintain in each Place of Payment for any series of Securities an Office or Agency where Securities of such series (but not Bearer Securities, except as otherwise provided below, unless such Place of Payment is located outside the United States) may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange, where Securities of such series that are convertible or exchangeable may be surrendered for conversion or exchange, and where notices and demands to or upon the Company in respect of the Securities of such series relating thereto and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Company shall maintain, subject to any laws or regulations applicable thereto, an Office or Agency in a Place of Payment for such series which is located outside the United States where Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment; provided, however, that if the Securities of such series are listed on The Stock Exchange of the United Kingdom and the Republic of Ireland or the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Company shall maintain a Paying Agent in London, Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of such series are listed on such exchange. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such Office or Agency. If at any time the Company shall fail to maintain any such required Office or Agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment at the place specified for the purpose with respect to such Securities as provided in or pursuant to this Indenture, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

Except as otherwise provided in or pursuant to this Indenture, no payment of principal, premium, interest or Additional Amounts with respect to Bearer Securities shall be made at any Office or Agency in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; provided, however, if amounts owing with respect to any Bearer Securities shall be payable in Dollars, payment of principal of, any premium or interest on and any Additional Amounts with respect to any such Security may be made at the Corporate Trust Office of the Trustee or any Office or Agency designated by the Company in the Continental United States, if (but only if) payment of the full amount of such principal, premium, interest or Additional Amounts at all offices outside the United States maintained for such purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other Offices or Agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an Office or Agency in each Place of Payment for Securities of any series for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other Office or Agency. Unless otherwise provided in or pursuant to this Indenture, the Company hereby designates as the Place of Payment for each series of Securities the Corporate Trust Office in the Continental United States, and initially appoints the Corporate Trust Office of the Trustee as the Office or Agency of the Company in the Corporate Trust Office in the Continental United States for such purpose.

58

The Company may subsequently appoint a different Office or Agency in the Corporate Trust Office in the Continental United States for the Securities of any series.

Unless otherwise specified with respect to any Securities pursuant to Section 3.1, if and so long as the Securities of any series (i) are denominated in a Foreign Currency or (ii) may be payable in a Foreign Currency, or so long as it is required under any other provision of this Indenture, then the Company will maintain with respect to each such series of Securities, or as so required, at least one exchange rate agent.

Section 10.3 Money for Securities Payments to Be Held in Trust

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it shall, on or before each due date of the principal of, any premium or interest on or Additional Amounts with respect to any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.1 for the Securities of such series) sufficient to pay the principal or any premium, interest or Additional Amounts so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and shall promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it shall, on or prior to each due date of the principal of, any premium or interest on or any Additional Amounts with respect to any Securities of such series, deposit with any Paying Agent a sum (in the currency or currencies, currency unit or units or composite currency or currencies described in the preceding paragraph) sufficient to pay the principal or any premium, interest or Additional Amounts so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company shall cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent shall:

- (1) hold all sums held by it for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in or pursuant to this Indenture;
- (2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any payment of principal, any premium or interest on or any Additional Amounts with respect to the Securities of such series; and
- (3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same terms as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

59

Except as otherwise provided herein or pursuant hereto, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to any Security of any series or any Coupon appertaining thereto and remaining unclaimed for two years after such principal or any such premium or interest or any such Additional Amounts shall have become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security or any Coupon appertaining thereto shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in an Authorized Newspaper in each Place of Payment for such series or to be mailed to Holders of Registered Securities of such series, or both, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing nor shall it be later than two years after such principal and any premium or interest or Additional Amounts shall have become due and payable, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.4 Additional Amounts.

All payments of principal of and premium, if any, interest and any other amounts on, or in respect of, the Securities of any series or any Coupon appertaining thereto shall be made without withholding or deduction at source for, or on account of, any present or future taxes, fees, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of a jurisdiction (a "taxing jurisdiction") or any political subdivision or taxing authority thereof or therein, unless such taxes, fees, duties, assessments or governmental charges are required to be withheld or deducted by (i) the laws (or any regulations or ruling promulgated thereunder) of a taxing jurisdiction or any political subdivision or taxing authority thereof or therein or (ii) an official position regarding the application, administration, interpretation or enforcement of any such laws, regulations or rulings (including, without limitation, a holding by a court of competent jurisdiction or by a taxing authority in a taxing jurisdiction or any political subdivision thereof). If a withholding or deduction at source is required, the Company shall, subject to certain limitations and exceptions set forth below, pay to the Holder of any such Security or any Coupon appertaining thereto such Additional Amounts as may be necessary so that every net payment of principal, premium, if any, interest or any other amount made to such Holder, after such withholding or deduction, shall not be less than the amount provided for in such Security, any Coupons appertaining thereto and this Indenture to be then due and payable; provided, however, that the Company shall not be required to make payment of such Additional Amounts for or on account of:

- (1) any tax, fee, duty, assessment or governmental charge of whatever nature which would not have been imposed but for the fact that such Holder: (A) was a resident, domiciliary or national of, or engaged in business or maintained a permanent establishment or was physically present in, the relevant taxing jurisdiction or any political subdivision thereof or otherwise had some connection with the relevant taxing jurisdiction other than by reason of the mere ownership of, or receipt of payment under, such Security; (B) presented such Security for payment in the relevant taxing jurisdiction or any political subdivision thereof, unless such Security could not have been presented for payment elsewhere; or (C) presented such Security more than thirty (30) days after the date on which the payment in respect of such Security first became due and payable or provided for, whichever is later, except to the extent that the Holder would have been entitled to such Additional Amounts if it had presented such Security for payment on any day within such period of thirty (30) days;

60

- (2) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;
- (3) any tax, assessment or other governmental charge that is imposed or withheld by reason of the failure by the Holder or the beneficial owner of such Security to comply with any reasonable request by the Company addressed to the Holder within 90 days of such request (A) to provide information concerning the nationality, residence or identity of the Holder or such beneficial owner or (B) to make any declaration or other similar claim or satisfy any information or reporting requirement, which, in the case of (A) or (B), is required or imposed by statute, treaty, regulation or administrative practice of the relevant taxing jurisdiction or any political subdivision thereof as a precondition to exemption from all or part of such tax, assessment or other governmental charge; or
- (4) any combination of items (1), (2) and (3);

nor shall Additional Amounts be paid with respect to any payment of the principal of, or premium, if any, interest or any other amounts on, any such Security to any Holder who is a fiduciary or partnership or other than the sole beneficial owner of such Security to the extent such payment would be required by the laws of the relevant taxing jurisdiction (or any political subdivision or relevant taxing authority thereof or therein) to be included in the income for tax purposes of a beneficiary or partner or settlor with respect to such fiduciary or a member of such partnership or a beneficial owner who would not have been entitled to such Additional Amounts had it been the Holder of the Security.

Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium, interest or any other amounts on, or in respect of, any Security of any series or any Coupon or the net proceeds received on the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established hereby or pursuant hereto to the extent that, in such context, Additional Amounts are,

were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of Additional Amounts (if applicable) in any provision hereof shall not be construed as excluding the payment of Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise provided in or pursuant to this Indenture or the Securities of the applicable series, at least 10 days prior to the first Interest Payment Date with respect to a series of Securities (or if the Securities of such series shall not bear interest prior to Maturity, the first day on which a payment of principal is made), and at least 10 days prior to each date of payment of principal or interest if there has been any change with respect to the matters set forth in the below-mentioned Officer's Certificate, the Company shall furnish to the Trustee and the principal Paying Agent or Paying Agents, if other than the Trustee, an Officer's Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of and premium, if any, interest or any other amounts on the Securities of such series shall be made to Holders of Securities of such series or the Coupons appertaining thereto without withholding for or on account of any tax, fee, duty, assessment or other governmental charge described in this Section 10.4. If any such withholding shall be required, then such Officer's Certificate shall specify by taxing jurisdiction the amount, if any, required to be withheld on such payments to such Holders of Securities or Coupons, and the Company agrees to pay to the Trustee or such Paying Agent the Additional Amounts required by this Section 10.4. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense incurred without negligence or willful misconduct on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officer's Certificate furnished pursuant to this Section 10.4.

61

Section 10.5 Corporate Existence.

Subject to Article 8, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, and that of each of its Subsidiaries, and their respective rights (charter and statutory) and franchises; provided, however, that the foregoing shall not obligate the Company or any of its Subsidiaries to preserve any such right or franchise if the Company or any such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of its business or the business of such Subsidiary and that the loss thereof is not disadvantageous in any material respect to any Holder.

Section 10.6 Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 10.5 with respect to the Securities of any series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series, by Act of such Holders, either shall waive such compliance in such instance or generally shall have waived compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 10.7 Company Statement as to Compliance; Notice of Certain Defaults

(1) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year, commencing April 2016, a written statement (which need not be contained in or accompanied by an Officer's Certificate) signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, stating that

(a) a review of the activities of the Company during such year and of its performance under this Indenture has been made under his or her supervision, and

(b) to the best of his or her knowledge, based on such review, (a) the Company has complied with all the conditions and covenants imposed on it under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such condition or covenant, specifying each such default known to him or her and the nature and status thereof, and (b) no event has occurred and is continuing which is, or after notice or lapse of time or both would become, an Event of Default, or, if such an event has occurred and is continuing, specifying each such event known to him and the nature and status thereof.

(2) The Company shall deliver to the Trustee, within five days after the occurrence thereof, written notice of any Event of Default or any event which after notice or lapse of time or both would become an Event of Default or an event of default under Senior Indebtedness.

(a) The Trustee shall have no duty to monitor the Company's compliance with the covenants contained in this Article 10 other than as specifically set forth in this Section 10.7.

62

ARTICLE 11

REDEMPTION OF SECURITIES

Section 11.1 Applicability of Article.

Redemption of Securities of any series at the option of the Company as permitted or required by the terms of such Securities shall be made in accordance with the terms of such Securities and (except as otherwise provided herein or pursuant hereto) this Article.

Section 11.2 Election to Redeem; Notice to Trustee

The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of (a) less than all of the Securities of any series or (b) all of the Securities of any series, with the same issue date, interest rate or formula, Stated Maturity and other terms, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

Section 11.3 Selection by Trustee of Securities to be Redeemed

If less than all of the Securities of any series with the same issue date, interest rate or formula, Stated Maturity and other terms are to be redeemed, and the Securities are global Securities, they will be selected for redemption in accordance with Applicable Procedures. If the Securities are not global Securities, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal amount of Registered Securities of such series; provided, however, that no such partial redemption shall reduce the portion of the principal amount of a Registered Security of such series not redeemed to less than the minimum denomination for a Security of such series established herein or pursuant hereto.

The Trustee shall promptly notify the Company and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of

any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal of such Securities which has been or is to be redeemed.

Unless otherwise specified in or pursuant to this Indenture or the Securities of any series, if any Security selected for partial redemption is converted into Common Stock of the Company or exchanged for other securities in part before termination of the conversion or exchange right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted or exchanged during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

63

Section 11.4 Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 1.6, not less than 30 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to the Holders of Securities to be redeemed. Failure to give notice by mailing in the manner herein provided to the Holder of any Registered Securities designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Securities or portion thereof.

Any notice that is mailed or sent to the Holder of any Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price (or manner of calculation if not then known),
- (3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed,
- (4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,
- (5) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Security or portion thereof to be redeemed, and, if applicable, that interest thereon shall cease to accrue on and after said date,
- (6) the place or places where such Securities, together (in the case of Bearer Securities) with all Coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and any accrued interest and Additional Amounts pertaining thereto,
- (7) that the redemption is for a sinking fund, if such is the case,
- (8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all Coupons maturing subsequent to the date fixed for redemption or the amount of any such missing Coupon or Coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Company, the Trustee and any Paying Agent is furnished,
- (9) if Bearer Securities of any series are to be redeemed and no Registered Securities of such series are to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on the Redemption Date pursuant to Section 3.5 or otherwise, the last date, as determined by the Company, on which such exchanges may be made,

64

(10) in the case of Securities of any series that are convertible into Common Stock of the Company or exchangeable for other securities, the conversion or exchange price or rate, the date or dates on which the right to convert or exchange the principal of the Securities of such series to be redeemed will commence or terminate and the place or places where such Securities may be surrendered for conversion or exchange, and

(11) the CUSIP number or the Euroclear or the Cedel reference numbers of such Securities, if any (or any other numbers used by a Depository to identify such Securities), provided that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

A notice of redemption published as contemplated by Section 1.6 need not identify particular Registered Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, at least 45 days prior to the Redemption Date (unless a shorter period shall be satisfactory to the Trustee) together with the notice to be given setting forth the information to be stated therein as provided in the preceding paragraph, by the Trustee in the name and at the expense of the Company.

Section 11.5 Deposit of Redemption Price.

On or prior to any Redemption Date, the Company shall deposit, with respect to the Securities of any series called for redemption pursuant to Section 11.4, with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money in the applicable Currency sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date, unless otherwise specified pursuant to Section 3.1 or in the Securities of such series) any accrued interest on and Additional Amounts with respect thereto, all such Securities or portions thereof which are to be redeemed on that date.

Section 11.6 Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest and the Coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon

surrender of any such Security for redemption in accordance with said notice, together with all Coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Company at the Redemption Price, together with any accrued interest and Additional Amounts to the Redemption Date; provided, however, that, except as otherwise provided in or pursuant to this Indenture or the Bearer Securities of such series, installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only upon presentation and surrender of Coupons for such interest (at an Office or Agency located outside the United States except as otherwise provided in Section 10.2), and provided, further, that, except as otherwise specified in or pursuant to this Indenture or the Registered Securities of such series, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the Regular Record Dates therefor according to their terms and the provisions of Section 3.7.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant Coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing Coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that any interest or Additional Amounts represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such Security located outside of the United States except as otherwise provided in Section 10.2.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium, until paid, shall bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 11.7 Securities Redeemed in Part

Any Registered Security which is to be redeemed only in part shall be surrendered at any Office or Agency for such Security (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Registered Security or Securities of the same series, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Security in global form is so surrendered, the Company shall execute, and the Trustee shall authenticate and deliver to the U.S. Depository or other Depository for such Security in global form as shall be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Security in global form in a denomination equal to and in exchange for the unredeemed portion of the principal of the Security in global form so surrendered.

ARTICLE 12

SINKING FUNDS

Section 12.1 Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise permitted or required in or pursuant to this Indenture or any Security of such series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of such series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and this Indenture.

Section 12.2 Satisfaction of Sinking Fund Payments with Securities

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any series to be made pursuant to the terms of such Securities (1) deliver Outstanding Securities of such series (other than any of such Securities previously called for redemption or any of such Securities in respect of which cash shall have been released to the Company), together in the case of any Bearer Securities of such series with all unmatured Coupons appertaining thereto, and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Company pursuant to the terms of such series of Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, provided that such series of Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If, as a result of the delivery or credit of Securities of any series in lieu of cash payments pursuant to this Section 12.2, the principal amount of Securities of such series to be redeemed in order to satisfy the remaining sinking fund payment shall be less than \$100,000, the Trustee need not call Securities of such series for redemption, except upon Company Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall at the request of the Company from time to time pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that series purchased by the Company having an unpaid principal amount equal to the cash payment requested to be released to the Company.

Section 12.3 Redemption of Securities for Sinking Fund

Not less than 75 days prior to each sinking fund payment date for any series of Securities, the Company shall deliver to the Trustee an Officer's Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that series pursuant to Section 12.2, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so credited and not theretofore delivered. If such Officer's Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Company shall thereupon be obligated to pay the amount therein specified. Not less than 60 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 11.6 and Section 11.7.

ARTICLE 13

REPAYMENT AT THE OPTION OF HOLDERS

Section 13.1 Applicability of Article.

Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 3.9, shall not operate as a

payment, redemption or satisfaction of the Indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled. Notwithstanding anything to the contrary contained in this Section 13.1, in connection with any repayment of Securities, the Company may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the close of business on the repayment date an amount not less than the repayment price payable by the Company on repayment of such Securities, and the obligation of the Company to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

ARTICLE 14

SECURITIES IN FOREIGN CURRENCIES

Section 14.1 Applicability of Article.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any series in which not all of such Securities are denominated in the same Currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary in the form of Security of any particular series or pursuant to this Indenture or the Securities, any amount in respect of any Security denominated in a Currency other than Dollars shall be treated for any such action or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Registered Securities of such series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Company may specify in a written notice to the Trustee.

ARTICLE 15

MEETINGS OF HOLDERS OF SECURITIES

Section 15.1 Purposes for Which Meetings May Be Called

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other Act provided by this Indenture to be made, given or taken by Holders of Securities of such series.

Section 15.2 Call, Notice and Place of Meetings.

(1) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 15.1, to be held at such time and at such place in the Borough of Manhattan, The City of New York, or, if Securities of such series have been issued in whole or in part as Bearer Securities, in London or in such place outside the United States as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.6, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(2) In case at any time the Company (by or pursuant to a Board Resolution) or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have

requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 15.1, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of or made the first publication of the notice of such meeting within 21 days after receipt of such request (whichever shall be required pursuant to Section 1.6) or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, or, if Securities of such series are to be issued as Bearer Securities, in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in clause of this Section.

Section 15.3 Persons Entitled to Vote at Meetings

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 15.4 Quorum: Action.

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for any meeting of Holders of Securities of such series. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any reconvened meeting, such reconvened meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such reconvened meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 15.2(1), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 9.2, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; provided, however, that, except as limited by the proviso to Section 9.2, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other Act which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of such series.

the Coupons appertaining thereto, whether or not such Holders were present or represented at the meeting.

Section 15.5 Determination of Voting Rights; Conduct and Adjournment of Meetings

(1) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of such series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 1.4 and the appointment of any proxy shall be proved in the manner specified in Section 1.4 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 1.4 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.4 or other proof.

(2) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 15.2(2), in which case the Company or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(3) At any meeting, each Holder of a Security of such series or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(4) Any meeting of Holders of Securities of any series duly called pursuant to Section 15.2 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 15.6 Counting Votes and Recording Action of Meetings

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Securities of any series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the

notice of the meeting and showing that said notice was given as provided in Section 15.2 and, if applicable, Section 15.4. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE 16

SUBORDINATION OF SECURITIES

Section 16.1 Agreement to Subordinate.

The Company covenants and agrees, and each Holder of Securities issued hereunder and under any indenture supplemental hereto or pursuant to a Board Resolution and Officer's Certificate ("Additional Provisions") by such Holder's acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 16; and each Holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

The payment by the Company of the principal of, any premium and interest on and any Additional Amounts with respect to all Securities of each series issued hereunder and under any Additional Provisions shall, to the extent and in the manner hereinafter set forth, be subordinate in right of payment to the prior payment in full of all Senior Indebtedness with respect to such series, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article 16 shall prevent the occurrence of any default or Event of Default hereunder.

Section 16.2 Default on Senior Indebtedness.

In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other amount due on any Senior Indebtedness with respect to the Securities of any series, or in the event that the maturity of any Senior Indebtedness with respect to the Securities of any series has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption and sinking fund payments) of, any premium or interest on, or any Additional Amounts with respect to, the Securities of such series.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 16.2, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of such Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent that the holders of such Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on such Senior Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of such Senior Indebtedness.

Section 16.3 Liquidation; Dissolution; Bankruptcy.

Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution, winding-up,

liquidation or reorganization of the Company, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Senior Indebtedness with respect to the Securities of any series shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the Company on account of the principal of, premium or interest on, or Additional Amounts with respect to, the Securities of such series; and upon any such dissolution, winding-up, liquidation or reorganization, or in any such bankruptcy, insolvency, receivership or other proceeding, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders or the Trustee would be entitled to receive from the Company, except for the provisions of this Article 16, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders or by the Trustee under this Indenture if received by them or it, directly to the holders of such Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of such Senior Indebtedness held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders of the Securities of such series or to the Trustee.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing shall be received by the Trustee before all such Senior Indebtedness is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all such Senior Indebtedness remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness.

For purposes of this Article 16, the words "cash, property or securities" shall not be deemed to include shares of stock or warrants to purchase shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other Corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article 16 with respect to the Securities of the relevant series to the payment of all Senior Indebtedness with respect to the Securities of such series that may at the time be Outstanding, provided that (i) such Senior Indebtedness is assumed by the new Corporation, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance, transfer or lease of its property as an entirety, or substantially as an entirety, to another Person upon the terms and conditions provided for in Article 16 of this Indenture shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 16.3 if such other Person shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article 16 of this Indenture. Nothing in Section 16.2 or in this Section 16.3 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7 of this Indenture.

Section 16.4 Subrogation.

Subject to the payment in full of all Senior Indebtedness with respect to the Securities of any series, the rights of the Holders of the Securities of such series shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Indebtedness until the principal of, any premium and interest on, and any Additional Amounts with respect to, the Securities of such series shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the Holders or the Trustee would be entitled except for the provisions of this Article 16, and no payment over pursuant to the provisions of this Article 16 to or for the benefit of the holders of such Senior Indebtedness by Holders of the Securities of such series or the Trustee, shall, as between the Company, its creditors other than holders of such Senior Indebtedness, and the Holders of the Securities of such series, be deemed to be a payment by the Company to or on account of such Senior Indebtedness. It is understood that the provisions of this Article 16 are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities of each series, on the one hand, and the holders of the Senior Indebtedness with respect to the Securities of such series on the other hand.

Nothing contained in this Article 16 or elsewhere in this Indenture, any Additional Provisions or in the Securities of any series is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness with respect to the Securities of such series, and the Holders of the Securities of such series, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities of such series the principal of, any premium and interest on, and any Additional Amounts with respect to, the Securities of such series as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities of such series and creditors of the Company, other than the holders of such Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the Holder of any Security of such series from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 16 of the holders of such Senior Indebtedness in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article 16, the Trustee, subject to the provisions of Article 6 of this Indenture, and the Holders shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities of any series, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness with respect to the Securities of such series and other Indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 16.

Section 16.5 Trustee to Effectuate Subordination.

Each Holder of Securities by such Holder's acceptance thereof authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 16 and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Section 16.6 Notice by the Company.

The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any

payment of monies to or by the Trustee in respect of the Securities of any series pursuant to the provisions of this Article 16. Notwithstanding the provisions of this Article 16 or any other provision of this Indenture or any Additional Provisions, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities of any series pursuant to the provisions of this Article 16, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder or holders of Senior Indebtedness with respect to the Securities of such series or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Article 6 of this Indenture, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 16.6 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of, any premium or interest on, or any Additional Amounts with respect to, any Security of such series), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

The Trustee, subject to the provisions of Article 6 of this Indenture, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness with respect to the Securities of any series (or a trustee on behalf of such holder), to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of such Senior Indebtedness to participate in any payment or distribution pursuant to this Article 16, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 16, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Upon any payment or distribution of assets of the Company referred to in this Article 16, the Trustee and the Holders shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding-up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities of any series, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Senior Indebtedness with respect to the Securities of such series and other Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 16.

Section 16.7 Rights of the Trustee; Holders of Senior Indebtedness.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 16 in respect of any Senior Indebtedness with respect to the Securities of any series at any time held by it, to the same extent as any other holder of such Senior Indebtedness, and nothing in this Indenture or any Additional Provisions shall deprive the Trustee of any of its rights as such holder.

74

With respect to the holders of Senior Indebtedness with respect to the Securities of any series, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 16, and no implied covenants or obligations with respect to the holders of such Senior Indebtedness shall be read into this Indenture or any Additional Provisions against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Indebtedness and, subject to the provisions of Article 6 of this Indenture, the Trustee shall not be liable to any holder of such Senior Indebtedness if it shall pay over or deliver to Holders of the Securities of such series, the Company or any other Person money or assets to which any holder of such Senior Indebtedness shall be entitled by virtue of this Article 16 or otherwise.

Nothing in this Article 16 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7 or Section 5.6.

Section 16.8 Subordination May Not Be Impaired.

No right of any present or future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company, or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness with respect to the Securities of any series may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of Securities of such series, without incurring responsibility to such Holders and without impairing or releasing the subordination provided in this Article 16 or the obligations hereunder of the Holders of the Securities of such series to the holders of such Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Indebtedness; (iii) release any Person liable in any manner for the collection of such Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

Section 16.9 Rights of Trustee as Holder of Senior Indebtedness: Preservation of Trustee's Rights

The Trustee or any Authenticating Agent in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness which may at any time be held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee or any Authenticating Agent of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7.

* * * * *

75

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

ENVESTNET, INC.

By: /s/ Judson Bergman
Name: Judson Bergman
Title: Chairman and Chief Executive Officer

[Indenture]

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Linda E. Garcia
Name: Linda E. Garcia
Title: Vice President

[Indenture]

ENVESTNET, INC.

as Issuer

AND

U.S. BANK NATIONAL ASSOCIATION

as Trustee

First Supplemental Indenture

Dated as of December 15, 2014

to Indenture

Dated as of December 15, 2014

1.75% Convertible Notes due 2019

i

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE 1		
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION		
Section 1.01.	<i>Scope of Supplemental Indenture</i>	1
Section 1.02.	<i>Definitions</i>	2
Section 1.03.	<i>Section References</i>	10
ARTICLE 2		
THE NOTES		
Section 2.01.	<i>Designation, Amount and Issuance of Notes</i>	10
Section 2.02.	<i>Form of the Notes</i>	11
Section 2.03.	<i>Date and Denomination of Notes; Payment at the Maturity Date; Payment of Interest</i>	11
Section 2.04.	<i>Registrar, Paying Agent and Conversion Agent</i>	12
Section 2.05.	<i>Registration of Transfer and Exchange</i>	12
Section 2.06.	<i>Global Securities</i>	13
Section 2.07.	<i>Purchase and Cancellation</i>	14
Section 2.08.	<i>Additional Notes</i>	14
Section 2.09.	<i>Mutilated, Destroyed, Lost or Stolen Notes</i>	14
ARTICLE 3		
PARTICULAR COVENANTS OF THE COMPANY		
Section 3.01.	<i>Covenants in Original Indenture</i>	15
Section 3.02.	<i>Compliance Certificate</i>	15
Section 3.03.	<i>Further Instruments and Acts</i>	15
Section 3.04.	<i>Future Subsidiary Guarantees</i>	15
ARTICLE 4		
REPURCHASE OF NOTES; NO REDEMPTION		
Section 4.01.	<i>Right To Require Repurchase Upon a Fundamental Change</i>	15
Section 4.02.	<i>No Redemption</i>	19
Section 4.03.	<i>No Sinking Fund</i>	19
ARTICLE 5		
CONVERSION		
Section 5.01.	<i>Conversion Privilege; Conversion Rate</i>	20
Section 5.02.	<i>Adjustment to Conversion Rate Upon Conversion in Connection with a Make-Whole Fundamental Change</i>	22
Section 5.03.	<i>Exercise of Conversion Privilege</i>	24
Section 5.04.	<i>Settlement of Conversion Obligation</i>	24
Section 5.05.	<i>Fractions of Shares</i>	27

i

Section 5.06.	<i>Adjustment of Conversion Rate</i>	28
Section 5.07.	<i>Notice of Adjustments of Conversion Rate</i>	38

Section 5.08.	<i>Company To Reserve Common Stock</i>	38
Section 5.09.	<i>Taxes on Conversions</i>	38
Section 5.10.	<i>Certain Covenants</i>	38
Section 5.11.	<i>Cancellation of Converted Notes</i>	39
Section 5.12.	<i>Provision in Case of Effect of Reclassification, Consolidation, Merger or Sale</i>	39
Section 5.13.	<i>Responsibility of Trustee for Conversion Provisions</i>	40
Section 5.14.	<i>Notice to Holders Prior to Certain Actions</i>	41

ARTICLE 6
SUBORDINATION

Section 6.01.	<i>Agreement to Subordinate</i>	41
Section 6.02.	<i>Liquidation, Dissolution, Bankruptcy</i>	41
Section 6.03.	<i>Default on Credit Facility</i>	42
Section 6.04.	<i>Acceleration of Payment of Notes</i>	43
Section 6.05.	<i>When Distribution Must Be Paid Over</i>	43
Section 6.06.	<i>Subrogation</i>	43
Section 6.07.	<i>Relative Rights</i>	43
Section 6.08.	<i>Subordination May Not Be Impaired by Company</i>	43
Section 6.09.	<i>Rights of Trustee and Paying Agent</i>	43
Section 6.10.	<i>Distribution or Notice to Administrative Agent</i>	44
Section 6.11.	<i>Article 6 Not to Prevent Events of Default or Limit Right to Accelerate</i>	44
Section 6.12.	<i>Trustee Entitled to Rely</i>	44
Section 6.13.	<i>Trustee to Effectuate Subordination</i>	44
Section 6.14.	<i>Trustee Not Fiduciary for Lenders</i>	45
Section 6.15.	<i>Reliance by Lenders on Subordination Provisions</i>	45
Section 6.16.	<i>Original Indenture</i>	45

ARTICLE 7
EVENTS OF DEFAULT; REMEDIES

Section 7.01.	<i>Original Indenture</i>	45
Section 7.02.	<i>Events of Default</i>	45
Section 7.03.	<i>Acceleration of Maturity; Rescission and Annulment</i>	47
Section 7.04.	<i>Limitation on Suits</i>	48
Section 7.05.	<i>Unconditional Right of Holders To Receive Payment</i>	49
Section 7.06.	<i>Waiver of Defaults and Events of Default</i>	49
Section 7.07.	<i>Undertaking for Costs</i>	50

ARTICLE 8
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.01.	<i>Original Indenture</i>	50
Section 8.02.	<i>Consolidation, Merger and Sale of Assets</i>	50

ii

Section 8.03.	<i>Successor Substituted</i>	50
---------------	------------------------------	----

ARTICLE 9
REPORTS BY COMPANY

Section 9.01.	<i>Reports by Company</i>	51
---------------	---------------------------	----

ARTICLE 10
SATISFACTION AND DISCHARGE

Section 10.01.	<i>Original Indenture</i>	51
Section 10.02.	<i>Discharge of Indenture</i>	51
Section 10.03.	<i>Deposited Monies and Shares To Be Held in Trust by Trustee</i>	52
Section 10.04.	<i>Paying Agent or Conversion Agent To Repay Monies and Shares Held</i>	52
Section 10.05.	<i>Reinstatement</i>	53

ARTICLE 11
SUPPLEMENTAL INDENTURES

Section 11.01.	<i>Supplemental Indentures Without Consent of Holders</i>	53
Section 11.02.	<i>Supplemental Indentures with Consent of Holders</i>	54

ARTICLE 12
MISCELLANEOUS

Section 12.01.	<i>Successors</i>	55
Section 12.02.	<i>Multiple Originals</i>	55
Section 12.03.	<i>Calculations</i>	55
Section 12.04.	<i>Benefits of Supplemental Indenture</i>	55
Section 12.05.	<i>Withholding Taxes</i>	56
Section 12.06.	<i>Waiver of Jury Trial</i>	56
Section 12.07.	<i>Governing Law</i>	56
Section 12.08.	<i>Concerning the Trustee</i>	56

SCHEDULE

Schedule A Make-Whole Table

EXHIBIT

Exhibit A Form of Security

iii

FIRST SUPPLEMENTAL INDENTURE, dated as of December 15, 2014, between Envestnet, Inc., a corporation duly organized and existing under the laws of the State of Delaware, as issuer (the “**Company**”), having its principal office at 35 East Wacker Drive, Suite 2400, Chicago, Illinois, and U.S. Bank National Association, as trustee (the “**Trustee**”) to the Indenture dated as of December 15, 2014, between the Company and the Trustee (the “**Original Indenture**”; the Original Indenture as amended and supplemented hereby and as it may be further amended and supplemented in accordance herewith and therewith, with respect to the Notes, the “**Indenture**”).

RECITALS OF THE COMPANY

WHEREAS, the Company executed and delivered the Original Indenture to the Trustee to provide for, among other things, the issuance, from time to time, of the Company’s Securities, in an unlimited aggregate principal amount, in one or more series to be established by the Company under, and authenticated and delivered as provided in, the Original Indenture;

WHEREAS, Section 3.1 of the Original Indenture provides for the Company to establish Securities of any series pursuant to a supplemental indenture, and Section 9.1(4) of the Original Indenture provides for the Company and the Trustee to enter into any such supplemental indenture to create a series of Securities and establish its terms as permitted by the Original Indenture;

WHEREAS, the Board of Directors has duly adopted resolutions authorizing the Company to execute and deliver this Supplemental Indenture;

WHEREAS, pursuant to the terms of the Original Indenture, the Company desires to provide for the establishment of a new series of its Securities to be known as its “1.75% Convertible Notes due 2019” (the “Notes” and each \$1,000 principal amount thereof, a “**Note**”) the form and substance of the Notes and the terms, provisions and conditions thereof to be set forth as provided in the Original Indenture and this Supplemental Indenture; and

WHEREAS, all things necessary to make the Notes, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid and legally binding obligations of the Company, and to make this Supplemental Indenture a valid and legally binding agreement of the Company, in accordance with the terms of the Notes and this Supplemental Indenture, have been done;

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the Company and the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Scope of Supplemental Indenture.* The changes, modifications and supplements to the Original Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and shall only govern the terms of, the Notes, and shall not apply

1

to any other Securities that may be issued under the Original Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. With respect to the Notes, the provisions of this Supplemental Indenture shall supplement and, to the extent they are inconsistent therewith, supersede any corresponding provisions in the Original Indenture.

Section 1.02. *Definitions.* For all purposes of the Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (i) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular;
- (ii) all words, terms and phrases used in this Supplemental Indenture and defined in the Original Indenture (but not otherwise defined herein) shall have the same meanings as in the Original Indenture;
- (iii) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (iv) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and
- (v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Additional Interest**” has the meaning specified in Section 7.03.

“**Additional Notes**” has the meaning specified in Section 2.08.

“**Additional Shares**” has the meaning specified in Section 5.02(a).

“**Administrative Agent**” means Bank of Montreal or such other financial institution named as administrative agent under the Credit Facility.

“**Bid Solicitation Agent**” means, initially, the Company, or any other person the Company may appoint in the future to determine a Trading Price for the Notes as may be required pursuant to Section 5.01(a)(ii).

“**Blockage Notice**” has the meaning specified in Section 6.03.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which state or federally chartered banking institutions in New York, New York are

authorized or required to be closed.

“**Capital Stock**” means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock and limited liability company interests and, with respect to partnerships, partnership interests (whether general or limited) and any other

2

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, such partnership.

“**Cash Settlement**” has the meaning specified in Section 5.04(a).

“**close of business**” means 5:00 p.m., New York City time.

“**Combination Settlement**” has the meaning specified in Section 5.04(a).

“**Common Stock**” means the shares of common stock, par value \$0.001 per share, of the Company as they exist on the Issue Date, subject to Section 5.12.

“**Company**” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Company” shall mean such successor Person.

“**Conversion Agent**” has the meaning specified in Section 2.04.

“**Conversion Date**” has the meaning specified in Section 5.03(a).

“**Conversion Notice**” has the meaning specified in Section 5.03(a).

“**Conversion Period**” means, with respect to any conversion of a Note:

(i) if the relevant Conversion Date occurs prior to the Final Settlement Method Election Date, the 25 consecutive Trading Day period beginning on, and including, the third Trading Day immediately following the related Conversion Date; and

(ii) if the relevant Conversion Date occurs on or after the Final Settlement Method Election Date, the 25 consecutive Trading Day period beginning on, and including, the 27th Scheduled Trading Day immediately preceding the Maturity Date.

“**Conversion Price**” means at any time, in respect of each Note, \$1,000 divided by the Conversion Rate in effect at such time.

“**Conversion Rate**” means, initially 15.9022 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment as set forth herein.

“**custodian**” means the Trustee, as the initial custodian with respect to the Global Securities, or any successor entity.

“**Credit Facility**” means the credit agreement dated as of June 19, 2014 and amended December 8, 2014, among the Company, the guarantors from time to time party thereto, the Lenders from time to time party thereto and Bank of Montreal, as Administrative Agent, BMO Capital Markets Corp., as sole lead arranger and sole book runner and Associated Bank, N.A. and Fifth Third Bank, as co-syndication agents, as such agreement may be further amended (including any amendment and restatement thereof), supplemented or otherwise modified or replaced from time to time by one or more credit and/or other agreements, including any

3

agreement extending the maturity of, refinancing, replacing or otherwise restructuring all or any portion of the indebtedness under such agreement, whether by the same or any other agent, lender or group of lenders.

“**Daily Conversion Value**” means, for each Trading Day during the Conversion Period, one-twenty fifth (1/25th) of the product of (i) the Conversion Rate on such Trading Day and (ii) the Daily VWAP of the Common Stock on such Trading Day.

“**Daily Measurement Value**” has the meaning specified in Section 5.04(a)(v).

“**Daily Settlement Amount**” has the meaning specified in Section 5.04(a)(v).

“**Daily VWAP**” of the Common Stock (or any security that is part of the Reference Property underlying the Notes, if applicable), in respect of any Trading Day, means the per share volume-weighted average price of Common Stock (or other security) as displayed under the heading “Bloomberg VWAP” on Bloomberg Page “ENV <equity> AQR” (or its equivalent successor if such page is not available, or the Bloomberg Page for any security that is part of such Reference Property, if applicable) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day or, if such volume-weighted average price is unavailable (or such Reference Property is not a security), the market value of one share of Common Stock (or such Reference Property) on such Trading Day as determined by a nationally recognized independent investment banking firm retained by the Company for such purpose. The Daily VWAP will be determined without regard to after-hours trading or any other trading outside the regular trading session.

“**Default**” means any event that is or with the passage of time or the giving of notice or both would become an Event of Default.

“**Depository**” means The Depository Trust Company until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean such successor Depository.

“**Effective Date**” has the meaning specified in Section 5.02(b).

“**Event of Default**” has the meaning specified in Section 7.02.

“**Ex-Dividend Date**” means the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended.

“**Expiration Date**” has the meaning specified in Section 5.06(e).

“**Expiration Time**” has the meaning specified in Section 5.06(e).

“**Final Settlement Method Election Date**” means the 30th Scheduled Trading Day prior to the Maturity Date .

“**Free Convertibility Date**” means July 1, 2019.

“**Fundamental Change**” shall mean the occurrence of any of the following:

- (i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries and the Company’s and its Subsidiaries’ employee benefit plans, files a Schedule 13D or Schedule TO (or any successor schedule, form or report) pursuant to the Exchange Act disclosing such person or group, as the case may be, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the common equity of the Company representing more than 50% of the voting power of all shares of the Company’s common equity (*provided, however*, that this clause (i) shall not apply to any transaction covered in clause (ii) below, including any exception thereto); or
- (ii) consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination of the Common Stock) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets or (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company’s Subsidiaries; *provided, however*, that a transaction described in clauses (A) and (B) pursuant to which the holders of all classes of the Company’s common equity immediately prior to such transaction that is a share exchange, consolidation or merger own, directly or indirectly, more than 50% of the total voting power of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such event shall not be deemed a Fundamental Change;
- (iii) the Company’s stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or
- (iv) the Common Stock or other common stock into which the Securities are convertible ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).

Notwithstanding the foregoing, a Fundamental Change as a result of clause (ii) above will not be deemed to have occurred if at least 90% of the consideration received or to be received by holders of Common Stock (excluding cash payments for fractional shares and cash payments made in respect of dissenters’ appraisal rights) in connection with such transaction or

transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Securities become convertible into such consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenters’ appraisal rights (subject to Section 5.04).

“**Fundamental Change Expiration Time**” has the meaning specified in Section 4.01(a)(i).

“**Fundamental Change Purchase Date**” has the meaning specified in Section 4.01(a).

“**Fundamental Change Purchase Notice**” has the meaning specified in Section 4.01(a)(i).

“**Fundamental Change Purchase Price**” has the meaning specified in Section 4.01(a).

“**Fundamental Change Purchase Right Notice**” has the meaning specified in Section 4.01(b).

“**GAAP**” means generally accepted accounting principles 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 have been approved by a significant segment of the accounting profession, in each case, as in effect in the United States from time to time.

“**Global Security**” means a Note executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“**Indebtedness**” has the meaning specified in Section 1.1 of the Original Indenture.

“**Indenture**” has the meaning specified in the first paragraph of this Supplemental Indenture.

“**Interest**” means, when used with reference to the Notes, any interest payable under the terms of the Notes, including Additional Interest, if any.

“**Interest Payment Date**” means each June 15 and December 15 of each year, commencing with June 15, 2015.

“**Irrevocable Election**” has the meaning specified in Section 5.04(a)(iii).

“**Issue Date**” means December 15, 2014.

“**Last Reported Sale Price**” of the Common Stock on any Trading Day means the closing per share sale price (or, if no closing sale price is reported, the average of the last bid and

last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) at 4:00 p.m. (New York City time) on such date as reported in composite transactions for The New York Stock Exchange or, if the Common Stock is not listed on The New York Stock Exchange, the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading or, if the Common Stock is not listed on a U.S. national or regional securities exchange, as reported by OTC Markets Group Inc. at 4:00 p.m. (New York City time) on such date (or in either case the then-standard closing time for regular trading on the relevant exchange or trading system); *provided* that if the closing sale price of the Common Stock is not so reported, the “Last Reported Sale Price” shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Lender**” means any lender under the Credit Facility.

“**Make-Whole Fundamental Change**” means any transaction or event that constitutes a Fundamental Change (determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the proviso in clause (ii) of the definition thereof).

“**Market Disruption Event**” means (i) a failure by the New York Stock Exchange, or if the Common Stock is not listed on the New York Stock Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed, to open for trading or (ii) the occurrence or existence for more than one half-hour period in the aggregate on any Scheduled Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by The New York Stock Exchange or otherwise) in the Common Stock or in any options contracts or future contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

“**Maturity Date**” means December 15, 2019.

“**Maximum Conversion Rate**” has the meaning specified in Section 5.02(b).

“**Merger Transaction**” has the meaning specified in Section 8.02.

“**Note**” or “**Notes**” has the meaning specified in the fourth paragraph of the Recitals of the Company.

“**open of business**” means 9:00 a.m., New York City time.

“**Original Indenture**” has the meaning specified in the first paragraph of this Supplemental Indenture.

“**Outstanding**” means, with respect to the Notes, notwithstanding anything to the contrary in Section 1.1 Original Indenture, any Notes authenticated by the Trustee except (i) Notes cancelled by it, (ii) Notes delivered to it for cancellation and (iii)(A) Notes replaced pursuant to Section 3.6 of the Original Indenture, on and after the time such Note is replaced (unless the Trustee and the Company receive proof satisfactory to them that such Note is held by

7

a bona fide purchaser), (B) Notes converted pursuant to Article 5 hereof, on and after their Conversion Date, (C) any and all Notes, as of the Maturity Date, if the Paying Agent holds, in accordance with this Indenture, money sufficient to pay all of the Notes then payable, and (D) any and all Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor, except that in determining whether the Trustee shall be protected in relying upon any request, demand, authorization, direction, notice consent or waiver or other action that is to be made by a requisite principal amount of Outstanding Notes, only such Notes which a Responsible Officer of the trustee knows to be so owned shall be disregarded.

“**Paying Agent**” means the “Paying Agent” (within the meaning of the Original Indenture) with respect to the Notes, which shall initially be the Trustee.

“**pay the Notes**” has the meaning specified in Section 6.03.

“**Payment Blockage Period**” has the meaning specified in Section 6.03.

“**Physical Securities**” means permanent certificated Notes in registered form issued in denominations of \$1,000 principal amount and integral multiples thereof.

“**Place of Payment**” has the meaning specified in Section 2.04.

“**Record Date**” means, with respect to the payment of Interest, the June 1 (whether or not a Business Day) immediately preceding an Interest Payment Date on June 15 and the December 1 (whether or not a Business Day) immediately preceding an Interest Payment Date on December 15.

“**Reference Property**” has the meaning specified in Section 5.12(a).

“**Registrar**” has the meaning assigned to the term “Security Registrar” in Section 1.1 of the Original Indenture, which, with respect to the Notes, shall initially be the Trustee.

“**Scheduled Trading Day**” means (i) a day that is scheduled to be a Trading Day (as defined in this Section 1.01 for the applicable purpose) on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed for trading or (ii) if the Common Stock is not listed on any such securities exchange or market, a Business Day.

“**SEC**” means the U.S. Securities and Exchange Commission (or any successor thereto).

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“**Senior Indebtedness**” means the principal of, premium, if any, on, interest on (including interest, to the extent allowable, accruing subsequent to the filing of a petition initiating any proceeding under any state, federal or foreign bankruptcy law, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), termination payments with respect to or in connection with, and all fees, costs, expenses, reimbursement amounts, indemnities and other amounts accrued or due on or in connection with, Indebtedness

8

of the Company, whether outstanding on the date of this Indenture or hereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing), except for Indebtedness that by its terms expressly provides that it shall be subordinated to the Notes.

“**Settlement Amount**” has the meaning specified in Section 5.04(a)(iv).

“**Settlement Method**” means the election of the Company as set forth in this Supplemental Indenture of settling each Settlement Amount through Cash Settlement, Stock Settlement or Combination Settlement.

“**Share Exchange Event**” has the meaning specified in Section 5.12(a).

“**Significant Subsidiary**” means a Subsidiary that is a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.

“**Specified Dollar Amount**” has the meaning specified in Section 5.04(a)(v).

“**Spin-Off**” has the meaning specified in Section 5.06(c).

“**Stock Price**” means, with respect to the Common Stock in connection with a Make-Whole Fundamental Change, (i) if holders of Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (ii) of the definition of Fundamental Change, the cash amount paid per share of Common Stock or (ii) if holders of Common Stock receive any consideration other than cash in such Make-Whole Fundamental Change or if a Make-Whole Fundamental Change occurs other than a Make-Whole Fundamental Change described in clause (ii) of the definition of Fundamental Change, the average of the Last Reported Sales Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the effective date of such Make-Whole Fundamental Change.

“**Stock Settlement**” has the meaning specified in Section 5.04(a).

“**Supplemental Indenture**” means this instrument, as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

“**Surviving Entity**” has the meaning specified in Section 8.02(b).

“**Trading Day**” means (a) except for purposes of determining Settlement Amounts pursuant to Section 5.04, a day on which (i) The New York Stock Exchange or, if the Common Stock is not listed on The New York Stock Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading, in each case, with a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or market, and (ii) a Last Reported Sale Price for the Common Stock is available on such securities exchange or market, or (b) for purposes of determining Settlement Amounts pursuant to Section 5.04 only, a day on which (i) there is no Market Disruption Event and (ii) The New York Stock Exchange or, if the

9

Common Stock is not listed on The New York Stock Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading, in either case, with a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or market. For the purposes of both (a) and (b) of this definition, if the Common Stock is not so listed, “Trading Day” means a Business Day.

“**Trading Price**” of the Notes means, on any date of determination, the average of the secondary market bid quotations per \$1,000 principal amount of Notes obtained by the Bid Solicitation Agent for \$2,000,000 principal amount of the Notes at approximately 3:30 p.m. (New York City time) on such determination date from three independent nationally recognized securities dealers that the Company shall select; *provided* that if at least three such bids cannot reasonably be obtained, but two such bids can reasonably be obtained, then the average of these two bids shall be used; *provided further* that, if at least two such bids cannot reasonably be obtained, but one such bid can reasonably be obtained, this one bid shall be used. If on any date of determination (i) the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$2,000,000 principal amount of the Notes from an independent nationally recognized securities dealer, (ii) if the Company shall have failed to request the Bid Solicitation Agent (if other than the Company) to obtain bids when required or (iii) if the Bid Solicitation Agent has failed to obtain bids when required, then, in each any such case, the Trading Price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for the Notes on such date.

“**Trading Price Condition**” has the meaning specified in Section 5.01(b)(ii).

“**Trigger Event**” has the meaning specified in Section 5.06(c).

“**Underwriters**” means the underwriters named in the Underwriting Agreement.

“**Underwriting Agreement**” means the Underwriting Agreement dated December 2, 2014 among the Company and the Underwriters relating to the purchase and sale of the Notes.

“**U.S.**” or “**United States**” means the United States of America.

“**Valuation Period**” has the meaning specified in Section 5.06(c).

Section 1.03. *Section References.* References to Articles, Sections, Exhibits, Annexes and Schedules are to Articles, Sections, Exhibits, Annexes and Schedules of this Supplemental Indenture unless otherwise specified.

ARTICLE 2 THE NOTES

Section 2.01. *Designation, Amount and Issuance of Notes.* The Securities to be issued hereunder shall be designated as the “1.75% Convertible Notes due 2019.” The Notes will be initially limited to an aggregate principal amount of \$150,000,000 (or up to \$172,500,000 if the Underwriters exercise their option to purchase additional Notes granted pursuant to the Underwriting Agreement in full), subject to Section 2.08 of this Supplemental Indenture and

10

except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.3, 3.5 and 3.6 of the Original Indenture and Sections 2.06, 4.01 and 5.03 of this Supplemental Indenture.

Section 2.02. *Form of the Notes.* The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A hereto. The terms and provisions contained in the form of Notes attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Supplemental Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

So long as the Notes are eligible for book-entry settlement with the Depository, or unless otherwise required by law, subject to Section 2.06 of this Supplemental Indenture, all of the Notes will be represented by one or more Global Securities. The transfer and exchange of beneficial interests in any such Global Securities shall be effected through the Depository in accordance with the Indenture and the applicable procedures of the Depository. Except as provided in Section 2.06 of this Supplemental Indenture, beneficial owners of a Global Security shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered Holders of such Global Security.

Any Global Security shall represent such of the Outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of Outstanding Notes from time to time endorsed thereon and that the aggregate amount of Outstanding Notes represented thereby may from time to time be increased or reduced to reflect issuances, repurchases, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Security to reflect the amount of any increase or decrease in the amount of Outstanding Notes represented thereby shall be made by the Trustee or the custodian for the Global Security, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with the Indenture.

Section 2.03. *Date and Denomination of Notes; Payment at the Maturity Date; Payment of Interest.* The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall accrue Interest from the date specified on the face of the form of Notes attached as Exhibit A hereto or from the most recent date to which Interest has been duly paid or provided for.

The principal amount of and Interest on Global Securities registered in the name of or held by The Depository or its nominee shall be paid by wire transfer in immediately available funds to such Depository or nominee, as applicable. The principal amount of Physical Securities shall be payable at the Corporate Trust Office and at any other office or agency maintained by the Company for such purpose. Interest on Physical Securities will be payable (i) to Holders having an aggregate principal amount of \$2,000,000 or less of Notes, by check mailed to such Holders at the address set forth in the Security Register and (ii) to Holders having an aggregate principal amount of more than \$2,000,000 of Securities, either by check mailed to such Holders or, upon written application by a Holder to the Security Registrar not later than the relevant

11

Record Date for such Interest payment, by wire transfer in immediately available funds to such Holder's account within the United States, which application shall remain in effect until the Holder notifies the Security Registrar to the contrary in writing.

The Company shall make any required interest payments to the Person in whose name each Note is registered at the close of business on the Record Date for the interest payment.

Notwithstanding anything to the contrary, if the Maturity Date or any Interest Payment Date or Fundamental Change Purchase Date or any Conversion Date falls, or if any payment, delivery, notice or other action by the Company is otherwise due, on a day that is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the immediately following Business Day with the same force and effect as if taken on such date, and no additional interest will accrue and no Default shall occur on account of such delay.

Section 2.04. *Registrar, Paying Agent and Conversion Agent.* The Company agrees that the office or agency maintained by the Company pursuant to Sections 3.5 of the Original Indenture, with respect to the Notes, shall be located in the continental United States. The Company shall also maintain an office in the continental United States where the Notes may be presented for conversion (the "**Conversion Agent**"). The Company initially appoints the Trustee as the Conversion Agent and initially designates the office or agency maintained by the Company in New York City pursuant to Section 3.5 of the Original Indenture as the place of payment for the Notes (the "**Place of Payment**").

The Company shall enter into an appropriate agency agreement with any Conversion Agent not a party to this Supplemental Indenture. The agreement shall implement the provisions of this Supplemental Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Conversion Agent, the Company shall act as Conversion Agent.

In addition to Section 6.9 of the Original Indenture, the Company may remove any Conversion Agent upon 30 days' prior written notice to such Conversion Agent and to the Trustee; *provided* that no such removal shall become effective until (1) acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Conversion Agent and delivered to the Trustee or (2) notification to the Trustee that the Company shall serve as Conversion Agent until the appointment of a successor in accordance with clause (1) above. The Conversion Agent may resign at any time upon written notice; *provided* that the Trustee may resign as Conversion Agent only if the Trustee also resigns as Trustee in accordance with Section 6.9 of the Original Indenture. If the Conversion Agent receives any cash or shares of Common Stock hereunder, the Conversion Agent agrees to hold such cash or shares in trust for the sole benefit of the relevant Holders.

The Company may appoint additional Conversion Agents and may approve any change in the office through which any Conversion Agent acts.

Section 2.05. *Registration of Transfer and Exchange.* Notwithstanding anything in Section 3.5 of the Original Indenture to the contrary, neither the Company nor the Trustee nor any Registrar shall be required to exchange or register a transfer of (a) any Notes or portions

12

thereof surrendered for conversion pursuant to Article 5, or (b) any Notes or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 4.01.

The last paragraph of Section 3.5 of the Original Indenture shall not apply to the Notes, and any reference in the Original Indenture to such provision shall be deemed to refer to this Section 2.05.

Section 2.06. *Global Securities.* The following provisions shall apply to Global Securities in addition to, or to the extent applicable, in lieu of, those provisions in Section 3.5 of the Original Indenture that are applicable to the Notes:

(a) The Company will issue, and the Trustee upon receipt of a Company Order will authenticate, Physical Securities in the name of the Depository's participants, in accordance with the Depository's procedures, in exchange for the Global Security if (i) the Depository notifies the Company at any time that it is unwilling or unable to continue as Depository for the Global Securities and a successor Depository is not appointed within 90 days; or (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor Depository is not appointed within 90 days. In addition, if an Event of Default with respect to the Notes has occurred and is continuing and any beneficial owner of an interest in a Global Security requests that its beneficial interest be exchanged for a Physical Security, the Company will issue and the Trustee upon receipt of a Company Order will authenticate Physical Securities in the name of such beneficial owner in exchange for the corresponding portion of such Global Security, which the Depository will distribute to such beneficial owner. The seventh paragraph of Section 3.5 of the Original Indenture shall not apply to the Notes, and any reference in the Original Indenture to such provision shall be deemed to refer to this Section 2.06.

Notwithstanding anything to the contrary in the Indenture or the Notes, following the occurrence and during the continuance of an Event of Default, any beneficial owner of a Global Security may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depository or any other Person, such beneficial owner's right to exchange its beneficial interest in such Global Security for a Physical Security in accordance with this Section 2.06.

Notes issued in exchange for a Global Security or any portion thereof pursuant to this Section 2.06(a) shall be issued in definitive, fully registered form, without Interest coupons, shall have an aggregate principal amount equal to that of such Global Securities or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depository shall designate and shall bear any legends required under the Indenture.

(b) Upon any request by the Depository or a beneficial owner in the circumstances described in Section 2.06(a), the Company will promptly make available to the Trustee a sufficient supply of Physical Securities in definitive, fully registered form, without Interest coupons.

(c) At such time as all interests in a Global Security have been repurchased, converted, cancelled or exchanged for Physical Securities, such Global Security shall, upon receipt thereof, be canceled by the Trustee in accordance with standing procedures and

13

instructions existing between the Depository and the custodian for the Global Security. At any time prior to such cancellation, if any interest in a Global Security is repurchased, converted, cancelled or exchanged for Notes in certificated form, the principal amount of such Global Security shall, in accordance with the standing procedures and instructions existing between the Depository and the custodian for the Global Security, be appropriately reduced, and an endorsement shall be made on such Global Security, by the Trustee or the custodian for the Global Security, at the direction of the Trustee, to reflect such reduction. The Company shall promptly notify the Trustee in writing of any repurchase, conversion, cancellation or exchange effected through any Paying Agent, Registrar or Conversion Agent other than the Trustee.

Section 2.07. *Purchase and Cancellation.* The Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. Notwithstanding anything to the contrary in the Original Indenture, the Company shall cause any Notes so purchased (other than Notes purchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation, and they will no longer be considered Outstanding.

Section 2.08. *Additional Notes.* The Company may, from time to time without the consent of the Holders of Outstanding Notes, reopen the Indenture and issue additional Notes under the Indenture (“**Additional Notes**”) with the same terms (other than differences in the issue date and, in some cases, the issue price, the first interest accrual date and first Interest Payment Date) as the Notes issued on the Issue Date in an unlimited amount; *provided* that if any such Additional Notes are not fungible for U.S. federal income tax purposes with the Notes issued on the Issue Date, such Additional Notes shall have a separate CUSIP number. The Notes issued on the Issue Date and any Additional Notes shall be treated as a single class for all purposes under the Indenture, including for purposes of voting.

The Company shall cause all Notes surrendered for payment, repurchase (including in accordance with the preceding paragraph), registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any agents, Subsidiaries or Affiliates of the Company), to be delivered to the Trustee for cancellation. All Notes delivered to the Trustee shall be cancelled promptly by the Trustee in accordance with its customary procedures. Except with respect to the Notes surrendered for registration of transfer or exchange, no Notes shall be authenticated in exchange for any Notes cancelled as provided in the Indenture.

Section 2.09. *Mutilated, Destroyed, Lost or Stolen Notes.* With respect to the Notes, the words “or is about to become due and payable” in the third paragraph of Section 3.6 of the Original Indenture shall be deemed to have been deleted.

14

ARTICLE 3 PARTICULAR COVENANTS OF THE COMPANY

Section 3.01. *Covenants in Original Indenture.* The following covenants of the Company are made in addition to the covenants set forth in Article 10 of the Original Indenture.

Section 3.02. *Compliance Certificate.* Notwithstanding anything to the contrary in Section 10.7 of the Original Indenture, the Company shall deliver to the Trustee (i) within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending December 31, 2014) an Officer’s Certificate stating whether or not the signer thereof has knowledge of any Event of Default that occurred during the previous year and whether the Company, to the officer’s knowledge, is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture and (ii) within 30 days after the occurrence thereof, written notice of any events that would constitute an Event of Default, their status and what action the Company is taking or proposing to take in respect thereof. Any notice required to be given under this Section 3.02 shall be delivered to a Responsible Officer of the Trustee at its Corporate Trust Office.

Section 3.03. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the Indenture.

Section 3.04. *Future Subsidiary Guarantees.* The Company shall cause each Subsidiary that guarantees payment by the Company of any unsecured debt securities of the Company issued by the Company in an offering registered pursuant to the Securities Act or in an offering exempt from such registration pursuant to Rule 144A and/or Regulation S thereunder to execute and deliver to the Trustee a supplemental indenture pursuant to Section 11.01 under which such Subsidiary will guarantee payment of the Securities and the obligations of the Company to the Trustee under the Indenture on terms substantially similar to the guarantee of such debt securities. If any such Subsidiary shall no longer provide such a guarantee with respect to any such debt securities, the Company may execute and deliver to the Trustee pursuant to Section 11.01 a further supplemental indenture in order to remove such guarantee of the Securities by such Subsidiary.

ARTICLE 4 REPURCHASE OF NOTES; NO REDEMPTION

Section 4.01. *Right To Require Repurchase Upon a Fundamental Change.*

(a) If a Fundamental Change occurs at any time, then each Holder shall have the right, at such Holder’s option, to require the Company to purchase for cash any or all of such Holder’s Notes or any portion thereof that is equal to \$1,000 or a multiple of \$1,000 principal amount, on the date (the “**Fundamental Change Purchase Date**”) specified by the Company that is not less than 20 calendar days and not more than 35 calendar days following the date of the Fundamental Change Purchase Right Notice (as defined below) at a purchase price equal to 100% of the principal amount thereof, together with accrued and unpaid Interest, thereon, if any, to, but excluding, the Fundamental Change Purchase Date (the “**Fundamental Change**”).

15

Purchase Price"); *provided, however*, that if Notes are purchased pursuant to this Section 4.01 on a Fundamental Change Purchase Date that falls after the close of business on a Record Date but at or prior to the close of business on the corresponding Interest Payment Date, the Interest payable in respect of such Interest Payment Date shall be payable to the Holders of record as of the corresponding Record Date, in which case, the Fundamental Change Purchase Price shall be equal to 100% of the principal amount of the Notes being purchased.

Purchases of Notes under this Section 4.01 shall be made, at the option of the Holder thereof, upon:

- (i) delivery to the Trustee (or other Paying Agent appointed by the Company) by a Holder of a duly completed notice (the **Fundamental Change Purchase Notice**) in the form set forth on the reverse of the Note during the period between the delivery of the Fundamental Change Purchase Right Notice and the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date (the **Fundamental Change Expiration Time**); and
- (ii) delivery or book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Company) at any time during period between the delivery of the Fundamental Change Purchase Notice and the Fundamental Change Expiration Time (together with all necessary endorsements, if the Notes are Physical Securities) at the corporate trust office of the Trustee (or other Paying Agent appointed by the Company), such delivery being a condition to receipt by the Holder of the Fundamental Change Purchase Price therefor.

The Fundamental Change Purchase Notice shall state:

- (A) if certificated, the certificate numbers of Notes to be delivered for purchase;
- (B) the portion of the principal amount of Notes to be purchased, which must be \$1,000 or an integral multiple thereof; and
- (C) that the Notes are to be purchased by the Company pursuant to the applicable provisions of the Notes and the Indenture;

provided, however, that if the Notes are Global Securities, the Fundamental Change Purchase Notice must comply with applicable Depository procedures.

The Company shall be required to purchase, pursuant to subsection (d), Notes that have been validly surrendered and not withdrawn on the Fundamental Change Purchase Date pursuant to subsection (c) of this Section 4.01.

Notes to be purchased pursuant to this Section 4.01 shall be paid for in cash.

The Trustee (or other Paying Agent appointed by the Company) shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written notice of withdrawal thereof in accordance with the provisions of subsection (c) of this Section 4.01.

16

Any Note that is to be purchased only in part shall be, if certificated, surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal of the Note so surrendered, or, if a Global Security, the Trustee, or the custodian at the direction of the Trustee, shall make a notation on such Global Security as to the reduction in the principal amount represented thereby for the purchased portion of the principal of the Note.

(b) The Company shall give the Trustee and Paying Agent and each Holder a written notice of the Fundamental Change within 20 calendar days after the occurrence of such Fundamental Change (such notice, the **Fundamental Change Purchase Right Notice**) and of the purchase right at the option of Holders arising as a result thereof. Such notice shall be either by first class mail or, with respect to Global Notes, in accordance with the Depository's notice procedures. Simultaneously with providing such Fundamental Change Purchase Right Notice, the Company shall publish a notice containing the information included therein on the Company's website or through such other public medium as the Company may use at such time.

The Fundamental Change Purchase Right Notice shall specify (if applicable):

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the purchase right pursuant to this Article 4;
- (iv) the Fundamental Change Purchase Price;
- (v) the Fundamental Change Purchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) the applicable Conversion Rate and any adjustments to the applicable Conversion Rate;
- (viii) that Notes with respect to which a Fundamental Change Purchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Purchase Notice in accordance with this Section 4.01; and
- (vii) the procedures that Holders must follow to require the Company to purchase their Notes.

17

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 4.01.

(c) A Fundamental Change Purchase Notice may be withdrawn, in whole or in part, by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Purchase Right Notice at any time until the Fundamental Change Expiration Time, specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,

- (ii) if certificated Notes have been issued, the certificate numbers of the withdrawn Notes, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Purchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

provided, however, that if the Notes are not in certificated form, the withdrawal notice must comply with appropriate procedures of the Depository.

(d) On or prior to 11:00 a.m., New York City time, on the Fundamental Change Purchase Date, the Company shall deposit with the Trustee (or other Paying Agent appointed by the Company or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust) an amount of money sufficient to purchase on the Fundamental Change Purchase Date all of the Notes to be repurchased on such date at the Fundamental Change Purchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for each Note surrendered for purchase (and not withdrawn) prior to the Fundamental Change Expiration Time shall be made on the later of (x) the Fundamental Change Purchase Date with respect to such Note (*provided* the Holder has satisfied the conditions to the payment of the Fundamental Change Purchase Price in this Section 4.01), and (y) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by this Section 4.01 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Security Register; *provided, however*, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Trustee (or other Paying Agent) shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Purchase Price.

(e) If the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to purchase on the Fundamental Change Purchase Date all the Notes or portions thereof that are to be purchased as of the Business Day following the Fundamental Change Purchase Date, then on and after the Fundamental Change Purchase Date (i) such Notes shall cease to be Outstanding and Interest, if any, shall cease to accrue on such Notes, whether or not book-entry transfer of the Notes has been made and whether or not the Notes have been

18

delivered to the Trustee or Paying Agent and (ii) all other rights of the Holders of such Notes shall terminate, other than (A) the right to receive the Fundamental Change Purchase Price upon delivery or transfer of the Notes, and (B) if the Fundamental Change Purchase Date falls after a Record Date and on or prior to the related Interest Payment Date the right of the Holder on such Record Date to receive the Interest payable on such Interest Payment Date.

- (f) In connection with any offer to purchase the Notes pursuant to this Article 4, the Company shall, if required:
 - (i) comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable;
 - (ii) file a Schedule TO or any successor or similar schedule under the Exchange Act, if required; and
 - (iii) otherwise comply with all applicable federal and state securities laws,

in each case, so as to permit the rights and obligations under this Article 4 to be exercised in the time and in the manner specified herein.

(g) Notwithstanding anything to the contrary herein, no Notes may be purchased by the Company at the option of Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the relevant Fundamental Change Purchase Date (except in the case of an acceleration resulting from the Company's default in the payment of the Fundamental Change Purchase Price with respect to such Notes).

(h) Notwithstanding anything to the contrary in this Article 4, the Company shall not be required to make a Fundamental Change purchase offer pursuant to a Fundamental Change Purchase Notice upon a Fundamental Change if a third party makes the Fundamental Change purchase offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Article 4 and purchases all Notes properly tendered and not withdrawn under the Fundamental Change purchase offer.

Section 4.02. *No Redemption.* Article 11 of the Original Indenture shall not apply with respect to the Notes. The Notes shall not be redeemable at the option of the Company prior to the Maturity Date.

Section 4.03. *No Sinking Fund.* No sinking fund shall be provided with respect to the Notes.

19

ARTICLE 5 CONVERSION

Section 5.01. *Conversion Privilege; Conversion Rate.*

(a) Subject to the conditions and during the periods described in Section 5.01(b), and upon compliance with the provisions of this Article 5, a Holder shall have the right to surrender for conversion all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of its Notes at any time until the close of business on the Business Day immediately preceding the Free Convertibility Date. On and after the Free Convertibility Date and until the close of business on the second Scheduled Trading Day immediately prior to the Maturity Date, a Holder shall have the right to surrender all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of its Notes for conversion, regardless of whether any of the conditions described in section 5.01(b) have been satisfied, upon compliance with the provisions of this Article 5. Upon conversion of Notes, the holder shall be entitled to receive the amounts due upon conversion specified in Section 5.04 based on the applicable Conversion Rate then in effect. The Conversion Rate in effect at any time shall be subject to adjustment in the manner set forth herein.

(b) Subject to the conditions and during the periods described in this section 5.01(b), a Holder shall have the right to surrender its Notes for conversion at any time until the close of business on the Business Day immediately preceding the Free Convertibility Date.

(i) Prior to the close of business on the Business Day immediately preceding the Free Convertibility Date, a Holder may surrender all or any portion of its Notes for conversion during any calendar quarter commencing after the quarter ending March 31, 2015 (and only during such calendar quarter) if the Last Reported Sale Price of the Common Stock for at least twenty (20) Trading Days (whether or not consecutive) in the period of thirty (30) consecutive Trading Days ending on the last Trading Day of the calendar quarter immediately preceding the calendar quarter in which the conversion occurs, is more than 130% of the Conversion Price of the Notes in effect on each applicable Trading Day.

(ii) If, prior to the close of business on the Business Day immediately preceding the Free Convertibility Date, the Trading Price per \$1,000 principal amount of the Notes on each Trading Day during any five consecutive Trading Day period is less than 98% of (x) the Last Reported Sale Price of the Common Stock on such Trading Day multiplied by (y) the Conversion Rate in effect on such Trading Day, a Holder may surrender its Notes for conversion at any time during the following five consecutive Business Days (the "**Trading Price Condition**").

The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price of the Notes unless the Company shall have requested such determination; and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, it shall have no obligation to determine the Trading Price) unless a Holder of a Note provides the Company with reasonable evidence that the trading price per \$1,000 principal amount of Notes would be

less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate. At such time, the Company shall instruct the Bid Solicitation Agent (if other than the Company) to determine, or if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price per \$1,000 principal amount of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate. If the Trading Price Condition has been met, the Company shall so notify the Holders of the Notes and the Trustee. If, at any time after the Trading Price Condition has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such date, the Company shall so notify the Holders of the Notes and the Trustee.

(iii) If, prior to the close of business on the Business Day immediately preceding the Free Convertibility Date, the Company elects to issue or distribute, as the case may be, to all or substantially all holders of Common Stock:

(x) rights, options or warrants entitling them to subscribe for or purchase, for a period expiring within 45 days from the announcement date for such distribution, Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such issuance; or

(y) cash, debt securities (or other evidence of indebtedness) or other assets or securities (including, for the avoidance of doubt, any rights, options or warrants that are not described in clause (i) above, but excluding dividends or distributions described in Section 5.06(a)), which distribution has a per share value exceeding 10% of the Last Reported Sale Price of Common Stock as of the Trading Day immediately preceding the declaration date for such distribution,

then, in either case, the Company shall notify Holders at least 35 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender their Notes for conversion at any time until the earlier of the close of business on the Business Day immediately preceding the Ex-Dividend Date and the Company's announcement that such issuance or distribution will not take place. A Holder may not convert any of its Notes under this subsection (iii) if the Company provides that Holders of the Notes shall participate, at the same time and upon the same terms as holders of Common Stock and as a result of holding the Notes, in the relevant distribution described above without having to convert their Notes as if they held a number of shares of Common Stock equal to the Conversion Rate on the record date for the distribution multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

(iv) If (x) a Fundamental Change or a Make-Whole Fundamental Change occurs or (y) the Company is a party to (a) a consolidation, merger, binding share

exchange, pursuant to which the Common Stock would be converted into cash, securities or other assets or (b) a sale, conveyance, transfer or lease of all or substantially all of the assets of the Company and its Subsidiaries, on a consolidated basis, to another person, the Securities may be surrendered for conversion at any time from or after the date that on which the Company shall provide the notice specified below until the Close of Business (i) if such transaction is a Fundamental Change, on the Business Day immediately preceding the Fundamental Change Purchase Date, and, (ii) otherwise, on the 35th Business Day immediately following the effective date for such transaction. The Company will notify the Holders and the Trustee of any such transaction:

(A) as promptly as practicable following the date the Company publicly announces such transaction but in no event less than 35 Scheduled Trading Days prior to the anticipated effective date of such transaction; or

(B) if the Company does not have knowledge of such transaction at least 35 Scheduled Trading Days prior to the anticipated effective date of such transaction, within one Business Day of the date upon which the Company receives notice, or otherwise becomes aware, of such transaction, but in no event later than the Business Day following the actual effective date of such transaction.

Section 5.02. *Adjustment to Conversion Rate Upon Conversion in Connection with a Make-Whole Fundamental Change.*

(a) If the Effective Date of a Make-Whole Fundamental Change occurs and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall increase the Conversion Rate for the Securities so surrendered for conversion by a number of additional shares of Common Stock (the "Additional Shares") under the circumstances and as set forth below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the Conversion Notice is received by the Conversion Agent (or in the case of global Securities, the relevant Conversion Notice in accordance with the Depository's applicable procedures) from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Purchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (ii) of the definition thereof, the 35th Scheduled Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change).

Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall, at its option, satisfy its conversion obligation by Stock Settlement, Cash Settlement or Combination Settlement in the manner specified in Section 5.04. However, if the consideration paid to holders of the Common Stock in any Make-Whole Fundamental Change described in the clause (ii) of the definition of Fundamental Change is composed entirely of cash, then, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the payment and delivery obligations upon the conversion of a Note shall be calculated based solely on the Stock Price for such Make-Whole Fundamental Change and shall, for each \$1,000 principal amount of Notes converted, be deemed to be an amount of cash equal to the product of (i) the Conversion Rate in effect on the applicable Conversion Date (as

increased by any number of Additional Shares required by this Section 5.02) multiplied by (ii) such Stock Price. In such event, the Company will pay such amount of cash to a converting Holder on the third Business Day following the applicable Conversion Date.

(b) The number of Additional Shares, if any, by which the Conversion Rate shall be increased for conversions in connection with a Make-Whole Fundamental Change as set forth in Section 5.02(a) shall be determined by reference to the table attached as Schedule A hereto, based on the date on which the Make-Whole Fundamental

Change occurs or becomes effective (the “**Effective Date**”) and the Stock Price. The exact Stock Price and Effective Date may not be set forth in the table attached as Schedule A hereto, in which case:

- (i) if the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Price amounts or the earlier and later Effective Dates, as applicable, based on a 365-day year;
- (ii) if the Stock Price is greater than \$200.00 per share (subject to adjustment in the same manner as the Stock Prices pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate; and
- (iii) if the Stock Price is less than \$47.46 per share (subject to adjustment in the same manner as the Stock Prices pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding anything herein to the contrary, the Company shall not increase the Conversion Rate to more than 21.0703 shares of Common Stock (the “**Maximum Conversion Rate**”) per \$1,000 in principal amount of Notes pursuant to the events described in this Section 5.02; *provided* the Company shall adjust the Maximum Conversion Rate upon the occurrence of any event for which, and in the same manner in which, it must adjust the Conversion Rate pursuant to Section 5.06.

(c) The Stock Prices set forth in the first row of the table in Schedule A hereto (*i.e.*, the column headers) and the number of Additional Shares in the table in Schedule A hereto shall be adjusted as of any date on which the Conversion Rate of the Notes is adjusted as set forth in Section 5.06. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied* by a fraction, the numerator of which is the applicable Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The numbers of Additional Shares within the table attached as Schedule A hereto shall each be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 5.06.

(c) The Company shall notify the Holders of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than five Business Days after such Effective Date.

23

Section 5.03. *Exercise of Conversion Privilege*

(a) Before any Holder of a Note shall be entitled to convert the same as set forth above, such Holder shall (i) in the case of a Global Security, transfer such Note to the Conversion Agent through the facilities of the Depository and comply with the applicable conversion procedures of the Depository in effect at that time and, if required, pay funds equal to Interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 5.04(d) and, if required, pay all taxes or duties, if any, as set forth in Section 5.09 and (ii) in the case of a Physical Security, (A) complete and manually sign and deliver an irrevocable written notice to the Conversion Agent in the form set forth in Exhibit A hereto (or a facsimile thereof) (a “**Conversion Notice**”) at the office of the Conversion Agent and shall state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the conversion obligation to be registered, (B) surrender such Note, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (C) if required, pay all transfer or similar taxes, if any, as set forth in Section 5.09 and (D) if required, pay funds equal to Interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 5.04(d). The Company shall pay any documentary, stamp or similar issue or transfer tax on the issuance of any shares of Common Stock upon conversion of the Notes, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder’s name, in which case the Holder shall pay the tax. A Note shall be deemed to have been converted on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in this Section 5.03.

If the Holder of a Note has submitted such Note for purchase upon a Fundamental Change, such Holder may only convert such Note if it withdraws its Fundamental Change Purchase Notice prior to the Fundamental Change Expiration Time, in accordance with Section 4.01(c).

(b) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall, upon receipt of an Officers’ Certificate, authenticate and deliver to or upon the written order of the Holder of the Note so surrendered, without charge to such Holder, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

Section 5.04. *Settlement of Conversion Obligation*. The provisions of this Section 5.04 shall be subject to the provisions of Section 5.08.

(a) Upon conversion of any Note, the Company may choose to satisfy its conversion obligation by paying or delivering, as the case may be, to converting Holders, in respect of each \$1,000 principal amount of Notes being converted, either (1) solely cash (“**Cash Settlement**”), (2) shares of Common Stock, together with cash, if applicable, in lieu of any fractional share of Common Stock in accordance with Section 5.05 (“**Stock Settlement**”) or (3) a combination of cash and shares of Common Stock, if any, with a particular Specified Dollar Amount (“**Combination Settlement**”), as set forth in this Section 5.04.

24

(i) All conversions on or after the Final Settlement Method Election Date shall be settled using the same Settlement Method. If the Company has not delivered to the Trustee and all Holders a written notice of its election of a Settlement Method on or prior to the Final Settlement Method Election Date, the Company shall, with respect to any conversions on or after the Final Settlement Method Election Date, be deemed to have elected to satisfy its conversion obligation using Combination Settlement with a Specified Dollar Amount of \$1,000, unless the Company has previously irrevocably elected another Settlement Method or Combination Settlement with a different Specified Dollar Amount as described in Section 5.04(a)(iii).

(ii) For all conversions prior to the Final Settlement Method Election Date, the Company shall use the same Settlement Method for all conversions occurring on any given Conversion Date. Except for any conversions that occur on or after the Final Settlement Method Election Date, or following any Irrevocable Election as described in Section 5.04(a)(iii), the Company shall not have any obligation to use the same Settlement Method with respect to conversions that occur on different Conversion Dates. If the Company elects a particular Settlement Method in connection with any conversion prior to the Final Settlement Method Election Date, unless the Company has previously made an Irrevocable Election pursuant to Section 5.04(a)(iii), the Company shall inform Holders so converting through the Trustee of the Settlement Method the Company has selected (including the Specified Dollar Amount, if applicable), no later than the close of business on the second Trading Day immediately following the related Conversion Date. If the Company does not timely make such an election, or if the Company elects Combination Settlement in respect of its conversion obligation, but the Company does not timely notify converting Holders of the Specified Dollar Amount per \$1,000 principal amount of Notes, the Company shall be deemed to have elected Combination Settlement with a Specified Dollar Amount of \$1,000 per \$1,000 principal amount of Notes with respect to such conversion.

(iii) Prior to the Final Settlement Method Election Date, the Company may, by written notice to Holders, at its option irrevocably elect Stock Settlement, Cash Settlement or Combination Settlement with a particular Specified Dollar Amount, for all conversions with a Conversion Date subsequent to the Company’s delivery of such notice (any such election, an “**Irrevocable Election**”).

(iv) The amount of cash, if any, and the number of shares of Common Stock, if any, that the Company is required to pay or deliver, as the case may be, in respect of any conversion of Notes (the “**Settlement Amount**”) shall be computed as follows:

(A) if the Company elects to satisfy its conversion obligation through Stock Settlement, the Company shall deliver to the converting Holder in respect of each \$1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date (together with cash in lieu of fractional shares as set forth in Section 5.05);

(B) if the Company elects to satisfy its conversion obligation through Cash Settlement, the Company shall pay to the converting Holder, in respect of

25

each \$1,000 principal amount of Notes being converted, cash in an amount equal to the sum of the Daily Conversion Values for each of the 25 consecutive Trading Days during the related Conversion Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its conversion obligation through Combination Settlement, the Company shall deliver to Holders, in respect of each \$1,000 principal amount of Notes being converted, an amount of cash and shares of Common Stock equal to the sum of the Daily Settlement Amounts for each of the 25 consecutive Trading Days during the related Conversion Period.

(v) The “**Daily Settlement Amount**” for each of the 25 consecutive Trading Days of the applicable Conversion Period, will consist of:

(A) cash equal to the lesser of (i) a dollar amount per \$1,000 principal amount of Notes to be received upon conversion as specified by the Company pursuant to Section 5.04(a)(i) or (ii), as the case may be (the “**Specified Dollar Amount**”), if any, *divided* by 25 (such quotient being referred to as the “**Daily Measurement Value**”) and (ii) the Daily Conversion Value; and

(B) to the extent the Daily Conversion Value for such Trading Day exceeds the Daily Measurement Value for such Trading Day, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided* by (ii) the Daily VWAP of the Common Stock for such Trading Day.

(vi) Payment or delivery, as the case may be, of the consideration due upon conversion shall be made (A) in the case of Stock Settlement, three Business Days after the Conversion Date, unless such Conversion Date occurs following the Record Date immediately preceding the Maturity Date, in which case the Company shall make such delivery (and payment, if applicable) on the Maturity Date or (B) in the case of any other Settlement Method, three Business Days after the last Trading Day of the Conversion Period; *provided, however*, that, in the case of clause (A) or (B), if prior to the Conversion Date for any converted Notes the Common Stock has been replaced by Reference Property consisting solely of cash pursuant to Section 5.12, the Company shall pay the consideration due in respect of conversion on the third Business Day immediately following the related Conversion Date, and, notwithstanding anything to the contrary herein, no Conversion Period shall apply to those conversions.

(vii) As a result of the provisions set forth in this Section 5.04(a), in the case of Cash Settlement or Combination Settlement, if a Market Disruption Event occurs on a Scheduled Trading Day during the Conversion Period, or if such Scheduled Trading Day is not a Trading Day for any other reason, then the Daily Conversion Value or Daily Settlement Amount, as applicable, will be determined on the next following Trading Day and delivery of the settlement amount will be delayed accordingly. No interest will accrue on account of such delay.

26

(b) Each conversion shall be deemed to have been effected immediately prior to the close of business on the relevant Conversion Date; *provided, however*, that the Person in whose name any shares of Common Stock shall be issuable upon such conversion shall be treated as the Holder of record of such shares as of the close of business on the Conversion Date (in the case of Stock Settlement) or the last Trading Day of the relevant Conversion Period (in any other case).

(c) Any cash amounts due upon conversion by a Holder of Notes surrendered for conversion shall be paid by the Company to such Holder, or such Holder’s nominee or nominees. In addition, the Company shall issue, or shall cause to be issued, any shares of Common Stock due upon conversion to such Holder, or such Holder’s nominee or nominees, certificates or a book-entry transfer through the Depository (together with any cash in lieu of fractional shares).

(d) Upon conversion, a Holder shall not receive any additional cash payment for accrued and unpaid Interest, if any, except as set forth in this clause (d), and the Company shall not adjust the Conversion Rate to account for accrued and unpaid Interest. Except as set forth in this subsection (d), the Company’s settlement of the conversion of a Note pursuant to this Section 5.04 shall be deemed to satisfy its obligation to pay the principal amount of such Note and accrued and unpaid Interest thereon, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the Conversion Date will be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon conversion of a Note into a combination of cash and shares of Common Stock, accrued and unpaid Interest shall be deemed to be paid first out of the cash paid upon such conversion.

Notwithstanding the foregoing, if a Note is converted after the close of business on a Record Date, the Holder of such Note at the close of business on such Record Date shall receive the Interest payable on such Note on the corresponding Interest Payment Date notwithstanding such conversion. A Note surrendered for conversion after the close of business on any Record Date but prior to the open of business on the immediately following Interest Payment Date must be accompanied by payment of an amount equal to the Interest that will be payable on such Interest Payment Date on the Note so converted; *provided, however*, that no such payment need be made:

- (i) if the Company has specified a Fundamental Change Purchase Date that is after a Record Date and on or prior to the corresponding Interest Payment Date;
- (ii) with respect to any Note surrendered for conversion following the Record Date immediately preceding the Maturity Date; or
- (iii) only to the extent of any overdue Interest, if any overdue Interest remains unpaid at the time of conversion with respect to such Note.

As a result of the foregoing, the Company will pay Interest on the Maturity Date on all Notes converted after the Record Date preceding the Maturity Date, and converting Holders will not be required to pay equivalent interest amounts.

Section 5.05. *Fractions of Shares.* The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of any fractional share of Common Stock otherwise issuable upon conversion based on the Daily VWAP of the

27

Common Stock on the relevant Conversion Date (in the case of Stock Settlement) or based on the Daily VWAP on the last Trading Day of the relevant Conversion Period (in the case of any other Settlement Method). For each Note surrendered for conversion, if the Company has elected to satisfy its conversion obligation through Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the applicable Conversion Period and any fractional share remaining after such computation shall be paid in cash. In addition, if more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered.

Section 5.06. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows, except that the Conversion Rate shall not be adjusted if Holders of the Notes participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 5.06 without having to convert their Notes as if they held a number of shares of Common Stock equal to the applicable Conversion Rate, multiplied by the principal amount of Notes held by such Holders divided by \$1,000:

- (a) In case the Company shall exclusively issue shares of Common Stock as a dividend or distribution on shares of the outstanding Common Stock, or shall effect a share split into a greater number of shares of Common Stock or a share combination into a lesser number of shares of Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or combination, as applicable;
- CR₁ = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as applicable;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or immediately prior to the open of business on the effective date of such share split or share combination, as applicable; and

28

- OS₁ = the number of shares of Common Stock that would be outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this subsection (a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this clause (a) is announced but not so paid or made, or any share split or combination of the type described in this clause (a) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

- (b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants entitling them for a period of not more than 45 calendar days after the record date of such issuance to subscribe for or purchase shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;
- CR₁ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants divided by the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

29

Any increase made under this subsection (b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this subsection (b) and for purposes of Section 5.01(b)(iii)(x), in determining whether any rights, options or warrants entitle the Holders to subscribe for or purchase shares of Common Stock at less than the average of the Last Reported Sale Prices of the Common Stock for each Trading Day in the applicable 10 consecutive Trading Day period, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

- (c) If the Company distributes shares of Capital Stock, evidences of indebtedness of the Company, other assets or property of the Company or rights, options or warrants to acquire Capital Stock or other securities of the Company, to all or substantially all holders of the Common Stock, excluding:
- (i) dividends, distributions, rights, options or warrants as to which an adjustment was effected pursuant to Section 5.06(a) or 5.06(b);
 - (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 5.06(d);
 - (iii) distributions of Reference Property pursuant to a transaction specified in Section 5.12; and
 - (iv) Spin-Offs as to which the provisions set forth below in this Section 5.06(c) shall apply,

then, in each such case, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

30

CR₁ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

SP₀ = the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

If “FMV” (as defined above) is equal to or greater than “SR” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of Common Stock, without having to convert its Notes, the amount and kind of Capital Stock of the Company, evidences of indebtedness of the Company, other assets or property of the Company or rights, options or warrants to acquire Capital Stock of the Company or other securities that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the record date for the distribution.

Any increase made under the portion of this Section 5.06(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

With respect to an adjustment pursuant to this subsection (c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “Spin-Off”) the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the Valuation Period;

CR₁ = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;

FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share

31

of Common Stock (determined by reference to the definition of Last Reported Sale Price set forth in Section 1.02 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (such period, the “Valuation Period”); and

MP₀ = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5.06(c) shall occur on the last Trading Day of the Valuation Period; provided that in respect of any conversion during the Valuation Period, references with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the Conversion Date in determining the applicable Conversion Rate. If the Ex-Dividend Date for the Spin-Off is less than 10 Trading Days prior to, and including, the last Trading Day of the Conversion Period in respect of any conversion, references in the definition of “FMV₀” relating to Spin-Off’s above to 10 Trading Days shall be deemed to be replaced, solely in respect of such conversion, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-Off to, and including, the last Trading Day of such Conversion Period.

Rights, options or warrants distributed by the Company to all or substantially all holders of Common Stock, entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“Trigger Event”): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this subsection (c) (and no adjustment to the Conversion Rate under this subsection (c) shall be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this subsection (c). Subject to Section 5.06(i), if any such rights, options or warrants are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of

distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). Subject to Section 5.06(i), in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this subsection (c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case

may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 5.06(c) and Sections 5.06(a) and 5.06(b), any dividend or distribution to which this Section 5.06(c) is applicable that also includes shares of Common Stock to which Section 5.06(a) applies or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 5.06(b) applies, shall be deemed instead to be (1) a dividend or distribution of the shares of Capital Stock, evidences of indebtedness or other assets or property, other than such shares of Common Stock or such rights, options or warrants, to which this Section 5.06(c) applies (and any Conversion Rate adjustment required by this Section 5.06(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Sections 5.06(a) and 5.06(b) with respect to such dividend or distribution shall then be made), except (A) the Ex-Dividend Date of such dividend or distribution shall under this Section 5.06(c) be substituted as “the Ex-Dividend Date” within the meaning of Section 5.06(a) and Section 5.06(b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the open of business on the Ex-Dividend Date or immediately prior to the open of business on the effective date of such share split or combination, as applicable” within the meaning of Section 5.06(a) or “outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution” within the meaning of Section 5.06(b).

- (d) If any cash dividend or distribution is made by the Company to all or substantially all holders of outstanding Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR₁ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP₀ = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share that the Company distributes holders of Common Stock.

Any increase made under this Section 5.06(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution; *provided* that if any dividend or distribution described in this Section 5.06(d) is declared but not so paid, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared, effective as of date the Board of Directors determines not to pay such a dividend or distribution.

Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each \$1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the record date for such cash dividend or distribution.

- (e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR₁ = the Conversion Rate in effect immediately after the close of business on 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer;

OS₀ = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer);

OS₁ = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer); and

SP₁ = the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires.

The adjustment to the Conversion Rate under this Section 5.06(e) shall occur at the close of business on the 10th Trading Day immediately following, and including the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within the 10 Trading Days immediately following and including the Trading Day next succeeding the expiration date of any tender or exchange offer, references with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and the Conversion Date in determining the applicable Conversion Rate. If the Trading Day next succeeding the expiration date is less than 10 Trading Days prior to, and including, the end of the Conversion Period in respect of any conversion, references in the definition of "SP₁" above to 10 consecutive Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date, to and including, the last Trading Day of such Conversion Period.

(f) If:

(i) the Company elects to satisfy its conversion obligation through Combination Settlement and shares of Common Stock are deliverable for a given Trading Day within the Conversion Period applicable to Notes that a Holder has converted,

(ii) the record date, effective date or expiration date for any distribution or transaction that requires an adjustment to the Conversion Rate as described in subsections (a), (b), (c), (d) and (e) of this Section 5.06 occurs on or after the first Trading Day of the relevant Conversion Period and on or prior to the last Trading Day of such Conversion Period,

(iii) the number of such shares of Common Stock is calculated (x) for a Trading Day in such Conversion Period that occurs on or prior to such record date, effective date or expiration date and (y) based on a Conversion Rate that is not adjusted as described in subsections (a), (b), (c), (d) and (e) of this Section 5.06 in respect of such distribution or transaction, and

(iv) the shares a Holder will receive in respect of such Trading Day are not entitled to participate in the relevant distribution or transaction (because such shares were not held on a related record date or otherwise),

35

then the Company shall adjust the number of shares that the Company will deliver to you in respect of the relevant Trading Day as the Company determines appropriate in good faith to reflect the relevant distribution or transaction.

(g) If a Conversion Rate adjustment becomes effective on any Ex-Dividend Date as described above, and a Holder that has converted its Note on or after such Ex-Dividend Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date pursuant to Section 5.04(b) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the foregoing Conversion Rate adjustment provisions and settlement provisions, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock such Holder is entitled to receive upon conversion on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

In addition, if a Holder converts a Note, Combination Settlement is applicable to such Note and the Daily Settlement Amount for any Trading Day during the Conversion Period applicable to such Note:

(i) is calculated based on a Conversion Rate adjusted on account of any distribution or transaction described in subsections (a), (b), (c), (d) and (e) of this Section 5.06; and

(ii) includes any shares of Common Stock that entitle their holder to participate in such event;

then, notwithstanding the foregoing Conversion Rate adjustment provisions and settlement provisions, (x) such Conversion Rate adjustment shall only be made for such converting Holder for such Trading Day to the extent of the cash or other consideration (other than shares of Common Stock entitled to participate in such event) included in the Daily Settlement Amount for such Trading Day and (y) with respect to such shares of Common Stock, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(h) Notwithstanding any of the foregoing, the applicable Conversion Rate will not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries;

36

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in subclause (ii) and outstanding as of the date the Notes were first issued;

(iv) for a change in the par value of the Common Stock; or

(v) for accrued and unpaid interest, if any.

(i) To the extent that the Company has a rights plan in effect upon conversion of the Notes (*e.*, a poison pill), converting Holders of the Notes shall receive, in addition to any Common Stock received in connection with such conversion, the rights under such rights plan, unless prior to such conversion, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of Common Stock shares of the Company's Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants pursuant to Section 5.06(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(j) In addition to those adjustments required by subsections (a), (b), (c), (d), (e) and (f) of this Section 5.06, and to the extent permitted by applicable law and applicable listing rules of The New York Stock Exchange and any other securities exchange on which the Company's securities are then listed, (i) the Company in its sole discretion from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days so long as such increase is irrevocable during such period and the Board of Directors determines that such increase would be in the Company's best interest and (ii) the Company may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) of Common Stock or similar events.

(k) Adjustments to the Conversion Rate shall be calculated to the nearest one-ten thousandth (1/10,000) of a share.

(l) For purposes of this Section 5.06, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(m) Whenever any provision of the Indenture requires the Company to calculate Last Reported Sale Prices, Daily VWAPs, Daily Conversion Values, Daily Settlement Amounts or the Stock Price for purposes of a Make-Whole Fundamental Change over a span of multiple days, the Board of Directors shall make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Expiration Date or effective date of the event occurs, at any time during the period for which such Last Reported Sale Prices, Daily VWAPs, Daily Conversion Values, Daily Settlement Amounts or the Stock Price is to be calculated. For the avoidance of doubt, the adjustments made pursuant to this subsection (m) shall be made without duplication of any adjustment made pursuant to subsection (f) of this Section 5.06. Neither the

Trustee nor the Conversion Agent shall have any responsibility for any of the foregoing calculations or determinations.

(n) For purposes of this Section 5.06, the term "record date" means, unless the context requires otherwise, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise), and the term "effective date" shall mean the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

Section 5.07. *Notice of Adjustments of Conversion Rate.* Whenever the Conversion Rate is adjusted as herein provided, the Company shall compute the adjusted Conversion Rate in accordance herewith and shall prepare a certificate signed by the Chief Financial Officer or Principal Accounting Officer of the Company setting forth the adjusted Conversion Rate and describing in reasonable detail the facts upon which such adjustment is based. Such certificate shall promptly be filed with the Trustee and with the Conversion Agent (if other than the Trustee), and the Company shall also notify the holders of the adjustment. Failure to deliver any such certificate or notice shall not affect the validity of such adjustment.

Section 5.08. *Company To Reserve Common Stock.* The Company shall at all times and from time to time reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock that is not committed for any other purpose, for the purpose of issuance upon conversion of Notes, a number of shares of Common Stock equal to the product of (a) the Maximum Conversion Rate and (b) the aggregate principal amount of Outstanding Notes divided by \$1,000.

Section 5.09. *Taxes on Conversions.* The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issuance of shares of Common Stock upon any conversion of Notes hereunder; *provided* that the Company shall not be required to pay any tax that is due because the converting Holder requests such shares to be issued in a name other than such Holder's name, and no such issuance shall be made unless and until the Holder has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

Section 5.10. *Certain Covenants.* Before taking any action which would cause an adjustment reducing the Conversion Rate below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company shall take all corporate action that it reasonably determines is necessary to ensure that the Company may validly and legally issue a number of shares of Common Stock equal to the Maximum Conversion Rate (giving effect to such prospective adjustment), and that such shares would be considered fully paid under applicable law.

Section 5.11. *Cancellation of Converted Notes.* All Notes delivered to the Conversion Agent for conversion shall be delivered to the Trustee or its agent and canceled by the Trustee as provided in Section 3.9 of the Original Indenture.

Section 5.12. *Provision in Case of Effect of Reclassification, Consolidation, Merger or Sale.*

(a) In the case of:

- (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);
- (ii) any consolidation, merger or combination involving the Company;
- (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and its Subsidiaries substantially as an entirety; or
- (iv) any statutory share exchange,

in each case, in which holders of outstanding Common Stock are entitled to receive cash, securities or other property for their shares of Common Stock (**Reference Property**) and any such transaction, a "**Share Exchange Event**"), then the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted hereby providing that, at and after the effective time of such Share Exchange Event, Holders of each \$1,000 principal amount of Notes will be entitled to convert their Notes into the kind and amount of Reference Property that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Share Exchange Event would have owned or been entitled to receive upon such Share Exchange Event; *provided* that at and after the effective time of any such Share Exchange Event, (i) the Company will continue to have the right to determine the Settlement Method applicable to any conversion of Notes, unless the Company has previously made an Irrevocable Election pursuant to Section 5.04(a), (ii) any amount otherwise payable in cash upon conversion of the Notes pursuant to Section 5.04(a)(iv) shall continue to be payable in cash, (iii) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes pursuant to Section 5.04(a)(iv) shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such Share Exchange Event and (iv) the Daily VWAP shall be calculated based on the value of a unit of Reference Property that a holder of one share of Common Stock would have received in such Share Exchange Event. Such supplemental indenture shall also provide for anti-dilution and other adjustments that are as nearly equivalent as possible to the adjustments set described in Section 5.06. If the Reference Property in respect of any such Share Exchange Event includes shares of stock, securities or other property or assets of a company other than the successor or purchasing Person, as the case may be, in such Share Exchange Event, such other company

shall also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the Holders, including the right of Holders to require the Company to purchase their Notes upon a Fundamental Change pursuant to Section 4.01, as the Board of Directors reasonably considers necessary by reason of the foregoing. If the Notes become convertible into Reference Property

pursuant to this Section 5.12 or such a supplemental indenture, the Company shall notify the Trustee in writing and issue a press release containing the relevant information and make such press release available on the Company's website. Throughout Article 5, if the Common Stock has been replaced by Reference Property as a result of any Share Exchange Event, references to Common Stock are intended to refer to such Reference Property, subject to the provisions of such supplemental indenture.

For purposes of this Section 5.12, the type and amount of consideration that holders of Common Stock are entitled to in the case of Share Exchange Events that cause Common Stock to be converted into the right to receive more than a single type of consideration because the holders of Common Stock have the right to elect the type of consideration they receive shall be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (y) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock. The Company shall notify Holders of such weighted average as soon as practicable after such determination is made. If the Holders receive only cash in any Share Exchange Event, then for all conversions that occur after the effective date of such Share Exchange Event (i) the consideration due upon conversion of each \$1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the relevant Conversion Date (as may be increased by any Additional Shares), multiplied by the price paid per share of Common Stock in such Share Exchange Event and (ii) the Company shall satisfy its conversion obligation by paying cash to converting Holders on the third Business Day immediately following the relevant Conversion Date. The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 5.12.

(b) The above provisions of this Section 5.12 shall similarly apply to successive Share Exchange Events.

Section 5.13. *Responsibility of Trustee for Conversion Provisions.* The Trustee and any Conversion Agent, subject to the provisions of Article 6 of the Original Indenture, shall not at any time be under any duty or responsibility to any Holder of Notes or to the Company to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the Trustee nor any Conversion Agent, subject to the provisions of Article 6 of the Original Indenture, shall be responsible for any failure of the Company to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion; and the Trustee and any Conversion Agent, subject to the provisions of Article 6 of the Original Indenture, shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article 5.

Section 5.14. *Notice to Holders Prior to Certain Actions.* In case of:

- (a) any action by the Company or any Subsidiary thereof that would require an adjustment to the Conversion Rate under Section 5.06;
- (b) any Share Exchange Event;
- (c) any voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Subsidiaries; or
- (d) any Merger Transaction;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of the Indenture excluding, for the avoidance of doubt, Section 5.07), the Company shall cause to be filed with the Trustee and the Conversion Agent and to be sent to each Holder at such Holder's address appearing on the list of Holders provided for in Section 7.1 of the Original Indenture, as promptly as practicable but in any event at least five calendar days prior to the applicable date specified in clause (x) or (y) below (or, if later, no more than two Business Days following the date on which the Company knows of the applicable date specified in clause (x) or (y) below), a notice stating (x) the date on which a record is to be taken for the purpose of such action by the Company or its Subsidiary or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or its Subsidiary, or (y) the date on which such Share Exchange Event, Merger Transaction, dissolution, liquidation or winding up is expected to become effective or occur, and, if applicable, the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such Share Exchange Event, Merger Transaction, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the operation of any provision herein consequent on such event.

ARTICLE 6 SUBORDINATION

Section 6.01. *Agreement to Subordinate.* The Company agrees, and each Holder by accepting a Note agrees, that the indebtedness evidenced by the Notes is an unsecured obligation and such indebtedness and all rights with respect thereto will be subordinated in right of payment, to the extent and in the manner provided in this Article 6, to the prior payment in full in cash of the Company's obligations under the Credit Facility and that the subordination is for the benefit of and enforceable by the Lenders. The Notes shall in all respects rank *pari passu* in right of payment with all other existing and future Senior Indebtedness of the Company other than indebtedness under the Credit Facility, and shall rank senior to any future subordinated Indebtedness of the Company; and other than indebtedness under the Credit Facility only Indebtedness of the Company that is secured shall rank senior to the Notes in accordance with the provisions set forth herein to the extent of the value of the assets securing such Indebtedness.

Section 6.02. *Liquidation, Dissolution, Bankruptcy.* Upon any payment or distribution of the assets of the Company to its creditors upon a total or partial liquidation or a total or partial

dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property:

- (a) the Lenders shall be entitled to receive payment in full in cash of such amounts owing under the Credit Facility before Holders shall be entitled to receive any payment of principal of or interest, if any, on, or any other amounts due in respect of the Notes from the Company; and
- (b) until the Lenders are paid in full in cash, any payment or distribution or other amount to which Holders would be entitled but for this Article 6 shall be made to the Lenders as their interests may appear, except that Holders may receive shares of Capital Stock and any debt securities that are subordinated to the

Credit Facility to at least the same extent as the Notes.

Section 6.03. *Default on Credit Facility.* The Company may not pay the principal of and interest on the Notes, make any deposit pursuant to Article 10 or otherwise repurchase or otherwise retire any Notes (collectively, “**pay the Notes**”) if:

- (a) any amounts owing under the Credit Facility are not paid in full in cash when due; or
- (b) any default under the Credit Facility occurs and the maturity of the Credit Facility is accelerated in accordance with its terms unless, in either case:
 - (i) the default has been cured or waived and any such acceleration has been rescinded; or
 - (ii) any amounts owing under the Credit Facility and the have been paid in full in cash;

provided, however, that the Company may pay the Notes without regard to the foregoing if the Company and the Trustee receive written notice approving such payment from the Administrative Agent with respect to which either of the events set forth in clause (a) or (b) of this sentence has occurred and is continuing.

During the continuance of any default (other than a default described in clause (a) or (b) of the preceding paragraph) with respect to the Credit Facility pursuant to which the maturity thereof may be accelerated immediately without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, the Company may not pay the Notes for a period (a “**Payment Blockage Period**”) commencing upon the receipt by the Trustee (with a copy to the Company) of written notice (a “**Blockage Notice**”) of such default from the Administrative Agent specifying an election to effect a Payment Blockage Period and ending 179 days thereafter (or earlier if such Payment Blockage Period is terminated (a) by written notice to the Trustee and the Company from the Person or Persons who gave such Blockage Notice, (b) by repayment in full in cash of all amounts owing under the Credit Facility or (c) because no default with respect to the Credit Facility is continuing).

42

Notwithstanding the provisions described in the immediately preceding paragraph (but subject to the provisions contained in the first paragraph of this Section 6.03), the Company may resume payments on the Notes after the end of such Payment Blockage Period, unless the Lenders or the representative thereof shall have accelerated the maturity of the Credit Facility, and such amounts owing under the Credit Facility have not been repaid in full in cash.

Section 6.04. *Acceleration of Payment of Notes.* If payment of the Notes is accelerated because of an Event of Default, the Trustee (*provided* that a Responsible Officer of the Trustee shall have received written notice of such Event of Default from the Company or Holders, as applicable) shall promptly notify the Administrative Agent. If any amounts owing under the Credit Facility are outstanding, the Company may not pay the Notes until five Business Days after the Administrative Agent receives notice of such acceleration and, thereafter, may pay the Notes only if this Article 6 otherwise permits payment at that time.

Section 6.05. *When Distribution Must Be Paid Over.* If a payment or distribution is made to Holders that because of this Article 6 should not have been made to them, the Holders who receive the payment or distribution shall hold it in trust for the Lenders and pay it over to them as their interests may appear. The Trustee shall have no obligation to advise the Holders of their obligations or Lenders of their rights under this Section 6.05.

Section 6.06. *Subrogation.* After all amounts owing under the Credit Facility and the are paid in full in cash and until the Notes are paid in full, Holders shall be subrogated to the rights of the Lenders to receive distributions applicable to the Credit Facility. A distribution made under this Article 6 to the Lenders which otherwise would have been made to Holders is not, as between the Company and the Holders, a payment by the Company on the Credit Facility.

Section 6.07. *Relative Rights.* This Article 6 defines the relative rights of Holders and the Lenders. Nothing in this Indenture shall:

- (a) impair, as between the Company and the Holders, the obligation of the Company, which is absolute and unconditional, to pay principal of and interest, if any, on, and all other amounts due to Holders with respect to, the Notes in accordance with their terms; or
- (b) prevent the Trustee or any Holder from exercising its available remedies upon an Event of Default, subject to the rights of the Lenders to receive distributions otherwise payable to Holders.

Section 6.08. *Subordination May Not Be Impaired by Company.* No right of any Lender to enforce the subordination of the indebtedness evidenced by the Notes shall be impaired by any act or failure to act by the Company or by its failure to comply with this Indenture.

Section 6.09. *Rights of Trustee and Paying Agent.* Notwithstanding Section 6.03, the Trustee or Paying Agent may continue to make payments on the Notes and shall not be charged with knowledge of the existence of facts that would prohibit the making of any such payments unless, not less than two Business Days prior to the date of such payment, a Responsible Officer of the Trustee receives written notice satisfactory to it that payments may not be made under this Article 6. The Company, the Administrative Agent and any Lender may give such notice.

43

The Trustee in its individual or any other capacity may be a Lender with the same rights it would have if it were not Trustee. The Registrar and the Paying Agent may do the same with like rights. The Trustee, to the extent that it is a Lender, shall be entitled to all the rights set forth in this Article 6 with respect to the Credit Facility as any other Lender; and nothing in Article 6 of the Original Indenture shall deprive the Trustee of any of its rights as a Lender. Nothing in this Article 6 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7 of the Original Indenture or any other Section of the Indenture.

Section 6.10. *Distribution or Notice to Administrative Agent.* Whenever a distribution is to be made or a notice is to be given to Lenders, the distribution may be made and the notice may be given to the Administrative Agent.

Section 6.11. *Article 6 Not to Prevent Events of Default or Limit Right to Accelerate.* The failure to make a payment pursuant to the Notes by reason of any provision in this Article 6 shall not be construed as preventing the occurrence of a Default. Nothing in this Article 6 shall have any effect on the right of Holders or the Trustee to accelerate the maturity of the Notes.

Section 6.12. *Trustee Entitled to Rely.* Upon any payment or distribution pursuant to this Article 6, the Trustee and the Holders shall be entitled to rely

- (a) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 6.02 are pending,
- (b) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution to the Trustee or to Holders or
- (c) upon the Administrative Agent

for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the Lenders and other holders of indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 6. In the event that the Trustee determines, in good faith, that evidence is required with respect to the right of any Person as a Lender to participate in any payment or distribution pursuant to this Article 6, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amounts owing to such Person under the Credit Facility, the extent to which such Person is entitled to participate in such payment or distribution and other facts pertinent to the rights of such Person under this Article 6, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment. The provisions of Article 6 of the Original Indenture shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article 6.

Section 6.13. *Trustee to Effectuate Subordination.* Each Holder by accepting a Note authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination between the Holders and the Lenders as provided in this Article 6 and appoints the Trustee as attorney-in-fact for any and all such purposes. If the Trustee does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in Section 6.02 at least 30 days prior to the expiration of the time to

44

file such claims the Administrative Agent is hereby authorized to file an appropriate proof in any such proceeding.

Section 6.14. *Trustee Not Fiduciary for Lenders.* The Trustee shall not be deemed to owe any fiduciary duty to the Lenders and shall not be liable to any such Lenders if it shall mistakenly pay over or distribute to Holders or the Company or any other Person, money or assets to which any Lenders shall be entitled by virtue of this Article 6 or otherwise.

Section 6.15. *Reliance by Lenders on Subordination Provisions.* Each Holder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each Lender, whether Indebtedness under the Credit Facility was created or acquired before or after the issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Indebtedness under the Credit Facility and such Lenders shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Indebtedness under the Credit Facility.

Section 6.16. *Original Indenture.* With respect to the Notes, this Article 6 shall supersede Article 16 of the Original Indenture in its entirety, and any reference in the Original Indenture to Article 16 or to any provision thereof shall be deemed to refer to the corresponding provision, if any, herein.

ARTICLE 7 EVENTS OF DEFAULT; REMEDIES

Section 7.01. *Original Indenture.* With respect to the Notes, (i) Section 7.02 hereof shall supersede Section 5.1 of the Original Indenture; (ii) Section 7.03 hereof shall supersede Section 5.2 of the Original Indenture; (iii) Section 7.04 hereof shall supersede Section 5.7 of the Original Indenture; (iv) Section 7.05 hereof shall supersede Section 5.8 of the Original Indenture; (v) Section 7.06 hereof shall supersede Section 5.13 of the Original Indenture; and (vi) Section 7.07 hereof shall, to the extent set forth therein, supersede Section 5.15 of the Original Indenture, and any reference in the Original Indenture to any such provision of the Original Indenture shall be deemed to refer to the corresponding provision herein (if any).

Section 7.02. *Events of Default.*

Notwithstanding the “Events of Default” set forth in Section 5.1 of the Original Indenture, which shall not apply with respect to the Notes, each of the following is an “**Event of Default**” with respect to the Notes:

- (a) default in any payment of interest on any Note when due and payable and the default continues for 30 days;
 - (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon required purchase in connection with any Fundamental Change, upon declaration of acceleration or otherwise;
- 45
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- (c) failure by the Company to pay or deliver, as the case may be, the Settlement Amount owing upon conversion of any Note within five days;
 - (d) failure by the Company to provide timely written notice pursuant to Section 5.01(b)(iii) or 5.01(b)(iv) or to timely provide a Fundamental Change Purchase Right Notice in accordance with the terms provided in Section 4.01(b) and, in either case, such failure is not cured within five days after the due date for such notice;
 - (e) failure by the Company to comply with its obligations under Article 8;
 - (f) failure by the Company to perform any other covenant required of it as provided in the Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in subsections (a) through (e) above) and such failure continues for 90 days after written notice thereof has been received by the Company from the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then Outstanding (with a copy to the Trustee);
 - (g) default by the Company or any of its Significant Subsidiaries with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$10.0 million (or its foreign currency equivalent) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable after any applicable grace period or (ii) constituting a failure to pay the principal of any such debt when due and payable after any applicable grace period at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;
 - (h) the Company or any Significant Subsidiary thereof shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;
 - (i) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary thereof seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 consecutive days; or

(j) a final judgment, entered in a court of competent jurisdiction, for the payment of \$10.0 million (or its foreign currency equivalent) or more rendered against the Company or any Significant Subsidiary, which judgment is not covered by insurance (other than with respect to customary deductibles) or not paid, discharged or stayed within 30 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished.

Section 7.03. *Acceleration of Maturity; Rescission and Annulment.* If an Event of Default (other than those specified in Section 7.02(h) and 7.02(i) with respect to the Company) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Notes may declare 100% of the principal amount plus accrued and unpaid Interest, if any, on all the Outstanding Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount plus accrued and unpaid Interest shall become immediately due and payable.

Notwithstanding the foregoing, in the case of an Event of Default specified in Section 7.02(h) or 7.02(i) (in each case, with respect to the Company), 100% of the principal amount plus accrued and unpaid Interest, if any, on all Outstanding Notes shall become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, the Holders of a majority in aggregate principal amount of the Outstanding Notes, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences (except with respect to nonpayment of principal, including the Fundamental Change Price, if applicable, or interest with respect to the failure to deliver the consideration due upon conversion) if:

- (i) such rescission and annulment will not conflict with any judgment or decree of a court of competent jurisdiction; and
- (ii) all existing Events of Default, other than the non-payment of the principal amount plus accrued and unpaid Interest, if any, on the Notes (including any Fundamental Change Purchase Price, if applicable) that have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 7.06.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Notwithstanding the provisions of this Section 7.03, if so elected by the Company, the sole remedy for any Event of Default relating to the Company's failure to comply with Section 9.01, will for the first 360 calendar days after the occurrence of such an Event of Default consist exclusively of the right to receive additional interest ("Additional Interest") on the Notes at an annual rate equal to (i) 0.25% of the principal amount of Outstanding Notes during the first 180 calendar days after the occurrence of such an Event of Default during which such Event of

Default is continuing and (ii) 0.50% of the principal amount of Outstanding Notes for each day from the 181st day to, and including, the 360th calendar day following the occurrence of such an Event of Default during which such Event of Default is continuing. If the Company so elects, the Additional Interest payable under this Section 7.03 will be payable on all Outstanding Notes from and including the date on which such Event of Default first occurs, but not including the 360th day thereafter, or such earlier date on which such Event of Default has been cured or waived. On the 361st day after such Event of Default (or earlier, if the Event of Default is cured or waived prior to such 361st day), Additional Interest payable pursuant to this Section 7.03 will cease to accrue and, to the extent the Event of Default is continuing after such 361st day, the Notes will be immediately subject to acceleration as provided in this Section 7.03. In the event the Company does not elect to pay the Additional Interest payable pursuant to this Section 7.03 upon an Event of Default in accordance with this paragraph, or elects to pay Additional Interest but does not pay such Additional Interest when due, the Notes will be immediately subject to acceleration as provided in this Section 7.03. In order to elect to pay the Additional Interest payable pursuant to this Section 7.03 as the sole remedy during the first 360 days after the occurrence of an Event of Default relating to the failure to comply with Section 9.01 in accordance with the provisions of this paragraph, the Company must notify all Holders, the Trustee and the Paying Agent of such election prior to the beginning of such 360 day period (which period shall not commence until the expiration of the 90-day period set forth in Section 7.02(f) above). Upon the failure to timely give all Holders, the Trustee and the Paying Agent such notice, the Notes will be immediately subject to acceleration as provided in this Section 7.03.

If the Company so elects, Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes. If Additional Interest is payable on the Notes, the Issuer shall provide an Officer's Certificate to the Trustee on or before the Record Date for each Interest Payment Date such Additional Interest is payable setting forth the accrual period and the amount of such Additional Interest in reasonable detail. The Trustee may provide a copy of such Officer's Certificate or other notice received from the Issuer relating to Additional Interest to any Holder upon request. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine whether any Additional Interest is payable, or with respect to the nature, extent, or calculation of the amount of any Additional Interest owed, or with respect to the method employed in such calculation of any Additional Interest. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Payments of the Fundamental Change Purchase Price, principal and Interest that are not made when due shall accrue Interest per annum at the then-applicable interest rate from the required payment date.

Section 7.04. *Limitation on Suits.* No Holder shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder (other than in the case of an Event of Default specified in Section 7.02(a), 7.02(b) or 7.02(c)), unless:

- (i) such Holder has previously given written notice to the Trustee of a continuing Event of Default;
- (ii) the Holders of not less than 25% in aggregate principal amount of the Outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (iii) such Holder or Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
- (iv) the Trustee for 60 days after its receipt of such notice, request and offer of security or indemnity has failed to institute any such proceeding; and

(v) no direction, in the opinion of the Trustee, inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Notes;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

Section 7.05. *Unconditional Right of Holders To Receive Payment* Notwithstanding any other provision of the Indenture or the Notes, any Holder has the right to receive payment or delivery, as the case may be, of the principal amount, Fundamental Change Purchase Price or accrued and unpaid Interest, if any, in respect of the Notes held by such Holder, on or after the respective due dates expressed in the Notes or any Fundamental Change Purchase Date, as applicable, and the consideration due upon conversion of the Notes in accordance with Article 5, or to institute suit for the enforcement of any such payment on or after such respective dates or the right to convert, and such right to receive such payment or delivery, as the case may be, shall not be impaired or affected adversely without the consent of such Holder.

Section 7.06. *Waiver of Defaults and Events of Default*. The Holders of not less than a majority in principal amount of the Outstanding Notes may on behalf of the Holders of all the Notes waive any past Default hereunder and its consequences (including without limitation, waivers obtained in connection with a purchase of, or tender offer or exchange for Securities), except a Default:

- (i) described in Section 7.02(a), 7.02(b) or 7.02(c); or
- (ii) in respect of a covenant or provision hereof which under Article 11 cannot be modified or amended without the consent of the Holder of each Outstanding Note affected.

49

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 this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 7.07. *Undertaking for Costs*. The provisions of Section 5.15 of the Original Indenture, in addition to the limitations set forth therein, shall not apply to any suit instituted by a Holder to enforce its right to receive the consideration due upon conversion of its Notes within the time period prescribed herein.

ARTICLE 8 CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.01. *Original Indenture*. This Article 8 supersedes in its entirety Article 8 of the Original Indenture, with the provisions of Section 8.02 of this Supplemental Indenture superseding the provisions of Sections 8.1 and 8.2 of the Original Indenture. In addition, each reference in the Original Indenture to Section 8.1 or 8.2 of the Original Indenture will, respect to the Notes, be deemed to be a reference to Section 8.02 or 8.03, respectively, of this Supplemental Indenture.

Section 8.02. *Consolidation, Merger and Sale of Assets*. The Company shall not consolidate with or merge with or into or sell, convey, transfer or lease all or substantially all of its properties and assets to any other Person (any such transaction or series of transactions, a “**Merger Transaction**”), unless:

- (a) either (i) the Company is the resulting, surviving or transferee Person or (ii) the resulting, surviving or transferee Person (if other than the Company) (the “**Surviving Entity**”), (1) is a Corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and (2) the Surviving Entity (if other than the Company) expressly assumes, by a supplemental indenture executed and delivered to the Trustee, all of the obligations of the Company under the Notes and this Indenture;
- (b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing; and
- (c) either the Company or the Surviving Entity shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such transaction and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article 8 and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.03. *Successor Substituted*. Upon any consolidation of the Company with, or merger with or into or sale of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all of the properties and assets of the Company in accordance with Section 8.02, the successor Person formed by such consolidation or which the Company is merged with or into or sold or to which such conveyance, transfer or lease is made shall succeed

50

to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease of all or substantially all of the Company’s properties and assets, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Notes.

ARTICLE 9 REPORTS BY COMPANY

Section 9.01. *Reports by Company*. The Company covenants to file with the Trustee copies of the annual reports and of the information, documents and other reports the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act, within 15 days after the same is required to be filed with the Commission (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act); *provided* that in each case, the delivery of materials to the Trustee by electronic means or filing of documents pursuant to the Commission’s “EDGAR” system (or any successor electronic filing system) shall be deemed to constitute “filing” with the Trustee for purposes of this Section 9.01 at the time such documents are so delivered or filed. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee’s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer’s Certificates). The Company also covenants to comply with the other provisions of Section 314(a) of the TIA. The Trustee shall have no duty to monitor compliance by the Company of its filing or reporting requirements.

ARTICLE 10 SATISFACTION AND DISCHARGE

Section 10.01. *Original Indenture*. This Article 10 supersedes in its entirety the provisions set forth in Article 4 of the Original Indenture and any reference in the Original Indenture to such Article 4 or any provision therein shall be deemed to refer this Article 10 or the corresponding provision herein (if any), as the case may be.

Section 10.02. *Discharge of Indenture.* When (a) the Company shall deliver to the Trustee for cancellation all Outstanding Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Outstanding Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether at the Maturity Date, or on any Fundamental Change Purchase Date or upon conversion and determination of related Settlement Amounts or otherwise) and the Company shall deposit with the Trustee, in trust, cash funds and (in the case of conversion) shares of Common Stock, if any, sufficient to pay all amounts due on all of such Outstanding Notes including principal and Interest due or satisfy the Company's conversion obligation, as the case may be, (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not

theretofore canceled or delivered to the Trustee for cancellation, and, in each case, the Company shall also pay or cause to be paid all other sums payable under the Indenture by the Company, then the Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of Holders to receive payments of principal of and Interest on, or the consideration due upon conversion of, the Notes and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as may be required pursuant to the Original Indenture and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of the Indenture. The Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with the Indenture or the Notes.

Section 10.03. *Deposited Monies and Shares To Be Held in Trust by Trustee.* Subject to Section 10.04, all monies and shares of Common Stock, if any, deposited with the Trustee pursuant to Section 10.02 shall be held in trust for the sole benefit of the Holders, and such monies and shares of Common Stock, if any, shall be applied by the Trustee to the payment, either directly or through the Paying Agent or Conversion Agent (including the Company if acting as the Paying Agent or Conversion Agent), to the Holders of the particular Notes for the payment or settlement of which such monies or shares of Common Stock have been deposited with the Trustee, of all sums due and to become due thereon for principal and Interest or the satisfaction of the Company's conversion obligation, as the case may be, and payment of all other sums due under the Indenture.

Section 10.04. *Paying Agent or Conversion Agent To Repay Monies and Shares Held.* Upon the satisfaction and discharge of the Indenture, all monies and shares of Common Stock, if any, then held by the Paying Agent or Conversion Agent (if other than the Trustee) shall, upon written request of the Company, be repaid or delivered to the Company or paid or delivered to the Trustee, and thereupon such Paying Agent or Conversion Agent shall be released from all further liability with respect to such monies and shares of Common Stock, if any.

Subject to the requirements of applicable law, any monies and shares of Common Stock deposited with or paid to the Trustee for payment of the principal of or Interest on or other obligations under, or to satisfy the Company's conversion obligation with respect to, the Notes and not applied but remaining unclaimed by the Holders of the Notes for two years after the date upon which the principal of or Interest on, or other obligations under, such Notes or the Company's conversion obligation, as the case may be, shall have become due and payable, shall be repaid or delivered to the Company by the Trustee on demand and all liability of the Trustee shall thereupon cease with respect to such monies and shares of Common Stock; and the Holder of any of the Notes shall thereafter look only to the Company for any payment or delivery that such Holder may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 10.05. *Reinstatement.* If the Trustee or the Paying Agent or Conversion Agent is unable to apply any money or shares of Common Stock in accordance with Section 10.03 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under the Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.02 until such time as the Trustee or the Paying Agent or Conversion Agent is permitted to apply all such money or shares of Common Stock in accordance with Section 10.03; *provided, however,* that if the Company makes any payment of Interest on or principal of any Note or delivery of shares in respect of its conversion obligation following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or shares of Common Stock held by the Trustee or Paying Agent or Conversion Agent.

ARTICLE 11 SUPPLEMENTAL INDENTURES

Section 11.01. *Supplemental Indentures Without Consent of Holders.* The Company and the Trustee at any time and from time to time may without notice to, or the consent of, any Holder enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes in addition to the purposes set forth in Section 9.1 of the Original Indenture (as amended hereby with respect to the Notes):

- (i) to cure any ambiguity or correct any omission, defect or inconsistency contained herein;
- herein; (ii) to provide for the assumption by a successor Corporation, Surviving Entity or other successor Person of the obligations of the Company contained
- (iii) to add guarantees with respect to the Notes and to remove guarantees in accordance with the terms of the Notes and the Indenture;
- (iv) to secure the Notes;
- (v) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company;
- Section 5.12; (vi) to increase the Conversion Rate as provided in this Indenture or make provisions with respect to conversion rights of the Holders pursuant to
- (vii) to make any change that does not adversely affect the rights of any Holder;
- (viii) to evidence the acceptance or appointment of a successor Person to the Trustee and the assumption of such successor Person of the obligations of the Trustee hereunder;
- (ix) to comply with requirements of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act; or

(x) to conform the provisions of this Indenture to the “Description of Notes” section contained in the preliminary prospectus supplement dated December 8, 2014 relating to the Notes, as supplemented by the related pricing term sheet dated December 9, 2014; *provided* that the Trustee receives an Officer’s Certificate setting forth such conformity.

For purposes of the Notes, clauses (1), (6), (9), (11) and (12) of Section 10.01 of the Original Indenture shall be deemed to be deleted in their entirety.

Section 11.02. *Supplemental Indentures with Consent of Holders.* The Company and the Trustee may amend or supplement the Indenture with respect to the Notes with the consent of the Holders of at least a majority in aggregate principal amount of the Outstanding Notes (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for Securities). In addition, the Holders of a majority in aggregate principal amount of the Outstanding Notes (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) may waive the Company’s compliance in any instance with any provision of the Indenture without notice to the other Holders of Notes.

Notwithstanding Section 9.2 of the Original Indenture, no amendment, supplement or waiver may be made without the consent of each Holder of outstanding Notes affected thereby if such amendment, supplement or waiver would:

- (i) reduce the percentage in principal amount of the Outstanding Notes, the consent of whose Holders is required for any supplemental indenture, or the consent of whose Holders is required for any waiver under this Indenture (including any waiver of past defaults pursuant to Section 7.06);
- (ii) reduce the rate or extend the time of payment of any Interest on any Note;
- (iii) reduce the principal amount of, or extend the Maturity Date of, any Note;
- (iv) make any change that impairs or adversely affects the conversion rights of any Notes;
- (v) reduce the Fundamental Change Purchase Price of any Note or amend or modify in any manner adverse to the Holders of the Notes, the Company’s obligation to make such payment, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (vi) make any Note payable in currency other than that stated in the Note;
- (vii) change the provisions of Article 6 hereof in a manner adverse to Holders of the Notes;
- (viii) impair the right of any Holder to receive payment of the principal amount of (including the Fundamental Change Purchase Price, if applicable), or

54

Interest on, a Holder’s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes;

(ix) impair or adversely affect the right of Holders to convert the Notes or otherwise modify provisions with respect to conversion, or reduce the Conversion Rate, subject to such modifications as are required under this Indenture; or

(x) modify any of the provisions of this Section 11.02 or Section 7.06, except to increase the percentage required for modification, amendment or waiver or to provide for consent of each affected Holder.

ARTICLE 12 MISCELLANEOUS

Section 12.01. *Successors.* All agreements of the Company and the Trustee in the Indenture and the Notes shall bind their respective successors.

Section 12.02. *Multiple Originals.* The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Supplemental Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 12.03. *Calculations.* Subject to the immediately following paragraph, and except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Indenture and the Notes, including, but not limited to, determinations of the Last Reported Sale Prices of Common Stock, the Trading Price of the Notes, accrued Interest payable on the Notes, the Conversion Rate of the Notes, the consideration due upon conversion of a Note and whether the Notes are convertible. The Company shall make all these calculations in good faith and, absent manifest error, its calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company’s calculations without independent verification. The Trustee shall forward a copy of such schedule to any Holder upon the request of such Holder.

The Trustee (including in its capacities as Conversion Agent, Paying Agent and Registrar) shall have no responsibility to determine the Trading Price of the Notes or whether the Notes are convertible or otherwise to make any of the foregoing calculations or determinations.

Section 12.04. *Benefits of Supplemental Indenture.* Nothing in this Supplemental Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

55

Section 12.05. *Withholding Taxes.* Each Holder agrees, and each beneficial owner of an interest in a Note by its acquisition of such interest is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner as a result of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, withhold such amounts from payments of cash and shares of Common Stock on the Note (or, in certain circumstances, against any payments on the Common Stock).

Section 12.06. *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 12.07. *Governing Law.* THIS SUPPLEMENTAL INDENTURE AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 12.08. *Concerning the Trustee.* The Trustee makes no representations and shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company and the Trustee assumes no responsibility for the same. All of the provisions contained in the Original Indenture in respect of the rights, privileges, immunities, powers, and duties of the Trustee shall be applicable in respect of this Supplemental Indenture as fully and with like force and effect as though fully set forth in full herein.

[Remainder of the page intentionally left blank]

56

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

ENVESTNET, INC.

By: /s/ Judson Bergman
 Name: Judson Bergman
 Title: Chairman and Chief Executive Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Linda E. Garcia
 Name: Linda E. Garcia
 Title: Vice President

57

SCHEDULE A

Make-Whole Table

The following table sets forth the number of Additional Shares to be added to the Conversion Rate for each \$1,000 principal amount of Notes pursuant to, and under the circumstances described in, Section 5.02 of this Supplemental Indenture, based on the Stock Prices and Effective Dates set forth below:

Effective Date	Stock Price													
	\$47.46	\$50.00	\$55.00	\$60.00	\$62.88	\$65.00	\$75.00	\$85.00	\$100.0	\$115.00	\$130.00	\$150.00	\$175.00	\$200.00
December 15, 2014	5.1681	4.5984	3.6903	2.9969	2.6700	2.4597	1.7034	1.2171	0.7700	0.5081	0.3452	0.2115	0.0979	0.0458
December 15, 2015	5.1681	4.6396	3.6637	2.9258	2.5812	2.3607	1.5804	1.0934	0.6627	0.4220	0.2785	0.1653	0.0699	0.0291
December 15, 2016	5.1681	4.6072	3.5541	2.7681	2.4058	2.1760	1.3814	0.9079	0.5139	0.3099	0.1964	0.1120	0.0402	0.0130
December 15, 2017	5.1681	4.5180	3.3599	2.5111	2.1274	1.8875	1.0890	0.6502	0.3241	0.1784	0.1071	0.0591	0.0152	0.0016
December 15, 2018	5.1681	4.2736	2.9544	2.0164	1.6090	1.3620	0.6110	0.2768	0.0963	0.0447	0.0271	0.0163	0.0012	0.0000
December 15, 2019	5.1681	4.0978	2.2796	0.7645	0.0011	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

SCH A - 1

EXHIBIT A

[FORM OF FACE OF SECURITY]

[INCLUDE IF A GLOBAL SECURITY]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO, AND IS REGISTERED IN THE NAME OF THE DEPOSITORY OR A NOMINEE OF THE DEPOSITORY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY, BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY OR BY THE DEPOSITORY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITORY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITORY.]

ENVESTNET, INC.

No. R- []

Initially \$[]

1.75% Convertible Notes due 2019

CUSIP No.: 29404K AA4

ENVESTNET, INC., a Delaware corporation, promises to pay to [CEDE & CO., or its registered assigns](1), the principal sum of _____ DOLLARS, [as revised by the Schedule of Increases or Decreases in Global Security attached hereto,](2) on December 15, 2019.

(1) Insert for Global Security

(2) Insert for Global Security

Ex A - 1

Interest Payment Dates: June 15 and December 15 commencing on June 15, 2015.

Interest Record Dates: June 1 and December 1.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash, shares of Common Stock or a combination thereof, at the Company's election, on the terms and subject to the limitations referred to on the reverse hereof and provisions with respect to the subordination of the notes, in each case, as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

Ex A - 2

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

ENVESTNET, INC.

By: _____

Name:

Title:

ATTESTED BY:

By: _____

Name:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein issued under the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

Authorized Signatory

Dated:

Ex A - 3

[FORM OF REVERSE OF NOTE]

ENVESTNET, INC.

1.75% Convertible Notes due 2019

1. Interest

Investnet, Inc., a Delaware corporation (such corporation, and its successors and assigns under the Indenture, the "Company"), promises to pay Interest on the principal amount of this Note at the rate of 1.75% per annum. The Company will pay Interest semiannually on June 15 and December 15 of each year, commencing on June 15, 2015. Interest on this Note will accrue from the most recent date to which Interest has been paid or, if no Interest has been paid, from December 15, 2014. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay Interest (including post-petition Interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the rate of Interest then in effect; and it shall pay Interest (including post-petition Interest in any proceeding under any Bankruptcy Law) on overdue installments of Interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful.

2. Paying Agent, Registrar and Conversion Agent

Initially, U.S. Bank National Association (the "Trustee"), will act as Paying Agent, Registrar and Conversion Agent. The Company may appoint and change any

Paying Agent, Registrar or Conversion Agent in accordance with the terms of the Indenture. The Company may act as Paying Agent, Registrar or Conversion Agent.

3. *Indenture*

The Company issued the Notes under an Indenture dated as of December 15, 2014 (the "**Original Indenture**"), as supplemented by the First Supplemental Indenture dated as of December 15, 2014 (the "**Supplemental Indenture**") and the Original Indenture, as supplemented by the First Supplemental Indenture, the "**Indenture**"), between the Company and the Trustee. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of those terms.

This Note is one of the Securities of the Company, designated as its 1.75% Convertible Notes due 2019, issued pursuant to the Indenture in an initial aggregate principal amount of \$150,000,000 (or up to \$172,500,000 if the Underwriters exercise their option to purchase additional Notes granted pursuant to the Underwriting Agreement in full). Additional Notes may be issued in accordance with the terms of the Indenture. The Indenture also imposes limitations on the ability of the Company to consolidate or merge with or into any other Person or convey, transfer or lease all or substantially all of the property of the Company.

Ex A - 4

4. *Conversion*

Subject to certain conditions and during certain periods specified in the Indenture, at any time until the close of business on the second Business Day immediately preceding the Maturity Date of this Note, the Holder hereof has the right, at its option, to convert each \$1,000 principal amount of this Note into cash, shares of Common Stock or a combination of cash and shares of Common Stock, at the Company's election, determined as set forth in the Indenture, based on the applicable Conversion Rate, as the same may be adjusted from time to time pursuant to the terms of the Indenture.

5. *Denominations, Transfer, Exchange*

The Notes are in registered form without coupons in denominations of \$1,000 and whole multiples of \$1,000. A Holder may transfer or exchange Notes in accordance with the terms of the Indenture, subject to certain exceptions set forth therein. Upon any transfer or exchange, the Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes required by law or permitted by the Indenture.

6. *Persons Deemed Owners*

The registered Holder of this Note may be treated as the owner of it for all purposes, subject to certain exceptions specified in the Indenture.

7. *Defaults and Remedies*

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Company) occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Outstanding Notes may declare the principal of and accrued and unpaid Interest on all the Notes to be due and payable. If an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Company occurs, the principal of 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 Holder. Notwithstanding the foregoing, at the election of the Company, the sole remedy for an Event of Default relating to a failure to file certain reports with the Commission and the Trustee shall for the first 360 calendar days after such Event of Default consist exclusively of the right to receive Additional Interest.

8. *No Recourse Against Others*

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

Ex A - 5

9. *Authentication*

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Note.

10. *Abbreviations*

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

11. *GOVERNING LAW*

THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE INDENTURE OR THE NOTES, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK.

12. *CUSIP and ISIN Numbers*

The Company has caused CUSIP and ISIN numbers to be printed on the Notes and the Trustee shall use the CUSIP and ISIN numbers in notices as a convenience to Holders, *provided*, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP and ISIN numbers printed in the notice or on the Notes, and that reliance may be placed only on the other identification numbers printed on the Notes, and that the validity of any such notice shall not be affected by any defect in or omission of any such numbers.

13. *Subordination*

The indebtedness evidenced by the Notes is an unsecured obligation and such indebtedness and all rights with respect thereto will be subordinated in right of payment, to the extent and in the manner provided in Article 6 of the Supplemental Indenture, to the prior payment in full in cash of the Company's obligations under the Credit Facility (as defined in the Supplemental Indenture).

The Company will furnish to any Holder of Notes upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Note.

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL SECURITY(3)

The following increases or decreases in this Global Security have been made:

Date of Exchange	Amount of decrease in principal amount of this Global Security	Amount of increase in principal amount of this Global Security	Principal amount of this Global Security following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

(3) Insert for Global Security

[FORM OF CONVERSION NOTICE]

To: Envestnet, Inc.

The undersigned registered owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion thereof (which is \$1,000 or a multiple thereof) below designated, into, cash, shares of Common Stock of Envestnet, Inc. or a combination of cash and shares of Common Stock, at the Company’s election, in accordance with the terms of the Indenture referred to in this Note, and directs that the check in payment for cash, if any, and the shares, if any, issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below.

If shares or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. In addition, subject to certain exceptions in the Indenture, if this notice is being delivered on a date after the close of business on a Record Date and prior to the open of business on the related Interest Payment Date, this notice is accompanied by payment of an amount equal to the Interest payable on such Interest Payment Date of the principal of this Note to be converted.

Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated:

Signature(s)

Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

Fill in the registration of shares of Common Stock, if any, if to be issued, and Notes, if any, to be delivered, and the person to whom cash, if any, and payment for fractional shares, if any, is to be made, if other than to and in the name of the registered Holder:

Please print name and address

(Name)

(Street Address)

(City, State and Zip Code)

Principal amount to be converted

(if less than all, must be \$1,000 or whole multiples thereof):

\$

Social Security or Other Taxpayer
Identification Number:

NOTICE: The signature on this Conversion Notice must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Ex A - 9

[FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE]

To: Envestnet, Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Envestnet, Inc. (the 'Company') as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Purchase Date and requests and instructs the Company to purchase from the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Purchase Date does not fall during the period after a Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid Interest thereon to, but excluding, such Fundamental Change Purchase Date.

In the case of Physical Securities, the certificate numbers of the Notes to be purchased are as set forth below:

Dated:

Signature(s)

Social Security or Other Taxpayer Identification Number

principal amount to be repaid (if less than all): \$ _____,000

NOTICE: The signature on the Fundamental Change Purchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Ex A - 10

[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated:

Signature(s)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

- (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.

Signature Guarantee

Ex A - 11

Mayer Brown LLP
 71 South Wacker Drive
 Chicago, Illinois 60606-4637
 Main Tel +1 312 782 0600
 Main Fax +1 312 701 7711
 www.mayerbrown.com

December 15, 2014

Envestnet, Inc.
 35 East Wacker Drive — Suite 2400
 Chicago, Illinois 60606

Ladies and Gentlemen:

We have acted as counsel to Envestnet, Inc., a Delaware corporation (the “Company”) in connection with the offer and sale by the Company of \$150,000,000 aggregate principal amount of the Company’s 1.75% Convertible Notes due 2019 (the “Firm Securities”) and, at the election of the underwriters (the “Underwriters”) of the public offering thereof, up to \$22,500,000 aggregate principal amount of the Company’s 1.75% Convertible Notes due 2019 (together with the Firm Securities, the “Securities”) to be issued pursuant to the Indenture, dated as of December 15, 2014, as supplemented by the First Supplemental Indenture, dated as of December 15, 2014 (together, the “Indenture”), between the Company and U.S. Bank National Association, as trustee (the “Trustee”). The Securities are convertible into cash, shares of the Company’s common stock, par value \$0.005 per share (the “Common Stock” and, when issued upon conversion of the Convertible Notes, the “Conversion Shares”) or a combination of cash and Conversion Shares. The public offering and sale of the Securities was registered under the Registration Statement on Form S-3 (No. 333-197145) (the “Registration Statement”), including the prospectus constituting a part thereof, dated July 1, 2014, and the prospectus supplement, dated December 9, 2014 (collectively, the “Prospectus”), filed by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended.

In rendering the opinions expressed herein, we have examined (i) the Registration Statement, (ii) the Prospectus, (iii) the Fifth Amended and Restated Certificate of Incorporation of the Company and all amendments thereto; (iv) the Amended and Restated Bylaws of the Company and all amendments thereto; (v) the Indenture and (vi) the global certificate representing the Firm Securities. We have also examined such other documents and instruments and have made such further investigations as we have deemed necessary or appropriate in connection with this opinion.

In expressing the opinions set forth below, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as certified, conformed or photostatic copies and the legal competence of each individual executing any document. As to all parties other than the Company, we have assumed the due authorization, execution and delivery of all documents

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 and is associated with Tauil & Chequer Advogados, a Brazilian law partnership.

and the validity and enforceability thereof against all parties thereto, other than the Company, in accordance with their respective terms.

As to matters of fact (but not as to legal conclusions), to the extent we deemed proper, we have relied on certificates of responsible officers of the Company and of public officials and on the representations, warranties and agreements of the Company contained in the Underwriting Agreement.

Based upon and subject to the foregoing, and having regard for legal considerations that we deem relevant, we are of the opinion that:

(i) the Indenture has been duly authorized, executed and delivered by the Company and (assuming the due authorization, execution and delivery thereof by the Trustee) constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors’ rights generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding in equity or at law);

(ii) the Firm Securities, have been duly authorized, executed and delivered by the Company and, assuming that the Firm Securities have been duly authenticated by the Trustee in the manner required by the Indenture, when the Firm Securities have been delivered to the Underwriters against payment therefor, the Firm Securities will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors’ rights generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding in equity or at law); and

(iii) the Conversion Shares issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and will be, when issued and delivered upon conversion of the Securities pursuant to the terms of the Indenture, will be validly issued, fully paid and non-assessable.

This opinion is limited to matters governed by the Federal laws of the United States of America, the laws of the State of New York and the General Corporation Law of the State of Delaware (including the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting the General Corporation Law of the State of Delaware and such applicable provisions of the Delaware Constitution).

The opinions and statements expressed herein are as of the date hereof. We assume no obligation to update or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in applicable law which may hereafter occur.

We hereby consent to the filing of this opinion as an exhibit to the Company’s Current Report on Form 8-K relating to the offering of the Securities, which is incorporated by reference into the Registration Statement, and to the reference to our name under the caption “Legal Matters” in the Prospectus. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

Mayer Brown LLP

MAYER BROWN LLP

ESB:

Envestnet, Inc.
Ratio of Earnings to Fixed Charges
and Ratio of Earnings to Fixed Charges and Preferred Stock Dividends
Unaudited
(Dollars in thousands)

	Nine Months Ended September 30,	Years Ended December 31,				
	2014	2013	2012	2011	2010	2009
Ratio of Earnings to Fixed Charges						
Earnings:						
Income before income taxes	\$ 16,098	\$ 5,712	\$ 3,068	\$ 10,580	\$ 907	\$ 944
Add: Fixed charges	2,960	2,989	1,336	1,763	1,387	822
Income before income taxes and fixed charges	<u>\$ 19,058</u>	<u>\$ 8,701</u>	<u>\$ 4,404</u>	<u>\$ 12,343</u>	<u>\$ 2,294</u>	<u>\$ 1,766</u>
Fixed Charges:						
Interest expensed and capitalized (1)	\$ 1,109	\$ 1,288	\$ —	\$ 786	\$ 564	\$ —
Amortized premiums, discounts and capitalized expenses related to indebtedness	—	—	—	—	—	—
An estimate of the interest within rental expense (2)	1,851	1,701	1,336	977	823	822
Total fixed charges	<u>\$ 2,960</u>	<u>\$ 2,989</u>	<u>\$ 1,336</u>	<u>\$ 1,763</u>	<u>\$ 1,387</u>	<u>\$ 822</u>
Ratio of earnings to fixed charges	<u>6.44</u>	<u>2.91</u>	<u>3.30</u>	<u>7.00</u>	<u>1.65</u>	<u>2.15</u>

(1) Amounts presented for nine months ended September 30, 2014 and year ended December 31, 2013 represent accretion on contingent consideration.

(2) Interest is estimated by management to equal one-third of minimum rental payments under operating leases.