

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): November 16, 2016

PDL BioPharma, Inc.

(Exact name of Company as specified in its charter)

000-19756
(Commission File Number)

Delaware
(State or Other Jurisdiction of Incorporation)

94-3023969
(I.R.S. Employer Identification No.)

932 Southwood Boulevard
Incline Village, Nevada 89451
(Address of principal executive offices, with zip code)

(775) 832-8500
(Company's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Company under any of the following provisions:

- ☐ 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.

On November 16, 2016, PDL BioPharma, Inc. (the Company) entered into an underwriting agreement (the Underwriting Agreement) with RBC Capital Markets, LLC (RBC), relating to the issuance and sale of \$150,000,000 aggregate principal amount of the Company's 2.75% Convertible Senior Notes due 2021 (or \$172,500,000 if the Underwriters exercise their over-allotment option in full) (the Notes). Under the terms of the Underwriting Agreement, the Company granted the Underwriters an option to purchase within a period of 13 days from, and including, the date the notes are first issued, up to an additional \$22,500,000 principal amount of the Notes solely to cover over-allotments, if any.

The offering was made pursuant to the Company's shelf registration statement on Form S-3 (File No. 333-211970), which became effective on June 28, 2016, as supplemented by the preliminary prospectus supplement filed with the Securities and Exchange Commission (the Commission) on November 15, 2016, and the prospectus supplement filed with the Commission on November 18, 2016.

The Underwriting Agreement includes customary representations, warranties and covenants by the Company. Under the terms of the Underwriting Agreement, the Company has agreed to indemnify the Underwriters against certain liabilities.

The description of the Underwriting Agreement is qualified in its entirety by reference to the Underwriting Agreement attached as Exhibit 1.1 to this Current Report and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

On November 16, 2016, in connection with the Underwriting Agreement and the offering of the Notes, the Company entered into a capped call transaction with Royal Bank of Canada, an affiliate of RBC (the "Counterparty"). The capped call transaction covers, subject to customary anti-dilution adjustments, the number of shares of the Company's common stock that will initially underlie the Notes. The capped call transaction is intended to reduce the dilutive impact of the conversion feature of the Notes on the Company's outstanding shares of common stock and/or offset any cash payments the Company will be required to make in excess of the principal amount, upon any conversion of the Notes, with such reduction and/or offset subject to a cap.

Item 9.01 Financial Statements and Exhibits.

Exhibit No.	Description
1.1	Underwriting Agreement among the Company and RBC Capital Markets, LLC, as Representative to the Underwriters, dated November 16, 2016
5.1	Opinion of Gibson, Dunn & Crutcher LLP, dated November 22, 2016
23.1	Consent of Gibson, Dunn & Crutcher LLP (included as part of exhibit 5.1)

SIGNATURES

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

PDL BIOPHARMA, INC.
(Company)

By: /s/ Peter S. Garcia
Peter S. Garcia
Vice President and Chief Financial Officer

Dated: November 22, 2016

Exhibit Index

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PDL BIOPHARMA, INC.

(a Delaware corporation)

\$150,000,000

2.75% Convertible Senior Notes Due 2021

UNDERWRITING AGREEMENT

Dated: November 16, 2016

PDL BIOPHARMA, INC.

(a Delaware corporation)

\$150,000,000

2.75% Convertible Senior Notes Due 2021

UNDERWRITING AGREEMENT

November 16, 2016

RBC Capital Markets, LLC

as Representative of the several Underwriters

c/o RBC Capital Markets, LLC
200 Vesey Street
New York, New York 10281

Ladies and Gentlemen:

PDL BioPharma, Inc., a Delaware corporation (the “**Company**”), confirms its agreement with RBC Capital Markets, LLC and each of the other Underwriters named in Schedule A hereto (collectively, the “**Underwriters**,” which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom RBC Capital Markets, LLC is acting as representative (in such capacity, the “**Representative**”), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective principal amounts set forth in said Schedule A of \$150,000,000 aggregate principal amount of the Company’s 2.75% Convertible Senior Notes Due 2021 (the “**Initial Securities**”) and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option to purchase all or any part of an additional \$22,500,000 aggregate principal amount of its 2.75% Convertible Senior Notes Due 2021 (the “**Option Securities**” and, together with the Initial Securities, the “**Securities**”) to cover over-allotments. The Securities are to be issued pursuant to an indenture to be dated as of November 22, 2016 (the “**Base Indenture**”) between the Company and Bank of New York Mellon Trust Company, as trustee (the “**Trustee**”). Certain terms of the Securities will be established pursuant to a supplemental indenture to be dated as of November 22, 2016 (the “**Supplemental Indenture**” and, together with the Base Indenture, the “**Indenture**”).

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

The Company has prepared and filed with the Securities and Exchange Commission (the “**Commission**”) a shelf registration statement on Form S-3 (File No. 333-211970), including a base prospectus (the “**Base Prospectus**”), covering the public offering and sale of certain securities, including the Securities, under the Securities Act of 1933, as amended (the “**1933 Act**”), and the rules and regulations promulgated thereunder (the “**1933 Act Regulations**”), which shelf registration statement has become effective. Such registration statement, as of any time, means such registration statement as amended by any post-effective amendments thereto to such time, including the exhibits and any schedules

thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B under the 1933 Act Regulations (“**Rule 430B**”), is referred to herein as the “Registration Statement;” provided, however, that the “**Registration Statement**” without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Securities, which time shall be considered the “new effective date” of such registration statement with respect to the Securities within the meaning of paragraph (f)(2) of Rule 430B, including the exhibits and schedules thereto as of such time, the documents incorporated or deemed incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to the Rule 430B. Any registration statement filed by the Company pursuant to Rule 462(b) under the Securities Act in connection with the offer and sale of the Securities is called the “**Rule 462(b) Registration Statement**,” and from and after the date and time of filing of any such Rule 462(b) Registration Statement the term “Registration Statement” shall include the Rule 462(b) Registration Statement. Each preliminary prospectus used in connection with the offering of the Securities, including the Base Prospectus and the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as a “preliminary prospectus.” Within the time period required by Rule 424(b) under the 1933 Act Regulations (“**Rule 424(b)**”) after execution and delivery of this Agreement, the Company will prepare and file a final prospectus relating to the Securities in accordance with the provisions of Rule 424(b). The final prospectus, in the form first furnished or made available to the Underwriters for use in connection with the offering of the Securities, including the Base Prospectus and the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as the “**Prospectus**.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system (“**EDGAR**”).

In connection with the offering and sale of the Initial Securities by the Company pursuant to the terms of this Agreement, the Company is separately entering into a capped call transaction with the Representative or an affiliate of the Representative (the “**Capped Call Counterparty**”) pursuant to a capped call confirmation letter (the “**Base Capped Call Confirmation**”), in each case, dated as of the date hereof. In connection with any exercise by the Underwriters of their option to purchase any Option Securities, the Company may enter into an additional capped call transaction with the Capped Call Counterparty pursuant to an additional capped call confirmation letter (the “**Additional Capped Call Confirmation**”), in each case, to be dated as of or about the date of such exercise (the Additional Capped Call Confirmation together with the Base Capped Call Confirmation, the “**Capped Call Confirmations**”). This Agreement, the Indenture, the Securities and the Capped Call Confirmations are referred to herein collectively as the “**Operative Documents**.”

As used in this Agreement:

“**Applicable Time**” means 9:00 a.m., New York City time, on November 17, 2016 or such other time as agreed by the Company and the Representative.

“**General Disclosure Package**” means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time and the most recent preliminary prospectus (including any documents incorporated therein by reference) that is distributed to investors prior to the Applicable Time, all considered together.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (**“Rule 433”**), including without limitation any “free writing prospectus” (as defined in Rule 405 of the 1933 Act Regulations (**“Rule 405”**)) prepared by or on behalf of the Company relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g), or (iv) the Final Term Sheet (as defined below).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule B hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

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 462(b) Registration Statement, the Base Prospectus, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed incorporated by reference in the Registration Statement, the 462(b) Registration Statement, the Base Prospectus, any preliminary prospectus or the Prospectus, as the case may be, prior to the execution and delivery of this Agreement; and all references in this Agreement to amendments or supplements to the Registration Statement, the 462(b) Registration Statement, the Base Prospectus, any preliminary prospectus or the 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 **“1934 Act”**), incorporated or deemed to be incorporated by reference in the Registration Statement, the preliminary prospectus or the Prospectus, as the case may be, at or after the execution and delivery of this Agreement.

Section 1. ***Representations and Warranties.***

(a) ***Representations and Warranties by the Company.*** The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) ***Registration Statement and Prospectuses.*** The Company meets, and at the time the Registration Statement was filed with the Commission, the Company then met, the applicable requirements for use of Form S-3 under the 1933 Act. Each of the Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective and at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act Regulations, complied in all material respects with the requirements of the

1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the 1933 Act Regulations. Each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus and the Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the “**1934 Act Regulations**”).

(ii) *Accurate Disclosure.* Neither the Registration Statement nor any amendment thereto, at its effective time, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, at the time the Registration Statement became effective or when such documents incorporated by reference were filed with the Commission, as the case may be, when read together with the other information in the Registration Statement, the General Disclosure Package or the Prospectus, as the case may be, did not and will 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 not misleading.

The representations and warranties in this subsection shall not apply to (i) the Statement of Eligibility (Form T-1) of the Trustee under the 1939 Act or (ii) statements in or omissions from the Registration Statement (or any amendment thereto), the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representative expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading “Underwriting- Commissions and Discounts,” the information in the first and second paragraphs under the heading “Underwriting - Price Stabilization, Short Positions”, the last two sentences of the third paragraph and the first sentence of the fourth paragraph under the heading “Underwriting-Capped Call Transactions” and the information under the heading “Underwriting- Electronic Offer, Sale and Distribution of Securities” in each case contained in the Prospectus (collectively, the “**Underwriter Information**”).

(iii) *Issuer Free Writing Prospectuses.* No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus,

including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. Any offer that is a written communication relating to the Securities made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 under the 1933 Act Regulations (“**Rule 163**”) and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

(v) *Company Not Ineligible Issuer.* At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

(vi) *Independent Accountants.* (A) Ernst & Young LLP, the accountants who certified certain financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus, are independent public accountants as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the Public Company Accounting Oversight Board and (B) PricewaterhouseCoopers LLC, the accountants who certified certain financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus, are independent public accountants as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the Public Company Accounting Oversight Board.

(vii) *Financial Statements; Non-GAAP Financial Measures.* The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly, in all material respects, the consolidated financial position of the Company and its consolidated subsidiaries at the dates indicated and the consolidated statement of operations, stockholders’ equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“**GAAP**”) applied on a consistent basis throughout the periods involved; and the assumptions used in preparing the pro forma financial statements incorporated by reference in each of the Registration Statement, the General Disclosure Package and the Prospectus provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts. The supporting schedules, if any, present fairly, in all material respects, in accordance with GAAP the information required to be stated therein.

The selected financial data and the summary financial information included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly, in all material respects, the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus, or incorporated by reference therein, regarding “non-GAAP financial measures” (as such

term is defined by the rules and regulations of the Commission) comply with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable.

(viii) *No Material Adverse Change in Business.* Except as otherwise stated therein, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, (A) there has been no material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a “**Material Adverse Effect**”), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, that are material with respect to the Company and its subsidiaries considered as one enterprise, (C) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, and (D) there has been no decision by the Company to wind up the Company’s business.

(ix) *Good Standing of the Company.* The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package or the Prospectus and to enter into and perform its obligations under the Operative Documents; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(x) *Good Standing of Subsidiaries.* The Company’s subsidiaries have been duly organized or formed and are validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and are duly qualified to transact business and are in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package or the Prospectus or as would not result in a Material Adverse Effect, all of the issued and outstanding capital stock or other equity or ownership interest of the Company’s subsidiaries have been duly authorized and validly issued, is fully paid and non-assessable and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock or other equity or ownership interest of the Company’s subsidiaries were issued in violation of the preemptive or similar rights of any securityholder of such subsidiary. The only subsidiary of the Company is Noden Pharma DAC.

(xi) *Capitalization.* The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the Registration Statement, the General Disclosure Package and the Prospectus in the column entitled “Actual” under the caption “Capitalization” (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the Registration Statement, the General Disclosure Package and the Prospectus or pursuant to the exercise of convertible securities or options referred to in the Registration Statement, the General Disclosure Package and the Prospectus).

(xii) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(xiii) *Authorization of the Capped Call Confirmations.* (x) The Base Capped Call Confirmation has been duly authorized, executed and delivered by the Company and constitutes, and (y) any Additional Capped Call Confirmation has been duly authorized by the Company and, when duly executed and delivered by the Company, will constitute, in each case, a valid and binding agreement of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws relating to or 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).

(xiv) *Authorization of the Indenture.* The Base Indenture has been duly authorized by the Company and duly qualified under the 1939 Act and, when the Supplemental Indenture is duly executed and delivered by the Company and the Trustee, the Indenture 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 other similar laws relating to or 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).

(xv) *Authorization of the Securities and the Common Stock.* The Securities have been duly authorized and, at the Closing Time, 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 other similar laws relating to or 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), will be in the form contemplated by, and entitled to the benefits of, the Indenture. The maximum number of shares of the Company's common stock, par value \$0.01 per share (the "**Common Stock**") issuable upon conversion of the Securities pursuant to the terms thereof (including the maximum number of shares of Common Stock that may be issued upon conversion of the Securities in connection with a make-whole fundamental change (the "**Maximum Underlying Shares**")) have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon such conversion in accordance with the terms of the Securities, 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.

(xvi) *Description of the Securities, the Common Stock and the Indenture.* The Securities and the Indenture will conform in all material respects to the respective statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus and will be in substantially the respective forms filed or incorporated by reference, as the case may be, as exhibits to the Registration Statement. The Common Stock conforms to all statements relating thereto contained or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus and such description conforms to the rights set forth in the instruments defining the same.

The statements set forth in the General Disclosure Package and the Prospectus, insofar as such statements purport to summarize certain provisions of the Capped Call Confirmations, provide a fair summary of such provisions.

(xvii) *Related Party Transactions.* There are no material business relationships or transactions involving the Company or any subsidiary on one hand and a related party on the other that have not been described in the General Disclosure Package or the Prospectus.

(xviii) *Registration Rights.* There are no persons with registration rights or other similar rights to have any securities registered for sale pursuant to the Registration Statement or otherwise registered for sale or sold by the Company under the 1933 Act pursuant to this Agreement.

(xix) *Absence of Violations, Defaults and Conflicts.* Neither the Company nor any of its subsidiaries is (A) in violation of its charter, by-laws or similar organizational document, (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any subsidiary is subject (collectively, **“Agreements and Instruments”**), except for such defaults that would not, singly or in the aggregate, result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, assets or operations (each, a **“Governmental Entity”**), except for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance of the Operative Documents (including, without limitation, the issuance of the Maximum Underlying Shares) and the consummation of the transactions contemplated therein and in the Registration Statement, the General Disclosure Package and the Prospectus (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described therein under the caption **“Use of Proceeds”**) and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not, singly or in the aggregate, result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter, by-laws or similar organizational document of the Company or any of its subsidiaries or any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity. As used herein, a **“Repayment Event”** means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(xx) *Absence of Labor Dispute.* No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any subsidiary’s principal suppliers, manufacturers, customers or contractors, which, in either case, would result in a Material Adverse Effect.

(xxi) *Absence of Proceedings.* Except as disclosed in the Registration Statement, the General Disclosure

Package or the Prospectus, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries that, if resolved against the Company as of the date hereof, would result in a Material Adverse Effect, or that, if resolved as of the date hereof, would materially and adversely affect their respective properties or assets, including Intellectual Property assets, or the consummation of the transactions contemplated in the Operative Documents or the performance by the Company of its obligations hereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any such subsidiary is a party or of which any of their respective properties or assets is the subject which are not described in the Registration Statement, the General Disclosure Package and the Prospectus, including ordinary routine litigation incidental to the business, would not, if resolved against the Company as of the date hereof, result in a Material Adverse Effect.

(xxii) *Accuracy of Exhibits.* There are no contracts or documents which are required to be described in the

General Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement which have not been so described and filed as required.

(xxiii) *Absence of Further Requirements.* No filing with, or authorization, approval, consent, license, order,

registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation and performance of the transactions contemplated by the Operative Documents (including, without limitation, the issuance of the Maximum Underlying Shares), except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of The NASDAQ Stock Market LLC, state securities laws or the rules of Financial Industry Regulatory Authority, Inc. (“**FINRA**”).

(xxiv) *Possession of Licenses and Permits.* The Company and its subsidiaries possess such permits,

licenses, approvals, consents and other authorizations (collectively, “**Governmental Licenses**”) issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(xxv) *Title to Property.* The Company and its subsidiaries have good and marketable title to all real

property owned by them and good title to all other properties (excluding intangible properties covered by Section 1(a)(xxvi)) owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (A) are described in the Registration Statement, the General Disclosure Package and the Prospectus or (B) do not, singly or in the aggregate, 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 or any of its subsidiaries; and all of the leases and subleases material to the business of the Company and its subsidiaries, considered as one

enterprise, and under which the Company or any of its subsidiaries holds properties described in the Registration Statement, the General Disclosure Package or the Prospectus, are in full force and effect, and neither the Company nor any such subsidiary has received any written notice of any claim that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease, in each case, where such claim if adversely determined would result in a Material Adverse Effect.

(xxvi) *Possession of Intellectual Property.* The Company and its subsidiaries own or possess sufficient rights to use all patents (inclusive of supplementary protection certificates based thereon), copyrights, trade secrets, trademarks, licenses, approvals, inventions, technology and other intellectual property rights, including registrations and applications for registration thereof (collectively, “**Intellectual Property**”) used in, held for use in or necessary to carry on the business now operated by them, except where the failure to so own, possess, or license or have other rights to use would not result in a Material Adverse Effect, and except as described in the Registration Statement, the General Disclosure Package and the Prospectus. Neither the Company nor any of its subsidiaries has received any notice or claim of infringement of, misappropriation of or conflict with, and, to the Company’s knowledge, the operation of the Company’s business does not infringe, misappropriate or conflict with, the Intellectual Property of any third party, except where, singly or in the aggregate, such infringement, misappropriation or conflict would not result in a Material Adverse Effect. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, and except as would not, if determined adversely to the Company or any of its subsidiaries, singly or in the aggregate, have a Material Adverse Effect, there is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by any third party challenging (i) the validity, enforceability or scope of any Intellectual Property of the Company or any of its subsidiaries or (ii) the Company’s or any of its subsidiaries’ rights in and to their Intellectual Property. To the Company’s knowledge, no third party is infringing, misappropriating or in conflict with any Intellectual Property of the Company or any of its subsidiaries, except where such infringement, misappropriation or conflict would not result in a Material Adverse Effect. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, (x) the Intellectual Property owned or purported to be owned by the Company or any of its subsidiaries is owned solely by the Company and its subsidiaries; (y) to the Company’s knowledge, none of the Intellectual Property of the Company or its subsidiaries is invalid or unenforceable; and (z) the Company has substantially complied with, and, to the Company’s knowledge, each counterparty is in substantial compliance with, the terms of any agreement pursuant to which the Intellectual Property used or held for use by the Company or any of its subsidiaries has been licensed to or from the Company.

(xxvii) *Environmental Laws.* Except as described in the Registration Statement, the General Disclosure Package or the Prospectus or would not, singly or in the aggregate, result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, “**Hazardous Materials**”) or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, “**Environmental Laws**”), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each

in compliance with their requirements, (C) there are no pending or, to the Company's knowledge, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxviii) *Accounting Controls and Disclosure Controls.* The Company and each of its subsidiaries maintain effective internal control over financial reporting (as defined under Rule 13-a15 and 15d-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting required to be disclosed under the 1934 Act (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company and each of its subsidiaries maintain an effective system of disclosure controls and procedures (as defined in Rule 13a-15 and Rule 15d-15 under the 1934 Act Regulations) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, and is accumulated and communicated to the Company's management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure.

(xxix) *Compliance with the Sarbanes-Oxley Act.* There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxx) *Payment of Taxes.* All United States federal income tax returns of the Company and its subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The Company and its subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not result in a Material Adverse Effect, and has paid all taxes shown on such returns or pursuant to any assessment received by the Company and its subsidiaries, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company. The Company has maintained the charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability in accordance with GAAP, except to the extent that would not result in a Material Adverse Effect.

(xxxi) *No Stamp or Transfer Taxes.* There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, or any other U.S. or non-U.S. governmental authority required to be paid in connection with the execution and delivery of this Agreement or the issuance or sale by the Company of the Securities or upon the issuance of Common Stock upon the conversion thereof.

(xxxii) *Insurance.* Except, in each case, as would not result in a Material Adverse Effect, the Company and its subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks that the Company reasonably believes is adequate, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of its subsidiaries will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

(xxxiii) *Investment Company Act.* The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the General Disclosure Package and the Prospectus will not be required, to register as an “investment company” under the Investment Company Act of 1940, as amended (the “**1940 Act**”).

(xxxiv) *Absence of Manipulation.* The Company has not taken, and the Company will not take, directly or indirectly, any action which is designed, or would be expected, to cause or result in, or which has constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or to result in a violation of Regulation M under the 1934 Act.

(xxxv) *Foreign Corrupt Practices Act.* Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or Affiliate (defined below) of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its subsidiaries and, to the knowledge of the Company, its Affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain reasonable policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxvi) *Money Laundering Laws.* The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with all applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder, including but not limited to the Bank Secrecy Act, as amended by the USA PATRIOT Act, 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 best knowledge of the Company, threatened.

(xxxvii) *OFAC.* None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries is currently the subject or the target of any applicable sanctions administered or enforced by the U.S. Government (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”)), the United Nations Security Council (“**UNSC**”), the European Union, Her Majesty’s Treasury (“**HMT**”), or other applicable sanctions authority (collectively, “**Sanctions**”), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory in violation of Sanctions; and the Company will not directly or indirectly use the proceeds of the offering hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund any activities of or business with any person, or in any country or territory, that, at the time of such funding, would be in violation of Sanctions or (ii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries, is a person that is, or is 50% or more owned or otherwise controlled by a person that is: (i) the subject of any Sanctions; or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions that broadly prohibit dealings with that country or territory (currently, Cuba, Iran, North Korea, Sudan, and Syria) (collectively, “**Sanctioned Countries**” and each, a “**Sanctioned Country**”).

(xxxviii) *Statistical and Market-Related Data.* Any statistical and market-related data included in the Registration Statement, the General Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, to be reliable and accurate and, to the extent required, the Company has obtained the consent to the use of such data from such sources.

(xxxix) *eXtensible Business Reporting Language.* The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

(xl) *No Broker’s Fees.* Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its subsidiaries or any Underwriter for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Securities.

(b) *Officer’s Certificates.* Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representative or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

Section 2. ***Sale and Delivery to Underwriters; Closing.***

(a) *Initial Securities.* On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the

Company, at the price set forth in Schedule A, the aggregate principal amount of Initial Securities set forth in Schedule A, plus any additional principal amount of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject to such adjustments as the Representative in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(b) *Option Securities.* In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase the Option Securities, at the price set forth in Schedule A. The option hereby granted may be exercised at any time after the date hereof and prior to the latest permissible Date of Delivery hereunder and may be exercised in whole or in part from time to time for the purpose of covering overallotments made in connection with the offering upon notice by the Representative to the Company setting forth the amount of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a “**Date of Delivery**”) shall be determined by the Representative, but shall not be later than seven full business days after the exercise of said option, nor in any event (a) prior to the Closing Time or (b) later than the 13th day from, and including, the date of the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total principal amount of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total principal amount of Initial Securities, plus any additional principal amount of Option Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject to such adjustments as the Representative in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(c) *Payment.* Payment of the purchase price for, and delivery of certificates for, the Initial Securities shall be made at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 at 10:00 A.M. New York City time on November 22, 2016 or at such other place as shall be agreed upon by the Representative and the Company, at 9:00 A.M. (New York City time) on the third (fourth, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representative and the Company (such time and date of payment and delivery being herein called “**Closing Time**”).

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representative and the Company, on each Date of Delivery as specified in the notice from the Representative to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company, against delivery to the Representative for the respective accounts of the Underwriters of certificates for the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representative, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. The Representative, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing

Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(d) *Denominations; Registration.* Certificates for the Initial Securities and the Option Securities, if any, shall be in such denominations (\$1,000 or integral multiples thereof) and registered in such names as the Representative may request in writing at least one full business day before the Closing Time or the relevant Date of Delivery, as the case may be. The Initial Securities and the Option Securities, if any, will be made available for examination and packaging by the Representative in The City of New York not later than 10:00 A.M. (New York City time) on the business day prior to the Closing Time or the relevant Date of Delivery, as the case may be.

Section 3. *Covenants of the Company.* The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests.* The Company, subject to Section 3(b), will comply with the requirements of Rule 430B, and will notify the Representative immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus, including any document incorporated by reference therein or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will affect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment. The Company shall pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1)(i) under the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the 1933 Act Regulations (including, if applicable, by updating the “Calculation of Registration Fee” table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b)).

(b) *Continued Compliance with Securities Laws.* The Company will comply with the 1933 Act, the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the 1933 Act Regulations (“**Rule 172**”), would be) required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will 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 not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly (A) give the Representative notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the General Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representative with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representative or counsel for the Underwriters shall object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company has given the Representative notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the Applicable Time; the Company will give the Representative notice of its intention to make any such filing from the Applicable Time to the Closing Time and will furnish the Representative with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representative or counsel for the Underwriters shall reasonably object.

(c) *Delivery of Registration Statements.* The Company has furnished or will deliver to the Representative and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also deliver to the Representative, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses.* The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Blue Sky Qualifications.* The Company will use its best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representative may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified

or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) *Rule 158.* The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(g) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Registration Statement, the General Disclosure Package and the Prospectus under “Use of Proceeds.”

(h) *Listing.* The Company will use its best efforts to effect and maintain the listing of the Maximum Underlying Shares on The NASDAQ Global Select Market.

(i) *Restriction on Sale of Securities.* During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representative (which consent shall not be unreasonably withheld, conditioned or delayed), (i) directly or indirectly, 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 or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder or any shares of Common Stock issued upon conversion thereof, (B) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion or exchange of a security outstanding on the date hereof, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company (including, without limitation, the Company’s 2005 Equity Incentive Plan), (D) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the Registration Statement, the General Disclosure Package and the Prospectus, (E) the repurchase for cash of the Company’s outstanding 4.00% Convertible Senior Notes Due 2018 or (F) the entry into the transactions contemplated by the Capped Call Confirmations. Nothing in this Section 3(i) shall prevent the Company from filing any registration statements on Form S-8 or S-4 relating to the issuance of securities pursuant to clauses (A), (B), (C), (D), or (E) or (F) set forth in this Section 3(i).

(j) *Reporting Requirements.* The Company, during the period when a Prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934 Act Regulations.

(k) *Final Term Sheet; Issuer Free Writing Prospectuses.* The Company will prepare a final term sheet (the “**Final Term Sheet**”), in the form set forth in Annex B-1 hereto, reflecting the final terms of the Securities, in form and substance satisfactory to the Representative, and shall file such Final Term Sheet as an “issuer free writing prospectus” pursuant to Rule 433 prior to the close of business two business days after the date hereof; provided that the Company shall furnish the Representative 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 Representative or counsel to the Underwriters shall object. The Company agrees that, unless it obtains the prior written consent of the Representative, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representative will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representative. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representative as an “issuer free writing prospectus,” as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representative and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(l) *DTC.* The Company will cooperate with the Representative and use its reasonable best efforts to permit the offered Securities to be eligible for clearance and settlement through the facilities of The Depository Trust Company.

(m) *Reserved Shares.* The Company will reserve and keep available at all times, free of preemptive rights, the Maximum Underlying Shares.

(n) *Conversion Rate.* Between the date hereof and the Closing Time, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion rate applicable to the Securities.

Section 4. *Payment of Expenses.*

(a) *Expenses.* The Company will pay or cause to be paid all expenses incident to the performance of their obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) preparation, issuance and delivery of the Securities to the Underwriters and the Common Stock issuable upon conversion thereof, (iv) the preparation, issuance and delivery of the Capped Call Confirmations, (v) the fees and disbursements of the Company’s counsel, accountants and other advisors, (vi) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto, (vii) all fees and expenses of the Trustee and any expenses of any transfer agent or registrar for the Securities or the Common Stock issuable upon conversion of the Securities; (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, (ix) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA of the terms of the sale of the Securities, (x) the fees and expenses incurred in connection with the listing of the Maximum Underlying Shares issuable upon conversion of the Securities on The NASDAQ Global Select Market and (xi) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by the Underwriters caused by a breach of the representation contained in the third sentence of Section 1(a)(ii). For the avoidance of doubt, the Company will not pay or otherwise be responsible for the fees or expenses of counsel for the Underwriters, except as provided in clauses (vi) and (ix) of this Section 4(a).

(b) *Termination of Agreement.* If this Agreement is terminated by the Representative in accordance with the provisions of Section 5, Section 9(a)(i) or (iii) or Section 10 hereof, the Company shall reimburse the Underwriters (or, in the case of Section 10, solely the non-defaulting Underwriters) for all of their reasonable, documented out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

Section 5. ***Conditions of Underwriters’ Obligations.*** The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company or any of its subsidiaries, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement.* The Registration Statement has become effective and at Closing Time no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, contemplated; and the Company has complied with each request (if any) from the Commission for additional information. The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by Rule 456(1)(i) under the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456 (b) and 457(r) under the 1933 Act Regulations and, if applicable, shall have, if necessary, updated the “Calculation of Registration Fee” table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b).

(b) *Opinions and Negative Assurance of Counsel for Company and Opinion of General Counsel for the Company.* At the Closing Time, the Representative shall have received the favorable opinion and negative assurance letter, dated the Closing Time, of Gibson, Dunn & Crutcher LLP, counsel for the Company, the favorable opinion, dated the Closing Time, of Clearly Gottlieb Steen & Hamilton LLP, counsel for the Company, and the favorable opinion of Christopher L. Stone, General Counsel for the Company, dated the Closing Time, in form and substance reasonably satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such opinions and letters for each of the other Underwriters.

(c) *Opinion and Negative Assurance of Counsel for Underwriters.* At the Closing Time, the Representative shall have received the favorable opinion and negative assurance letter, dated the Closing Time, of Latham & Watkins LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, in form and substance satisfactory to the Underwriters.

(d) *Officers' Certificate.* At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, and the Representative shall have received a certificate of the Chief Executive Officer of the Company and of the Chief Financial Officer of the Company, dated the Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 Act has been issued, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to their knowledge, contemplated.

(e) *Accountant's Comfort Letters.* At the time of the execution of this Agreement, the Representative shall have received from Ernst & Young LLP and PricewaterhouseCoopers LLC letters, each dated such date, in form and substance satisfactory to the Representative, together with signed or reproduced copies of such letters for each of the other Underwriters containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(f) *Bring-down Comfort Letter.* At the Closing Time, the Representative shall have received from PricewaterhouseCoopers LLC a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(g) *Approval of Listing.* At the Closing Time, the Maximum Underlying Shares shall have been approved for listing on The NASDAQ Global Select Market, subject only to official notice of issuance.

(h) *Lock-up Agreements.* At the date of this Agreement, the Representative shall have received an agreement substantially in the form of Schedule D hereto signed by the persons listed on Schedule C hereto.

(i) *Maintenance of Rating.* Since the execution of this Agreement, there shall not have been any decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the 1933 Act) or any notice given of any intended or potential decrease in or withdrawal of any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(j) *Rule 462(b) Registration Statement.* In the event that a Rule 462(b) Registration Statement is filed in connection with the offering contemplated by this Agreement, such Rule 462(b) Registration Statement shall have been filed with the Commission on the date of this Agreement and shall have become effective automatically upon such filing.

(k) *Conditions to Purchase of Option Securities.* In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company and any of its subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representative shall have received:

(i) *Officers' Certificate.* A certificate, dated such Date of Delivery, of Chief Executive Officer of the Company and of the Chief Financial Officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) *Opinions of Counsel for Company.* The favorable opinion and negative assurance letter of Gibson, Dunn & Crutcher LLP, counsel for the Company, and the favorable opinion of the general counsel for the Company, substantially in the same form and substance of the applicable opinion furnished to the Representative pursuant to Section 5(a) hereof, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery.

(iii) *Opinion of Counsel for Underwriters.* The favorable opinion and negative assurance letter of Latham & Watkins LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) *Bring-down Comfort Letter.* A letter from Ernst & Young LLP, in form and substance satisfactory to the Representative and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representative pursuant to Section 5(e) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(l) *Additional Documents.* At the Closing Time and at each Date of Delivery (if any) counsel for the Underwriters shall have been furnished with such documents as they may require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Representative and counsel for the Underwriters.

(m) *Termination of Agreement.* If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representative by notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7, 8, 14 and 15 shall survive any such termination and remain in full force and effect.

(a) *Indemnification of Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an “**Affiliate**”)), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included (A) in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) or (B) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities (“**Marketing Materials**”), if any, including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or the omission or alleged omission in any preliminary prospectus, Issuer Free Writing Prospectus, Prospectus or in any Marketing Materials of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all reasonable expenses, as incurred (including the reasonable fees and disbursements of counsel chosen by the Representative), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense

described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representative, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding 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) *Actions against Parties; Notification.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for the reasonable fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

Section 7. ***Contribution.*** If the indemnification provided for in Section 6 hereof is for any reason (other than failure to meet the requirements for indemnification thereunder) unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) 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 hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in

connection with the statements or omissions that resulted in such losses, liabilities, claims, damages or expenses, 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 hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters 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 Section 7 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 Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any unreimbursed legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the Securities underwritten by it and distributed to the public.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the aggregate principal amount of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

Section 8. ***Representations, Warranties and Agreements to Survive.*** All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company and (ii) delivery of and payment for the Securities.

(a) *Termination.* The Representative may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representative, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representative, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or The NASDAQ Global Select Market, or (iv) if trading generally on the New York Stock Exchange or in The NASDAQ Global Select Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or with respect to Clearstream or Euroclear systems in Europe, or (vi) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities.* If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 14 and 15 shall survive such termination and remain in full force and effect.

Section 10. ***Default by One or More of the Underwriters.*** If one or more of the Underwriters shall fail at Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the “**Defaulted Securities**”), the Representative shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representative shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the aggregate principal amount of the Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the aggregate principal amount of the Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either the (i) Representative or (ii) the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

Section 11. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to RBC Capital Markets, LLC at 200 Vesey Street, 8th Floor, New York, New York 10281-8098, attention of Michael Goldberg, Syndicate Director, fax: (212) 428-6260; notices to the Company shall be directed to it at 932 Southwood Boulevard, Incline Village, Nevada 89451, attention of Christopher L. Stone, and with a copy to Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071, attention of Karen Bertero.

Section 12. **Advisory or Fiduciary Relationship.** The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any of its subsidiaries or their respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its subsidiaries on other matters) and no Underwriter has any obligation to the Company with respect to the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering of the Securities and the Company has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

Section 13. **Parties.** This Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

Section 14. ***Trial by Jury.*** The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) 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.

Section 15. ***GOVERNING LAW.*** THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

Section 16. ***TIME.*** TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

Section 17. ***Partial Unenforceability.*** The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 18. ***Counterparts.*** This Agreement may be executed 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 Agreement.

Section 19. ***Effect of Headings.*** The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

PDL BIOPHARMA, INC.

By: /s/ Peter S. Garcia
Name: Peter S. Garcia
Title: VP & CEO

CONFIRMED AND ACCEPTED,
as of the date first above written:

RBC Capital Markets, LLC

By: /s/ Susan Kirtland
Name: Susan Kirtland
Title: Managing Director

For itself and as Representative of the other Underwriters named in Schedule A hereto.

SCHEDULE A

1. The public offering price of the Securities shall be 100% of the principal amount thereof, plus accrued interest, if any, from the date of issuance.
2. The purchase price to be paid by the Underwriters for the Securities shall be 97.50% of the principal amount thereof.
3. The interest rate on the Securities shall be 2.75% per annum.
4. The conversion rate for the Securities shall be 262.2951 shares per \$1,000 principal amount of the Securities.

Name of Underwriter		Principal Amount of Securities
RBC Capital Markets, LLC	\$	90,000,000
Piper Jaffray & Co.	\$	52,500,000
Roth Capital Partners, LLC	\$	7,500,000
Total	\$	150,000,000

Schedule A-1

SCHEDULE B

Free Writing Prospectuses

1. Final Term Sheet substantially in the form of Annex B-1
2. Free Writing Prospectus filed November 15, 2016.

Schedule B-1

Annex B-1
Final Term Sheet

Annex B-1-1

\$150,000,000
PDL BioPharma, Inc.
2.75% Convertible Senior Notes due 2021
Final Term Sheet

The information in this pricing term sheet relates to PDL BioPharma, Inc.'s offering (the "Offering") of its 2.75% Convertible Senior Notes due 2021 and should be read together with the preliminary prospectus supplement dated November 15, 2016 relating to the Offering (the "Preliminary Prospectus Supplement"), including the documents incorporated by reference therein, and the base prospectus dated June 28, 2016 (the "Base Prospectus"), each filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended.

Issuer:	PDL BioPharma, Inc. (the "Issuer"), a Delaware corporation.
Ticker / Exchange for Common Stock:	PDLI / The NASDAQ Global Select Market ("NASDAQ").
Aggregate Principal Amount Offered:	\$150,000,000 aggregate principal amount of Notes. In addition, the Issuer has granted the underwriters the option to purchase, within a period of 13 days from, and including, the date the Notes are first issued, up to an additional \$22,500,000 aggregate principal amount of Notes, solely to cover overallocments.
Use of Proceeds:	<p>The Issuer estimates that the net proceeds to it from the Offering to be approximately \$145.8 million (or approximately \$167.7 million if the underwriters fully exercise their option to purchase additional Notes), after deducting underwriting discounts and estimated fees and expenses related to the Offering.</p> <p>The Issuer entered into a capped call transaction with Royal Bank of Canada, an affiliate of one of the underwriters (the "Option Counterparty"). The Issuer intends to use \$14.4 million of the net proceeds from the Offering to pay the cost of the capped call transaction.</p> <p>If the underwriters exercise their option to purchase additional Notes, the Issuer expects to use a portion of the net proceeds from the sale of such additional Notes to enter into an additional capped call transaction.</p>

The Issuer intends to use a portion of the net proceeds from the Offering to repurchase up to approximately \$120 million aggregate principal amount of its outstanding 4.00% Senior Convertible Notes due 2018 for approximately \$120 million in cash, plus accrued interest, and to use the remaining proceeds to acquire income-generating assets and pharmaceutical products and for general corporate purposes. Pending such uses, the Issuer intends to invest any remaining net proceeds of the Offering in interest-bearing, short-term securities issued or guaranteed as to principal or interest by the United States or a person controlled by the government of the United States. See “Use of Proceeds” in the Preliminary Prospectus Supplement.

Maturity: December 1, 2021, unless earlier repurchased or converted.

Interest and Payment Dates: Interest on the Notes will accrue at a rate of 2.75% on their principal amount from November 22, 2016, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2017.

	Per Note		Without Option		With Option
Public Offering Price⁽¹⁾:	100.00%	\$	150,000,000	\$	172,500,000
Underwriting Discount:	2.50%	\$	3,750,000	\$	4,312,500
Proceeds, Before Expenses, to the Issuer⁽¹⁾:	97.50%	\$	146,250,000	\$	168,187,500

⁽¹⁾ Plus accrued interest from November 22, 2016, if settlement occurs after that date.

Trade Date: November 17, 2016

Settlement Date: November 22, 2016

NASDAQ Last Reported Sale Price on November 16, 2016: \$3.05 per share of the Issuer’s common stock.

Conversion Premium: Approximately 25.0% above the NASDAQ Last Reported Sale Price on November 16, 2016.

Initial Conversion Price: Approximately \$3.81 per share of the Issuer’s common stock, subject to adjustment.

Initial Conversion Rate: 262.2951 shares of the Issuer’s common stock per \$1,000 principal amount of Notes, subject to adjustment.

Sole Book-Running Manager: RBC Capital Markets, LLC

Lead Manager: Piper Jaffray & Co.

Co-Manager: Roth Capital Partners, LLC

Schedule B-1-3

CUSIP: 69329Y AG9

ISIN: US69329YAG98

Capped Call Transactions:

In connection with the pricing of the Notes, the Issuer expects to enter into a capped call transaction with the Option Counterparty. The capped call transaction is intended to reduce the dilutive impact of the conversion feature of the Notes on the Issuer’s outstanding shares of common stock and/or offset any cash payments the Issuer will be required to make in excess of the principal amount, upon any conversion of the Notes, with such reduction and/or offset subject to a cap. If the underwriters exercise their overallotment option to purchase additional Notes, the Company expects to enter into an additional capped call transaction.

In connection with establishing their initial hedge of the capped call transaction, the Option Counterparty and/or its affiliates expect to enter into various derivative transactions with respect to the Issuer’s common stock concurrently with or shortly after the pricing of the Notes. This activity could increase (or reduce the size of any decrease in) the market price of the Issuer’s common stock or the Notes at that time.

In addition, the Option Counterparty and/or its affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to the Issuer’s common stock and/or purchasing or selling the Issuer’s common stock in secondary market transactions following the pricing of the Notes and prior to the maturity of the Notes (and are likely to do so during any observation period related to a conversion of Notes). This activity could also cause or avoid an increase or a decrease in the market price of the Issuer’s common stock or the Notes, which could affect a holder’s ability to convert the Notes and, to the extent the activity occurs during any observation period related to a conversion of Notes, could affect the amount and value of the consideration that a holder will receive upon conversion of the Notes. For a discussion of the potential impact of any market or other activity by the Option Counterparty and/or its affiliates in connection with the capped call transaction, see “Risk Factors-Risk Factors Related to the Notes and Our Common Stock-The capped call transaction may affect the value of the Notes and our common stock” in the Preliminary Prospectus Supplement.

Increase in Conversion Rate Upon a Make-Whole Fundamental Change:

The following table sets forth the number of additional shares of the Issuer’s common stock, if any, to be added to the conversion rate per \$1,000 principal amount of Notes for conversions in connection with a “make-whole fundamental change” (as defined in the Preliminary Prospectus Supplement):

Schedule B-1-4

<u>Effective Date</u>	<u>Stock Price</u>									
	<u>\$3.05</u>	<u>\$3.50</u>	<u>\$3.81</u>	<u>\$4.50</u>	<u>\$5.00</u>	<u>\$7.50</u>	<u>\$10.00</u>	<u>\$12.50</u>	<u>\$15.00</u>	<u>\$17.50</u>
November 22, 2016	65.5737	49.2143	41.0131	28.3311	22.2200	7.9747	3.2550	1.2456	0.3093	0.0000
December 1, 2017	65.5737	47.8057	39.2467	26.2911	20.2180	6.7800	2.6560	0.9720	0.2193	0.0000
December 1, 2018	65.5737	45.8886	36.8268	23.5267	17.5520	5.3360	1.9880	0.6824	0.1227	0.0000
December 1, 2019	65.5737	42.9514	33.1365	19.4511	13.7500	3.6093	1.2900	0.4072	0.0420	0.0000
December 1, 2020	65.5737	37.4657	26.3911	12.6333	7.8880	1.7000	0.6290	0.1832	0.0080	0.0000
December 1, 2021	65.5737	23.4200	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact stock price and effective date 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 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- or 366-day year, as applicable;
- more than \$17.50 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; and
- less than \$3.05 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.

Despite the foregoing, in no event will the conversion rate, including any additional shares issuable under the table above, exceed 327.8688 shares of common stock per \$1,000 principal amount of Notes, subject to adjustment in the same manner and for the same events as the conversion rate as described in the Preliminary Prospectus Supplement under the caption “Description of Notes-Conversion of Notes-Conversion Rate Adjustments.”

The information below replaces the information in the Preliminary Prospectus Supplement under the caption “Capitalization.”

Capitalization

The following table sets forth the Issuer’s unaudited cash, cash equivalents and investments and the Issuer’s consolidated capitalization as of September 30, 2016. The Issuer’s capitalization is presented:

- on an actual basis; and
- on an as-adjusted basis to reflect (i) net proceeds of approximately \$145.8 million from the issuance of \$150.0 million aggregate principal amount of Notes in the Offering (assuming the underwriters’ option to purchase additional Notes is not exercised), after deducting the discounts, commissions and estimated expenses payable by the Issuer; (ii) the use of approximately \$14.4 million to pay the cost of the capped call transaction, as described in the Preliminary Prospectus Supplement under the caption “Description of the Concurrent Capped Call Transaction”; and (iii) the repurchase of approximately \$120 million aggregate principal amount of the Issuer’s outstanding 4.00% Convertible Senior Notes due 2018 for approximately \$120 million plus accrued interest, as described in the Preliminary Prospectus Supplement under the Caption “Use of Proceeds.”

You should read this table along with the Issuer’s consolidated financial statements and related notes and the other financial information incorporated by reference into the Preliminary Prospectus Supplement or the Base Prospectus.

	As of September 30, 2016	
	Actual	As Adjusted
	(dollars in thousands)	
	(unaudited)	
Cash, cash equivalents and investments	\$ 189,575	\$ 199,460 (1)
Long-term debt, including current maturities:		
4.00% Convertible Senior Notes due 2018	\$ 234,895	\$ 120,520 (2)
2.75% Convertible Senior Notes due 2021	—	150,000 (3)
Total long-term debt, including current maturities	234,895	270,520
Total stockholders’ equity	753,856	753,856 (1)(2)(3)
Total capitalization	\$ 988,751	\$ 1,024,376 (1)(2)(3)

(1) Reflects an estimated amount of \$14.4 million for the pre-tax cost of the capped call transaction, as described in the Preliminary Prospectus Supplement under the caption “Description of the Concurrent Capped Call Transaction.” Such cost will be included in additional paid-in capital in the Issuer’s stockholders’ equity presented on its consolidated balance sheets but is not reflected in the as adjusted total stockholders’ equity line item in the table above.

(2) The 4.00% Convertible Senior Notes due 2018 are reflected in the long-term debt, including current maturities, total stockholders’ equity and total capitalization line items above in accordance with Accounting Standards Codification 470-20, which is described in note 3 below. As of September 30, 2016, approximately \$246.4 million aggregate principal amount of the 4.00% Convertible Senior Notes due 2018 were outstanding. The Issuer expects to pay an aggregate repurchase price in cash of approximately \$120 million plus accrued interest in connection with the repurchase of the 4.00% Convertible Senior Notes due 2018. The repurchase is expected to accelerate a portion of the related debt discount for the repurchased notes, which is not reflected in the as adjusted total stockholders’ equity line item in the table above. See “Use of Proceeds.”

- (3) Accounting Standards Codification ASC 470-20 provides that issuers of convertible debt that may be wholly or partially settled in cash, such as the Notes and the Issuer's outstanding 4.00% Convertible Senior Notes due 2018, must separately account for the liability and equity components in a manner that will reflect the issuer's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. The amounts presented above do not reflect the debt discount that the Issuer will be required to recognize for the Notes. Following the issuance of the Notes, the Issuer will record a debt discount for the Notes that will decrease total consolidated debt and increase additional paid-in capital. The debt component will accrete up to the principal amount over the expected term of the debt.
-

The information below will be considered to immediately follow the caption "Prospectus Supplement Summary-2016 Dividends" in the Preliminary Prospectus Supplement.

Recent Development

As previously disclosed, the Issuer extended waivers through November 30, 2016 under the credit agreement between the Issuer and Direct Flow Medical, Inc. ("Direct Flow Medical") related to certain defaults of Direct Flow Medical pursuant to the credit agreement. During this waiver period, PDL explored its options while Direct Flow Medical continued to seek additional financing. Late in the morning, Pacific Standard Time, on November 16, 2016, Direct Flow Medical advised the Issuer that its potential additional financing source had significantly modified its financing proposal, changing from an equity investment to a loan in a substantially lower amount and proposing other less favorable terms. The Issuer is evaluating its alternatives regarding its investment in Direct Flow Medical in light of this development. The Issuer may elect to initiate foreclosure proceedings with respect to Direct Flow Medical's assets that secure the Direct Flow Medical loan. If it does so, there is no assurance as to the value the Issuer may realize upon foreclosure, and it is likely the investment will be further impaired, resulting in a write down of a portion or all of the value of the investment.

The Issuer has filed a registration statement (including the Preliminary Prospectus Supplement, dated November 15, 2016, and an accompanying prospectus, dated June 28, 2016) with the Securities and Exchange Commission, or SEC, for the Offering to which this communication relates. Before you invest, you should read the Preliminary Prospectus Supplement and the accompanying prospectus in that registration statement and other documents the Issuer has filed with the SEC for more complete information about the Issuer and the Offering. You may get these documents for free by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, copies may be obtained from RBC Capital Markets, Attention: Equity Syndicate, 200 Vesey Street, 8th Floor, New York, NY 10281 or by calling (877) 822-4089.

This communication should be read in conjunction with the Preliminary Prospectus Supplement, dated November 15, 2016, and the accompanying prospectus, dated June 28, 2016. The information in this communication supersedes the information in the Preliminary Prospectus Supplement and the accompanying prospectus to the extent inconsistent with the information in the Preliminary Prospectus Supplement and the accompanying prospectus. Terms used but not defined herein have the meanings given in the Preliminary Prospectus Supplement.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

SCHEDULE C

List of Persons Subject to Lock-up

Name:

Paul R. Edick
Peter S. Garcia
David W. Gyska
Danny Hart
Jody S. Lindell
John P. McLaughlin
Steffen Pietzke
Samuel R. Saks
Paul W. Sandman
Harold E. Slick
Christopher L. Stone

Office:

Director
Vice President and Chief Financial Officer
Director
Vice President, Business Development
Director
President, Chief Executive Officer and Director
Controller and Chief Accounting Officer
Director
Director
Director
Vice President, General Counsel and Secretary

Schedule C-1

Schedule D

FORM OF LOCK-UP TO BE DELIVERED PURSUANT TO SECTION 5(h)

Schedule D-1

November [•], 2016

RBC Capital Markets, LLC

as Representative of the several
Underwriters to be named in the
within-mentioned Underwriting Agreement

c/o RBC Capital Markets, LLC
Three World Financial Center
200 Vesey Street
New York, New York 10281

Re: Proposed Offering by PDL BioPharma, Inc.

Dear Sirs:

The undersigned, a stockholder and an officer and/or director of PDL BioPharma, Inc., a Delaware corporation (the “**Company**”), understands that the Representative proposes to enter into an Underwriting Agreement (the “**Underwriting Agreement**”) with the Company providing for the public offering of the Company’s Convertible Senior Notes Due 2021 (the “**Securities**”). In recognition of the benefit that such an offering will confer upon the undersigned as a stockholder and an officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees, subject to the terms and conditions set forth herein, with each underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on, and including, the date that is 90 days from the date of the Underwriting Agreement (the “**Lock-Up Period**”), the undersigned will not, without the prior written consent of the Representative, directly or indirectly, (i) 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 for the sale of, or otherwise dispose of or transfer any shares of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the “**Lock-Up Securities**”), or exercise any right with respect to the registration of any of the Lock-up Securities, or file or cause to be filed any registration statement in connection therewith, under the Securities Act of 1933, as amended, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

Annex D- 2

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer the Lock-Up Securities without the prior written consent of the Representative, provided that (1) the Representative receives a signed lock-up agreement for the balance of the Lock-Up Period from each donee, trustee, distributee, or transferee, as the case may be, (2) any such transfer shall not involve a disposition for value, (3) no filing or public announcement by any party (transferor or transferee) shall be required or shall be voluntarily made in connection with such transfer or distribution and (4) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

- (i) as a *bona fide* gift or gifts;
- (ii) by testate or intestate succession;
- (iii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this lock-up agreement, “immediate family” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin) and lineal descendants thereof;
- (iv) as a distribution to members, limited partners or stockholders of the undersigned;
- (v) if the undersigned holds the Lock-Up Securities as a trustee of a trust, to such trust’s beneficiaries; or
- (vi) to the undersigned’s direct or indirect affiliates or subsidiaries or to any investment fund or other entity controlled or managed by the undersigned.

Notwithstanding anything herein to the contrary, the foregoing shall not be deemed to restrict the undersigned with respect to (1) the exercise (including any cashless exercise involving the transfer of securities between the undersigned and the Company) of options or warrants issued by the Company to the undersigned to acquire Lock-Up Securities; provided that any Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock issuable upon exercise or settlement of such options and warrants shall be subject to the provisions of this letter, (2) the withholding of Lock-Up Securities by the Company in connection with the vesting of restricted stock held by the undersigned as of the date of the Underwriting Agreement, (3) transactions that occur in connection with, or after, the termination of the undersigned’s employment by, or service to, the Company or any of its subsidiaries and for which disposition or sale of such Lock-Up Securities does not require any filing or public announcement by any party (transferor or transferee) and no filing or public announcement shall be voluntarily made in connection with such transfer or distribution, (4) entering into any written trading plan or agreement (“**Rule 10b5-1 Plan**”) with a broker designed to comply with Rule 10b5-1(c)(1) promulgated pursuant to the Exchange Act, provided that any such Rule 10b5-1 Plan shall specify that any sales of Lock-Up Securities sold for the undersigned’s benefit pursuant to the Rule 10b5-1 Plan shall not occur prior to the expiration of the Lock-Up Period and provided further that such action does not trigger any public filing requirement and the undersigned does not make any such public filing or other public announcement, or (5) the disposition or sale of any Lock-Up Securities pursuant to any existing contract, instruction or plan entered into pursuant to a Rule 10b5-1 Plan in existence as of the date hereof.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the Lock-Up Securities except in compliance with the foregoing restrictions.

This letter agreement shall automatically terminate and the undersigned shall be released from his or her or its obligations hereunder if any of the following occurs: (i) the Company notifies you in writing

that it does not intend to proceed with the offering of the Securities; or (ii) for any reason after the execution of the Underwriting Agreement, the Underwriting Agreement shall be terminated (other than the provisions thereof that survive termination) prior to the consummation of the purchase of the Securities in accordance with the terms of the Underwriting Agreement.

Very truly yours,

By: _____
Name:
Title:

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

November 22, 2016

PDL BioPharma, Inc. 73748
932 Southwood Boulevard
Incline Village, Nevada 89451

Re: PDL BioPharma, Inc.
Registration Statement on Form S-3 (File No. 333-211970)

Ladies and Gentlemen:

We have acted as special counsel to PDL BioPharma, Inc., a Delaware corporation (the “Company”), in connection with the preparation and filing with the Securities and Exchange Commission (the “Commission”) of a Registration Statement on Form S-3, file no. 333-211970 (the “Registration Statement”), under the Securities Act of 1933, as amended (the “Securities Act”), the prospectus included therein, the prospectus supplement, dated November 16, 2016, filed with the Commission on November 18, 2016 pursuant to Rule 424(b) of the Securities Act (the “Prospectus Supplement”), and the offering by the Company pursuant thereto of \$150,000,000 aggregate principal amount of the Company’s 2.75% Convertible Senior Notes due 2021 (the “Notes”) and shares of the Company’s common stock, \$0.01 par value per share, issuable upon conversion of the Notes (the “Shares”).

The Notes have been issued pursuant to the Indenture dated as of November 22, 2016 (the “Base Indenture”), between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as supplemented by the Supplemental Indenture, dated November 22, 2016, relating to the Notes (the “Supplemental Indenture” and together with the Base Indenture, the “Indenture”) between the Company and the Trustee.

In arriving at the opinions expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of the Base Indenture, the Supplemental Indenture, and the Notes and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render these opinions. In our examination, we have assumed, without independent investigation, the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. As to any facts material to these opinions, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others.

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

1. The Notes are legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.
2. When issued upon conversion of the Notes as provided in the Indenture, the Shares will be legally issued, fully paid and nonassessable.

The opinions expressed above are subject to the following additional exceptions, qualifications, limitations and assumptions:

A. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the United States of America and, for purposes of paragraphs 1 and 2 above, the Delaware General Corporation Law. We are not admitted to practice in the State of Delaware; however, we are generally familiar with the Delaware General Corporation Law as currently in effect and have made such inquiries as we consider necessary to render the opinions contained in paragraphs 1 and 2 above. This opinion is limited to the effect of the current state of the laws of the State of New York, the United States of America and, to the limited extent set forth above, the laws of the State of Delaware and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts.

B. The opinions above are each subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors' generally, including without limitation the effect of statutory or other laws regarding fraudulent transfers or preferential transfers, and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

C. We express no opinion regarding the effectiveness of (i) any waiver of stay, extension or usury laws; (ii) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws or due to the negligence or willful misconduct of the indemnified party; (iii) any provision in the Indenture or the certificates evidencing the global Notes waiving the right to object to venue in any court; (iv) any agreement to submit to the jurisdiction of any Federal court; (v) any waiver of the right to jury trial or (vi) any provision to the effect that every right or remedy is cumulative and may be exercised in addition to any other right or remedy or that the election of some particular remedy does not preclude recourse to one or more others.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption “Validity of the Notes” in the Registration Statement and the Prospectus Supplement. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP