SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

PDL BioPharma, Inc.

(Name of Subject Company (Issuer))

PDL BioPharma, Inc.

(Names of Filing Persons (Offeror))

2.875% Convertible Senior Notes due February 15, 2015
(Title of Class of Securities)

69329Y AB0
69329Y AA2
(CUSIP Number of Class of Securities)

Danny Hart
Associate General Counsel
PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Telephone: (775) 832-8500
(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

With Copies to:
Dhiya El-Saden
Gibson, Dunn & Crutcher LLP
333 South Grand Ave.
Los Angeles, CA 90071
Telephone: (213) 229-7000

Calculation of Filing Fee

Transaction Valuation	Amount of Filing Fee
$180,000,000(1)	**$20,628(2)**

(1) Calculated solely for purposes of determining the filing fee pursuant to Rule 0-11 of the Securities Exchange Act of 1934, as amended. The transaction value is $180,000,000, which is based upon the aggregate principal amount of the 2.875% Convertible Senior Notes due February 15, 2015, as of November 9, 2011.

(2) The amount of the filing fee was calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and equals $114.60 for each $1,000,000 of the value of the transaction.

☐ Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: N/A	Filing Party: N/A
Form or Registration No.: N/A	Date Filed: N/A

☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes to designate any transactions to which the statement relates:

☐ third-party tender offer subject to Rule 14d-1.

☒ issuer tender offer subject to Rule 13e-4.

☐ going-private transaction subject to Rule 13e-3.

☐ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer. ☐

SCHEDULE TO

This Issuer Tender Offer Statement on Schedule TO (this Schedule TO) is being filed by PDL BioPharma, Inc., a Delaware corporation (PDL or the Company), pursuant to Section 13e-4 of the Securities Exchange Act of 1934, as amended (the Exchange Act), in connection with an offer (the Exchange Offer) by PDL to exchange, for each $1,000 principal amount of the Company's 2.875% Convertible Senior Notes due February 15, 2015 (the Old Notes), 2.875% Series 2011 Convertible Senior Notes due February 15, 2015 (the New Notes), in the principal amount of $1,000 and a cash payment. PDL is seeking to exchange any and all outstanding Old Notes in the Exchange Offer.

The Exchange Offer shall commence on November 15, 2011, and shall expire at 5:00 p.m., New York City time, on December 13, 2011, unless extended or earlier terminated by the Company.

The Exchange Offer is made upon the terms and subject to the conditions described in the offering memorandum dated November 15, 2011 (as may be amended or supplemented from time to time, the Offering Memorandum), and the accompanying letter of transmittal (the Letter of Transmittal). The Offering Memorandum and the Letter of Transmittal are filed as exhibits (a)(1)(i) and (a)(1)(ii), respectively, hereto.

The Exchange Offer is being made by the Company pursuant to an exemption from registration under Section 3(a)(9) of the Securities Act of 1933, as amended, and is contingent upon satisfaction or waiver of certain customary conditions.

This Schedule TO is being filed in satisfaction of the reporting requirements of Rules 13e-4(b)(1) and (c)(2) promulgated under the Exchange Act.

Information set forth in the Offering Memorandum is incorporated by reference in response to Items 1 through 13 of this Schedule TO, except those items as to which information is specifically provided herein.

Item 1. Summary Term Sheet.

The information set forth in the Offering Memorandum in the sections entitled "Summary" and "Questions and Answers about the Exchange Offer" is incorporated by reference herein.

Item 2. Subject Company Information.

(a) **Name and Address.** The name of the subject company is PDL BioPharma, Inc. The address of the Company's principal executive offices is 932 Southwood Boulevard, Incline Village, Nevada 89451. The Company's telephone number is (775) 832-8500.

(b) **Securities.** The subject class of securities is the Company's 2.875% Convertible Senior Notes due February 15, 2015. As of November 10, 2011, the aggregate principal amount of Old Notes outstanding was $180,000,000.

(c) **Trading Market and Price.** The Old Notes are not listed on any national securities exchange. To the knowledge of the Company, there is no established trading market for the Old Notes except for limited or sporadic quotations.

Item 3. Identity and Background of Filing Person.

(a) **Name and Address.** The filing person and issuer is PDL BioPharma, Inc., with its principal executive offices located at 932 Southwood Boulevard, Incline Village, Nevada 89451, telephone number (775) 832-8500.

As required by General Instruction C to Schedule TO, the following persons are the directors and executive officers of PDL. No single person or group of persons controls PDL.

Name	Position
Frederick Frank	Lead Director
Jody S. Lindell	Director
Paul W. Sandman	Director
Harold E. Selick, Ph.D	Director
John P. McLaughlin	Director, President and Chief Executive Officer
Christine R. Larson	Vice President and Chief Financial Officer
Christopher L. Stone	Vice President, General Counsel and Secretary
Caroline Krumel	Vice President of Finance and Principal Accounting Officer
Danny Hart	Associate General Counsel and Assistant Secretary

The business address and telephone number of each director and executive officer is: c/o PDL BioPharma, Inc., 932 Southwood Boulevard, Incline Village, Nevada 89451, telephone number (775) 832-8500.

Item 4. Terms of the Transaction.

(a) **Material Terms.** The information set forth in the Offering Memorandum in the sections entitled “Summary,” “Questions and Answers About the Exchange Offer,” “Capitalization,” “Terms of the Exchange Offer,” “Description of New Notes” and “Material U.S. Federal Income Tax Considerations” is incorporated by reference herein.

(b) **Purchases.** To PDL’s knowledge based on reasonable inquiry, no Old Notes are owned by any officer, director or affiliate of PDL. Accordingly, no Old Notes will be purchased from any officer, director or affiliate of the Company in connection with the Exchange Offer.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

(e) **Agreements Involving the Issuer’s Securities**.

Agreements Related to the New Notes

(1) The Company will enter into an Indenture with The Bank of New York Mellon Trust Company, N.A., as trustee, relating to the New Notes (the form of which is filed as an exhibit to this Schedule TO)

Agreements Related to the Old Notes (each of which is filed as an exhibit to this Schedule TO)

(1) Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., dated as of November 1, 2010

Agreements Related to the Company’s Other Securities (each of which is filed as an exhibit to this Schedule TO)

(1) Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., dated as of May 16, 2011

(2) Supplemental Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., dated as of May 16, 2011

(3) Pursuant to certain of the Company’s employee benefits plans, certain of the Company’s directors and employees are parties to equity based award agreements and stock incentive compensation plans relating to the Company’s common stock

The information set forth in the Offering Memorandum in the sections entitled “Terms of the Exchange Offer,” “Information Agent,” “Tender and Paying Agent” and “Interests of Directors and Executive Officers” and in the related Letter of Transmittal is incorporated by reference herein in response to this item.

Item 6. Purposes of the Transaction and Plans or Proposals.

(a) **Purposes.** The information set forth in the Offering Memorandum in the sections entitled "Summary—Purpose of the Exchange Offer," "Questions and Answers About the Exchange Offer—Why is the Company making the exchange offer?" and "Terms of the Exchange Offer—Purpose of the Exchange Offer" is incorporated by reference herein.

(b) **Use of Securities Acquired.** The Company will retire and cancel all Old Notes acquired pursuant to the Exchange Offer.

(c) **Plans.** The information set forth in the Offering Memorandum in the section entitled "Capitalization" is incorporated by reference herein.

Item 7. Source and Amount of Funds or Other Consideration.

(a) **Source of Funds.** The information set forth in the Offering Memorandum in the sections entitled "Summary—Sources of Payment of the Cash Portion of the Exchange Offer Consideration," "Questions and Answers About the Exchange Offer—How will the Company fund the cash portion of the exchange offer consideration?," "Terms of the Exchange Offer," "Information Agent" and "Tender and Paying Agent" is incorporated by reference herein.

(b) **Conditions.** The information set forth in the Offering Memorandum in the sections entitled "Questions and Answers About the Exchange Offer—What are the conditions to the exchange offer?" and "Terms of the Exchange Offer" is incorporated by reference herein.

(c) **Borrowed Funds.** The information set forth in the Offering Memorandum in the sections entitled "Summary—Sources of Payment of the Cash Portion of the Exchange Offer Consideration" and "Questions and Answers About the Exchange Offer—How will the Company fund the cash portion of the exchange offer consideration?" is incorporated by reference herein.

Item 8. Interest in Securities of the Subject Company.

(a) **Securities Ownership.** The information set forth in the Offering Memorandum in the section entitled "Interests of Directors and Executive Officers" is incorporated by reference herein.

(b) **Securities Transactions.** The information set forth in the Offering Memorandum in the section entitled "Interests of Directors and Executive Officers" is incorporated by reference herein.

Item 9. Persons/Assets, Retained, Employed, Compensated or Used.

(a) **Solicitations or Recommendations.** The information set forth in the Offering Memorandum in the sections entitled "Questions and Answers About the Exchange Offer—Is the Company making a recommendation regarding whether I should participate in the exchange offer?," "Tender and Paying Agent" and "Information Agent" is incorporated by reference herein. None of the Company, the tender and paying agent or the information agent is making any recommendation as to whether holders of Old Notes should tender such Old Notes for exchange in the Exchange Offer.

Item 10. Financial Statements.

(a) **Financial Information**.

(1) The information, including the financial statements, set forth under Item 8, Financial Statements and Supplementary Data, in PDL's Annual Report on Form 10-K for the fiscal year ended December 31, 2010, is incorporated by reference herein and can also be accessed electronically on the Securities and Exchange Commission's website at *www.sec.gov*.

(2) The information, including the financial statements, set forth under Item 1, Financial Statements, in PDL's Quarterly Report on Form 10-Q for the period ended September 30, 2011, is incorporated by reference herein and can also be accessed electronically on the Securities and Exchange Commission's website at *www.sec.gov*.

(3) The information set forth in the Offering Memorandum in the section entitled "Ratio of Earnings to Fixed Charges" is incorporated by reference herein.

(4) At September 30, 2011, the book value per share of the Company's common stock was approximately $(1.954).

(b) **Pro Forma Information.** The information set forth in the Offering Memorandum in the section entitled "Capitalization" is incorporated by reference herein.

Item 11. Additional Information.

(a) **Agreements, Regulatory Requirements and Legal Proceedings.**

(1) None.

(2) The Company is required to (i) qualify under the Trust Indenture Act of 1939, as amended, the indenture pursuant to which the New Notes will be issued and (ii) list on the NASDAQ Global Select Market the shares of common stock underlying the New Notes.

(3) None.

(4) None.

(5) None.

(b) **Other Material Information.** None.

Item 12. Exhibits.

(a)(1)(i)	Offering Memorandum, dated November 15, 2011.*
(a)(1)(ii)	Form of Letter of Transmittal.*
(a)(1)(iii)	Form of Letter to brokers, dealers, commercial banks, trust companies and other nominees.*
(a)(1)(iv)	Form of Letter to Clients for use by brokers, dealers, commercial banks, trust companies and other nominees.*
(a)(5)	Press Release, dated November 15, 2011 (incorporated by reference to Exhibit 99.1 to Current Report on Form 8-K filed on November 15, 2011).
(d)(1)	Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as Trustee, dated as of May 16, 2011.
(d)(2)	Supplemental Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as Trustee, dated as of May 16, 2011.
(d)(3)	Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., dated as of November 1, 2010.
(d)(4)	Form of Indenture between the Company and The Bank of New York Mellon Trust Company, N.A. relating to the New Notes.*

(g) None.

(h) None.

* Filed herewith.

Item 13. Information Required by Schedule 13E-3. Not applicable.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Schedule TO is true, complete and correct.

PDL BIOPHARMA, INC.

/S/ JOHN P. MCLAUGHLIN
Name: John P. McLaughlin
Title: President and Chief Executive Officer

Date: November 15, 2011

Index to Exhibits

Exhibit Number	Description
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(d)(3)	Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., dated as of November 1, 2010.
(d)(4)	Form of Indenture between the Company and The Bank of New York Mellon Trust Company, N.A. relating to the New Notes.*
(g)	None.
(h)	None.

* Filed herewith.

Exhibit (a)(1)(i)

PDL BIOPHARMA, INC.

OFFERING MEMORANDUM

EXCHANGE OFFER FOR
ALL OUTSTANDING
2.875% CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015
(CUSIP Nos. 69329YAB0 and 69329YAA2)
for new 2.875% Series 2011 Convertible Senior Notes due February 15, 2015

This exchange offer will expire at 5:00 p.m., New York City time, on December 13, 2011, unless extended or earlier terminated.

Upon the terms and subject to the conditions set forth in this offering memorandum and the accompanying letter of transmittal, we are offering to exchange any and all of our outstanding 2.875% Convertible Senior Notes due February 15, 2015, which we refer to herein as "old notes," for our 2.875% Series 2011 Convertible Senior Notes due February 15, 2015, which we refer to herein as "new notes," and a cash payment. For each $1,000 principal amount of outstanding old notes, we are offering to exchange the following "exchange offer consideration:"

- new notes in the principal amount of $1,000; plus
- a cash payment equal to $2.50, which we refer to herein as the "note exchange payment."

New notes will be issued only in denominations of $1,000 or an integral multiple thereof.

The terms of the new notes will be substantially the same as the terms of the old notes, except as follows. The new notes will contain (i) a net share settlement feature and (ii) a conditional conversion feature. As a result of these new features, the anti-dilution provisions and settlement procedures for the new notes have been modified, and changes were made to the anti-dilution provisions in conformity with our 3.75% Convertible Senior Notes due 2015, which also have net share settlement and conditional conversion features. Holders of the old notes may freely convert their old notes at any time solely into shares of our common stock. By contrast, upon conversion of the new notes, we will pay the conversion value, calculated on a proportionate basis for each trading day in a 40 trading day cash settlement averaging period, in cash up to the daily allocation of the principal amount of the new notes (1/40th of $1,000, or $25) for each such trading day, and in shares of Company common stock for any conversion value in excess of such cash payment. Certain changes have been made to the settlement procedures and the anti-dilution provisions of the new notes in order to accommodate the effects of this net share settlement feature and the 40 trading day cash settlement averaging period. The anti-dilution provisions of the new notes are described in this offering memorandum. Additionally, holders of the new notes may convert their notes at their option prior to the close of business on the second scheduled trading day prior to maturity only under the following circumstances: (1) during any fiscal quarter commencing after the fiscal quarter ending December 31, 2011, if the closing price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the new notes on the last day of such preceding fiscal quarter; (2) during the five business-day period immediately after any five consecutive trading-day period, which we refer to as the measurement period, in which the trading price per $1,000 principal amount of new notes for each trading day of that measurement period was less than 98% of the product of the closing price of our common stock and the conversion rate for the new notes for each such day; (3) if we call any or all of the new notes for

redemption, at any time prior to the close of business on the last business day prior to the redemption date; or (4) upon the occurrence of specified corporate events. On and after August 15, 2014, until the close of business on the second scheduled trading day immediately preceding the stated maturity date for the new notes, holders may convert their notes at any time, regardless of the foregoing circumstances.

We will not issue fractional shares of common stock upon conversion of the new notes. Instead, we will pay cash for the fractional amount based upon the daily VWAP (as defined in "Description of New Notes—Conversion of Notes—Settlement Upon Conversion") of the common stock on the last trading day of the relevant cash settlement averaging period.

The exchange offer will expire at 5:00 p.m., New York City time, on December 13, 2011, unless extended or earlier terminated, which time, as may be so extended or terminated, we refer to herein as the "expiration time." You must validly tender your old notes for exchange in the exchange offer prior to the expiration time to receive the exchange offer consideration. You should carefully review the procedures for tendering old notes beginning on page 34 of this offering memorandum. You may withdraw old notes tendered in the exchange offer at any time prior to the expiration time.

Any old notes not validly tendered will not be accepted by us for exchange and holders of the old notes not validly tendered will not receive the exchange offer consideration.

The exchange offer is subject to the conditions discussed under "Terms of the Exchange Offer—Conditions of the Exchange Offer." The exchange offer is not conditioned on the tender of any minimum aggregate principal amount of old notes.

As of November 14, 2011, the aggregate principal amount of old notes outstanding was $180 million. The old notes are not listed for trading on any national securities exchange.

Our common stock is traded on the NASDAQ Global Select Market under the symbol "PDLI." The last reported sale price of our common stock on November 10, 2011, was $6.06 per share.

We urge you to carefully read the "Risk Factors" section of this offering memorandum beginning on page 15 before you make any decision regarding the exchange offer.

You must make your own decision whether to tender old notes in the exchange offer, and, if so, the amount of old notes to tender. Neither we, the tender and paying agent, the information agent nor any other person is making any recommendation as to whether or not you should tender your old notes for exchange in the exchange offer.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of this transaction or these securities or determined if this offering memorandum is truthful or complete. Any representation to the contrary is a criminal offense.

The tender and paying agent for this offer is The Bank of New York Mellon Trust Company, N.A. The information agent for this offer is Georgeson Inc.

THE DATE OF THIS OFFERING MEMORANDUM IS NOVEMBER 15, 2011.

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We are relying on Section 3(a)(9) of the Securities Act of 1933, as amended, which we refer to herein as the "Securities Act," to exempt the exchange offer from the registration requirements of the Securities Act. Section 3(a)(9) provides that the registration requirements of the Securities Act will not apply to "any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange." We have no contract, arrangement or understanding relating to, and will not, directly or indirectly, pay any commission or other remuneration to any broker, dealer, salesperson, agent or any other person for soliciting tenders in the exchange offer. Officers and regular employees of our company, who will not receive additional compensation therefor, may solicit tenders from holders. In addition, we have not engaged or authorized any financial advisor, broker, dealer, salesperson, agent or any other person to express any statement, opinion, recommendation or judgment with respect to the relative merits and risks of the exchange offer. You must comply with all applicable laws and regulations in force in any applicable jurisdiction, and you must obtain any consent, approval or permission required for the purchase, offer or sale by you of the new notes under the laws and regulations in force in any jurisdiction to which you are subject or in which you make such purchase, offer or sale, and we will not have any responsibility therefor. We are not making any representation to any participant in this offering regarding the legality of the exchange offer under any investment or similar laws or regulations.

No dealer, salesman or other person has been authorized to give any information or to make any representations with respect to the matters described in this offering memorandum, other than those contained in, or incorporated by reference into, this offering memorandum. If given or made, such information or representations may not be relied upon as having been authorized by us.

This offering memorandum is submitted to holders for informational use solely in connection with their consideration of the exchange offer described in this offering memorandum. Its use for any other purpose is not authorized. The offering memorandum may not be copied or reproduced in whole or in part nor may it be distributed or any of its contents be disclosed to anyone other than the holder to whom it is submitted.

In making an investment decision, holders must rely on their own examination of us and the terms of the exchange offer, including the merits and risks involved. The information contained in this offering memorandum is correct as of the date hereof and neither the delivery of this offering memorandum nor the consummation of the exchange offer shall create the implication that the information contained herein is correct at any time after the date hereof. Our business, financial condition, results of operations and prospects may have changed since that date. No representation is made to any holder regarding the legality of an investment in the new notes under any applicable legal investment or similar laws or regulations. The contents of this offering memorandum are not to be construed as legal, business or tax advice. Holders should consult their own attorneys, business advisors or tax advisors as to legal, business or tax advice with respect to the exchange offer.

Questions regarding the exchange offer, requests for assistance in tendering your old notes or requests for additional copies of this offering memorandum or the letter of transmittal should be directed to Georgeson Inc., the information agent for the exchange offer, at the telephone number or the address listed on the back cover page of this offering memorandum. Holders of old notes may also contact their brokers, dealers, commercial banks, trust companies or other nominees for assistance concerning the exchange offer.

FORWARD-LOOKING STATEMENTS

Some of the statements made and information contained in this offering memorandum, excluding historical information, are "forward-looking statements" as defined in Section 27A of the Securities Act and 21E of the
Securities Exchange Act of 1934, as amended, which we refer to herein as the "Exchange Act." Forward-looking

statements give our current expectations or forecasts of future events. Words such as “may,” “will,” “expect,” “intend,” “estimate,” “anticipate,” “believe,” “project” or “continue,” and similar expressions are used to identify forward-looking statements. They can be affected by assumptions used or by known or unknown risks or uncertainties. Consequently, no forward-looking statements can be guaranteed. Actual results may vary materially. You are cautioned not to place undue reliance on any forward-looking statements. You should also understand that it is not possible to predict or identify all such factors and should not consider the following list to be a complete statement of all potential risks and uncertainties. Any of the following factors may impact the achievement of results:

- our ability to protect our patent and other intellectual property rights through litigation or other means;
- our ability to acquire new patents and the cost thereof;
- the validity and enforceability of our supplementary protection certificates;
- continued market acceptance of products sold by our licensees upon which we receive royalties, approval of their licensed products that are in development and continued performance by our licensees of their obligations under their agreements with the Company;
- the ability of our licensees to maintain or obtain regulatory approvals;
- changes in the third-party reimbursement environment;
- expiration of our existing patents;
- the payment of dividends or distributions to our stockholders;
- failure to meet securities analyst or investor expectations;
- delisting from the NASDAQ Global Select Market;
- fluctuation in revenues and operating results;
- fluctuations in foreign currency exchange rates;
- our ability to attract, retain and integrate key employees;
- our ability to collect under our indemnification rights from Abbott Biotherapeutics Corp. (fka Facet Biotech Corporation and referred to herein as “Facet”);
- entry into acquisitions or other material royalty asset transactions that may not produce anticipated royalty revenues; and
- errors in royalty payment calculations and other factors beyond our control.

This list of factors is not exhaustive, and new factors may emerge or changes to the foregoing factors may occur that would affect our business. Additional information regarding these and other factors may be contained in our filings with the Securities and Exchange Commission (SEC), especially on Forms 10-K, 10-Q and 8-K. All such risk factors are difficult to predict and contain material uncertainties that may affect actual results and may be beyond our control.

WHERE YOU CAN FIND MORE INFORMATION

PDL BioPharma, Inc. files annual, quarterly and current reports, proxy statements and other information with the SEC under the Exchange Act. You may read and copy this information at the Public Reference Room of the SEC, 100 F Street NE, Washington, D.C. 20549, at prescribed rates. You may obtain information on the operation of the Public Reference Room by calling the SEC at (800) SEC-0330.

The SEC also maintains an internet world wide website that contains reports, proxy statements and other information about issuers, like us, who file electronically with the SEC. The address of that website is *www.sec.gov*. Unless specifically listed under “Incorporation of Certain Documents by Reference” below, the information contained on the SEC website is not intended to be incorporated by reference in this offering memorandum and you should not consider that information a part of this offering memorandum.

You can also inspect reports, proxy statements and other information about us at the offices of the NASDAQ Global Select Market, One Liberty, 165 Broadway, New York, New York 10005.

You also may obtain a free copy of our most recent annual report on Form 10-K, quarterly report on Form 10-Q and proxy statement on our Internet website at *www.pdl.com*. Other than the documents filed with the SEC and incorporated by reference into this offering memorandum, the information contained on our website does not constitute a part of this offering memorandum.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to "incorporate by reference" information into this offering memorandum. This means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be part of this offering memorandum, except for any information that is superseded by information that is included directly in this document.

This offering memorandum incorporates by reference the documents and information listed below that we have filed with the SEC but have not been included or delivered with this offering memorandum.

- Our annual report on Form 10-K for the year ended December 31, 2010;
- Our quarterly reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011, and September 30, 2011;
- Our current reports on Form 8-K filed with the SEC on March 8, 2011, April 18, 2011, May 13, 2011, May 16, 2011, May 24, 2011 (Item 8.01 and Exhibit 99.2 only), May 26, 2011, June 6, 2011, June 16, 2011, June 24, 2011, July 5, 2011, July 11, 2011, September 8, 2011 (Item 8.01 and Exhibit 99.3 only), September 15, 2011, and October 19, 2011;
- The description of our common stock in our registration statement on Form 8-A filed with the SEC on December 23, 1991, as amended on Form 8-A/A filed with the SEC on January 22, 1992.
- The information set forth under the captions "Election of Directors," "Information Relating to Committees of the Board," "Code of Ethics," "Compensation of Our Directors and Officers," "Executive Officers," "Executive Officer Compensation," "Compliance with Section 16(a)," "Compensation Committee Report," "Security Ownership of Certain Beneficial Owners and Management" and "Principal Independent Registered Public Accounting Firm Fees and Services" contained in our Proxy Statement relating to our June 22, 2011, annual meeting of stockholders and incorporated into our annual report on Form 10-K.

We also incorporate by reference any future filings we make with the SEC under sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, on or after the date of the initial registration statement and prior to effectiveness of the registration statement and on or after to the date of this offering memorandum and prior to the closing of this exchange offer. These additional documents include periodic reports, such as annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K (other than information furnished and not filed by us under any item of any current report on Form 8-K, including the related exhibits, which is deemed not to be incorporated by reference in this offering memorandum), as well as proxy statements (other than information identified in them as not incorporated by reference). You should review these filings as they may disclose changes in our business, prospects, financial condition or other affairs after the date of this offering memorandum. The information that we file later with the SEC under sections 13(a), 13(c), 14 or 15(d) of the Exchange Act and before the closing of this exchange offer will automatically update and supersede previous information included or incorporated by reference in this offering memorandum.

You can obtain any of the documents incorporated by reference in this offering memorandum from us without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference in this offering memorandum. You can obtain documents incorporated by reference in this offering memorandum by requesting them in writing or by telephone from us at the following address:

Investor Relations
PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
(775) 832-8500

In order to ensure timely delivery, you must request the information no later than five business days before the expiration of the exchange offer. This request must be made by December 6, 2011.

SUMMARY

The following summary may not contain all of the information you should consider before investing in the new notes and should be read in conjunction with the more detailed information, financial statements and related notes appearing elsewhere in or incorporated by reference in this offering memorandum. This offering memorandum contains forward-looking statements, which involve risks and uncertainties. See "Forward-Looking Statements." Our actual results could differ materially from those anticipated in such forward-looking statements as a result of certain factors, including those discussed in the "Risk Factors" and other sections of this offering memorandum.

Unless the context otherwise requires, the terms the "Company," "we" and "our" refer to PDL BioPharma, Inc., a Delaware corporation, and its predecessors and subsidiaries.

PDL BIOPHARMA, INC.

Our business is managing our intellectual property assets, which consist of our Queen et al. patents and license agreements with leading pharmaceutical and biotechnology companies pursuant to which we have licensed certain rights under our Queen et al. patents, investing in new royalty bearing assets and maximizing the value of our existing patent portfolio and related assets. We receive royalties based on our license agreements on sales of a number of humanized antibody products marketed today and also may receive royalty payments on additional humanized antibody products launched before final general patent expiry of the Queen et al. patents in 2014. Under our existing licensing agreements, we are entitled to receive a flat-rate or tiered royalty based upon our licensees' net sales.

Until December 2008, our business included a biotechnology operation that was focused on the discovery and development of novel antibodies, which we spun-off as Facet. From March 2005 until March 2008, we also had commercial and manufacturing operations that we partially divested in 2006 and fully divested in 2008.

For more information about our business, please refer to the "Business" section in our most recent annual report on Form 10-K filed with the SEC and incorporated by reference in this offering memorandum and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" sections of our most recent annual report on Form 10-K and subsequent quarterly reports on Form 10-Q filed with the SEC and incorporated by reference in this offering memorandum.

We were organized as a Delaware corporation in 1986 under the name Protein Design Labs, Inc. In 2006, we changed our name to PDL BioPharma, Inc. Our principal executive offices are located at 932 Southwood Boulevard, Incline Village, Nevada, 89451, (775) 832-8500, and our Internet website address is *www.pdl.com*. Information on or connected to our Internet website is not a part of this offering memorandum.

Background of the Exchange Offer

This exchange offer is being made pursuant to an exemption from the registration requirements of the Securities Act contained in Section 3(a)(9) of the Securities Act. We have not filed a registration statement under the Securities Act or any other federal or state securities laws with respect to the new notes that will be issued in the exchange offer.

The Company issued the old notes in November 2010 in separate, privately negotiated exchange transactions and a private transaction for limited resale pursuant to Rule 144 under the Securities Act. The issuance of the old notes was not registered under the Securities Act in reliance on exemption from registration thereunder.

All of the old notes are freely transferable under U.S. federal securities laws because we are (and have been for more than 90 days) subject to the reporting requirements of Section 13 of the Exchange Act and the old notes have been held by non-affiliates of the Company for over one year, as a result of which the old notes are eligible for resale without restriction pursuant to Rule 144 under the Securities Act. Accordingly, all of the new notes issued in the exchange offer (and any underlying common stock issued upon conversion of the new notes in accordance with the terms of the indenture governing the new notes) will also be freely transferable under U.S. federal securities laws by anyone who is not an affiliate (as such term is defined in Rule 144 under the Securities Act) of the Company, subject to certain requirements. The new notes will be represented by a single unrestricted CUSIP number. See "Terms of the Exchange Offer—Resale of New Notes Received Pursuant to the Exchange Offer."

Purpose of the Exchange Offer

The purpose of this exchange offer is to reduce the dilutive impact of the conversion feature of the old notes on (i) our earnings per share, which occurs whether or not the conversion feature is exercised, and (ii) our outstanding shares of common stock, which occurs if and when the conversion feature is exercised. While exercise of the conversion rights under the old notes requires us to issue shares of our common stock (but not fractional shares) in full satisfaction of the conversion value of the old notes, the new notes include a net share settlement feature that will require us, upon exercise of the conversion rights under the new notes, to pay the conversion value, calculated on a proportionate basis for each trading day in a 40 trading day cash settlement averaging period, in cash up to the daily allocation of the principal amount of the new notes (1/40th of $1,000, or $25) for each such trading day, and in shares of Company common stock for any conversion value in excess of such cash payment. We believe that this net share settlement feature will help us improve our capital structure by limiting the additional amount of common stock that will be issuable upon conversion of the new notes, thereby reducing the dilution on our earnings per share and on our outstanding shares of common stock. We have also added restrictions on when the new notes may be converted (see "Description of New Notes—Conversion of Notes") that did not apply to the conversion of the old notes so as to preserve the treatment of the new notes with the net share settlement feature as long term debt on our balance sheet.

Sources of Payment of the Cash Portion of the Exchange Offer Consideration

Assuming full participation, we will need approximately $450,000 in cash to fund the aggregate note exchange payment. We will use cash on hand to fund the aggregate note exchange payment. There are no alternative financing arrangements for the exchange offer.

Summary Terms of the Exchange Offer

The following summary is provided solely for the convenience of holders of old notes. This summary is not intended to be complete and is qualified in its entirety by reference to, and should be read in conjunction with, the information appearing elsewhere or incorporated by reference in this offering memorandum. Holders of old notes are urged to read this offering memorandum in its entirety, including the information set forth in the section of this offering memorandum entitled "Risk Factors," and the other documents incorporated by reference in this offering memorandum.

Offeror	PDL BioPharma, Inc.
Securities Subject to the Exchange Offer	Any and all of our outstanding 2.875% Convertible Senior Notes due February 15, 2015. As of November 14, 2011, $180 million aggregate principal amount of old notes was outstanding.
The Exchange Offer	We are offering to exchange, upon the terms and subject to the conditions set forth in this offering memorandum, any and all of our outstanding old notes for a combination of cash and the new notes. You may tender all, some or none of your old notes, except that old notes must be tendered in principal amounts that are integral multiples of $1,000.
Exchange Offer Consideration	Upon the terms and subject to the conditions set forth in this offering memorandum and in the related letter of transmittal, for each $1,000 principal amount of outstanding old notes, we are offering to exchange the following exchange offer consideration: • new notes in the principal amount of $1,000; plus • a cash payment equal to $2.50. New notes will be issued only in denominations of $1,000 or an integral multiple thereof.
Comparison of the Terms of Old Notes and New Notes	The terms of the new notes will be substantially the same as the terms of the old notes, except that the new notes will require us, upon conversion thereof, to settle the conversion value of such new notes in cash and shares of our common stock, rather than exclusively in shares of our common stock as currently required by the old notes. Certain changes have been made to the settlement procedures and the anti-dilution provisions of the new notes in order to accommodate the effects of this net share settlement feature and the 40 trading day cash settlement averaging period. The new notes also have restrictions on when they may be converted that did not apply to the conversion of the old notes.
Expiration; Extension	The exchange offer will expire at 5:00 p.m., New York City time, on Tuesday, December 13, 2011, unless extended or earlier terminated by us, in which case the expiration time will be the latest date and time to which the exchange offer is extended. See "Terms of the Exchange Offer —Expiration; Extensions; Termination; Amendment."

Interest	The new notes will bear interest at an annual rate of 2.875%, accruing from August 15, 2011.
Settlement Date	The settlement date in respect of any old notes that are validly tendered prior to the expiration time is expected to be promptly following the expiration time and is anticipated to be December 15, 2011. See "Terms of the Exchange Offer—Settlement Date."
Acceptance of Tendered Old Notes and Payment	Upon the terms of the exchange offer and upon satisfaction or waiver of the conditions to the offer specified herein under "Terms of the Exchange Offer—Conditions of the Exchange Offer," we will: • accept for exchange old notes in principal amounts that are integral multiples of $1,000, validly tendered (or defectively tendered, if we have waived such defect) and not validly withdrawn before the expiration time; and • promptly pay the exchange offer consideration, on the settlement date for all old notes accepted for exchange.
Waiver; Amendment	We reserve the right, subject to applicable law, to waive any and all conditions to the exchange offer, extend or terminate the exchange offer or otherwise amend, modify or interpret the terms of the exchange offer.
Conditions of the Exchange Offer	The exchange offer is subject to customary conditions, some of which we may waive in our sole discretion (see "Terms of the Exchange Offer—Conditions of the Exchange Offer"). The exchange offer is not conditioned upon any minimum principal amount of old notes being tendered for exchange.
How to Tender Old Notes	In order to exchange your old notes for new notes, you must validly tender them at or before the applicable expiration time. If you beneficially own old notes through an account maintained by a broker, dealer, commercial bank, trust company or other nominee and you desire to tender your old notes, you should contact your nominee promptly and instruct it to tender your old notes on your behalf. To properly tender old notes, DTC participants must electronically submit their acceptance through DTC's ATOP system (as defined in "Terms of the Exchange Offer—Procedures for Tendering") or complete, sign and mail or transmit the letter of transmittal to the tender and paying agent prior to the expiration time. Additionally, the tender and paying agent must receive either a timely confirmation of book-entry transfer of the old notes or an agent's message through DTC's ATOP system.

	You may tender your old notes for new notes in whole or in part in principal amounts that are integral multiples of $1,000. See “Terms of the Exchange Offer—Procedures for Tendering” and “Risk Factors.”
Special Procedures for Beneficial Owners	If you beneficially own old notes registered in the name of a broker, dealer, commercial bank, trust company or other nominee and you wish to tender your old notes in the exchange offer, you should contact the registered holder promptly and instruct it to tender on your behalf. See “Terms of the Exchange Offer—Procedures for Tendering.”
Withdrawal and Revocation Rights	You may withdraw any old notes tendered in the exchange offer at any time prior to the expiration time. If we decide for any reason not to accept any old notes tendered for exchange, the old notes will be credited to the registered holder’s account at DTC at our expense promptly after the expiration or termination of the exchange offer. Any withdrawn old notes will be credited to the tendering holder’s account at DTC. For further information regarding the withdrawal of tendered old notes, see “Terms of the Exchange Offer—Withdrawal of Tenders.”
Use of Proceeds	We will not receive any cash proceeds from the issuance of the new notes. See “Use of Proceeds.”
Risk Factors	You should consider carefully in its entirety all of the information set forth in this offering memorandum, as well as the information incorporated by reference in this offering memorandum, and, in particular, you should evaluate the specific factors set forth in the section of this offering memorandum entitled “Risk Factors” before deciding whether to participate in the exchange offer.
Material U.S. Federal Income Tax Considerations	The U.S. federal income tax treatment of the exchange offer is uncertain; however, we intend to take the position that the exchange pursuant to the exchange offer will not constitute a taxable transaction for U.S. federal income tax purposes, except with respect to the note exchange payment. See “Material United States Federal Income Tax Considerations.”
Old Notes not Tendered or Accepted for Exchange	Any old notes not accepted for exchange for any reason will be credited to an account maintained at DTC promptly after the expiration or termination of the exchange offer. If you do not tender your old notes in the exchange offer, or if your old notes are not accepted for exchange, you will not receive the exchange offer consideration. You will continue to hold your old notes and will be entitled to all the rights and subject to all the limitations applicable to the old notes. However, the liquidity of any trading market for old notes not tendered for exchange, or tendered for exchange and not

	accepted, could be reduced to the extent that old notes are tendered and accepted for exchange in the exchange offer. Holders of old notes who do not exchange their old notes for the exchange offer consideration will continue to have the right to convert their old notes, subject to the terms and conditions governing the old notes. See "Risk Factors—Risks Related to the New Notes, the Old Notes and Our Common Stock." If you do not exchange your old notes, the old notes you retain may become substantially less liquid as a result of the completion of the exchange offer.
Market; Trading	The old notes are not listed for trading on any national securities exchange or automated quotation system. We do not intend to list the new notes on any national securities exchange or automated quotation system. Our common stock is traded on the NASDAQ Global Select Market under the symbol "PDLI." The last reported sale price of our common stock on November 10, 2011, was $6.06 per share.
Fees and Expenses	We estimate that the total fees and expenses of the exchange offer will be approximately $990,000.
Brokerage Commissions	No brokerage commissions are payable by the holders of the old notes to the tender and paying agent or us. If your old notes are held through a broker or other nominee that tenders the old notes on your behalf, your broker may charge you a commission for doing so. You should consult with your broker or nominee to determine whether any charges will apply. See "Terms of the Exchange Offer."
Tender and Paying Agent	The Bank of New York Mellon Trust Company, N.A. is the tender and paying agent for the exchange offer. Its address and telephone number are set forth on the back cover of this offering memorandum. See the section of this offering memorandum entitled "Tender and Paying Agent."
Further Information	If you have questions regarding the exchange offer, require assistance in tendering your old notes or require additional copies of the offering memorandum or the letter of transmittal, please contact Georgeson Inc., the information agent for the exchange offer, at the telephone number or the address listed on the back cover page of this offering memorandum. Holders of old notes may also contact their brokers, dealers, commercial banks, trust companies or other nominees for assistance concerning the exchange offer.

New Notes

The following is a summary of some of the terms of the new notes. For a more complete description, see "Description of New Notes."

Issuer	PDL BioPharma, Inc.
Securities Offered	2.875% Series 2011 Convertible Senior Notes due February 15, 2015.
Maturity	February 15, 2015.
Interest	The new notes will bear interest at an annual rate of 2.875%, accruing from August 15, 2011.
Interest Payment Dates	February 15 and August 15 of each year, beginning on February 15, 2012.
Conversion Rights	Holders may convert their new notes at their option at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date of the notes, in multiples of $1,000 principal amount, under the following circumstances: • during any fiscal quarter commencing after the fiscal quarter ending December 31, 2011, if the closing price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the new notes on the last day of such preceding fiscal quarter; • during the five business-day period immediately after any five consecutive trading-day period, which we refer to as the measurement period, in which the trading price per $1,000 principal amount of notes for each trading day of that measurement period was less than 98% of the product of the closing price of our common stock and the conversion rate for the notes for each such day; • if we call any or all of the new notes for redemption, at any time prior to the close of business on the last business day prior to the redemption date; or • upon the occurrence of specified corporate transactions described under "Description of New Notes—Conversion of Notes—Conversion upon Specified Corporate Transactions." In addition, holders may convert their notes at their option at any time beginning on August 15, 2014, and ending on the close of business on the second scheduled trading day immediately preceding the stated maturity date for the notes, without regard to the foregoing circumstances.

Payment Upon Conversion	Upon conversion, we will pay cash and, if applicable, deliver shares of our common stock as described under “Description of New Notes—Conversion of Notes—Settlement Upon Conversion.” We refer to our obligation to pay or deliver these amounts as our conversion obligation. The amount of cash and shares of our common stock, if any, due upon conversion will be based on a daily conversion value (as described herein) calculated on a proportionate basis for each trading day in the 40 trading day cash settlement averaging period (as described herein). See “Description of New Notes—Conversion of Notes—Settlement Upon Conversion.” In addition, following certain corporate transactions, we will increase the conversion rate for a holder who elects to convert in connection with such corporate transactions by a number of additional shares of our common stock as described under “Description of New Notes—Adjustment to Conversion Rate Upon a Fundamental Change.” We generally will deliver the settlement amount to converting holders on the third trading day immediately following the last day of the cash settlement averaging period.
Public Acquirer Change of Control	If a fundamental change is a “public acquirer change of control” (as defined under “Description of New Notes—Public Acquirer Change of Control”), we may, in lieu of permitting a repurchase at the holder’s option or adjusting the conversion rate as described in ”Description of New Notes —Adjustment to Conversion Rate Upon a Fundamental Change,” elect to adjust the conversion rate and the related conversion obligation such that from and after the effective date of such public acquirer change of control, holders of the new notes will be entitled to convert their new notes into cash and, if applicable, an adjusted number of shares of public acquirer common stock.
Optional Redemption	On or after August 15, 2014, the new notes may be redeemed at our option upon not less than 10 nor more than 60 days’ notice at a redemption price equal to 100% of the aggregate principal amount of the new notes to be redeemed, together with accrued interest up to, but not including, the redemption date (provided that if the redemption date falls after an interest record date and on or before an interest payment date, then the interest payment is payable to the record date holder).
Repurchase at the Option of Holders	Upon the occurrence of certain fundamental changes, holders of the new notes will have the right, subject to certain restrictions and conditions, to require us to repurchase all or any part (equal to $1,000 or an integral multiple of $1,000) of their new notes at a repurchase price equal to 100% of the principal amount of the new notes plus any accrued and unpaid interest. See “Description of New Notes—Repurchase at Option of the Holder Upon a Fundamental change” and “Risk Factors—Risks Related to the New Notes, the Old Notes and Our Common Stock.”

Ranking	The new notes will be senior unsecured obligations of the Company and rank equal in right of payment to all of our existing and future unsecured and unsubordinated indebtedness. The new notes are senior in right to any existing or future indebtedness that is subordinated by its terms. As of September 30, 2011, if all of the old notes had been exchanged for new notes, we would have had $137,882,553 of senior unsecured indebtedness that would be equal in right of payment to the new notes. The notes will be structurally subordinated to all liabilities of our subsidiaries (including, as of September 30, 2011, the $115.3 million principal amount outstanding of QHP PhaRMA℠ Senior Secured Notes due 2015 issued by QHP Royalty Sub LLC, one of our subsidiaries) and will be effectively junior to our future secured indebtedness to the extent of the value of the assets securing such indebtedness. See “Description of New Notes—General” and “Risk Factors—Risks Related to the New Notes, the Old Notes and Our Common Stock.”
Form	The new notes will be issued in book-entry form only and will be represented by permanent global certificates deposited with, or on behalf of, DTC and registered in the name of a nominee of DTC. Beneficial interests in any of the new notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee and any such interest may not be exchanged for certificated new notes, except in limited circumstances. See “Description of New Notes—Book-Entry, Delivery and Form.”
Trading	We do not intend to list the new notes on any national securities exchange or automated quotation system. Our common stock is quoted on the NASDAQ Global Select Market under the symbol “PDLI.”
Governing Law	New York.
Risk Factors	In general, the risks associated with the new notes and the old notes are the same. However, because the new notes will be a new issue of securities, an active trading market for the new notes may not develop or be sustained and the new notes may not have sufficient liquidity to avoid price volatility and trading disadvantages. See “Risk Factors.”

QUESTIONS AND ANSWERS ABOUT THE EXCHANGE OFFER

These answers to questions that you may have as a holder of old notes are highlights of selected information included elsewhere or incorporated by reference in this offering memorandum. To fully understand the exchange offer and the other considerations that may be important to your decision about whether to participate in it, you should carefully read this offering memorandum in its entirety, including the section entitled "Risk Factors," as well as the information incorporated by reference in this offering memorandum. See "Where You Can Find More Information" and "Incorporation of Certain Documents by Reference."

Why is the Company making the exchange offer?

We are making the exchange offer to reduce the dilution caused by the conversion feature of the old notes on our earnings per share and, when the conversion feature is exercised, on our outstanding shares of common stock. The conversion rights under the old notes require us to issue shares of our common stock (except for fractional shares) in full satisfaction of the conversion value of the old notes. By contrast, the new notes include a net share settlement feature that will require us, upon exercise of the conversion rights under the new notes, to pay cash (instead of issue shares of common stock as required by the old notes) for up to the principal amount of the new notes and, if applicable, deliver shares of our common stock as described in this offering memorandum. As a result, there will be fewer shares of our common stock issuable upon conversion of the new notes as compared to the old notes, thereby reducing the dilution on our earnings per share and on our outstanding shares of common stock. We have also added restrictions on when the new notes may be converted that did not apply to the conversion of the old notes so as to preserve the treatment of the new notes with the net share settlement feature as long term debt on our balance sheet.

What aggregate principal amount of old notes is being sought in the exchange offer?

We are making the exchange offer for any and all of our outstanding old notes. As of November 14, 2011, the aggregate principal amount of old notes outstanding was $180 million.

What will I receive in the exchange offer if I tender my old notes and they are accepted?

For each $1,000 principal amount of old notes that you validly tender as part of the exchange offer and we accept for exchange, you will receive the following exchange offer consideration:

- new notes in the principal amount of $1,000; plus
- a cash payment equal to $2.50.

New notes will be issued only in denominations of $1,000 or an integral multiple thereof. We will not issue fractional shares of common stock upon conversion of the new notes. Instead, we will pay cash for the fractional amount based upon the daily VWAP (as defined in "Description of New Notes—Conversion of Notes—Settlement Upon Conversion") of the common stock on the last trading day of the relevant cash settlement averaging period.

Your right to receive the exchange offer consideration in the exchange offer is subject to all of the conditions set forth in this offering memorandum and the related letter of transmittal.

What are the differences between the new notes and the old notes?

The terms of the new notes will be substantially the same as the terms of the old notes, except that the new notes will require us, upon conversion thereof, to settle the conversion value of such new notes in cash and shares

of our common stock, rather than exclusively in shares of our common stock as currently required by the old notes. Certain changes have been made to the settlement procedures and the anti-dilution provisions of the new notes in order to accommodate the effects of this net share settlement feature and the 40 trading day cash settlement averaging period. Additionally, the new notes also have restrictions on when they may be converted that did not apply to the conversion of the old notes.

How will the Company fund the cash portion of the exchange offer consideration?

Assuming full participation, we will need approximately $450,000 in cash to fund the aggregate note exchange payment. We will use cash on hand to fund the aggregate note exchange payment. There are no alternative financing arrangements for the exchange offer.

Do I have a choice in whether to tender my old notes?

Yes. Holders of old notes are not required to tender their old notes pursuant to the exchange offer. All rights and obligations under the indenture pursuant to which the old notes were issued will continue with respect to those old notes that remain outstanding after expiration of the exchange offer.

May I tender only a portion of the old notes that I hold?

Yes. You do not have to tender all of your old notes to participate in the exchange offer. You may choose to tender in the exchange offer all of the old notes that you hold or any portion of the old notes that you hold in principal amounts that are integral multiples of $1,000.

Will the new notes received by tendering holders of old notes be freely tradable?

This exchange offer is being made pursuant to an exemption from the registration requirements of the Securities Act contained in Section 3(a)(9) of the Securities Act. All of the new notes issued in the exchange offer (and any underlying common stock issued upon conversion of the new notes in accordance with the terms of the indenture governing the new notes) will also be freely transferable under U.S. federal securities laws by anyone who is not an affiliate (as such term is defined in Rule 144 under the Securities Act) of the Company, subject to certain requirements. See “Terms of the Exchange Offer —Resale of New Notes Received Pursuant to the Exchange Offer.”

Will the new notes to be issued in the exchange offer be listed for trading?

No, we do not intend to list the new notes on any national securities exchange or automated quotation system. The old notes are not listed for trading on any national securities exchange or automated quotation system. Our common stock is traded on the NASDAQ Global Select Market under the symbol “PDLI.” The last reported sale price of our common stock on November 10, 2011, was $6.06 per share.

If the exchange offer is consummated and I do not participate in the exchange offer or I do not exchange all of my old notes in the exchange offer, how will my rights and obligations under my remaining outstanding old notes be affected?

The terms of your old notes, if any, that remain outstanding after the consummation of the exchange offer will not change as a result of the exchange offer. However, we expect the trading market for the remaining outstanding principal amount of old notes to be less liquid following the consummation of the exchange offer. See “Risk Factors—Risks Related to the New Notes, the Old Notes and Our Common Stock.”

When does the exchange offer expire?

Unless extended or earlier terminated by us, the exchange offer will expire at 5:00 p.m., New York City time, on Tuesday, December 13, 2011. Old notes tendered may be validly withdrawn at any time before the expiration time, but not thereafter. If a broker, dealer, commercial bank, trust company or other nominee holds your old notes, such nominee may have an earlier deadline for accepting the exchange offer. You should promptly contact the broker, dealer, commercial bank, trust company or other nominee that holds your old notes to determine its deadline.

What are the conditions to the exchange offer?

The exchange offer is conditioned upon the closing conditions described in "Terms of the Exchange Offer—Conditions of the Exchange Offer." The exchange offer is not conditioned upon the tender of any minimum principal amount of old notes. We may waive certain conditions of the exchange offer. If any of the conditions are not satisfied or waived, we will not complete the exchange offer.

What if less than all of the old notes are tendered?

The exchange offer is not conditioned upon the tender of any minimum principal amount of old notes. If less than all of the old notes are validly tendered, all old notes tendered will be accepted and the exchange offer consideration per $1,000 principal amount of old notes will be paid to all tendering holders, unless any of the conditions of the exchange offer are not satisfied or waived and we terminate the offer. See "Terms of the Exchange Offer."

Is the Company making a recommendation regarding whether I should participate in the exchange offer?

We are not making any recommendation regarding whether you should tender or refrain from tendering your old notes for exchange in the exchange offer. In addition, we have not authorized anyone to make any such recommendation. Accordingly, you must make your own determination as to whether to tender your old notes for exchange in the exchange offer and, if so, the amount of old notes to tender. Before making your decision, we urge you to read this offering memorandum carefully in its entirety, including the information set forth in the section of this offering memorandum entitled "Risk Factors," and the other documents incorporated by reference in this offering memorandum. We also urge you to consult your financial and tax advisors in making your own decisions on what action, if any, to take in light of your own particular circumstances.

Under what circumstances can the exchange offer be extended, amended or terminated?

We reserve the right to extend the exchange offer for any reason or no reason at all. We also expressly reserve the right, at any time or from time to time, to amend the terms of the exchange offer in any respect prior to the expiration time. Further, we may be required by law to extend the exchange offer if we make a material change in the terms of the exchange offer or in the information contained in this offering memorandum or waive a material condition to the exchange offer. During any extension of the exchange offer, old notes that were previously tendered and not validly withdrawn will remain subject to the exchange offer. We reserve the right, in our sole and absolute discretion, but subject to applicable law, to terminate the exchange offer at any time prior to the expiration time if any condition to the exchange offer is not met. If the exchange offer is terminated, no old notes will be accepted for purchase, and any old notes that have been tendered will be returned to their holders. For more information regarding our right to extend, amend or terminate the exchange offer, see "Terms of the Exchange Offer—Expiration; Extensions; Termination; Amendments."

How will I be notified if the exchange offer is extended, amended or terminated?

If the exchange offer is extended, amended or terminated, we will promptly make a public announcement thereof. For more information regarding notification of extensions, amendments or the termination of the exchange offer, see "Terms of the Exchange Offer—Expiration; Extensions; Termination; Amendments."

How do I tender old notes in the exchange offer?

The outstanding old notes are represented by global certificates issued to Cede & Co., as nominee of DTC. Cede & Co., as nominee of DTC, is the only registered holder of the old notes. DTC facilitates the clearance and settlement of transactions in the old notes through electronic book-entry changes in accounts of DTC participants. DTC participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations.

If you beneficially own old notes through an account maintained by a broker, dealer, commercial bank, trust company or other nominee and you desire to tender your old notes, you should contact your nominee promptly and instruct it to tender your old notes on your behalf.

To properly tender old notes, DTC participants must electronically submit their acceptance through DTC's ATOP system (as defined in "Terms of the Exchange Offer—Procedures for Tendering") or complete, sign and mail or transmit the letter of transmittal to the tender and paying agent prior to the expiration time.

Additionally, the tender and paying agent must receive either a timely confirmation of book-entry transfer of the old notes or an agent's message through DTC's ATOP system (as defined in "Terms of the Exchange Offer—Procedures for Tendering").

For more information regarding the procedures for tendering your old notes, see "Terms of the Exchange Offer—Procedures for Tendering."

If I change my mind, can I withdraw my tender of old notes?

You may withdraw previously tendered old notes at any time prior to the expiration time. See "Terms of the Exchange Offer—Withdrawal of Tenders."

Will I have to pay any fees or commissions if I tender my old notes?

Tendering holders are not obligated to pay brokerage fees or commissions to us or to the tender and paying agent. If your old notes are held through a broker or other nominee who tenders the old notes on your behalf, your broker may charge you a commission for doing so. You should consult with your broker or nominee to determine whether any charges will apply. See "Terms of the Exchange Offer."

What risks should I consider in deciding whether or not to tender any or all of my old notes?

In deciding whether to participate in the exchange offer, you should carefully consider the discussion of risks and uncertainties pertaining to the exchange offer, and those affecting our businesses, described in this section "Questions and Answers About the Exchange Offer," in the section entitled "Risk Factors" and in the documents incorporated by reference in this offering memorandum.

What are the material U.S. federal income tax considerations of participating in the exchange offer?

The tax consequences of participation in the exchange offer are complex and, in certain aspects, not entirely clear. We intend to take the position that the exchange pursuant to the exchange offer will not be a taxable

transaction for U.S. federal income tax purposes, except with respect to the note exchange payment. For a more detailed discussion, please see the section of this offering memorandum entitled “Material United States Federal Income Tax Considerations.” You should consult your own tax advisor for a full understanding of the tax consequences of your participation in the exchange offer.

What does the Company intend to do with the old notes that it acquires in the exchange offer?

We will retire and cancel all old notes that are validly tendered and accepted for exchange pursuant to the exchange offer. See “Terms of the Exchange Offer—Purpose of the Exchange Offer.”

Are any old notes held by Company directors or officers?

No. To our knowledge, none of our directors or officers beneficially holds any old notes.

Will the Company receive any cash proceeds from the exchange offer?

No. We will not receive any cash proceeds from the exchange offer.

With whom may I talk if I have questions about the exchange offer?

If you have questions regarding the exchange offer, require assistance in tendering your old notes or require additional copies of the offering memorandum or the letter of transmittal, please contact Georgeson Inc., the information agent for the exchange offer, at the telephone number or the address listed on the back cover page of this offering memorandum. Holders of old notes may also contact their brokers, dealers, commercial banks, trust companies or other nominees for assistance concerning the exchange offer.

RISK FACTORS

Participation in the exchange offer and ownership of the new notes involve risks. Our business is influenced by many factors that are difficult to predict and beyond our control and that involve uncertainties that may materially affect our results of operations, financial condition or cash flows, or the value of these securities. These risks and uncertainties include those described in the risk factor and other sections of the documents that are incorporated by reference in this offering memorandum. The risks and uncertainties incorporated by reference in this offering memorandum are not the only risks and uncertainties we may confront. Moreover, risks and uncertainties not presently known to us or currently deemed immaterial by us may also adversely affect our business, results of operations, financial condition or cash flows, or the value of the securities.

You should carefully consider and evaluate all of the information included and incorporated by reference in this offering memorandum, including the risk factors listed below. Any of these risks, as well as other risks and uncertainties, could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the trading price of shares of our common stock. Additional risks not currently known or currently material to us may also harm our business.

Keep these risk factors in mind when you read forward-looking statements contained in this offering memorandum and the documents incorporated by reference in this offering memorandum. These statements relate to our expectations about future events and time periods. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “intends,” “plans,” “believes,” “anticipates,” “expects,” “estimates,” “predicts,” “potential,” “continue” or “opportunity,” the negative of these words or words of similar import. Similarly, statements that describe our reserves and our future plans, strategies, intentions, expectations, objectives, goals or prospects are also forward-looking statements. Forward-looking statements involve risks and uncertainties, and future events and circumstances could differ significantly from those anticipated in the forward-looking statements.

Risks Related to Our Business

Please carefully consider the information set forth in our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, June 30 and September 30, 2011, and the risk factors discussed in Part I, “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2010, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K, as well as other risks and uncertainties, could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the trading price of shares of our common stock. Additional risks not currently known or currently material to us may also harm our business.

Failure to acquire other sources of royalty revenue after expiration of our Queen et al. patents may result in liquidation of our business.

Our revenues consist almost entirely of royalties from licensees of our Queen et al. patents, which finally expire in December of 2014. Unless we are able to acquire patents or other sources of royalty revenue on commercially reasonable terms, we will no longer receive patent-related royalties once our licensees have sold all their inventory of licensed product that was manufactured before the expiration of the Queen et al. patents. If we are unsuccessful in acquiring new sources of royalty revenue, we will likely liquidate our business.

Risks Related to the Exchange Offer

Our board of directors has not made a recommendation with regard to whether you should tender your old notes in the exchange offer nor have we obtained a third-party determination that the exchange offer is fair to holders of the old notes.

The exchange offer has been approved by our board of directors. We are not, however, making a recommendation as to whether holders of the old notes should exchange them. We have not retained and do not intend to retain any unaffiliated representative to act solely on behalf of the holders of the old notes for purposes of negotiating the terms of the exchange offer or preparing a report concerning the fairness of the exchange offer. Although we expect the value of the old notes and the new notes to be comparable, it is possible that the value of the cash consideration together with the future value of the new notes received by an exchanging holder may not equal or exceed the value of the old notes tendered and we do not take a position as to whether you ought to participate in the exchange offer.

Failure to comply with the exchange offer procedures could prevent a holder from exchanging its old notes.

Holders of the old notes are responsible for complying with all exchange offer procedures. The issuance of new notes in exchange for old notes will only occur upon completion of the procedures described in this offering memorandum under "Terms of the Exchange Offer." Therefore, holders of old notes who wish to exchange them for new notes should allow sufficient time for completion of the exchange procedure. Neither we nor the tender and paying agent are obligated to extend the offer or to notify you of any failure to follow the proper procedures.

The U.S. federal income tax consequences of the exchange offer are unclear.

The U.S. federal income tax consequences of participation in the exchange offer are complex and, in certain aspects, not entirely clear. We intend to take the position that the exchange of old notes for new notes will not be an exchange of old notes for United States federal income tax purposes. That position, however, is subject to uncertainty and could be challenged by the Internal Revenue Service (IRS). Consistent with our position, we believe that no gain or loss will be recognized by a holder who exchanges old notes for new notes pursuant to the exchange offer, apart from the receipt of the note exchange payment. If, contrary to our position, the exchange is treated as an exchange of old notes for new notes for United States federal income tax purposes, the tax consequences to you could materially differ. See "Material United States Federal Income Tax Considerations—Material Federal Income Tax Consequences of the Exchange Offer" for more information.

We intend to treat payment of the note exchange payment as ordinary income to holders participating in the exchange offer and to report such payment to holders and the IRS for information purposes in accordance with such treatment. Therefore, the receipt of the note exchange payment by a Non-U.S. Holder (as defined in "Material United States Federal Income Tax Considerations") participating in the exchange offer may be subject to U.S. federal withholding tax. See "Material United States Federal Income Tax Considerations—Material Federal Income Tax Consequences of the Exchange Offer—Federal Income Tax Consequences of the Exchange Offer to U.S. Non-U.S. Holders" for more information.

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

The new notes are a new issue of securities for which there is no established public market. Any market making activity for the new notes will be subject to the limits imposed by the Securities Act and the Exchange Act. Accordingly, there can be no assurance that any market for the new notes will develop or, if one does develop, that it will be maintained. The liquidity of any market for the new notes will depend upon the number of holders of the new notes, our performance, the market for similar securities, the interest of securities dealers in making a market in the notes and other factors. A liquid trading market may not develop for the new notes. If a market develops, the new notes could trade at prices that may be lower than the initial offering price of the new notes. If an active market does not develop or is not maintained, the price and liquidity of the new notes may be adversely affected.

We may repurchase any old notes that are not tendered in the exchange offer on terms that are more favorable to the holders of the old notes than the terms of the exchange offer.

Although we have no current plans to do so, we may, to the extent permitted by applicable law, purchase from time to time after consummation of the exchange offer some or all of the remaining old notes in the open market, in privately negotiated transactions, through subsequent tender or exchange offers or otherwise. Any such purchases may be made on the same terms or on terms that are more or less favorable to holders than the terms of this exchange offer.

The market for old notes that remain outstanding after the exchange offer may become less liquid, and trading in the old notes may become more volatile.

If a sufficiently large number of old notes do not remain outstanding after the exchange offer, the liquidity of the old notes may be adversely affected and market prices may fluctuate significantly, and an active trading market in the old notes may not exist. A security with a small outstanding principal amount available for trading (referred to as "float") may command a lower price and trade with greater volatility or much less volume than would a comparable security with a greater float. Therefore, the market price for the old notes that remain outstanding after completion of the exchange offer may be materially and adversely affected.

Risks Related to the New Notes

The conditional conversion feature of the new notes will restrict your ability to convert your new notes in certain situations prior to August 15, 2014, where the old notes would be freely convertible.

Unlike the old notes, which are freely convertible at any time, prior to August 15, 2014, the new notes are only convertible if specified conditions are met. See "Description of New Notes—Conversion of Notes." If the specific conditions for conversion are not met, you will not be able to convert your new notes prior to August 15, 2014, and you may not be able to receive the value of the common stock into which the old notes would otherwise be convertible.

The net share settlement feature of the new notes may have adverse consequences to new note holders or the Company.

The net share settlement feature of the new notes, as described under "Description of New Notes—Conversion of Notes—Settlement Upon Conversion," may, upon the satisfaction of the conditions permitting conversions:

- result in holders receiving no shares upon conversion or shares representing less than 100% of the net share conversion value of the new notes;
- delay holders' receipt of the proceeds upon conversion;
- reduce our liquidity as a result of the requirement that we settle all or a portion of the conversion value in cash and;
- require us, under applicable accounting rules, to reclassify all or a portion of the outstanding principal of the new notes as a current liability rather than a long-term liability, thereby reducing, perhaps materially, our net working capital.

The U.S. federal income tax consequences of the conversion of new notes into a combination of both cash and our common stock differs from the U.S. federal income tax consequences of the conversion of old notes into our common stock and will require U.S. holders to recognize taxable gains.

Upon the conversion of old notes into our common stock, a U.S. Holder (as defined in "Material United States Federal Income Tax Considerations") generally should not recognize any gain or loss on the conversion for United States federal income tax purposes (except with respect to any cash received in lieu of fractional shares of common stock or any common stock received attributable to accrued interest). Upon the conversion of new notes into a combination of both cash and our common stock, however, a U.S. Holder (as defined in "Material United States Federal Income Tax Considerations") may be required to recognize gain on the conversion for United States federal income tax purposes. Prospective investors should carefully review the information regarding tax considerations relevant to an investment in the new notes set forth under "Material

United States Federal Income Tax Considerations—Material Federal Income Tax Consequences to U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock—Conversion of the New Notes."

Upon conversion of the new notes, you will not be able to determine the conversion value of the new notes, and you may receive less proceeds than expected because the value of our common stock may decline (or not appreciate as much as you may expect) between the day that you exercise your conversion right and the day the conversion value of your new notes is finally determined or because the total number of shares of our common stock into which the new notes may be converted may be limited in accordance with NASDAQ Global Select Market listing requirements.

We will generally satisfy our conversion obligation to holders of the new notes by paying an amount of cash and, if applicable, shares of our common stock determined by reference to the volume weighted average price of our common stock for each trading day in a 40 trading day cash settlement averaging period that will follow the conversion date, and such cash and, if applicable, common stock will be delivered by the third trading day immediately following the last trading day of the related 40 day trading day cash settlement averaging period as described in the "Description of New Notes—Conversion of Notes—Settlement Upon Conversion." As a result, upon conversion of the new notes, you will not be able to determine the conversion value of the new notes, and you may receive less proceeds than expected because the value of our common stock may decline (or not appreciate as much as you may expect) during this period. Further, the total number of shares of our common stock into which the new notes may be converted may be limited in accordance with NASDAQ Global Select Market listing requirements, as described below under "Description of New Notes—Conversion of Notes—Settlement Upon Conversion" in this offering memorandum, and we are not obligated to compensate you, in cash or otherwise, if NASDAQ Global Select Market's limits reduce the number of shares you would otherwise be entitled to receive upon conversion of new notes under the terms of the indenture. As a result, holders of the new notes may receive, upon conversion of new notes, less than their full conversion value.

The accounting method for convertible debt securities that may be settled in cash, such as the new notes, will impact our reported financial results.

Under the Financial Accounting Standards Board (FASB) Staff Position No. APB 14-1, Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion (Including Partial Cash Settlement), codified into FASB Accounting Standards Codification, or ASC, Subtopic 470-20 (ASC 470-20), an entity must separately account for the liability and equity components of the convertible debt instruments (such as the new notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The effect of ASC 470-20 on the accounting for the new notes is that the equity component is required to be included in the additional paid-in capital section of stockholders' equity on our consolidated balance sheet and the value of the equity component would be treated as original issue discount for purposes of accounting for the debt component of the new notes. As a result, we will be required to record a greater amount of non-cash interest expense in current periods presented as a result of the amortization of the discounted carrying value of the new notes to their face amount over the term of the new notes. We will report lower net income in our financial results because ASC 470-20 will require interest to include both the current period's amortization of the debt discount and the instrument's coupon interest, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the new notes.

In addition, under certain circumstances, convertible debt instruments, such as the new notes that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method in the calculation of diluted earnings per share, the effect of which is that the shares issuable upon conversion of the new notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of the new notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess is issued.

Risks Related to the New Notes, the Old Notes and Our Common Stock

The patents underlying substantially all of our current revenues will expire prior to the maturity of the new notes and the old notes (together, the "convertible notes"). If we do not obtain adequate replacement assets, the value of the convertible notes and our common stock could reasonably be expected to be adversely affected by the resulting decrease in our revenue base or wind up of our operations. In addition, any assets we acquire to replace our expiring patents will involve presently unknowable risks.

As described above in "Risks Related to Our Business," our revenues consist almost entirely of royalties from licensees of our Queen et al. patents, which finally expire in December of 2014. The continued existence of our company is dependent on the successful identification, acquisition and integration of new patents or other revenue-generating assets into our business to replace the expiring Queen et al. patents. We may not be successful in our efforts to identify and acquire new assets, or may not receive expected revenues from new assets, either of which could reasonably be expected to adversely affect the value of the convertible notes and any common stock received on the conversion of the convertible notes. See "Risk Factors—Our common stock may lose value due to several factors, including the expiration of our Queen et al. patents, the payment of dividends or distributions to our stockholders and failure to meet analyst expectations, and our common stock could be delisted from NASDAQ" in our Annual Report on Form 10-K for the year ended December 31, 2010.

There is substantial competition for valuable patents and royalty assets. We may not be able to identify such assets, or, even if we do, such assets may not be available for sale. Even if they are available for sale, we may not be successful in our attempt to acquire them or they may not be competitively priced. If we do not identify and acquire adequate replacement assets for our expiring patents, our revenue base will be decreased and our business may be wound up. Any adjustments to the conversion rate for the new notes described under the headings "Description of New Notes—Conversion of Notes—Anti-Dilution Adjustments" and, if applicable, under "Description of New Notes—Adjustment to Conversion Rate Upon a Fundamental Change," and similar adjustments to the conversion rate for the old notes, may not adequately compensate you for any lost value of the convertible notes as a result of any related distributions to our common stockholders, delisting of our common stock or other events resulting from any failure to acquire replacement assets, and liquidity of the trading market for the convertible notes and our common stock may also be adversely affected. In addition, if we fail to reserve adequate amounts to satisfy our liabilities and do not acquire adequate replacement assets, we could become unable to meet our obligations in respect of the convertible notes.

Because specific assets that we may acquire in the future are not currently known, there is no current basis for you to evaluate the possible merits or risks of the particular assets that, if successfully acquired, will form the future basis for our business. See "Risk Factors—We may enter into acquisitions or other material royalty asset transactions now and in the future and such acquisitions may not produce anticipated royalty revenues" in our Annual Report on Form 10-K for the year ended December 31, 2010. In addition, any financing arrangements entered into in connection with or anticipation of future acquisitions may contain restrictions that limit management's flexibility in operating our business or may negatively impact our liquidity or operating results.

The convertible notes are unsecured and rank pari passu with our other senior debt; the convertible notes are effectively subordinated to our secured indebtedness (to the extent of the value of the assets securing such indebtedness) and will be structurally subordinated to all liabilities of our subsidiaries, including trade payables.

The convertible notes will rank equal in right of payment to all of our existing and future senior indebtedness, including our trade payables. The convertible notes will not be secured by any of our assets or those of our subsidiaries. As a result, the convertible notes will be effectively subordinated to all of our secured indebtedness to the extent of the value of the assets securing such indebtedness. In any liquidation, dissolution, bankruptcy or other similar proceeding, holders of our secured debt may assert rights against any assets securing such debt in order to receive full payment of their debt before those assets may be used to pay the holders of the convertible notes.

In the event of our insolvency, bankruptcy, liquidation, reorganization, dissolution or winding up, we may not have sufficient assets to pay amounts due on any or all of the convertible notes then outstanding. See "Description of New Notes—General."

None of our subsidiaries will guarantee our obligations under, or otherwise become obligated to pay any amounts due on, the convertible notes. Our right to receive assets from any of our subsidiaries upon its liquidation or reorganization, and the right of holders of the convertible notes to participate in those assets, is structurally subordinated to claims of that subsidiary's creditors (including, as of September 30, 2011, the holders of the $115.3 million aggregate principal amount outstanding of QHP PhaRMA℠ Senior Secured Notes due 2015), including trade creditors. The ability of our subsidiaries to pay dividends and make other payments to us may be restricted by, among other things, applicable corporate and other laws and regulations as well as agreements to which our subsidiaries may become a party. Even if we were a creditor of any of our subsidiaries, our rights as a creditor would be subordinate to any security interest in the assets of that subsidiary and any indebtedness of that subsidiary senior to that held by us.

The convertible notes are not protected by restrictive covenants.

The indentures governing the convertible notes do not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries. In light of the absence of any of the foregoing restrictions, we may conduct our businesses in a manner that may cause the market prices of the convertible notes and common stock to decline or otherwise restrict or impair our ability to pay amounts due on the convertible notes. In addition, the indentures do not contain covenants or other provisions to afford protection to holders of the convertible notes in the event of a fundamental change involving us, except to the extent described under "Description of New Notes—Repurchase at Option of the Holder Upon a Fundamental Change" and "Description of New Notes—Public Acquirer Change of Control."

We may not have the ability to raise the funds necessary to repurchase the convertible notes or our other indebtedness upon a fundamental change or to pay cash upon conversion of the new notes.

Holders may require us to repurchase all or a portion of their new notes upon a fundamental change as described under "Description of New Notes—Repurchase at Option of the Holder Upon a Fundamental Change," and the old notes have a similar requirement. In addition, upon conversion of the new notes, we will be required to make cash payments in respect of the new notes being converted as described under "Description of New Notes—Conversion of Notes—Settlement Upon Conversion." However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of convertible notes surrendered therefor or new notes being converted. Any future borrowing arrangements or debt agreements to which we become a party may contain restrictions on or prohibitions against making cash payments due upon maturity, required repurchase or conversion of the convertible notes. While currently we are not a party to any debt instruments that would prohibit us from making cash payments on the convertible notes, we are not prevented by the terms of the convertible notes or our other current indebtedness from entering into other debt instruments that could prohibit such payments. If we are prohibited from repaying or repurchasing the convertible notes or paying the settlement amount due upon conversion of new notes, we could try to obtain the consent of lenders under those arrangements, or we could attempt to refinance the borrowings that contain the restrictions. If we do not obtain the necessary consents or refinance the borrowings, we will be unable to make cash payments with respect to the convertible notes when due. Any such failure would constitute an event of default under the indenture which could, in turn, constitute a default under the terms of our other indebtedness. In addition, our ability to repurchase the convertible notes or to pay cash upon conversions of the new notes may be limited by law or by regulatory authority. Our failure to repurchase convertible notes at a time when the repurchase is required by the applicable indenture or to pay any cash payable on future conversions of the new notes as required by the applicable indenture would constitute a default under the applicable indenture. A default under the applicable indenture or the fundamental change itself could also lead to a default under agreements governing our existing

and future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the convertible notes or make cash payments upon conversions of the new notes.

Some significant restructuring transactions may not constitute a fundamental change, in which case we would not be obligated to offer to repurchase the convertible notes.

Upon the occurrence of certain fundamental change transactions described under "Description of New Notes—Repurchase at Option of the Holder Upon a Fundamental Change," you have the right to require us to repurchase your convertible notes. However, the fundamental change provisions will only afford protection to holders of convertible notes in the event of certain transactions. Other transactions, such as leveraged recapitalizations, refinancings, restructurings or certain acquisitions, may not constitute a fundamental change requiring us to repurchase the convertible notes. In the event of any such transaction, the holders would not have the right to require us to repurchase the convertible notes, even though each of these transactions could increase the amount of our indebtedness or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting the holders of convertible notes.

The adjustment to the conversion rate for convertible notes converted in connection with certain types of fundamental change may not adequately compensate you for any lost value of your convertible notes as a result of such transaction.

If a specified corporate transaction constituting certain types of fundamental change occurs, under certain circumstances we will increase the conversion rate applicable to your convertible notes, as described under "Description of New Notes—Adjustment to Conversion Rate Upon a Fundamental Change." While the adjustment to the conversion rate for convertible notes converted in connection with any such specified fundamental change is designed to compensate you for the lost option value of your convertible notes as a result of such transaction, the increase is only an approximation of such lost value and may not adequately compensate you for such loss. In addition, if the stock price for such transaction (determined as described under "Description of New Notes—Adjustment to Conversion Rate Upon a Fundamental Change") is greater than $12.69 per share, or if such price is less than $5.28 per share (each such price, subject to adjustment), no adjustment will be made to the applicable conversion rate. In addition, our obligation to increase the conversion rate could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

The conversion rate for the convertible notes may not be adjusted for all dilutive events.

The conversion rates of the convertible notes are subject to adjustment for certain events, including the issuance of stock dividends on our common stock, the issuance of certain rights or warrants, subdivisions, combinations, distributions of capital stock, indebtedness or assets, cash dividends and certain issuer tender or exchange offers, as described under "Description of New Notes—Conversion of Notes—Anti-Dilution Adjustments." The conversion rates will not be adjusted, however, for other events, such as a third-party tender or exchange offer, conversion of our existing convertible notes into common stock or an issuance of common stock for cash, which may adversely affect the trading price of the convertible notes or our common stock. In addition, an event that adversely affects the value of the convertible notes may occur, and that event may not result in an adjustment to such conversion rate.

As a holder of convertible notes, you will not be entitled to any rights with respect to our common stock, but you will be subject to all changes made with respect to our common stock.

If you hold convertible notes, you will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but you will be subject to all changes affecting our common stock. You will have the rights with

respect to our common stock only if you convert your convertible notes and, as a result, are deemed to become a record owner of any shares of our common stock due upon such conversion. For example, in the event that an amendment is proposed to our charter or bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the date you are deemed the record owner of the shares of our common stock, if any, due upon conversion, you will not be entitled to vote on the amendment, although you nevertheless will be subject to any changes in the powers, preferences or special rights of our common stock.

The fundamental change provisions may delay or prevent an otherwise beneficial takeover attempt of the Company.

The fundamental change repurchase rights, which will allow holders to require us to repurchase all or a portion of their convertible notes upon the occurrence of a fundamental change, as defined in "Description of New Notes—Repurchase at Option of the Holder Upon a Fundamental Change," may in certain circumstances delay or prevent a takeover of the Company and the removal of incumbent management that might otherwise be beneficial to investors.

Provisions in Delaware law and our certificate of incorporation and amended and restated bylaws may inhibit a takeover of the Company, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management.

Our certificate of incorporation and amended and restated bylaws contain provisions that may discourage unsolicited takeover proposals that stockholders may consider to be in their best interests, including the ability of our board of directors to designate the terms of and issue new series of preferred stock, provision of a staggered board, limitations on who can call special meetings of stockholders and advance notice requirements for stockholder proposals and director nominations. In addition, Section 203 of the Delaware General Corporation Law, which we have not opted out of, prohibits a public Delaware corporation from engaging in certain business combinations with an "interested stockholder" (as defined in such section) for a period of three years following the time that such stockholder became an interested stockholder without the prior consent of our board of directors. Section 203 of the Delaware General Corporation Law, as well as these charter and bylaws provisions, may make the removal of management more difficult and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our securities.

Conversion of the convertible notes may dilute the ownership interest of existing stockholders, including holders who have previously converted their convertible notes.

To the extent we issue common stock upon conversion of the convertible notes, such conversion would dilute the ownership interests of existing stockholders, including holders who had previously converted their convertible notes. Sales of our common stock in the public market or sales of any of our other securities could dilute ownership and earnings per share, and even the perception that such sales could occur could cause the market price of our common stock to decline. The market price of our common stock also could decline as a result of sales of shares of our common stock made after this offering or the perception that such sales could occur.

Future issuances of shares of common stock may depress the trading price of our common stock and the convertible notes.

Any issuance of equity securities after this offering, including any issuance of shares of our common stock upon conversion of the convertible notes, could dilute the interests of our existing stockholders, including stockholders who have received shares of our common stock upon conversion of their convertible notes, and could substantially decrease the trading price of our common stock and the convertible notes.

We may incur significantly more debt, which could further increase the risks described above.

The terms of the convertible notes do not limit our ability to incur additional indebtedness. If new indebtedness is added to our and our subsidiaries' current debt levels, the related risks that we and they now face could intensify, and we may not be able to meet all our debt obligations, including repayment of the convertible notes, in whole or in part. Subject to certain limitations, additional debt could also be secured or incurred by our subsidiaries, which could increase the risks described above herein.

If we pay a cash dividend on our common stock, holders of convertible notes may be deemed to have received a taxable dividend without the receipt of any cash.

If we pay a cash dividend on our common stock, an adjustment to the conversion rate may result, and holders of convertible notes may be deemed to have received a taxable dividend subject to U.S. federal income tax without the receipt of any cash. If you are a Non-U.S. Holder (as defined in "Material United States Federal Income Tax Considerations"), such deemed dividend may be subject to U.S. federal withholding tax at a 30% rate or such lower rate as may be specified by an applicable treaty. See "Material United States Federal Income Tax Considerations." If we pay withholding taxes on behalf of a convertible note holder, we may, at our option, set off such payments against payments of cash and common stock on the convertible notes. See the discussions under the headings "Material United States Federal Income Tax Considerations—Material Federal Income Tax Consequences to Non-U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock—Dividends" for more details.

The market price of the old notes is, and the market price of the new notes is expected to be, significantly affected by the market price of our common stock.

The market price of the old notes has been significantly affected by the market price of our common stock, and we expect that the new notes will be similarly affected by the market price of our common stock. The market price of our common stock could fluctuate significantly for many reasons, including in response to the risks described in this section, elsewhere in this offering memorandum, in the documents we have incorporated by reference in this offering memorandum or for reasons unrelated to our operations, such as reports by industry analysts, investor perceptions or announcements by our licensees or their competitors regarding their own performance, as well as industry and regulatory conditions and general financial, economic and political instability. This has resulted in greater volatility in the market price of the old notes, and it may result in greater volatility in the market price of the new notes than would be expected for nonconvertible debt securities. A decrease in the market price of our common stock would likely adversely impact the trading price of the convertible notes.

Any adverse rating of either the new notes or the old notes may cause the value of the convertible notes to fall.

The old notes are not rated and we do not intend to seek a rating on the new notes. However, if, in the future, one or more rating agencies rate either the new notes or the old notes and assign the new notes or the old notes a rating lower than the rating expected by investors, or reduce or withdraw their rating, or place such convertible notes on "watch list," the market prices of the such convertible notes and our common stock would be adversely affected.

We entered into purchased call option and warrant transactions in connection the issuance of the May 2015 Notes, and the option and warrant transactions may affect the value of our common stock.

In connection with the issuance of 3.75% Senior Convertible Notes due 2015 (the May 2015 Notes), we entered into purchased call option transactions. Separately, we also entered into warrant transactions at that time. The purchased call option transactions are expected to reduce the potential dilution with respect to our common stock upon conversion of the May 2015 Notes. The warrant transactions could separately have a dilutive effect from the issuance of our common stock pursuant to the warrants.

The purchased call option and warrant transactions are accounted for as an adjustment to our stockholders' equity. In connection with hedging these transactions, the hedge counterparties to the hedge transactions or their respective affiliates may enter into, or may unwind, various derivative transactions and/or purchase or sell our common stock in secondary market transactions prior to maturity of the May 2015 Notes (and are likely to do so during any cash settlement averaging period related to any conversion of the May 2015 Notes). Such activities could have the effect of decreasing the trading price of our common stock during any cash settlement averaging period related to a conversion of the new notes.

In addition, we intend to exercise the purchased call options whenever May 2015 Notes are converted, if ever. In order to unwind their hedge positions with respect to those exercised options, the hedge counterparties or their respective affiliates may sell shares of our common stock in secondary market transactions or unwind various derivative transactions with respect to our common stock during the cash settlement averaging period for the converted notes. The effect, if any, of any of these transactions and activities on the trading price of our common stock will depend, in part, on market conditions and cannot be ascertained at this time, but any of these activities could adversely affect the value of our common stock.

Further, a failure by the hedge counterparties or their respective affiliates (due to bankruptcy or otherwise) to pay or deliver, as the case may be, amounts owed to us under the purchased call option transactions will not reduce the consideration we are required to deliver to a holder upon its conversion of the May 2015 Notes and may result in an increase in dilution with respect to our common stock.

Recent regulatory actions may adversely affect the trading price and liquidity of the convertible notes.

Many investors currently employ a convertible arbitrage strategy with respect to our old notes. We expect that many investors in, and potential purchasers of, the new notes will also employ, or seek to employ, a convertible arbitrage strategy with respect to the new notes. Investors that employ a convertible arbitrage strategy with respect to convertible debt instruments typically implement that strategy by selling short the common stock underlying the convertible notes and dynamically adjusting their short position while they hold the notes. As a result, any specific rules regulating short selling of securities or other governmental action that interferes with the ability of market participants to effect short sales in our common stock could adversely affect the ability of investors in, or potential purchasers of, the new notes to conduct the convertible arbitrage strategy that we believe they will seek to employ with respect to the new notes. This could, in turn, adversely affect the trading price and liquidity of the new notes.

During the past year, the SEC and other regulatory and self-regulatory authorities have implemented various rule changes and are expected to adopt additional rule changes in the future that may impact those engaging in short selling activity involving equity securities (including our common stock). In particular, Rule 201 of SEC Regulation SHO now restricts short selling when the price of a "covered security" triggers a "circuit breaker" by falling 10% or more in one day. If this circuit breaker is triggered, short sale orders can be displayed or executed only if the order price is above the current national best bid, subject to certain limited exceptions. Because our common stock is a "covered security," these Rule 201 restrictions may interfere with the ability of investors in, and potential purchasers of, the new notes, to effect short sales in our common stock and conduct the convertible arbitrage strategy that we believe they will employ, or seek to employ, with respect to the new notes.

The SEC also approved a pilot program (the SRO pilot program) allowing several national securities exchanges and the Financial Industry Regulatory Authority, Inc. (FINRA) to halt trading in securities included in the S&P 500 Index, Russell 1000 Index and over 300 exchange traded funds if the price of any such security moves 10% or more from a sale price in a five-minute period. The SRO pilot program will continue in effect until the date on which a proposed new "limit up/limit down mechanism" (the limit up/limit down proposal) to address extraordinary market volatility is adopted and effective as to the securities covered by the SRO pilot program. The limit up/limit down proposal would lock trading in listed equity securities into a price band of 5% above or below the average price over the preceding five minutes for securities currently subject to the SRO pilot

program, and 10% for securities not subject to the SRO pilot program; the percentage bands would be doubled during opening or closing. The inability to trade within those price bands would trigger a trading pause. As of the November 10, 2011, the SEC has yet to determine whether to approve the proposal.

FINRA Rule 11892 and corresponding exchange rule amendments intended to clarify the review process for potentially erroneous trades in exchange-listed securities have also been adopted, which establish uniform standards for reviews of (i) multi-stock events involving 20 or more securities and (ii) transactions that trigger an individual stock trading pause by a primary listing market and subsequent transactions that occur before the trading halt is in effect for over-the-counter trading. The pilot period for these amendments extends to January 31, 2012.

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) on July 21, 2010, also introduces regulatory uncertainty that may impact trading activities relevant to the convertible notes. This new legislation may require many over-the-counter swaps to be centrally cleared through regulated clearinghouses and traded on exchanges or comparable trading facilities. For example, on January 14, 2011, the SEC proposed Regulation SBSR, which would require security-based swap dealers and major security-based swap participants to provide trade acknowledgments, verify trade acknowledgments and establish and maintain policies and procedures reasonably designed to obtain prompt verification of trade acknowledgments sent, and to report almost all of the information required in the trade acknowledgment to a registered security-based swap data repository (SDR). The comment periods for these proposed rules have expired, but, as of November 10, 2011, the SEC had not adopted related final rules. In addition, swap dealers and major market participants may be required to comply with margin and capital requirements as well as public reporting requirements to provide transaction and pricing data on both cleared and uncleared swaps. For example, the Commodity Futures Trading Commission (CFTC), has recently proposed rules pursuant to the Dodd-Frank Act governing, among other things, swap trading documentation, margin requirements for uncleared swaps and mandatory swap clearing and trade execution on Designated Contract Markets or Swap Execution Facilities. In October 2011, the CFTC extended the effective date of some of these rules until July 16, 2012. As of November 10, 2011, the CFTC has yet to adopt related final rules.

The requirements discussed above could adversely affect the ability of investors in, or potential purchasers of, the new notes to implement a convertible arbitrage strategy with respect to the new notes (including increasing the costs incurred by such investors in implementing such strategy). This could, in turn, adversely affect the trading price and liquidity of the convertible notes. The legislation will become effective 60 days after the publication of the final rules; however, it is unclear whether the margin requirements will apply retroactively to existing swap transactions. We cannot predict how this legislation will ultimately be implemented by the SEC, CFTC and other regulators, or the magnitude of the effect that this legislation will have on the trading price or liquidity of the new notes.

Although the direction and magnitude of the effect that the amendments to Regulation SHO, FINRA and national securities exchange rule changes and/or implementation of the Dodd-Frank Act may have on the trading price and the liquidity of the convertible notes will depend on a variety of factors, many of which cannot be determined at this time, past regulatory actions have had a significant impact on the trading prices and liquidity of convertible debt instruments. For example, in September 2008, the SEC issued emergency orders generally prohibiting short sales of the common stock of a variety of financial services companies while Congress worked to provide a comprehensive legislative plan to stabilize the credit and capital markets. The orders made the convertible arbitrage strategy difficult to execute and adversely affected both the liquidity and trading price of convertible debt instruments issued by many of the financial services companies subject to the prohibition. Any governmental action that similarly restricts the ability of investors in, or potential purchasers of, the notes to effect short sales of our common stock could similarly adversely affect the trading price and the liquidity of the convertible notes.

USE OF PROCEEDS

We will not receive any proceeds from the issuance of the new notes in the exchange offer. We will retire and cancel all old notes that are validly tendered and exchanged for the exchange offer consideration pursuant to the exchange offer.

CAPITALIZATION

The following table sets forth our capitalization as of September 30, 2011, on an actual basis and on an as adjusted basis to give effect to this exchange offer. You should read the information set forth in the table below in conjunction our audited and unaudited financial statements and the accompanying notes incorporated by reference in this offering memorandum.

	As of September 30, 2011	
	Actual	As Adjusted
	(in thousands) (unaudited)	
Cash, cash equivalents and investments	$ 225,335	$ 224,345[1]
Long term debt, including current maturities 2.875% Convertible Senior Notes due 2015	$ 177,485	$ —[1]
3.75% Convertible Senior Notes due 2015	137,883	137,883
Non-recourse notes payable	115,268	115,268
2.875% Series 2011 Convertible Senior Notes due 2015 offered hereby	—	157,784[1][2]
Total debt	430,636	410,935
Total stockholders' deficit	(243,239)	(231,066)[1][2]
Total capitalization	$ 187,397	$ 179,869

(1) Assumes that all of the outstanding old notes are tendered for exchange pursuant to the exchange offer. As of November 10, 2011, there were $180 million aggregate principal amount of old notes outstanding.

(2) Amounts shown reflect the application of ASC 470-20, which requires us to separately account for the liability and equity components of the new notes that may be settled entirely or partially in cash upon conversion in a manner that reflects our economic interest cost. In accordance with ASC 470-20, the $180 million principal amount, net of original issuer's discount of $2.5 million, of the new notes has been characterized (and, to the extent applicable, reflected in the table above) as follows:

Deferred tax liabilities	$ 6.9 million
Long-term debt	157.8 million
Additional paid-in-capital	12.8 million
Total	$ 177.5 million

The accretion of the liability component to par increases the effective interest rate expense under U.S. GAAP.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges for the nine months ended September 30, 2011, and the five years ended December 31, 2010:

	Nine Months Ended September 30, 2011	Year Ended December 31,				
		2010	2009	2008(2)	2007	2006
Ratio(1)	9.9	4.5	15.4	18.0	12.7	12.2

(1) For purposes of computing the ratio of earnings to fixed charges, earnings consist of income from continuing operations before income taxes. Fixed charges consist of interest expense related to continuing operations and estimated interest portion of rent expense related to continuing operations.

(2) Prior to December 2008, our business included commercial and manufacturing operations and a biotechnology operation focused on the discovery and development of novel antibodies. We partially divested our commercial and manufacturing operations in 2006 and fully divested them in 2008, and we spun-off our biotechnology operation in December 2008.

PRICE RANGE OF COMMON STOCK

Our common stock is listed on the NASDAQ Global Select Market under the symbol “PDLI.” The following table sets forth, for the periods indicated, the high and low sales prices per share of our common stock as reported on the NASDAQ Global Select Market.

	Price Range of Common Stock	
	High	Low
2009		
First Quarter	$7.35	$5.20
Second Quarter	8.04	6.57
Third Quarter	9.32	7.61
Fourth Quarter	9.13	6.32
2010		
First Quarter	$7.30	$6.05
Second Quarter	6.68	5.03
Third Quarter	6.75	4.97
Fourth Quarter	6.55	5.13
2011		
First Quarter	$6.40	$4.66
Second Quarter	6.70	5.70
Third Quarter	6.44	5.40
Fourth Quarter (through November 11, 2011)	6.32	5.35

The last reported sale price of our common stock on the NASDAQ Global Select Market on November 10, 2011, was $6.06 per share. As of November 10, 2011, there were 139,834,559 shares of our common stock outstanding held by approximately 157 holders of record.

DIVIDEND POLICY

On February 25, 2011, our board of directors adopted a regular, quarterly dividend policy and declared that the quarterly dividends to be paid to our stockholders in 2011 will be $0.15 per share of common stock and payable on March 15, June 15, September 15 and December 15 of 2011 to stockholders of record on March 8, June 8, September 8 and December 8 of 2011, the record dates for each of the dividend payments, respectively. We paid $21.0 million to our stockholders on each of March 15, June 15, and September 15, 2011, using current year earnings and cash on hand. As of September 30, 2011, we have accrued $21.0 million in dividends payable for the December 15 dividend.

At the beginning of each fiscal year, our board of directors will review the Company's total annual dividend payment for the prior year and determine whether to increase, maintain or decrease the quarterly dividend payments for that year. The board of directors evaluates the financial condition of the Company and considers the economic outlook, corporate cash flow, the Company's liquidity needs and the health and stability of credit markets when determining whether to maintain or change the dividend.

TERMS OF THE EXCHANGE OFFER

No Recommendation

NEITHER PDL BIOPHARMA, INC. NOR ITS BOARD OF DIRECTORS MAKES ANY RECOMMENDATION AS TO WHETHER YOU SHOULD TENDER ANY OLD NOTES OR REFRAIN FROM TENDERING OLD NOTES IN THE EXCHANGE OFFER. IN ADDITION, WE HAVE NOT AUTHORIZED ANYONE TO MAKE ANY SUCH RECOMMENDATION. ACCORDINGLY, YOU MUST MAKE YOUR OWN DECISION AS TO WHETHER TO TENDER OLD NOTES IN THE EXCHANGE OFFER AND, IF SO, THE AMOUNT OF OLD NOTES TO TENDER. PARTICIPATION IN THE EXCHANGE OFFER IS VOLUNTARY, AND YOU SHOULD CONSIDER CAREFULLY WHETHER TO PARTICIPATE. BEFORE YOU MAKE YOUR DECISION, WE URGE YOU TO READ CAREFULLY THIS OFFERING MEMORANDUM IN ITS ENTIRETY, INCLUDING THE INFORMATION SET FORTH IN THE SECTION OF THIS OFFERING MEMORANDUM ENTITLED "RISK FACTORS" AND THE INFORMATION INCORPORATED BY REFERENCE HEREIN. WE ALSO URGE YOU TO CONSULT YOUR OWN FINANCIAL AND TAX ADVISORS IN MAKING YOUR OWN DECISIONS ON WHAT ACTION, IF ANY, TO TAKE IN LIGHT OF YOUR OWN PARTICULAR CIRCUMSTANCES.

General

We are making the exchange offer for any and all outstanding old notes. Upon the terms and subject to the conditions set forth in this offering memorandum and in the letter of transmittal, we will accept for exchange any old notes that are properly tendered and are not withdrawn prior to the expiration of the exchange offer. The exchange offer will expire at 5:00 p.m., New York City time, on Tuesday, December 13, 2011, unless extended or earlier terminated by us.

We will issue new notes and make the aggregate note exchange payment in exchange for tendered old notes promptly after the expiration time. The settlement date in respect of any old notes that are validly tendered prior to the expiration time and accepted by us is expected to occur promptly following the expiration time and is anticipated to be December 15, 2011.

This offering memorandum and the letter of transmittal are being sent to all registered holders of old notes. There will be no fixed record date for determining registered holders of old notes entitled to participate in the exchange. Old notes may be tendered only in principal amounts that are integral multiples of $1,000.

We will retire and cancel all old notes that are accepted for exchange in the exchange offer. Old notes tendered but not accepted because they were not validly tendered will remain outstanding upon completion of the exchange offer. Any tendered old notes not accepted for exchange and payment because of an invalid tender, the occurrence of other events set forth in this offering memorandum or otherwise, will be credited to the tendering holder's account at DTC, without expense, as promptly as practicable after the expiration time.

Our obligation to accept old notes tendered pursuant to the exchange offer is limited by the conditions listed below under "—Conditions of the Exchange Offer."

Old notes that are not exchanged in the exchange offer will remain outstanding and continue to accrue interest and will be entitled to the rights and benefits their holders have under the indenture pursuant to which the old notes were issued. Holders of old notes do not have any appraisal or dissenters' rights under the indenture or otherwise in connection with the exchange offer.

We shall be deemed to have accepted for exchange properly tendered old notes when we have given oral or written notice of the acceptance to the tender and paying agent. The tender and paying agent will act as agent for the holders of old notes who tender their old notes in the exchange offer for the purposes of receiving the

exchange offer consideration from us and delivering the exchange offer consideration to the exchanging holders. We expressly reserve the right, subject to applicable law, to amend or terminate the exchange offer, and not to accept for exchange any old notes not previously accepted for exchange, upon the occurrence of any of the conditions specified below under "—Conditions of the Exchange Offer."

Exchange Offer Consideration

We are offering to exchange for each $1,000 principal amount of the old notes, the following "exchange offer consideration:"

- new notes in the principal amount of $1,000; plus
- the note exchange payment equal to $2.50.

New notes will be issued only in denominations of $1,000 or an integral multiple thereof.

Background of the Exchange Offer

This exchange offer is being made pursuant to an exemption from the registration requirements of the Securities Act contained in Section 3(a)(9) of the Securities Act. We have not filed a registration statement under the Securities Act or any other federal or state securities laws with respect to the new notes that will be issued in the exchange offer.

The Company issued the old notes in November 2010 in separate, privately negotiated exchange transactions and a private placement for limited resale pursuant to Rule 144 under the Securities Act. The issuance of the old notes was not registered under the Securities Act in reliance on exemption from registration thereunder.

This exchange offer is being made pursuant to an exemption from the registration requirements of the Securities Act contained in Section 3(a)(9) of the Securities Act. All of the new notes issued in the exchange offer (and any underlying common stock issued upon conversion of the new notes in accordance with the terms of the indenture governing the new notes) will be freely transferable under U.S. federal securities laws by anyone who is not an affiliate (as such term is defined in Rule 144 under the Securities Act) of the Company, subject to certain requirements. See "—Resale of New Notes Received Pursuant to the Exchange Offer."

Purpose of the Exchange Offer

The purpose of this exchange offer is to reduce the dilutive impact of the conversion feature of the old notes on (i) our earnings per share, which occurs whether or not the conversion feature is exercised, and (ii) our outstanding shares of common stock, which occurs if and when the conversion feature is exercised. While exercise of the conversion rights under the old notes requires us to issue shares of our common stock (but not fractional shares) in full satisfaction of the conversion value of the old notes, the new notes include a net share settlement feature that will require us, upon exercise of the conversion rights under the new notes, to pay the conversion value, calculated on a proportionate basis for each trading day in a 40 trading day cash settlement averaging period, in cash up to the daily allocation of the principal amount of the new notes (1/40th of $1,000, or $25) for each such trading day, and in shares of Company common stock for any conversion value in excess of such cash payment. We believe that this net share settlement feature will help us improve our capital structure by limiting the additional amount of common stock that will be issuable upon conversion of the new notes, thereby reducing the dilution on our earnings per share and on our outstanding shares of common stock. Certain changes have been made to the settlement procedures and the anti-dilution provisions of the new notes in order to accommodate the effects of this net share settlement feature and the 40 trading day cash settlement averaging period. The anti-dilution provisions of the new notes are described in this offering memorandum. We have also added restrictions on when the new notes may be converted (see "Description of New Notes—Conversion of Notes") that did not apply to the conversion of the old notes so as to preserve the treatment of the new notes with the net share settlement feature as long term debt on our balance sheet.

Sources of Payment of the Cash Portion of the Exchange Offer Consideration

Assuming full participation, we will need approximately $450,000 in cash to fund the aggregate note exchange payment. We will use cash on hand to fund the aggregate note exchange payment. There are no alternative financing arrangements for the exchange offer.

Conditions of the Exchange Offer

The exchange offer is not conditioned upon the tender of any minimum principal amount of old notes. Notwithstanding any other provision of the exchange offer, or any extension of the exchange offer, we will not be required to accept for exchange, or to issue new notes in exchange for, any old notes and may terminate or amend the exchange offer, by oral (promptly confirmed in writing) or written notice to the tender and paying agent or by a timely press release, if at any time before the expiration of the exchange offer, any of the following conditions exist:

- any action or proceeding is instituted or threatened in any court or by or before any governmental agency challenging the exchange offer or that we believe might be expected to prohibit or materially impair our ability to proceed with the exchange offer;
- any stop order is threatened or in effect with respect to the qualification of the indenture governing the new notes under the Trust Indenture Act of 1939, as amended (the Trust Indenture Act);
- any law, rule or regulation is enacted, adopted, proposed or interpreted that we believe might be expected to prohibit or impair our ability to proceed with the exchange offer or to materially impair the ability of holders generally to receive freely tradable new notes in the exchange offer;
- any change or a development involving a prospective change in our business, properties, assets, liabilities, financial condition, operations or results of operations taken as a whole, that is or may be adverse to us;
- any declaration of war, armed hostilities or other similar international calamity directly or indirectly involving the United States, or the worsening of any such condition that existed at the time that we commence the exchange offer;
- the NASDAQ Global Select Market has not approved the supplemental application for listing the shares of our common stock underlying the new notes; or
- we become aware of facts that, in our reasonable judgment, have or may have adverse significance with respect to the value of the old notes or the new notes to be issued in the exchange offer.

We expressly reserve the right to amend or terminate the exchange offer and to reject for exchange any old notes not previously accepted for exchange, upon the occurrence of any of the conditions of the exchange offer specified above. In addition, we expressly reserve the right, at any time or at various times, to waive any of the conditions of the exchange offer, in whole or in part. We will give oral or written notice (with any oral notice to be promptly confirmed in writing) of any amendment, non-acceptance, termination or waiver to the information and tender and paying agent as promptly as practicable, followed by a timely press release.

These conditions are for our sole benefit, and we may assert them regardless of the circumstances that may give rise to them or waive them in whole or in part at any or at various times in our sole discretion. If we fail at any time to exercise any of the foregoing rights, this failure will not constitute a waiver of such right. Each such right will be deemed an ongoing right that we may assert at any time or at various times.

All conditions to the exchange offer must be satisfied or waived prior to the expiration of the exchange offer.

Procedures for Tendering

Only a record holder of old notes may tender in the exchange offer. The outstanding old notes are represented by global certificates issued to Cede & Co., as nominee of DTC, so Cede & Co. is the only registered holder of the old notes. DTC facilitates the clearance and settlement of transactions through electronic book-entry changes in accounts of DTC participants. DTC participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations. Persons that are not participants beneficially own the old notes only through DTC participants.

How to tender if you are a beneficial owner but not a DTC participant.

If you beneficially own old notes through an account maintained by a broker, dealer, commercial bank, trust company or other nominee and you desire to tender your old notes, you should contact your nominee promptly and instruct it to tender your old notes on your behalf.

How to tender if you are a DTC participant.

To participate in the exchange offer, a DTC participant must:

- comply with the automated tender offer program procedures (ATOP) of DTC described below; or
- complete, sign and date the letter of transmittal and deliver the letter of transmittal or facsimile to the tender and paying agent prior to the expiration time by mail, facsimile transmission or in person.

In addition, either:

- the tender and paying agent must receive, prior to the expiration time, a properly transmitted agent's message (described below); or
- the tender and paying agent must receive, prior to the expiration time, a timely confirmation of book-entry transfer of such old notes into the tender and paying agent's account at DTC according to the procedure for book-entry transfer described below and the letter of transmittal and other documents required by the letter of transmittal.

Any tender of old notes that is not withdrawn will, upon our acceptance of the tender, constitute a binding agreement between the holder of such old notes and us in accordance with the terms and subject to the conditions described in this offering memorandum and in the letter of transmittal.

If a DTC participant chooses to tender by delivery of a letter of transmittal, to be validly tendered the tender and paying agent must receive any physical delivery of the letter of transmittal and other required documents at its address indicated on the back cover of this offering memorandum and the front cover of the letter of transmittal prior to the expiration time. The method of delivery of the letter of transmittal and all other required documents to the tender and paying agent is at the holder's election and risk. In all cases, holders should allow sufficient time to assure delivery to the tender and paying agent before the expiration time. The letter of transmittal should not be sent to the Company.

Signatures and signature guarantees.

Holders using a letter of transmittal or notice of withdrawal must have signatures guaranteed by a member firm of a registered national securities exchange or of FINRA, a commercial bank or trust company having an office or correspondent in the United States, or an "eligible guarantor institution" within the meaning of Rule 17Ad-15 under the Exchange Act. In addition, such entity must be a member of one of the recognized signature guarantee programs identified in the letter of transmittal. Signature guarantees are not required, however, if the old notes are tendered for the account of a member firm of a registered national securities exchange or of FINRA, a commercial bank or trust company having an office or correspondent in the United States, or an eligible guarantor institution.

Tendering through DTC's ATOP.

DTC participants may, instead of physically completing and signing the letter of transmittal and delivering it to the tender and paying agent, transmit an acceptance of the exchange offer electronically. DTC participants may do so by causing DTC to transfer the old notes to the tender and paying agent in accordance with its procedures for transfer. DTC will then send an agent's message to the tender and paying agent.

The term "agent's message" means a message that:

- is electronically transmitted by DTC;
- is received by the tender and paying agent and forms a part of a book-entry transfer;
- states that DTC has received an express acknowledgement that the tendering holder has received and agrees to be bound by, and makes each of the representations and warranties contained in, the letter of transmittal; and
- states that the Company may enforce the letter of transmittal against such holder.

Determination of Validity

We will determine in our sole discretion all questions as to the validity, form, eligibility (including time of receipt), acceptance and withdrawal of old notes tendered for exchange and all other required documents. We reserve the absolute right to:

- reject any and all tenders of any old note not validly tendered;
- refuse to accept any old note if, in our judgment or the judgment of our counsel, acceptance of the old note may be deemed unlawful;
- waive any defects or irregularities or conditions of the exchange offer, either before or after the expiration time; and
- determine the eligibility of any holder who seeks to tender old notes in the exchange offer.

Our determinations, either before or after the expiration time, under, and of the terms and conditions of, the exchange offer, including the letter of transmittal and the instructions to it, or as to any questions with respect to the tender of any old notes, will be final and binding on all parties. To the extent we waive any conditions to the exchange offer, we will waive such conditions as to all old notes. Holders must cure any defects and irregularities in connection with tenders of old notes for exchange within such reasonable period of time as we will determine, unless we waive such defects or irregularities. Neither we, the tender and paying agent nor any other person will be under any duty to give notification of any defect or irregularity with respect to any tender of old notes for exchange, nor will any of us incur any liability for failure to give such notification. Tenders of old notes will not be considered to have been made until any defects or irregularities have been cured or waived.

Acceptance; Exchange of Old Notes

Upon satisfaction or waiver of all of the conditions of the exchange offer, all old notes properly tendered and not withdrawn will be accepted promptly after the expiration time. See "Terms of the Exchange Offer—Conditions of the Exchange Offer." For purposes of the exchange offer, we will be deemed to have accepted for exchange validly tendered old notes or defectively tendered old notes with respect to which we have waived such defect, when, as and if we give written or oral notice of such acceptance to the tender and paying agent. Under no circumstances will any additional interest or distributions be payable because of any delay by the tender and paying agent in the transmission of funds to the holders of exchanged old notes or otherwise.

We will issue the new notes, and cause them to be delivered with the aggregate note exchange payment, under the terms of the exchange offer and applicable law upon exchange of old notes validly tendered in the

exchange offer promptly after the expiration time and our acceptance of the validly tendered old notes. We anticipate that such issuance and delivery will occur on the second business day following the expiration time.

We will pay for old notes accepted for exchange by us pursuant to the exchange offer by depositing the aggregate note exchange payment and the new notes with the tender and paying agent. The tender and paying agent will act as your agent for the purpose of receiving cash and new notes from us and transmitting such cash and new notes to you.

In all cases, issuance of new notes and payment of the cash note exchange payment for old notes accepted for exchange by us pursuant to the exchange offer will be made promptly after the expiration time and will be credited by the tender and paying agent to the appropriate account at DTC, subject to receipt by the tender and paying agent of:

- timely confirmation of a book-entry transfer of the old notes into the tender and paying agent's account at DTC, pursuant to the procedures set forth in "—Procedures for Tendering" above and a properly completed letter of transmittal and any other documents required by the letter of transmittal; or
- a properly transmitted agent's message.

By tendering old notes pursuant to the exchange offer, the holder thereof will be deemed to have represented and warranted that such holder has full power and authority to tender, sell, assign and transfer the old notes tendered thereby and that when such old notes are accepted for purchase and payment by us, we will acquire good title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim or right. The holder will also be deemed to have agreed to, upon request, execute and deliver any additional documents deemed by the tender and paying agent or by us to be necessary or desirable to complete the sale, assignment and transfer of the old notes tendered thereby.

By tendering old notes pursuant to the exchange offer, the holder will be deemed to have agreed that the delivery and surrender of the old notes is not effective, and the risk of loss of the old notes does not pass to the tender and paying agent, until receipt by the tender and paying agent of a properly transmitted agent's message or properly completed letter of transmittal together with all accompanying evidences of authority and any other required documents in form satisfactory to us.

We may transfer or assign, in whole or from time to time in part, to one or more of our affiliates or any third party the right to purchase all or any of the old notes tendered pursuant to the exchange offer, but any such transfer or assignment will not relieve us of our obligations under the exchange offer and will in no way prejudice the rights of tendering holders of old notes to receive payment for old notes validly tendered and not validly withdrawn and accepted for exchange pursuant to the exchange offer.

Return of Unaccepted Old Notes

If any tendered old notes are not accepted for payment for any reason pursuant to the terms and conditions of the exchange offer, such old notes will be credited to the tendering holder's account at DTC promptly following the expiration time or the termination of the exchange offer.

Expiration; Extensions; Termination; Amendment

The expiration time will occur at 5:00 p.m., New York City time, on Tuesday, December 13, 2011, unless the exchange offer is extended or earlier terminated by us. The expiration time will be at least 20 business days from its commencement, as required by Rules 13e-4(f) and 14e-1(a) under the Exchange Act.

We reserve the right to extend the period of time that the exchange offer is open and delay acceptance for exchange of any old notes by giving oral or written notice to the tender and paying agent and by timely public

announcement no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration time. During any extension, all old notes previously tendered will remain subject to the exchange offer unless validly withdrawn.

In addition, we reserve the right to:

- terminate or amend the exchange offer and not to accept for exchange any old notes not previously accepted for exchange upon the occurrence of any of the events specified above under "—Conditions of the Exchange Offer" that have not been waived by us; and
- amend the terms of the exchange offer in any manner permitted or not prohibited by law.

If we terminate or amend the exchange offer, we will notify the tender and paying agent by oral or written notice (with any oral notice to be promptly confirmed in writing) and will issue a timely press release or other public announcement regarding the termination or amendment.

If we make a material change in the terms of the exchange offer or the information concerning the exchange offer, or waive a material condition of the exchange offer, we will promptly disseminate disclosure regarding the changes to the exchange offer and extend the exchange offer, each if required by law, to ensure that the exchange offer remains open a minimum of five business days from the date we disseminate disclosure regarding the changes.

If we make a change in the principal amount of old notes sought or the exchange offer consideration, including the principal amount of new notes or the amount of the note exchange payment offered in the exchange, we will promptly disseminate disclosure regarding the changes and extend the exchange offer, each if required by law, to ensure that the exchange offer remains open a minimum of ten business days from the date we disseminate disclosure regarding the changes.

If, for any reason, acceptance for purchase of, or payment for, validly tendered old notes pursuant to the exchange offer is delayed, or we are unable to accept for purchase or to pay for validly tendered old notes pursuant to the exchange offer, then the tender and paying agent may, nevertheless, on our behalf, retain the tendered old notes, without prejudice to our rights described herein, but subject to applicable law and Rule 14e-l under the Exchange Act, which requires that we pay the consideration offered or return the old notes tendered promptly after the termination or withdrawal of the exchange offer.

Settlement Date

The settlement date in respect of any old notes that are validly tendered prior to the expiration time and accepted by us is expected to occur promptly following the expiration time and is anticipated to be December 15, 2011.

Fractional Interests

New notes will be issued only in denominations of $1,000 or an integral multiple thereof.

Withdrawal of Tenders

Old notes tendered may be validly withdrawn at any time prior to the expiration time, but not thereafter. If the exchange offer is terminated, the old notes tendered pursuant to the exchange offer will be promptly returned to the tendering holders.

For a withdrawal of old notes to be effective, the tender and paying agent must receive a written or facsimile transmission containing a notice of withdrawal prior to the expiration time by a properly transmitted "Request

Message" through DTC's ATOP. Such notice of withdrawal must (i) specify the name of the holder of old notes who tendered the old notes to be withdrawn, (ii) specify, by CUSIP number, the aggregate principal amount of the old notes to be withdrawn, (iii) contain a statement that such holder of old notes is withdrawing the election to tender their old notes specified in such notice of withdrawal and (iv) be signed by the holder of such old notes in the same manner as the original signature on the letter of transmittal (including any required signature guarantees) or be accompanied by evidence satisfactory to us that the person withdrawing the tender has succeeded to the beneficial ownership of the old notes. Any notice of withdrawal must identify the old notes to be withdrawn, including the name and number of the account at DTC to be credited and otherwise comply with the procedures of DTC. Withdrawal of old notes may only be accomplished in accordance with the foregoing procedures.

Old notes validly withdrawn may thereafter be re-tendered at any time prior to the expiration time by following the procedures described under "— Procedures for Tendering."

We will determine all questions as to the form and validity (including time of receipt) of any notice of withdrawal of a tender, in our reasonable discretion, which determination shall be final and binding. None of the Company, the tender and paying agent, or any other person will be under any duty to give notification of any defect or irregularity in any notice of withdrawal of a tender or incur any liability for failure to give any such notification.

Fees and Expenses

Tendering holders of outstanding old notes will not be required to pay any expenses of soliciting tenders in the exchange offer. However, if a tendering holder handles the transactions through its broker, dealer, commercial bank, trust company or other institution, such holder may be required to pay brokerage fees or commissions. We will bear the fees and expenses of soliciting tenders for the exchange offer. The principal solicitation is being made by mail. However, additional solicitations may be made by facsimile transmission, telephone or in person by our officers and other employees. We will also pay the information agent and tender and paying agent reasonable out-of-pocket expenses and we will indemnify the information agent and tender and paying agent against certain liabilities and expenses in connection with the exchange offer, including liabilities under the federal securities laws.

Transfer Taxes

Holders who tender their old notes for exchange will not be obligated to pay any transfer taxes in connection with the exchange. If, however, new notes issued in the exchange offer are to be delivered to, or are to be issued in the name of, any person other than the holder of the old notes tendered, or if a transfer tax is imposed for any reason other than the exchange of old notes in connection with the exchange offer, then the holder must pay these transfer taxes, whether imposed on the registered holder or on any other person. If satisfactory evidence of payment of or exemption from these taxes is not submitted with the letter of transmittal, the amount of these transfer taxes will be billed directly to the tendering holder.

Future Purchases

Following completion of the exchange offer, we or our affiliates may repurchase additional old notes that remain outstanding in the open market, in privately negotiated transactions or otherwise. Future purchases of old notes that remain outstanding after the exchange offer may be on terms that are more or less favorable than the exchange offer. However, Exchange Act Rules 14e-5 and 13e-4 generally prohibit us and our affiliates from purchasing any old notes other than pursuant to the exchange offer until ten business days after the expiration of the exchange offer, although there are some exceptions. Future purchases, if any, will depend on many factors, including market conditions and the condition of our business.

Resale of New Notes Received Pursuant to the Exchange Offer

This exchange offer is being made pursuant to an exemption from the registration requirements of the Securities Act contained in Section 3(a)(9) of the Securities Act. We have not filed a registration statement under the Securities Act or any other federal or state securities laws with respect to the new notes that will be issued in the exchange offer.

All of the old notes are freely transferable under U.S. federal securities laws because we are (and have been for more than 90 days) subject to the reporting requirements of Section 13 of the Exchange Act and the old notes have been held by non-affiliates of the Company for over one year, as a result of which the old notes are eligible for resale without restriction pursuant to Rule 144 under the Securities Act. Accordingly, all of the new notes issued in the exchange offer (and any underlying common stock issued upon conversion of the new notes in accordance with the terms of the indenture governing the new notes) will also be freely transferable under U.S. federal securities laws by anyone who is not an affiliate (as such term is defined in Rule 144 under the Securities Act) of the Company, subject to certain requirements. The new notes will be represented by a single unrestricted CUSIP number.

Accounting Treatment

For accounting purposes, we will not recognize gain or loss upon the issuance of the new notes for old notes, other than the recognition of direct expenses incurred related to the exchange offer.

Compliance with Securities Laws

We are making the exchange offer to all holders of outstanding old notes. We are not aware of any jurisdiction in which the making of the exchange offer is not in compliance with applicable law. If we become aware of any jurisdiction in which the making of the exchange offer would not be in compliance with applicable law, we will make a good faith effort to comply with any such law. If, after such good faith effort, we cannot comply with any such law, the exchange offer will not be made to, nor will tenders of old notes be accepted from or on behalf of, the holders of old notes residing in any such jurisdiction. The exchange offer will not be made in any jurisdiction where the securities, blue sky or other laws require the exchange offer to be made by a licensed broker or dealer.

No action has been or will be taken in any jurisdiction other than in the United States that would permit a public offering of the new notes, or the possession, circulation or distribution of this offering memorandum or any other material relating to us or the new notes in any jurisdiction where action for that purpose is required. Accordingly, the new notes may not be offered or sold, directly or indirectly, and neither this offering memorandum nor any other offering material or advertisement in connection with the new notes may be distributed or published, in or from any country or jurisdiction except in compliance with any applicable rules and regulations of any such country or jurisdiction. This offering memorandum does not constitute an offer to sell or a solicitation of any offer to buy in any jurisdiction where such offer or solicitation would be unlawful. Persons into whose possession this offering memorandum comes are advised to inform themselves about and to observe any restrictions relating to this exchange offer, the distribution of this offering memorandum, and the resale of the new notes.

Additional Information

Pursuant to Exchange Act Rule 13e-4 we have filed with the SEC a Tender Offer Statement on Schedule TO (the Schedule TO), that contains additional information with respect to the exchange offer. We will file an amendment to the Schedule TO to report any material changes in the terms of the exchange offer and to report the final results of the exchange offer as required by Exchange Act Rule 13e-4(c)(3) and 13e-4(c)(4), respectively. The Schedule TO, including the exhibits and any amendments thereto, may be examined, and

copies may be obtained, at the same places and in the same manner as is set forth under “Where You Can Find More Information” and “Incorporation of Certain Documents by Reference.”

The Tender and Paying Agent

We have appointed The Bank of New York Mellon Trust Company, N.A., as our tender and paying agent for the exchange offer. All executed letters of transmittal should be directed to the tender and paying agent at its address set forth below.

The Bank of New York Mellon Trust Company, N.A.
The Bank of New York Mellon Corporation
Corporate Trust Operations
Reorganization Unit
101 Barclay Street—7 East
New York, N.Y. 10286
Attn: Mr. David Mauer
Telephone (212) 815-3687
Facsimile (212) 298-1915

Delivery of the letter of transmittal to an address other than as set forth above will not constitute a valid delivery.

The Information Agent

We have appointed Georgeson Inc. as our information agent for the exchange offer. Questions and requests for assistance respecting the procedures for the exchange offer, requests for additional copies of this offering memorandum or of the letter of transmittal should also be directed to the tender and paying agent at its address below.

Georgeson Inc.
199 Water Street 26th Floor
New York, NY 10038
Telephone (212) 440-9800
Facsimile (212) 440-9009

DESCRIPTION OF NEW NOTES

We will issue the new notes under an indenture between us and The Bank of New York Mellon Trust Company, N.A., as trustee (the trustee), to be entered into upon the closing of the exchange offer and dated as of the closing date (the indenture). The terms of the new notes include those expressly set forth in the indenture and those made part of the indenture by reference to the Trust Indenture Act, which will be deemed to apply to the indenture. The following summarizes some, but not all, provisions of the new notes and the indenture. We urge you to read the indenture because it, and not this description, defines your rights as a holder of the new notes. A copy of the indenture and the form of certificate evidencing the new notes is available to you upon request. See "Where You Can Find More Information."

In this section of the offering memorandum entitled "Description of New Notes," when we refer to "PDL," "we," "our," or "us," we are referring to PDL BioPharma, Inc. and not any of its subsidiaries.

General

The new notes are senior unsecured obligations of PDL and rank equal in right of payment to all of our existing and future unsecured and unsubordinated indebtedness. The new notes are senior in right to any existing or future indebtedness which is subordinated by its terms. As of September 30, 2011, we had no indebtedness subordinated by its terms to the old notes. The notes will be structurally subordinated to all liabilities of our subsidiaries (including, as of September 30, 2011, the $115,268,000 principal amount outstanding of QHP PhaRMA℠ Senior Secured Notes due 2015 issued by QHP Royalty Sub LLC, one of our subsidiaries) and will be effectively junior to our future secured indebtedness to the extent of the value of the assets securing such indebtedness.

The new notes are convertible into common stock as described under "—Conversion of Notes." We are offering up to $180 million aggregate principal amount of new notes, the amount issued on the settlement date determined by the extent to which the exchange offer is accepted. We may, without the consent of the holders of the new notes, issue additional notes having the same ranking and the same interest rate, maturity and other terms as the new notes. Any of these additional notes will, together with the new notes, constitute a single series of notes under the indenture. Holders of such additional notes will have the right to vote together with holders of new notes as one class. No such additional notes may be issued with the same CUSIP number unless they will be fungible with the notes offered hereby for U.S. federal income tax and securities law purposes. The new notes will be issued only in denominations of $1,000 or in integral multiples of $1,000. The new notes will mature on February 15, 2015, unless earlier redeemed at our option or purchased by us at your option upon a fundamental change.

Neither we nor our subsidiaries are restricted from paying dividends, incurring debt or issuing or repurchasing our securities under the indenture. In addition, there are no financial covenants in the indenture. You are not protected under the indenture in the event of a highly leveraged transaction or a change in control of PDL, except to the extent described under "—Repurchase at Option of the Holder Upon a Fundamental Change" and "—Adjustment to Conversion Rate Upon a Fundamental Change."

The new notes bear interest at the annual rate of 2.875% commencing on August 15, 2011. Interest is payable on February 15 and August 15 of each year, beginning February 15, 2012, subject to limited exceptions if the new notes are converted, redeemed or purchased prior to the interest payment date. The record dates for the payment of interest are February 1 and August 1. We may, at our option, pay interest on the new notes by check mailed to the holders. However, a holder with an aggregate principal amount in excess of $2 million will be paid by wire transfer in immediately available funds upon its election if the holder has provided us with wire transfer instructions at least 10 business days prior to the payment date. Interest on the new notes is paid on the basis of a 360-day year comprised of twelve 30-day months. We are not required to make any payment on the new notes due on any day which is not a business day until the next succeeding business day. The payment made on the next succeeding business day will be treated as though it were paid on the original due date and no interest will accrue on the payment for the additional period of time.

We maintain an office in New York, New York, where the new notes may be presented for registration, transfer, exchange or conversion. This office is an office or agency of the trustee. Except under limited circumstances described below, the new notes are issued only in fully-registered book-entry form, without coupons, and are represented by one or more global notes. There is no service charge for any registration of transfer or exchange of new notes. We may, however, require holders to pay a sum sufficient to cover any tax or other governmental charge payable in connection with certain transfers or exchanges.

Conversion of Notes

General

Upon the occurrence of any of the conditions described under the headings "—Conversion Based on Common Stock Price," "—Conversion Upon Satisfaction of Trading Price Condition," "—Conversion Upon Notice of Redemption," "—Conversion Upon Specified Corporate Transactions" and "—Conversion During a Specified Period," you have the right, at your option, to convert your new notes into shares of our common stock at any time until the close of business on the last business day prior to maturity, unless previously redeemed or purchased, at the conversion rate of 151.713 shares per $1,000 principal amount of new notes, subject to the adjustments described below (including adjustment based on the $0.15 per share cash dividend scheduled to be paid on December 15, 2011). This is equivalent to an initial conversion price of approximately $6.59 per share, subject to such adjustment.

Except as described below, we will not make any payment or other adjustment for accrued interest on new notes or dividends on any common stock issued upon conversion of the new notes. If you submit your new notes for conversion between an interest payment record date and the opening of business on the next interest payment date (except for (i) conversions following the regular record date immediately preceding February 15, 2015, (ii) new notes or portions of new notes called for redemption or subject to purchase following a fundamental change on a redemption date or a purchase date, as the case may be, occurring during the period from the close of business on a record date and ending on the opening of business on the first business day after the next interest payment date, or if this interest payment date is not a business day, the second business day after the interest payment date or (iii) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to the new notes) you must pay funds equal to the interest payable on the principal amount being converted. As a result of the foregoing provisions, if the exception described in the preceding sentence does not apply and you surrender your new notes for conversion on a date that is not an interest payment date, you will not receive any interest for the period from the interest payment date next preceding the date of conversion or for any later period.

We will not issue fractional shares of common stock upon conversion of the new notes. Instead, we will pay cash for the fractional amount based upon the daily VWAP (as defined in "Description of New Notes—Conversion of Notes—Settlement Upon Conversion") of the common stock on the last trading day of the relevant cash settlement averaging period. Subject to the exception for interest described in the preceding paragraph, our settlement of conversions as described below under "—Settlement Upon Conversion" will be deemed to satisfy in full our obligation to pay (i) the principal amount of the note; and (ii) accrued and unpaid interest and additional interest, if any, to, but not including, the conversion date. As a result, accrued but unpaid interest to the conversion date is deemed to be paid in full rather than cancelled, extinguished or forfeited.

If the new notes are called for redemption or are subject to purchase following a fundamental change, your conversion rights on the new notes called for redemption or so subject to purchase will expire at the close of business on the last business day before the redemption date or purchase date, as the case may be, or such earlier date as the new notes are presented for redemption or for purchase, unless we default in the payment of the redemption price or purchase price, in which case, your conversion right will terminate at the close of business

on the date the default is cured and the new notes are redeemed or purchased. If you have submitted your new notes for purchase upon a fundamental change, you may only convert your new notes if you withdraw your election in accordance with the indenture.

Conversion Based on Common Stock Price

You may surrender new notes for conversion in any fiscal quarter after the fiscal quarter ending December 31, 2011, if the closing price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the new notes on the last day of such preceding fiscal quarter, which we refer to as the "conversion trigger price."

The conversion trigger price immediately following issuance of the new notes will be approximately $8.57, which is 130% of the initial conversion price for the new notes, subject to anti-dilution adjustments made in connection with our anticipated December 15, 2011, dividend payment.

Conversion Upon Satisfaction of Trading Price Condition

You may surrender new notes for conversion during the five business-day period immediately after any five consecutive trading-day period, which we refer to as the "measurement period," in which the "trading price" per $1,000 principal amount of notes (as determined following a request by a holder of the new notes in accordance with the procedures described below) for each trading day of the measurement period was less than 98% of the product of the closing price of our common stock and the conversion rate for the new notes for each such trading day, subject to compliance with the procedures and conditions described below concerning the bid solicitation agent's obligation to make a trading price determination, in which event the "trading price condition" will have been met.

The "trading price" per $1,000 principal amount of the new notes on any date of determination shall be determined based on the average of the secondary market bid quotations obtained by us or the bid solicitation agent (which shall be an investment bank selected by us) for $2.0 million principal amount of the new notes at approximately 3:30 p.m., New York City time, on such determination date from three independent U.S. nationally recognized securities dealers we select, which may include any or all of the underwriters; provided that if three such bids cannot reasonably be obtained by us or the bid solicitation agent, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by us or the bid solicitation agent, that one bid shall be used. If we cannot reasonably obtain at least one bid for $2.0 million principal amount of the new notes from a U.S. nationally recognized securities dealer, then the trading price per $1,000 principal amount of new notes will be deemed to be less than 98% of the product of the "closing price" of our common stock and the conversion rate.

In connection with any conversion upon satisfaction of the above trading price condition, the bid solicitation agent shall have no obligation to determine the trading price of the new notes unless we have requested such a determination; and we shall have no obligation to make such a request unless a holder provides us and the trustee with reasonable evidence that the trading price per $1,000 principal amount of the new notes would be less than 98% of the product of the closing price of our common stock and the conversion rate. At such time, we will determine (or cause the bid solicitation agent to determine) the trading price of the new notes beginning on the next trading day and on each successive trading day until the trading price per $1,000 principal amount of the new notes is greater than or equal to 98% of the product of the closing price of our common stock and the conversion rate. If, upon presentation of such reasonable evidence by the holder, we do not make such determination or cause the bid solicitation agent to make such determination, then the trading price per $1,000 principal amount of the new notes will be deemed to be less than 98% of the product of the "closing price" of our common stock and the conversion rate.

If the trading price condition has been met, we will, as soon as practicable following the condition being met, so notify the holders of the new notes. If, at any point after the trading price condition has been met, the trading price per $1,000 principal amount of the new notes is greater than 98% of the product of the closing price of our common stock and the conversion rate for such day, we will so notify the holders of the new notes by the same mechanism.

Conversion Upon Notice of Redemption

If we call any or all of the new notes for redemption, holders may convert new notes that have been so called for redemption at any time prior to the close of business on the last business day prior to the redemption date, even if the new notes are not otherwise convertible at such time, after which time the holder's right to convert will expire unless we default in the payment of the redemption price.

Conversion Upon Specified Corporate Transactions

If we elect to:

- distribute to all or substantially all holders of our common stock any rights, options or warrants entitling them for a period expiring within 60 calendar days after the record date for such distribution to subscribe for or purchase shares of our common stock, at a price per share less than the last closing price of our common stock on the trading day immediately preceding the declaration date for such distribution; or
- distribute to all or substantially all holders of our common stock, assets, debt securities or certain rights to purchase our securities, which distribution has a per share value as determined by our board of directors exceeding 10% of the closing price of our common stock on the trading day immediately preceding the declaration date for such distribution,

we will notify the holders of the new notes at least 20 business days prior to the ex-dividend date for such distribution. Once we have given such notice, holders may surrender their new notes for conversion at any time from, and including, the date we mail such notice until the earlier of 5:00 p.m., New York City time, on the business day immediately prior to the ex-dividend date or the date of our announcement that such distribution will not take place, even if the new notes are not otherwise convertible at such time. No holder may exercise this right to convert if the holder otherwise may participate in the distribution of cash or common stock without conversion (based upon the conversion rate and upon the same terms as holders of our common stock). The ex-dividend date is the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

In addition, in the event of a fundamental change (as defined below under "—Repurchase at Option of the Holder Upon a Fundamental Change"), a holder may surrender notes for conversion at any time from and after the 25th scheduled trading day prior to the anticipated effective date of such fundamental change, until the 45th day following the effective date of such transaction (or, if earlier and to the extent applicable, the close of business on the second scheduled trading day immediately preceding the fundamental change repurchase date).

We must notify holders of the anticipated effective date of the fundamental change, (i) as soon as practicable following the date we publicly announce such transaction but in no event less than 25 scheduled trading days prior to the anticipated effective date of such transaction; or (ii) if we do not have knowledge of such transaction at least 25 scheduled trading days prior to the anticipated effective date of such transaction, within one business day of the date upon which we receive notice, or otherwise become aware, of such transaction, but in no event later than the actual effective date of such transaction. We will update our notice promptly if the anticipated effective date subsequently changes.

If a fundamental change occurs, a holder may also have the right to require us to repurchase all or a portion of its new notes, as described under "—Repurchase at Option of the Holder Upon a Fundamental Change."

Conversion During a Specified Period

Notwithstanding anything herein to the contrary, a holder may surrender its new notes for conversion beginning on August 15, 2014, until the close of business on the second scheduled trading day immediately preceding the stated maturity date for the new notes irrespective of the conditions set forth above.

Settlement Upon Conversion

Upon conversion, we will deliver to the converting holder in respect of each $1,000 principal amount of new notes being converted a "settlement amount" equal to the sum of the daily settlement amounts for each of the 40 consecutive trading days during the related cash settlement averaging period.

The "daily settlement amount," for each of the 40 consecutive trading days during the cash settlement averaging period, will consist of:

- cash equal to the lesser of (i) $25.00 and (ii) the daily conversion value; and
- to the extent the daily conversion value exceeds $25.00, a number of shares equal to (i) the difference between the daily conversion value and $25.00, divided by (ii) the daily VWAP of our common stock for such trading day.

"Daily conversion value" means, for each of the 40 consecutive trading days during the cash settlement averaging period, one-fortieth (1/40th) of the product of (i) the conversion rate and (ii) the daily VWAP of our common stock on such trading day.

"Daily VWAP" of our common stock, in respect of any trading day, means the per share volume-weighted average price on the NASDAQ Global Select Market as displayed under the heading "Bloomberg VWAP" on Bloomberg page PDLI.Q<EQUITY> VAP (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of our common stock on such trading day as determined in a commercially reasonable manner by our board of directors or by a nationally recognized independent investment banking firm retained for the purpose by us, using a volume-weighted average price method) and will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"Cash settlement averaging period," with respect to any new note, means the 40 consecutive trading-day period beginning on, and including, the third trading day immediately following the related conversion date, except that "cash settlement averaging period" means, (i) with respect to any conversion date occurring after we have given a notice of redemption, the 40 consecutive trading day period beginning on, and including, the 42nd scheduled trading day prior to the redemption date, and (ii) with respect to any other conversion date occurring during the period beginning on, and including, August 15, 2014, and ending at 5:00 p.m., New York City time, on the second scheduled trading day immediately prior to the maturity date, the 40 consecutive trading day period beginning on, and including, the 42nd scheduled trading day prior to the maturity date.

"Trading day" means with respect to any security, each day (i) which is Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which securities are not generally traded on the principal exchange or market in which such security is traded and (ii) on which there is no market disruption event.

"Market disruption event" means (1) a failure by the primary exchange or quotation system on which our common stock trades or is quoted to open for trading during its regular trading session on any trading day or (2) the occurrence or existence, prior to 1:00 p.m., New York City time, on any trading day for our common stock, of an aggregate one half-hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in our common stock or in any options, contracts or future contracts relating to our common stock.

"Scheduled trading day" means any day that is scheduled to be a trading day.

We generally will deliver the conversion consideration in respect of any new notes that you convert by the third trading day immediately following the last trading day of the cash settlement averaging period. However, if prior to the conversion date for any converted notes, our common stock has been replaced by reference property (as defined under "—Anti-Dilution Adjustments" below) consisting solely of cash (pursuant to the provisions described under "—Anti-Dilution Adjustments"), we will deliver the conversion consideration due in respect of conversion on the tenth trading day immediately following the relevant conversion date. Notwithstanding the foregoing, if any information required in order to calculate the conversion consideration deliverable will not be available as of the applicable settlement date, we will deliver the additional shares of our common stock resulting from that adjustment on the third trading day after the earliest trading day on which such calculation can be made.

Anti-Dilution Adjustments

The conversion rate is subject to adjustment, without duplication, upon the occurrence of any of the following events:

1) *stock dividends in common stock:* we pay a dividend or make a distribution on our common stock, payable exclusively in shares of our common stock; then the conversion rate in effect immediately before the open of business on the ex-dividend date for that dividend or distribution will be increased by multiplying: (x) the applicable conversion rate; by (y) a fraction, (1) the numerator of which shall be the number of shares of common stock outstanding immediately after such dividend or other distribution, and (2) the denominator of which shall be the number of shares of common stock outstanding immediately before such dividend or distribution;

2) *issuance of rights or warrants:* we issue to all or substantially all holders of our common stock rights or warrants that allow the holders to purchase shares of our common stock for a period expiring within 60 days from the date of issuance of the rights or warrants at less than the current market price; provided that the conversion rate will be readjusted to the extent that the rights or warrants are not exercised prior to their expiration and as a result no additional shares are delivered or issued pursuant to such rights or warrants; then the conversion rate in effect immediately before the open of business on the ex-dividend date for that issuance will be increased by multiplying (x) the applicable conversion rate by (y) a fraction, (1) the numerator of which is the sum of the number of shares of common stock outstanding immediately prior to the open of business on the ex-dividend date for such issuance, and the total number of shares of common stock issuable pursuant to such rights or warrants and (2) the denominator of which is the sum of the number of shares of common stock outstanding immediately prior to the open of business on the ex-dividend date for such issuance and the number of shares of common stock equal to the aggregate price payable to exercise such rights or warrants divided by the average of the closing prices of the common stock over the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such distribution.

3) *stock splits and combinations:* we:

- subdivide or split the outstanding shares of our common stock into a greater number of shares;
- combine or reclassify the outstanding shares of our common stock into a smaller number of shares; or

then the applicable conversion rate will be adjusted by multiplying (x) the applicable conversion rate by (y) a fraction, (1) the numerator of which is the number of shares of common stock outstanding immediately after such subdivision, split or combination, as the case may be, and (2) the denominator of which is the number of shares of common stock outstanding immediately prior to such subdivision, split or combination, as the case may be.

4) *distribution of indebtedness, securities or assets:* we distribute to all or substantially all holders of our common stock evidences of indebtedness, securities or assets or certain rights to purchase our securities

(provided, however, that if these rights are only exercisable upon the occurrence of specified triggering events, then the conversion rate will not be adjusted until the triggering events occur), but excluding:

- dividends or distributions described in paragraph (1) above;
- rights or warrants described in paragraph (2) above;
- dividends or distributions paid exclusively in cash described in paragraph (6), (7) or (8) below (the "distributed assets"), in which event (other than in the case of a spin-off as described below), the conversion rate in effect immediately before the open of business on the ex-dividend date for that distribution will be increased by multiplying the conversion rate by a fraction, the numerator of which is the current market price of our common stock and the denominator of which is the current market price of our common stock minus the fair market value, as determined by our board of directors, whose determination in good faith will be conclusive, of the portion of those distributed assets applicable to one share of common stock as of the open of business on the ex-dividend date for such distribution.

For purposes of this section (unless otherwise stated), the "current market price" of our common stock means the average of the closing sale prices of our common stock for the five consecutive trading days ending on the trading day prior to the ex-dividend date for such distribution, and the new conversion rate shall take effect immediately after the open of business on the ex-dividend date for such distribution.

Notwithstanding the foregoing, in cases where (a) the fair market value per share of the distributed assets as of the open of business on the ex-dividend date for such distribution equals or exceeds the current market price of our common stock, or (b) the current market price of our common stock exceeds the fair market value per share of the distributed assets by less than $1.00, in lieu of the foregoing adjustment, you have the right to receive upon conversion, in addition to the cash and, if applicable, number of shares of our common stock which you are entitled to receive, the distributed assets you would have received if you had already owned a number of shares of common stock equal to the applicable conversion rate immediately prior to the record date for the distribution.

5) *spin-offs:* we distribute to all holders of our common stock shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit, which we refer to as a "spin-off," in which case the conversion rate in effect immediately before the open of business on the ex-dividend date for that distribution will be increased by multiplying the conversion rate by an adjustment factor equal to the sum of the daily adjustments for each of the ten consecutive trading days beginning on the ex-dividend date of the spin-off. The "daily adjustment" for any given trading day is equal to a fraction, the numerator of which is the closing price of our common stock on that trading day plus the closing price of the portion of those shares of capital stock or similar equity interests so distributed applicable to one share of our common stock on that trading, and the denominator of which is the product of 10 and the closing price of our common stock on that trading day. The adjustment to the conversion rate in the event of a spin-off will occur immediately after the open of business on the day after the tenth trading day from, and including, the ex-dividend date of the spin-off, but shall be given effect as of the open of business on the ex-dividend date for the spin-off. If the ex-dividend date for the spin-off is less than 10 trading days prior to, and including, the end of the cash settlement averaging period in respect of any conversion, references within this clause (5) to 10 consecutive trading days shall be deemed replaced, for purposes of calculating the affected daily conversion rates in respect of that conversion, with such lesser number of trading days as shall elapse from, and including, the ex-dividend date for the spin-off to, and including, the last trading day of such cash settlement averaging period. For purposes of determining the conversion rate, in respect of any conversion during the 10 consecutive trading days commencing on the ex-dividend date for any spin-off, references within this clause (5) related to "spin-offs" to 10 consecutive trading days shall be deemed replaced with such lesser number of trading days as have elapsed from, and including, the ex-dividend date for such spin-off to, but excluding, the relevant conversion date.

6) *cash distributions:* we make a distribution consisting exclusively of cash to all or substantially all holders of outstanding shares of common stock, in which event the conversion rate on the ex-dividend date for such

distribution will be adjusted by multiplying the conversion rate immediately prior to the open of business on the ex-dividend date for such distribution by a fraction, the numerator of which is the current market price of our common stock, and the denominator of which is the current market price of our common stock, minus the amount per share of such distribution.

Notwithstanding the foregoing, in cases where (a) the per share amount of such distribution equals or exceeds the current market price of our common stock or (b) the current market price of our common stock exceeds the per share amount of such distribution by less than $1.00, in lieu of the foregoing adjustment, you have the right to receive upon conversion, in addition to the cash and, if applicable, number of shares of our common stock which you are entitled to receive, such distribution you would have received if you had already owned a number of shares of common stock equal to the applicable conversion rate immediately prior to the record date. For purposes of this section, the "current market price" of our common stock means the average of the closing sale prices of our common stock for the five consecutive trading days ending on the trading day prior to the ex-dividend date for such cash distribution, and the new conversion rate shall take effect immediately after the open of business on the ex-dividend date fixed for such distribution.

7) *tender or exchange offers:* we (or one of our subsidiaries) make a payment in respect of a tender offer or exchange offer for our common stock, in which event, to the extent the cash and value of any other consideration included in the payment per share of our common stock exceeds the current market price of our common stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer, as the case may be, the conversion rate will be adjusted by multiplying the conversion rate immediately prior to the open of business on the trading day next succeeding the last day on which tender or exchange may be made by a fraction, the numerator of which will be the sum of (a) the fair market value, as determined by our board of directors, of the aggregate consideration payable for all shares of our common stock we purchase in the tender or exchange offer and (b) the product of (i) the number of shares of our common stock outstanding less any such purchased shares and (ii) the current market price of our common stock on the trading day next succeeding the date of the expiration of the tender or exchange offer, and the denominator of which will be the product of (a) the number of shares of our common stock outstanding, including any such purchased shares, and (b) the current market price of our common stock on the trading day next succeeding the date of expiration of the tender or exchange offer.

The adjustment to the conversion rate under the preceding paragraph of this clause (7) will be given effect at the open of business on the trading day next succeeding the expiration date. For purposes of this clause (7) (unless otherwise stated) the "current market price" of our common stock means the average of the closing prices of the common stock for the five consecutive trading days commencing on, and including, the trading day next succeeding the date of the expiration of the tender or exchange offer. If the trading day next succeeding the expiration date is less than five consecutive trading days prior to, and including, the end of the cash settlement averaging period in respect of any conversion, references within this clause (7) to five consecutive trading days shall be deemed replaced, for purposes of calculating the affected daily conversion rates in respect of that conversion, with such lesser number of trading days as shall elapse from, and including, the trading day next succeeding the expiration date to, and including, the last trading day of such cash settlement averaging period. For purposes of determining the conversion rate, in respect of any conversion during the five consecutive trading days commencing on the trading day next succeeding the expiration date, references within this clause (7) to five consecutive trading days shall be deemed replaced with such lesser number of trading days as have elapsed from, and including, the trading day next succeeding the expiration date to, but excluding, the relevant conversion date.

8) *repurchases:* we (or one of our subsidiaries) make a payment in respect of a repurchase for our common stock the consideration for which exceeded the then-prevailing market price of our common stock (such amount, the "repurchase premium"), and that repurchase, together with any other repurchases of our common stock by us (or one of our subsidiaries) involving a repurchase premium concluded within the preceding 12 months, resulted in the payment by us of an aggregate consideration exceeding an amount equal to 10% of the market capitalization of our common stock, the conversion rate will be adjusted by multiplying the conversion rate by a

fraction, the numerator of which is the current market price of our common stock and the denominator of which is (A) the current market price of our common stock, minus (B) the quotient of (i) the aggregate amount of all of the repurchase premiums paid in connection with such repurchases and (ii) the number of shares of common stock outstanding on the day next succeeding the date of the repurchase triggering the adjustment, as determined by our board of directors; provided that no adjustment to the conversion rate shall be made to the extent the conversion rate is not increased as a result of the above calculation and provided further that the repurchases of our common stock effected by us or our agent in conformity with Rule 10b-18 under the Exchange Act will not be included in any adjustment to the conversion rate made under this clause (8). For purposes of this clause (8), (i) the market capitalization will be calculated by multiplying the current market price of our common stock by the number of shares of common stock then outstanding on the date of the repurchase triggering the adjustment, (ii) the current market price will be the average of the closing sale prices of our common stock for the five consecutive trading days beginning on the trading day next succeeding the date of the repurchase triggering the adjustment, and (iii) in determining the repurchase premium, the "then-prevailing market price" of our common stock will be the average of the closing sale prices of our common stock for the five consecutive trading days ending on the relevant repurchase date.

The adjustment to the conversion rate under the preceding paragraph of this clause (8) will be given effect at the open of business on the trading day next succeeding the date of the repurchase triggering the adjustment. If the trading day next succeeding the date of the repurchase triggering the adjustment is less than five consecutive trading days prior to, and including, the end of the cash settlement averaging period in respect of any conversion, references within this clause (8) to five consecutive trading days shall be deemed replaced, for purposes of calculating the affected daily conversion rates in respect of that conversion, with such lesser number of trading days as shall elapse from, and including, the trading day next succeeding the date of the repurchase triggering the adjustment to, and including, the last trading day of such cash settlement averaging period. For purposes of determining the applicable conversion rate, in respect of any conversion during the five consecutive trading days commencing on the trading day next succeeding the date of the repurchase triggering the adjustment, references within this clause (8) to five consecutive trading days shall be deemed replaced with such lesser number of trading days as have elapsed from, and including, the trading day next succeeding the date of the repurchase triggering the adjustment to, but excluding, the relevant conversion date.

If:

- we are required to satisfy our conversion obligation through delivery of a combination of cash and common stock and shares of common stock are deliverable to settle the daily settlement amount for a given trading day within the cash settlement averaging period applicable to notes that you have converted,
- any distribution or transaction described in clauses (1) to (8) above has not yet resulted in an adjustment to the applicable conversion rate on the trading day in question, and
- the shares you will receive in respect of such trading day are not entitled to participate in the relevant distribution or transaction (because they were not held on a related record date or otherwise),

then we will adjust the number of shares that we deliver to you in respect of the relevant trading day to reflect the relevant distribution or transaction.

In the event of a taxable distribution to holders of our common stock which results in an adjustment of the conversion rate, you may, in certain circumstances, be deemed to have received a distribution subject to U.S. income tax as a dividend; in certain other circumstances, the absence of such an adjustment may result in a taxable dividend to the holders of our common stock. In addition to these adjustments, we may increase the conversion rate as our board of directors considers advisable to avoid or diminish any income tax to holders of our common stock or rights to purchase our common stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. We may also, from time to time, to the extent permitted by applicable law, increase the conversion rate by any amount for any period of at

least 20 days if our board of directors has determined that such increase would be in our best interests. If our board of directors makes such a determination, it will be conclusive. We will give you at least 15 days' notice of such an increase in the conversion rate.

No adjustment to the conversion rate or your ability to convert will be made if you otherwise participate in the distribution without conversion or in certain other cases.

The applicable conversion rate will not be adjusted:

- upon the issuance of any shares of our common stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on our securities and the investment of additional optional amounts in shares of our common stock under any plan;
- upon the issuance of any shares of our common stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by us or any of our subsidiaries;
- upon the issuance of any shares of our common stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding bullet and outstanding as of the date the new notes were first issued;
- for a change in the par value of the common stock; or
- for accrued and unpaid interest, if any.

If you will receive common stock upon conversion of your new notes, you will also receive the associated rights under any stockholder rights plan we may adopt, whether or not the rights have separated from the common stock at the time of conversion unless, prior to conversion, the rights have expired, terminated or been redeemed or exchanged.

In the case of reclassifications, consolidations, mergers, sales or transfers of assets or other transactions that cause our common stock to be converted into the right to receive other securities, cash or property (reference property), upon conversion of your new notes, you will be entitled to receive the same type of consideration that you would have been entitled to receive if you had converted the new notes into our common stock immediately prior to any of these events, except as set forth below under "—Public Acquirer Change of Control;" provided that, at and after the effective time of any such transaction, (x) any amount otherwise payable in cash upon conversion of the new notes will continue to be payable as described under the provision under "—Settlement Upon Conversion," (y) the number of shares of our common stock otherwise deliverable upon conversion of the new notes as set forth under "—Settlement upon Conversion" above, if any, will instead be deliverable in the amount and type of reference property that a holder of that number of shares of our common stock would have received in such transaction and (z) the daily VWAP will be calculated based on the value of a unit of reference property that a holder of one share of our common stock would have received in such transaction.

Simultaneously with an adjustment of the conversion rate, we will disseminate a press release detailing the new conversion rate and other relevant information.

In no event will we take any action that would require adjustment to the applicable conversion rate, nor will we adjust the applicable conversion rate, if such applicable conversion rate adjustment would require us to issue, upon conversion of the new notes, a number of shares of common stock that would require us to obtain prior shareholder approval under the rules and regulations of the NASDAQ Global Select Market, and, if applicable, the rules of the exchange or quotation system on which the common stock is then traded, without obtaining such prior shareholder approval.

Optional Redemption

We do not have the option to redeem the new notes prior to August 15, 2014. Thereafter, the new notes may be redeemed at our option in whole, or in part, upon not less than 10 nor more than 60 days' notice by mail to holders of the new notes at a redemption price equal to 100% of the aggregate principal amount of the new notes to be redeemed in each case together with accrued interest up to, but not including, the redemption date; provided that if the redemption date falls after an interest payment record date and on or before an interest payment date, then the interest payment shall be payable to holders of record on the relevant record date.

If fewer than all of the new notes are to be redeemed, the trustee will select the new notes to be redeemed by lot or in accordance with applicable procedures of DTC. If any new note is to be redeemed in part only, a new note in principal amount equal to the unredeemed principal portion will be issued. If a portion of your new notes is selected for partial redemption and you convert a portion of your new notes, the converted portion will be deemed to be of the portion selected for redemption.

No sinking fund is provided for the new notes.

Repurchase at Option of the Holder Upon a Fundamental Change

If a fundamental change (as defined below) occurs at any time prior to maturity, you have the right (subject to our rights described under "—Public Acquirer Change of Control") to require us to repurchase any or all of your new notes for cash, or any portion of the initial principal amount thereof that is equal to $1,000 or an integral multiple of $1,000. The cash price we are required to pay is equal to 100% of the principal amount of the new notes to be purchased plus accrued and unpaid interest, if any, to (but not including) the fundamental change repurchase date, unless such fundamental change repurchase date falls after a record date and on or prior to the corresponding interest payment date, in which case we will pay the full amount of accrued and unpaid interest payable on such interest payment date to the holder of record at the close of business on the corresponding record date.

Except as set forth below under "—Public Acquirer Change of Control," within fifteen trading days prior to but not including the expected effective date of a fundamental change that is also a public acquirer change of control (as defined below under "—Public Acquirer Change of Control"), we will provide to all holders of the new notes and the trustee and paying agent a notification (the public acquisition notice) stating whether we will:

- elect to adjust the conversion rate and related conversion obligation as described under "—Public Acquirer Change of Control," in which case the holders will not have the right to require us to repurchase their new notes as described in this section and will not have the right to the conversion rate adjustment described under "—Adjustment to Conversion Rate Upon a Fundamental Change;" or
- not elect to adjust the conversion rate and related conversion obligation as described under "—Public Acquirer Change of Control," in which case the holders will have the right (if applicable) to require us to repurchase their new notes as described in this section and/or the right (if applicable) to the conversion rate adjustment described under "—Adjustment to Conversion Rate Upon a Fundamental Change."

A "fundamental change" will be deemed to have occurred at the time that any of the following occurs:

(1) our common stock (or other common stock into which the new notes are convertible or American Depositary Shares representing such common stock) is neither traded on the NASDAQ Global Select Market, the NASDAQ Global Market, the New York Stock Exchange or another U.S. national securities exchange nor quoted on an established automated over-the-counter trading market in the United States; or

(2) any person, including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Exchange Act, acquires beneficial ownership, directly or indirectly, through a purchase, merger or other

acquisition transaction or series of transactions, of shares of our capital stock entitling the person to exercise 50% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors, other than an acquisition by us, any of our subsidiaries or any of our employee benefit plans; or

(3) we merge or consolidate with or into any other person (other than a subsidiary), another person merges with or into us, or we convey, sell, transfer or lease all or substantially all of our assets to another person, other than any transaction:

- that does not result in a reclassification, conversion, exchange or cancellation of our outstanding common stock;
- pursuant to which the holders of our common stock immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50% or more of the voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after the transaction; or
- which is effected solely to change our jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of our common stock solely into shares of common stock of the surviving entity.

However, notwithstanding the foregoing, holders of the new notes do not have the right to require us to repurchase any new notes under clauses (2) or (3) (and we are not required to deliver the notice incidental thereto), if either:

- the closing sale price of our common stock for any five trading days within the period of 10 consecutive trading days ending immediately after the later of the fundamental change or the public announcement of the fundamental change, in the case of a fundamental change relating to an acquisition of capital stock under clause (2) above, or the period of ten consecutive trading days ending immediately before the fundamental change, in the case of a fundamental change relating to a merger, consolidation, asset sale or otherwise under clause (3) above, equals or exceeds 105% of the applicable conversion price of the new notes in effect on each of those five trading days; or
- at least 95% of the consideration paid for our common stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in a merger or consolidation or a conveyance, sale, transfer or lease otherwise constituting a fundamental change under clause (2) and/or clause (3) above consists of shares of capital stock traded on the NASDAQ Global Select Market, the NASDAQ Global Market, the New York Stock Exchange or another U.S. national securities exchange nor quoted on an established automated over-the-counter trading market in the United States (or will be so traded or quoted immediately following the merger or consolidation) and, as a result of the merger or consolidation, the new notes become convertible into such shares of such capital stock subject to the provisions for settlement of up to $1,000 of the settlement amount due on conversion of any note in cash that are described under "—Settlement Upon Conversion."

For purposes of these provisions, whether a person is a "beneficial owner" will be determined in accordance with Rule 13d-3 under the Exchange Act, and "person" includes any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

For purposes of the above, the term "capital stock" means (a) in the case of a corporation, corporate stock, (b) in the case of an association or business entity, shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distribution of the assets of, the issuing person.

On or before the 15th day after the date on which a fundamental change transaction becomes effective (which fundamental change results in the holders of new notes having the right to cause us to repurchase their new notes) (the effective date), we will provide to all holders of the new notes and the trustee and paying agent a

notice of the occurrence of the fundamental change and of the resulting repurchase right. Such notice shall state, among other things:

- the events causing a fundamental change;
- whether the fundamental change falls under clause (2) or (3) of the definition of fundamental change, in which case the conversion adjustments described under "—Adjustment to Conversion Rate Upon a Fundamental Change" will be applicable;
- the effective date of the fundamental change;
- the last date on which a holder may exercise the repurchase right;
- the fundamental change repurchase price;
- the fundamental change repurchase date;
- the name and address of the paying agent and the conversion agent;
- the conversion rate and any adjustments to the conversion rate;
- that the new notes with respect to which a fundamental change repurchase notice has been given by the holder may be converted only if the holder withdraws the fundamental change repurchase notice in accordance with the terms of the indenture; and
- the procedures that holders must follow to require us to repurchase their new notes.

Simultaneously with providing such notice, we will issue a press release and publish the information through a public medium customary for such press releases.

To exercise the repurchase right, you must deliver, before the close of business on the second business day immediately preceding the fundamental change repurchase date, the new notes to be purchased, duly endorsed for transfer (or effect book-entry transfer of the new notes to the paying agent), together with the fundamental change repurchase notice duly completed, to the paying agent. Your fundamental change repurchase notice must state:

- if certificated, the certificate numbers of the new notes to be delivered for repurchase;
- the portion of the principal amount of new notes to be purchased, which must be $1,000 or an integral multiple thereof; and
- that the new notes are to be purchased by us pursuant to the applicable provisions of the new notes and the indenture.

If the new notes are not in certificated form, your repurchase notice must comply with appropriate DTC procedures.

You may withdraw any repurchase notice (in whole or in part) by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the fundamental change repurchase date. The notice of withdrawal shall state:

- the principal amount of the withdrawn new notes;
- if certificated new notes have been issued, the certificate numbers of the withdrawn new notes; and
- the principal amount, if any, that remains subject to the repurchase notice.

If the new notes are not in certificated form, the withdrawal notice must comply with appropriate DTC procedures.

We are required to repurchase the new notes no less than 20 and no more than 35 days after the date of our notice of the occurrence of the relevant fundamental change, subject to extension to comply with applicable law. To receive payment of the repurchase price, you must either effect book-entry transfer or deliver the new notes, together with necessary endorsements, to the office of the paying agent after delivery of the repurchase notice. Holders will receive payment of the fundamental change repurchase price promptly following the later of the fundamental change repurchase date or the time of book-entry transfer or the delivery of the new notes. If the paying agent holds money or securities sufficient to pay the fundamental change repurchase price of the new notes on the business day following the fundamental change repurchase date, then:

- the new notes will cease to be outstanding and interest, if any, will cease to accrue (whether or not book-entry transfer of the new notes is made or whether or not the new note is delivered to the paying agent); and
- all other rights of the holder will terminate (other than the right to receive the fundamental change repurchase price upon delivery or transfer of the new notes).

We will under the indenture:

- comply with the provisions of Rule 13e-4 and Rule 14e-1, if applicable, under the Exchange Act;
- file a Schedule TO or any successor or similar schedule, if required, under the Exchange Act; and
- otherwise comply with all federal and state securities laws in connection with any offer by us to purchase the new notes upon a fundamental change.

The rights of the holders to require us to repurchase their new notes upon a fundamental change could discourage a potential acquirer of us. The fundamental change repurchase feature, however, is not the result of management's knowledge of any specific effort to accumulate shares of our common stock, or to obtain control of us by any means, or part of a plan by management to adopt a series of anti-takeover provisions. Instead, the fundamental change repurchase feature is a standard term contained in other offerings of debt securities similar to the new notes.

The term fundamental change is limited to specified transactions and may not include other events that might adversely affect our financial condition. In addition, the requirement, if applicable, that we offer to repurchase the new notes upon a fundamental change may not protect holders in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

The definition of fundamental change includes a phrase relating to the conveyance, transfer, sale, lease or disposition of "all or substantially all" of our consolidated assets. There is no precise, established definition of the phrase "substantially all" under applicable law. Accordingly, the ability of a holder of the new notes to require us to repurchase its new notes as a result of the conveyance, transfer, sale, lease or other disposition of less than all of our assets may be uncertain.

The terms of future senior debt instruments could prohibit us from repurchasing any new notes, or provide that certain fundamental changes would constitute a default thereunder. If a fundamental change occurs at a time when we are prohibited from repurchasing new notes, we could seek the consent of the holders of the applicable senior debt to the repurchase of new notes or could attempt to refinance the applicable senior debt that contains such prohibitions. If we do not obtain such a consent or repay such senior debt, we will remain prohibited from repurchasing any new notes. In such case, our failure to purchase tendered new notes would constitute an event of default under the indenture, which may, in turn, constitute a default under such senior debt.

Our ability to repurchase the new notes may be limited by restrictions on our ability to obtain funds for such repurchase through dividends, loans or other distributions from our subsidiaries and the terms of our then existing borrowing agreements. We cannot assure you that we would have the financial resources, or would be able to arrange financing, to pay the repurchase price in cash for all the new notes that might be delivered by

holders of new notes seeking to exercise the repurchase right. In addition, we have incurred, and may in the future incur, other indebtedness with similar fundamental change provisions permitting holders to accelerate or to require us to repurchase our indebtedness upon the occurrence of similar events or on some specific dates.

Adjustment to Conversion Rate Upon a Fundamental Change

If and only to the extent that you convert your new notes in connection with a fundamental change described in clause (2) or (3) of the definition of fundamental change (and subject to our rights described under "—Public Acquirer Change of Control"), we will increase the conversion rate for the new notes surrendered for conversion by a number of additional shares (the additional shares) as described below; provided, however, that no increase will be made in the case of a fundamental change if at least 95% of the consideration paid for our common stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in such fundamental change transaction consists of shares of capital stock (or American Depositary Shares representing such capital stock) traded on the NASDAQ Global Select Market, the NASDAQ Global Market, the New York Stock Exchange or another U.S. national securities exchange or quoted on an established automated over-the-counter trading market in the United States (or that will be so traded or quoted immediately following the transaction) and as a result of such transaction or transactions the new notes become convertible into the consideration paid for our common stock (consisting, as described above, of at least 95% eligible capital stock (or American Depositary Shares representing such capital stock)), subject to the provisions for settlement of up to $1,000 of the settlement amount due on conversion of any new note in cash that are described above under "—Settlement Upon Conversion."

The number of additional shares will be determined by reference to the table below, based on the effective date of the fundamental change and the price (the stock price) paid per share of our common stock in such fundamental change transaction. If holders of our common stock receive only cash in such fundamental change transaction, the stock price will be the cash amount paid per share. Otherwise, the stock price will be the average of the last closing prices of our common stock on each of the five consecutive trading days prior to but not including the effective date of such fundamental change.

A conversion of new notes by a holder will be deemed for these purposes to be "in connection with" a fundamental change if the conversion notice is received by the conversion agent on or subsequent to the effective date of the fundamental change and prior to the 45th day following the effective date of the fundamental change (or, if earlier and to the extent applicable, the close of business on the second business day immediately preceding the fundamental change repurchase date (as specified in the repurchase notice described under "—Repurchase at Option of the Holder Upon a Fundamental Change")).

The stock prices set forth in the first row of the following table (i.e., the column headers) will be adjusted in connection with our anticipated December 15, 2011, dividend payment and as of any date on which the conversion rate of the new notes is otherwise adjusted, as described above under "—Anti-Dilution Adjustments." The adjusted stock prices will equal the stock prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The number of additional shares will be adjusted in the same manner and for the same events as the conversion rate as set forth under "—Anti-Dilution Adjustments," including in connection with our anticipated December 15, 2011, dividend payment.

The following table sets forth the hypothetical stock price and number of additional shares issuable per $1,000 initial principal amount of new notes:

Effective Date of Fundamental Change	Stock Price								
	$5.281	$6.208	$7.134	$8.061	$8.988	$9.914	$10.841	$11.767	$12.694
February 15, 2011	37.6313	21.8100	13.9624	10.3246	7.7439	6.1019	4.6276	3.6721	2.7775
February 15, 2012	37.6313	18.0278	9.7171	7.1853	5.3893	4.2467	3.2205	2.5556	1.9330
February 15, 2013	37.6313	14.2457	5.4718	4.0462	3.0348	2.3913	1.8135	1.4391	1.0884
February 15, 2014	37.6313	10.4636	1.2265	0.9069	0.6803	0.5360	0.4065	0.3226	0.2440
February 15, 2015	37.6313	9.3709	—	—	—	—	—	—	—

The stock prices and additional share amounts set forth above are based upon the corresponding figures in the indenture applicable to the old notes.

The exact stock price and conversion dates may not be set forth on the table; in which case, if the stock price is:

- between two stock price amounts on the table or the effective date of the Fundamental Change is between two dates on 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 price amounts and the two dates, as applicable, based on a 365-day year;
- more than $12.69 per share (subject to adjustment), no additional shares will be issued upon conversion; and
- less than $5.28 per share (subject to adjustment), no additional shares will be issued upon conversion.

Despite the foregoing, in no event will the total number of shares of common stock issuable upon conversion exceed 189.3473 per $1,000 principal amount of new notes, subject to adjustment in the same manner and for the same events as the conversion rate as set forth under "—Anti-Dilution Adjustments."

Public Acquirer Change of Control

Notwithstanding the foregoing, in the case of a public acquirer change of control (as defined below), we may, in lieu of permitting a repurchase at the holder's option or adjusting the conversion rate as described under "—Adjustment to Conversion Rate Upon a Fundamental Change," elect to adjust the conversion rate and the related conversion obligation such that from and after the effective date of such public acquirer change of control, holders of the new notes will be entitled to convert their new notes into cash and, if applicable, a number of shares of public acquirer common stock (as defined below) by adjusting the conversion rate in effect immediately before the public acquirer change of control by multiplying the conversion rate by a fraction:

- the numerator of which will be (i) in the case of a share exchange, consolidation, merger or binding share exchange, pursuant to which our common stock is converted into cash, securities or other property, the value of all cash and any other consideration (as determined by our board of directors) paid or payable per share of common stock or (ii) in the case of any other public acquirer change of control, the average of the closing price of our common stock for the five consecutive trading days prior to but excluding the effective date of such public acquirer change of control, and
- the denominator of which will be the average of the closing prices of the public acquirer common stock for the five consecutive trading days prior to but excluding the effective date of such public acquirer change of control.

If we elect to adjust the conversion rate and conversion obligation as described in this section, we must send holders of the new notes a public acquisition notice within fifteen trading days prior to but not including the expected effective date of the fundamental change that is also a public acquirer change of control, as described

under "—Repurchase at Option of the Holder Upon a Fundamental Change." If we elect to adjust the conversion rate and conversion obligation in connection with a public acquirer change of control, holders of the new notes will not have the right to require us to repurchase their new notes as described under "—Repurchase at Option of the Holder Upon a Fundamental Change" or to convert at an adjusted conversion rate as described under "—Adjustment to Conversion Rate Upon a Fundamental Change" in connection with the fundamental change that is also a public acquirer change of control. Notwithstanding the foregoing, we will not provide notice if the expected effective date of a public acquirer change of control is on or after the 42nd scheduled trading day prior to the final maturity date and, whether or not such notice is provided, no election to adjust the Applicable Conversion Rate and related conversion obligation as described in this paragraph shall be effective if the actual effective date of a public acquirer change of control is on or after the 42nd scheduled trading day prior to the final maturity date. A "public acquirer change of control" means any event constituting a fundamental change that would otherwise give holders the right to cause us to repurchase the new notes as described above under "—Repurchase at Option of the Holder Upon a Fundamental Change," and the acquirer has a class of common stock (or American Depository Shares representing such common stock) traded on a U.S. national securities exchange or quoted on an established automated over-the-counter-trading market in the United States or which will be so traded or quoted when issued or exchanged in connection with such fundamental change (the public acquirer common stock). If an acquirer does not itself have a class of common stock (or American Depository Shares representing such common stock) satisfying the foregoing requirement, it will be deemed to have "public acquirer common stock" if either (1) a direct or indirect majority-owned subsidiary of acquirer or (2) a corporation that directly or indirectly owns at least a majority of the acquirer, has a class of common stock (or American Depository Shares representing such common stock) satisfying the foregoing requirement; in such case, all references to public acquirer common stock shall refer to such class of common stock. "Majority-owned" for these purposes means having "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the total voting power of all shares of the respective entity's capital stock that are entitled to vote generally in the election of directors.

Events of Default

Each of the following constitutes an event of default under the indenture:

(1) we fail to pay principal or premium, if any, on any new notes when due or fail to comply with our obligation to convert the new notes in accordance with the indenture upon exercise of a Holder's right as described under "—Conversion of Notes;"

(2) we fail to pay any interest on any new note when due if such failure continues for 30 days;

(3) we fail to perform any other agreement required of us in the indenture if such failure continues for 60 days after notice is given in accordance with the indenture;

(4) we fail to pay the purchase price of any new note when due;

(5) we fail to provide timely notice of a fundamental change, if required by the indenture, if such failure continues for 30 days after notice of our failure to do so;

(6) any indebtedness for money borrowed by us or one of our significant subsidiaries (all or substantially all of the outstanding voting securities of which are owned, directly, or indirectly, by us) in an aggregate outstanding principal amount in excess of $25 million is not paid at final maturity or upon acceleration and such indebtedness is not discharged, or such acceleration is not cured or rescinded, within 30 days after written notice as provided in the indenture; and

(7) certain events in bankruptcy, insolvency or reorganization of us or any of our significant subsidiaries.

If an event of default, other than an event of default described in clause (7) above with respect to us, occurs and is continuing, either the trustee or the holders of at least 25% in aggregate principal amount of the outstanding new notes may declare the principal amount of the new notes to be due and payable immediately. If an event of default described in clause (7) above occurs with respect to us, the principal amount of the new notes will automatically become immediately due and payable.

After any such acceleration, but before a conflicting judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of the new notes may, under certain circumstances, rescind and annul such acceleration if all events of default, other than the non-payment of accelerated principal, have been cured or waived.

Notwithstanding the foregoing, we may, at our option, elect that the sole remedy for an event of default relating to our failure to comply with our obligation to file reports with the SEC in accordance with "—Reports" below (a Filing Failure) shall for the first one hundred eighty (180) days after the occurrence of such event of default (the Extension Period) consist exclusively of the right of holders to receive a fee (the Extension Fee) accruing at the rate of 1.00% per annum of the aggregate principal amount of new notes that are then outstanding, on the terms and in the manner described below. Any Extension Fee shall be paid at the same times and in the same manner as interest shall be paid in accordance with the indenture. The Extension Fee shall accrue on the new notes that are then outstanding from the first day of the event of default to, but excluding, the earlier of (i) the date on which we have made the filings initially giving rise to the Filing Failure and (ii) the date that is one hundred eighty (180) days after the occurrence of the event of default. We must give written notice of our election to pay the Extension Fee prior to the occurrence of the event of default. On the 181st day after such event of default (if the event of default relating to the reporting obligations is not cured or waived prior to such 181st day), the new notes shall be subject to acceleration as provided in above. This right shall not affect the rights of holders of new notes if any other event of default occurs under the indenture. If we do not pay the Extension Fee on a timely basis in accordance with this provision, the new notes shall be subject to acceleration as provided above. Notwithstanding the foregoing, if an additional Filing Failure occurs during an Extension Period, the 2011 notes will be subject to acceleration for such additional Filing Failure at the end of the Extension Period for the first Filing Failure to the extent it has not been remedied before the end of the first Extension Period, provided, however, that to the extent we have agreed to pay an additional Extension Fee in accordance with the terms of this provision as to such additional Filing Failure, and the first Filing Failure has been remedied before the end of the first Extension Period, the new notes will not be subject to acceleration until the end of the additional Extension Period as to such additional Filing Failure. For the avoidance of doubt, notwithstanding the occurrence of multiple overlapping Filing Failures, the aggregate amount of all Extension Fees paid in a year shall not exceed 1.00% per annum of the aggregate principal amount of the new notes that are outstanding as of the beginning of such year.

Subject to the trustee's duties in the case of an event of default, the trustee will not be obligated to exercise any of its rights or powers at the request of the holders, unless the holders have offered to the trustee satisfactory indemnity. Subject to the indenture, applicable law and the trustee's right to indemnification, the holders of a majority in aggregate principal amount of the outstanding new notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee with respect to the new notes.

No holder has any right to institute any proceeding under the indenture, or for the appointment of a receiver or a trustee, or for any other remedy under the indenture unless:

- the holder has previously given the trustee written notice of a continuing event of default;
- the holders of at least 25% in aggregate principal amount of the new notes then outstanding have made a written request to pursue the remedy;
- such holder or holders have offered reasonable indemnity to the trustee against any loss, liability or expense; and

- the trustee has failed to institute such proceeding within 60 days after such notice, request and offer, and has not received from the holders of a majority in aggregate principal amount of the new notes then outstanding a direction inconsistent with such request within 60 days after such notice, request and offer.

However, the above limitations do not apply to a suit instituted by a holder for the enforcement of payment of the principal of or any premium or interest on any new note on or after the applicable due date or the right to convert the new notes in accordance with the indenture.

Generally, the holders of a majority of the aggregate principal amount of outstanding new notes may waive any default or event of default unless:

- we fail to pay principal, premium or interest on any new note when due;
- we fail to convert any new note in accordance with the provisions of the new note and the indenture; or
- we fail to comply with any of the provisions of the indenture that would require the consent of the holder of each outstanding new note affected.

We are required to furnish to the trustee, on an annual basis, a statement by our officers as to whether or not PDL, to the officers' knowledge, is in default in the performance or observance of any of the terms, provisions and conditions of the indenture, specifying any known defaults.

Modification and Waiver

We and the trustee may amend or supplement the indenture or the new notes with the consent of the holders of a majority in aggregate principal amount of the outstanding new notes. In addition, the holders of a majority in aggregate principal amount of the outstanding new notes may waive our compliance in any instance with any provision of the indenture without notice to the note holders. However, no amendment, supplement or waiver may be made without the consent of the holder of each outstanding new note if such amendment, supplement or waiver would:

- change the stated maturity of the principal of, or interest on, any new note;
- reduce the principal amount of or any premium or interest on any new note;
- reduce the amount of principal payable upon acceleration of the maturity of any new note;
- change the place or currency of payment of principal of, or any premium or interest on, any new note;
- impair the right to institute suit for the enforcement of any payment on, or with respect to, any new note;
- modify the provisions with respect to the purchase right of the holders upon a fundamental change in a manner adverse to holders;
- adversely affect the right of holders to convert new notes other than as provided in the indenture;
- reduce the percentage in principal amount of outstanding new notes required for modification or amendment of the indenture;
- reduce the percentage in principal amount of outstanding new notes necessary for waiver of compliance with certain provisions of the indenture or for waiver of certain defaults; or
- modify provisions with respect to modification and waiver (including waiver of events of default), except to increase the percentage required for modification or waiver or to provide for consent of each affected holder of new notes.

We and the trustee may amend or supplement the indenture or the new notes without notice to, or the consent of, the note holders to, among other things, cure any ambiguity, defect or inconsistency or make any other change that does not adversely affect the rights of any note holder.

Consolidation, Merger and Sale of Assets

We may not consolidate with or merge into any person in a transaction in which we are not the surviving person or convey, transfer or lease our properties and assets substantially as an entirety to any successor person, unless:

- (i) the successor person, if any, is a corporation organized and existing under the laws of the United States, any state of the United States, or the District of Columbia, and (ii) such person assumes our obligations on the new notes and under the indenture;
- immediately after giving effect to the transaction, no default or event of default shall have occurred and be continuing; and
- other conditions specified in the indenture are met.

Limitations on Issuances of Common Stock

Unless we have received the stockholder approval described below (which we shall have no obligation to seek), we will not issue any shares of common stock pursuant to the indenture if, after giving effect to such issuance, the aggregate number of such shares of common stock (after adjusting any previous issuances for any subsequent events that would give rise to an adjustment to the applicable conversion rate under "—Anti-Dilution Adjustments") would exceed the "Maximum Shares" as calculated at the time of the proposed issuance by multiplying (x) 0.1999 by (y) the number of shares of common stock outstanding on the date of the original issuance of the new notes, as appropriately adjusted for any subsequent event that would give rise to a change in the conversion rate as described under "—Anti-Dilution Adjustments."

In no event will we take any action that would require adjustment to the applicable conversion rate, nor will we adjust the applicable conversion rate, if such adjustment would require us to issue, upon conversion of the new notes, a number of shares of our common stock that would require us to obtain prior stockholder approval under the rules and regulations of the NASDAQ Global Select Market, and, if applicable, the rules of the exchange or quotation system on which our common stock is then traded, without obtaining such prior stockholder approval.

The restrictions described above shall automatically terminate if and when our stockholders duly approve the issuance of shares of common stock under the indenture in excess of the Maximum Shares for purposes of NASDAQ Listing Rule 5635(d) or any successor rule or any rule of any other principal exchange on which our common stock is then traded.

For the avoidance of doubt, the applicable conversion rate for purposes of determining the "Maximum Shares" issuable pursuant to this section shall be determined as set forth under "—Anti-Dilution Adjustments," without giving effect to any additional shares that would be added to the conversion rate as set forth under "—Adjustment to Conversion Rate Upon a Fundamental Change."

Calculations in Respect of Notes

Except as otherwise provided above, we will be responsible for making all calculations called for under the indenture and the new notes. These calculations include, but are not limited to, determinations of the closing prices of our common stock, accrued interest payable on the notes and the conversion rate. We will make all these calculations in good faith and, absent manifest error, our calculations will be final and binding on holders of new notes. We will provide a schedule of our calculations to each of the trustee and the conversion agent, and each of the trustee and conversion agent is entitled to rely conclusively upon the accuracy of our calculations without independent verification. The trustee will forward our calculations to any holder upon the request of that holder. Neither the trustee nor the conversion agent shall be responsible for making any calculations for determining amounts to be paid or for monitoring any stock price.

Reports

We shall file all reports and other information and documents which we are required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, and within 15 days after we file them with the SEC, we shall file copies of all such reports, information and other documents with the trustee. It is agreed that the filing of such reports via the SEC's EDGAR system shall constitute "filing" of such reports with the trustee for purposes of this provision.

Satisfaction and Discharge

We may discharge our obligations under the indenture while new notes remain outstanding if (1) all outstanding new notes have or will become due and payable at their scheduled maturity within one year or (2) all outstanding new notes are scheduled for redemption within one year, and, in either case, we have deposited with the trustee or a paying agent an amount sufficient to pay and discharge all outstanding new notes on the date of their scheduled maturity or the scheduled date of redemption; provided, however, that the foregoing shall not discharge our obligation to effect conversion, registration of transfer or exchange of securities in accordance with the terms of the indenture.

Transfer and Exchange

We have appointed the trustee as the security registrar, paying agent and conversion agent, acting through its corporate trust office. We reserve the right to:

- vary or terminate the appointment of the security registrar, paying agent or conversion agent;
- act as the paying agent;
- appoint additional paying agents or conversion agents; or
- approve any change in the office through which any security registrar or any paying agent or conversion agent acts.

Purchase and Cancellation

All new notes surrendered for payment, redemption, registration of transfer or exchange or conversion shall, if surrendered to any person other than the trustee, be delivered to the trustee. All new notes delivered to the trustee shall be cancelled promptly by the trustee. No new notes shall be authenticated in exchange for any new notes cancelled as provided in the indenture.

We may, to the extent permitted by law, purchase new notes in the open market or by tender offer at any price or by private agreement. Any new notes purchased by us may, to the extent permitted by law, be reissued or resold or may, at our option, be surrendered to the trustee for cancellation. Any new notes surrendered for cancellation may not be reissued or resold and will be promptly cancelled. Any new notes held by us or one of our subsidiaries shall be disregarded for voting purposes in connection with any notice, waiver, consent or direction requiring the vote or concurrence of note holders.

Replacement of Notes

We will replace mutilated, destroyed, stolen or lost new notes at your expense upon delivery to the trustee of the mutilated new notes, or evidence of the loss, theft or destruction of the new notes satisfactory to us and the trustee. In the case of a lost, stolen or destroyed new note, indemnity satisfactory to the trustee and us may be required at the expense of the holder of such new note before a replacement new note will be issued.

No Recourse against Others

A director, officer, employee or stockholder, as such, of us shall not have any liability for any of our obligations under the new notes or the indenture nor for any claim based on, in respect of or by reason of such

obligations or their creation. The holder of any new note by accepting the new note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the new notes.

Governing Law

The indenture and the new notes are governed by, and will be construed in accordance with, the laws of the State of New York.

Concerning the Trustee

The Bank of New York Mellon Trust Company, N. A. has agreed to serve as the trustee under the indenture (see "Tender and Paying Agent"). The trustee is permitted to deal with us and any of our affiliates with the same rights as if it were not trustee. However, under the Trust Indenture Act, if the trustee acquires any conflicting interest and there exists a default with respect to the new notes, the trustee must eliminate such conflict or resign.

The holders of a majority in principal amount of all outstanding new notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy or power available to the trustee. However, any such direction may not conflict with any law or the indenture, may not be unduly prejudicial to the rights of another holder or the trustee and may not involve the trustee in personal liability.

Book-Entry, Delivery and Form

The new notes initially will be issued in the form of one or more global securities. The global security will be deposited with the trustee as custodian for DTC and registered in the name of a nominee of DTC. Except as set forth below, the global security may be transferred, in whole and not in part, only to DTC or another nominee of DTC. You will hold your beneficial interests in the global security directly through DTC if you have an account with DTC or indirectly through organizations that have accounts with DTC. Notes in definitive certificated form (called certificated securities) will be issued only in certain limited circumstances described below.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York;
- a member of the Federal Reserve System;
- a "clearing corporation" within the meaning of the New York Uniform Commercial Code; and
- a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act.

DTC was created to hold securities of institutions that have accounts with DTC (called participants) and to facilitate the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, which may include the initial purchasers, banks, trust companies, clearing corporations and certain other organizations. Access to DTC's book-entry system is also available to others such as banks, brokers, dealers and trust companies (called, the indirect participants) that clear through or maintain a custodial relationship with a participant, whether directly or indirectly.

We expect that pursuant to procedures established by DTC upon the deposit of the global security with DTC, DTC will credit, on its book-entry registration and transfer system, the principal amount of new notes represented by such global security to the accounts of participants. The accounts to be credited shall be designated by the initial purchasers. Ownership of beneficial interests in the global security will be limited to participants or persons that may hold interests through participants. Ownership of beneficial interests in the

global security will be shown on, and the transfer of those beneficial interests will be effected only through, records maintained by DTC (with respect to participants' interests), the participants and the indirect participants. The laws of some jurisdictions may require that certain purchasers of securities take physical delivery of such securities in definitive form. These limits and laws may impair the ability to transfer or pledge beneficial interests in the global security.

Owners of beneficial interests in global securities who desire to convert their interests into common stock should contact their brokers or other participants or indirect participants through whom they hold such beneficial interests to obtain information on procedures, including proper forms and cut-off times, for submitting requests for conversion.

So long as DTC, or its nominee, is the registered owner or holder of a global security, DTC or its nominee, as the case may be, will be considered the sole owner or holder of the new notes represented by the global security for all purposes under the indenture and the new notes. In addition, no owner of a beneficial interest in a global security will be able to transfer that interest except in accordance with the applicable procedures of DTC. Except as set forth below, as an owner of a beneficial interest in the global security, you will not be entitled to have the new notes represented by the global security registered in your name, will not receive or be entitled to receive physical delivery of certificated securities and will not be considered to be the owner or holder of any new notes under the global security. We understand that under existing industry practice, if an owner of a beneficial interest in the global security desires to take any action that DTC, as the holder of the global security, is entitled to take, DTC would authorize the participants to take such action. Additionally, in such case, the participants would authorize beneficial owners owning through such participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

We will make payments of principal of, premium, if any, and interest (including any additional interest) on the new notes represented by the global security registered in the name of and held by DTC or its nominee to DTC or its nominee, as the case may be, as the registered owner and holder of the global security. Neither we, the trustee nor any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in the global security or for maintaining, supervising or reviewing any records relating to such beneficial interests.

We expect that DTC or its nominee, upon receipt of any payment of principal of, premium, if any, or interest (including additional interest) on the global security, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the global security as shown on the records of DTC or its nominee. We also expect that payments by participants or indirect participants to owners of beneficial interests in the global security held through such participants or indirect participants will be governed by standing instructions and customary practices and will be the responsibility of such participants or indirect participants. We will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial interests in the global security for any new note or for maintaining, supervising or reviewing any records relating to such beneficial interests or for any other aspect of the relationship between DTC and its participants or indirect participants or the relationship between such participants or indirect participants and the owners of beneficial interests in the global security owning through such participants.

Transfers between participants in DTC will be effected in the ordinary way in accordance with DTC rules and will be settled in same-day funds.

DTC has advised us that it will take any action permitted to be taken by a holder of new notes only at the direction of one or more participants to whose account the DTC interests in the global security is credited and only in respect of such portion of the aggregate principal amount of new notes as to which such participant or participants has or have given such direction. However, if DTC notifies us that it is unwilling to be a depositary for the global security or ceases to be a clearing agency or there is an event of default under the new notes, DTC

will exchange the global security for certificated securities which it will distribute to its participants and which will be legended, if required, as set forth under the heading “Notice to Investors.” Although DTC is expected to follow the foregoing procedures in order to facilitate transfers of interests in the global security among participants of DTC, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. Neither we nor the trustee will have any responsibility, or liability for the performance by DTC or the participants or indirect participants of their respective obligations under the rules and procedures governing their respective operations.

DESCRIPTION OF COMMON STOCK

This summary does not purport to be complete and is subject to, and qualified in its entirety by, the provisions of our certificate of incorporation, as amended, and all applicable provisions of Delaware law.

General

We are authorized to issue 250,000,000 shares of common stock, $0.01 par value, and 10,000,000 shares of preferred stock, $0.01 par value.

Common Stock

Holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. The vote of the holders of a majority of the stock represented at a meeting at which a quorum is present is generally required to take stockholder action, unless a greater vote is required by law. The holders are not entitled to cumulative voting in the election of directors. Directors are elected by plurality vote.

Holders of common stock have no preemptive rights. They are entitled to such dividends as may be declared by our board of directors out of funds legally available for such purpose. The common stock is not entitled to any sinking fund, redemption or conversion provisions. On our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in our net assets remaining after the payment of all creditors and liquidation preferences of preferred stock, if any. The outstanding shares of common stock are duly authorized, validly issued, fully paid and nonassessable.

The transfer agent and registrar for the common stock is BNY Mellon Shareowner Services.

The following provisions in our charter or bylaws may make a takeover of our company more difficult:

- a provision in our charter that our board of directors will be a classified board pursuant to which one-third of our directors will be elected each year to serve for a three-year term;
- the ability of our board of directors to designate the terms of and issue new series of preferred stock;
- a bylaw limiting the persons who may call special meetings of stockholders to our board of directors; and
- bylaws establishing an advance written notice procedure for stockholders seeking to nominate candidates for election to the board of directors or for proposing matters which can be acted upon at stockholders' meetings.

These provisions may delay stockholder actions with respect to business combinations and the election of new members to our board of directors. As such, the provisions could discourage open market purchases of our common stock because a stockholder who desires to participate in a business combination or elect a new director may consider them disadvantageous. Additionally, the issuance of preferred stock could delay or prevent a change of control or other corporate action.

Delaware Anti-Takeover Statute. As a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. In general, Section 203 prevents an "interested stockholder" from engaging in a "business combination" with us for three years following the date that person became an interested stockholder, unless:

- before that person became an interested stockholder, our board of directors approved the transaction in which the interested stockholder became an interested stockholder or approved the business combination;

- upon completion of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding stock held by persons who are both directors and officers of our corporation or by certain employee stock plans; or
- on or following the date on which that person became an interested stockholder, the business combination is approved by our board of directors and authorized at a meeting of stockholders by the affirmative vote of the holders of at least 66 2/3% of our outstanding voting stock excluding shares held by the interested stockholder.

An “interested stockholder” is generally a person owning 15% or more of our outstanding voting stock. A “business combination” includes mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder.

Transfer Agent

The transfer agent for our common stock is BNY Mellon Shareowner Services. Their address is 480 Washington Boulevard, Jersey City, New Jersey 07310, Attention: Corporate Trust Administration. Their telephone number is (877) 424-4271.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion summarizes material U.S. federal income tax consequences of the exchange of old notes for new notes and the note exchange payment pursuant to the exchange offer and of the ownership and disposition of the new notes and common stock into which a new note is convertible (old notes and new notes are sometimes referred to collectively as the convertible notes). The discussion is based on the Internal Revenue Code of 1986, as amended (the Code), and regulations, rulings and judicial decisions thereunder as of the date hereof, all of which are subject to change or differing interpretations at any time with possible retroactive effect. The discussion does not describe any tax consequences arising out of the laws of any local, state, or foreign jurisdictions and does not consider any aspects of U.S. federal tax law other than income taxation. The discussion does not deal with special classes of beneficial owners of the convertible notes, such as dealers or traders in securities, investors that elect mark to market accounting, banks, financial institutions, insurance companies, tax-exempt organizations, partnerships, grantor trusts, or other pass-through entities (or entities treated as such for tax purposes), U.S. expatriates, persons holding the convertible notes as a part of a hedging, integration, conversion or constructive sale transaction or a straddle, U.S. Holders (as defined below) subject to the alternative minimum tax, or U.S. Holders having a functional currency other than the U.S. Dollar. This discussion assumes that the convertible notes are held as "capital assets" within the meaning of Section 1221 of the Code. We have not sought any ruling from the IRS with respect to the statements made and the conclusions reached in this discussion, and there can be no assurance that the IRS will agree with such statements and conclusions or that a court will not sustain any challenge by the IRS in the event of litigation. For purposes of this discussion, a "U.S. Holder" is a beneficial owner of convertible notes that is:

- an individual citizen or resident of the United States for U.S. federal income tax purposes;
- a corporation, including any entity treated as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof, or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust, if its administration is subject to the primary supervision of a U.S. court and one or more U.S. persons within the meaning of the Code have the authority to control all substantial decisions of the trust, or if it has made a valid election under applicable Treasury regulations to be treated as a U.S. person.

A "Non-U.S. Holder" of convertible notes means a beneficial owner of convertible notes that is an individual, a corporation, an estate or a trust that is not a U.S. Holder.

If a partnership or other flow-through entity holds the convertible notes, the tax treatment of a partner in the partnership or beneficial owner of the flow-through entity generally will depend upon the status of the partner / owner and the activities of the partnership or flow-through entity. A partner of a partnership or a beneficial owner of a flow-through entity holding convertible notes should consult its own tax advisor regarding the U.S. federal income tax consequences of the exchange offer.

This summary of certain U.S. federal income tax consequences is for general information only and is not tax advice. U.S. Holders are urged to consult their tax advisors with respect to the application of the U.S. federal income tax laws to their particular situation as well as any tax consequences arising under the U.S. federal estate or gift tax rules or under the laws of any state, local, foreign or other taxing jurisdiction. The statements of U.S. federal income tax considerations set out below are based on the laws and regulations in force and interpretations thereof as of the date of this offering memorandum, and are subject to changes occurring after that date.

To ensure compliance with Internal Revenue Service Circular 230, you are hereby notified that the discussion of tax matters set forth in this offering memorandum was written in connection with the

preparation of exchange offer and was not intended or written to be used, and cannot be used by any prospective investor, for the purpose of avoiding tax-related penalties under federal, state, or local tax law. Each holder should seek advice based on its particular circumstances from an independent tax advisor.

Material Federal Income Tax Consequences of the Exchange Offer

Tax Characterization of the Exchange of the Old Notes for the New Notes

Generally, the exchange of an old debt instrument for a new debt instrument will be treated as an "exchange" for U.S. federal income tax purposes upon which gain or loss is realized if the exchange results in a "significant" modification of the terms of the old debt instrument within the meaning of the applicable U.S. Treasury Regulations (the Regulations). Under the Regulations, a modification is significant if, based on all of the facts and circumstances and taking into account all modifications of the debt instrument collectively, the legal rights or obligations that are altered and the degree to which they are altered are "economically significant."

Under the Regulations certain types of modifications are not significant modifications. The Regulations provide that a change in yield of a debt instrument is not a significant modification unless the yield of the modified instrument (determined by taking into account any payments made by the issuer to the holder as consideration for the modification) varies from the yield on the unmodified instrument (determined as of the date of the modification) by more than the greater of 25 basis points or 5 percent of the annual yield of the unmodified instrument. The Regulations provide that all modifications to a debt instrument (other than, *inter alia*, a significant change in yield) are considered collectively, so that a series of such modifications may be significant when considered together although each modification, if considered alone, would not be significant.

Although the law is subject to uncertainty and the matter is not free from doubt, we intend to take the position that the receipt of the note exchange payment and differences between the terms of the old notes and new notes should not cause a significant modification of the old notes under the Regulations and should not result in the treatment of the exchange of the old notes for the new notes as an "exchange" for U.S. federal income tax purposes. The receipt of the note exchange payment is not expected to result in a signification modification of the old notes under the Regulations because the increase in yield of a new note, compared to the yield on an old note is expected to be less than 25 basis points and less than five percent of the annual yield on the old note (computing yield for this purpose by treating the note exchange payment as part of the yield of the new note and otherwise in the manner prescribed by the Regulations). Moreover, the differences between the terms of the old notes and new notes are not expected to result in a significant modification of the old notes. The Company's position is based on an expectation that the value of a new note will not differ from the value of an old note for which it is exchanged, an expectation that no one or more of the changes in terms of a new note compared to an old note will be economically significant, and an expectation that the changes in the terms of the conversion feature of a new note compared to an old note will not affect the market yield of the new note. Based on such expectations, the Company will take the position that the exchange of an old note for a new note and the note exchange payment will not be treated as an "exchange" for U.S. federal income tax purposes. However, this position is subject to uncertainty because neither the Regulations nor any other legal authority provides sufficient guidance on whether changes similar to the changes to the terms of the old notes should be treated as a significant modification. Therefore, there can be no assurance that the IRS or a court will agree with this position.

Federal Income Tax Consequences of the Exchange Offer to U.S. Holders

Tax Treatment if the Exchange of the Old Notes for the New Notes and the Note Exchange Payment is Not Treated as an "Exchange" for Tax Purposes

If, consistent with the Company's position, the exchange of old notes for new notes is not treated as an "exchange" for U.S. federal income tax purposes, a U.S. Holder of the old notes will not recognize any income,

gain or loss in connection with the exchange except with respect to the note exchange payment received (as discussed below), and will have the same issue price, adjusted tax basis and holding period in the new notes after the exchange that such holder had in the old notes immediately before such exchange.

The tax treatment of the receipt of a note exchange payment by U.S. Holders is unclear because there are no authorities that directly address the treatment of this payment. Consistent with our position that the exchange does not result in a "significant modification" and therefore does not constitute an "exchange" for U.S. federal income tax purposes, we intend to take the position that the note exchange payment will be treated as a separate payment in the nature of a fee, which will constitute ordinary income to U.S. Holders in the full amount of the payment, without reduction by any portion of a U.S. Holder's basis in the old notes. Alternatively, the note exchange payment may be treated as a principal payment on the old note or may be treated as a payment of interest. Each U.S. Holder should consult its own tax advisor as to possible alternative treatment of the note exchange payment.

Tax Treatment if the Exchange of the Old Notes for the New Notes and the Note Exchange Payment is Treated as an "Exchange" for Federal Income Tax Purposes

If, contrary to our position, the exchange of an old note for a new note is treated as an "exchange" for federal income tax purposes, the tax consequences to a holder will vary depending on whether the exchange qualifies as a recapitalization for U.S. federal income tax purposes. The exchange would qualify as a recapitalization if the old notes and new notes are treated as "securities" for U.S. federal income tax purposes. The term security is not defined in the Code or the Regulations and has not been clearly defined by judicial decisions. The test as to whether a debt instrument is a security involves an overall evaluation of the nature of the debt instrument, the extent of the investor's proprietary interest in the issuer compared with the similarity of the debt instrument to a right to receive a cash payment and certain other considerations. One of the most significant factors considered in determining whether a particular debt instrument is a security is its original term. In general, debt instruments with an initial term of less than five years are not likely to be considered securities. However, in some circumstances debt instruments with less than a five-year term have been considered securities and the convertibility of a debt instrument into stock of the issuer may argue in favor of "security" treatment because of the holder's possible equity participation in the issuer.

If the old notes and new notes qualify as securities and the exchange is treated as a recapitalization, U.S. Holders would not recognize any gain or loss on the exchange, except that (i) a portion of the new notes may be allocated to the accrued but unpaid interest on the old notes (and the U.S. Holder may be required to recognize ordinary income equal to that amount) and (ii) the note exchange payment may either be treated as ordinary income (e.g., a separate fee or interest income) or as amount realized on the exchange and taxable to such U.S. Holder to the extent of any gain realized on the exchange. In addition, except for any portion of the new notes which may be allocated to such interest, a U.S. Holder should have the same adjusted tax basis in the new notes as in the old notes immediately prior to the deemed exchange, increased by gain, if any, recognized due to the receipt of the note exchange payment and decreased by the amount of the note exchange payment received (assuming, as discussed below, that the note exchange payment is treated as an amount realized in the deemed exchange, rather than ordinary income), and the holding period in the new notes should include the holding period in the old notes.

If the exchange fails to qualify as a tax-free recapitalization, the exchange would be a taxable transaction for U.S. federal income tax purposes. A U.S. Holder would therefore generally recognize gain or loss (subject to the wash sale rules) on the exchange of the old note in an amount equal to the difference between (1) the amount realized on the exchange and (2) the U.S. Holder's adjusted tax basis in the old note exchanged at the time of exchange. The amount realized on the exchange will include the issue price of the new notes (which will be equal to the trading price of the new notes if they are publicly traded within the meaning of the applicable Regulations or the stated principal amount of the new notes if neither the old notes or new notes are publicly traded within the meaning of the applicable Regulations) and the note exchange payment (assuming that such amount is not treated

as ordinary income (e.g., a separate fee or interest income)). The amount realized will not include any amount that is attributable to accrued and unpaid interest or any portion of the note exchange payment that is treated as ordinary income. Any gain or loss recognized upon the exchange of the old notes will be capital gain or loss (unless such gain is treated as ordinary income based on the application of the market discount rules) and will be long-term capital gain or loss if the U.S. Holder's holding period in the old notes exceeded one year at the time of sale. Non-corporate taxpayers are generally subject to reduced rates of U.S. federal income taxation on net long-term capital gains. The deductibility of capital losses is subject to limitations.

If there is an "exchange" of the old notes for the new notes for U.S. federal income tax purposes (and regardless of whether the exchange is treated as a recapitalization) and, if the "issue price" of the new notes is determined to be less than the "stated redemption price at maturity" by more than a statutory *de minimis* amount, then the new notes would be treated as having been issued with original issue discount (OID) for U.S. federal income tax purposes. In addition, if the issue price of a new note exceeds its stated principal amount, the excess would constitute amortizable bond premium. Holders should consult their own tax advisors regarding the potential tax consequences of a deemed exchange, including any tax consequences arising if the new notes held by a holder are considered to have OID, acquisition premium, bond premium, or market discount.

Federal Income Tax Consequences of the Exchange Offer to U.S. Non-U.S. Holders

The characterization of an exchange of old notes for new notes is the same as the characterization of such exchange for U.S. Holders, with the following two exceptions. To the extent any gain is required to be recognized on the exchange, a Non-U.S. Holder generally would be subject to the rules under the heading "Material Federal Income Tax Consequences to Non-U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock—Sale, Exchange, Certain Redemptions or other Taxable Dispositions of the New Notes or Common Stock" below. Because of the uncertainty in the law as to the U.S. federal income tax treatment of the note exchange payment, U.S. federal income tax at the rate of 30% will be withheld from the note exchange payment that is paid to a Non-U.S. Holder unless:

- the Non-U.S. Holder is engaged in the conduct of a trade or business in the United States to which the receipt of the note exchange payment is effectively connected and provides a properly executed Form W-8ECI (or successor form); or
- a tax treaty between the United States and the country of residence of the Non-U.S. Holder eliminates or reduces the applicable withholding rate for "Other Income" and such Non-U.S. Holder provides a properly executed Form W-8BEN (or successor form).

Non-U.S. Holders should consult their own tax advisors regarding alternative treatments of the note exchange payment and the availability of a refund of any U.S. withholding tax.

Each U.S. and Non-U.S. Holder of the convertible notes is urged to consult its tax adviser with respect to the U.S. federal income tax consequences if the exchange of an old note for a new note is treated as a "significant modification" of the terms of the old note and thus an "exchange" of the old note for the new note for U.S. federal income tax purposes and the potential treatment of such exchange as a recapitalization. The discussion that follows assumes that an exchange of old notes for new notes pursuant to the exchange offer is not a significant modification or an "exchange" for U.S. federal income tax purposes.

Material Federal Income Tax Consequences to U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock

Treatment of Stated Interest

Stated interest on the new notes will be treated as "qualified stated interest" (i.e., stated interest that is unconditionally payable at least annually at a single fixed rate over the entire term of the new notes) and will be

taxable to U.S. Holders as ordinary interest income as the interest accrues or is paid in accordance with the holder's regular method of tax accounting. This assumes that a U.S. Holder has not made an election to treat stated interest on the new notes as OID, as discussed below.

Original Issue Discount

A person that has acquired a note may be considered to have acquired a note with OID if the issue price of the note is less than its stated principal amount (by more than a *de minimis* amount). The "issue price" of a note issued for money generally is the first price at which a substantial amount of the "issue" of such notes is sold to the public for money (excluding sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The issue price of a note issued in exchange for another note would be equal to the trading price of newly issued notes if such notes were publicly traded within the meaning of the applicable Regulations. The old notes were issued with OID and therefore new notes issued in exchange for old notes will have OID.

A holder (whether a cash or accrual method taxpayer) is required to include in gross income all OID as it accrues on a constant yield to maturity basis, before the receipt of cash payments attributable to this income. The amount of OID includible in gross income for a taxable year will be the sum of the daily portions of OID with respect to a note for each day during that taxable year on which the holder holds the note. The daily portion is determined by allocating to each day in an "accrual period" a pro rata portion of the OID allocable to that accrual period. The "accrual period" with respect to a note may be of any length selected by the holder and may vary in length over the term of the note as long as (i) no accrual period is longer than one year and (ii) each scheduled payment of interest or principal on the note occurs on either the final or first day of an accrual period. The OID allocable to any accrual period will equal (a) the product of the "adjusted issue price" of the note as of the beginning of such period and the note's yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period) less (b) the qualified stated interest allocable to that accrual period. The "adjusted issue price" of a note as of the beginning of any accrual period will equal its issue price, increased by previously accrued OID includible in income by the U.S. Holder, and decreased by previous payments on the note that were not qualified stated interest payments.

A holder will not be required to recognize any additional income upon the receipt of any payment on a note that is attributable to previously accrued OID (if any).

Election to Treat All Interest as Original Issue Discount

A holder may elect to include in gross income all interest that accrues on a note using the constant-yield method described above under " –Original Issue Discount," with certain modifications. For purposes of this election, interest includes stated interest and OID. This election generally applies only to a note with respect to which it is made and may not be revoked without the consent of the IRS. U.S. Holders should consult their tax advisors concerning the consequences of this election.

Additional Payments

We may be required to pay additional interest to holders of the new notes in certain circumstances described above under the heading "Description of New Notes—Events of Default." We intend to take the position that the likelihood of paying additional interest is remote and therefore we intend to take the position (and this discussion assumes) that the new notes will not be treated as contingent payment debt instruments. Assuming our position is respected, a U.S. Holder would be required to include in income such additional ordinary interest income at the time it accrues or is received in accordance with the holder's method of accounting for U.S. federal income tax purposes. The IRS may take a different position, however, which could affect the timing of both your income from the new notes and our deduction with respect to the payment of additional interest.

Sale, Exchange, Certain Redemption or other Taxable Dispositions of the New Notes

Upon the sale or exchange, or upon certain redemptions or other taxable dispositions of a new note (other than a conversion described below under "—Conversion of the New Notes"), a U.S. Holder generally will recognize capital gain or loss equal to the difference between (i) the amount of cash proceeds and the fair market value of any property received on the sale, exchange or redemption (except to the extent such amount is attributable to accrued interest income not previously included in income, which will be taxable as ordinary income) and (ii) the holder's adjusted tax basis in the new notes. A U.S. Holder's adjusted tax basis in a new note generally will be equal to the holder's cost therefor, increased by OID previously includible in income by the U.S. Holder and reduced by the amount of any previous payments that were not qualified stated interest payments. Such capital gain or loss will be long-term capital gain or loss (unless such gain is treated as ordinary income based on the application of the market discount rules) if a holder has held the new notes for more than one year at the time of sale, exchange or redemption. Long-term capital gains recognized by certain non-corporate U.S. Holders, including individuals, will generally be subject to a reduced rate of U.S. federal income tax. The deductibility of capital losses against ordinary income is subject to limitations.

Market Discount

A person that has acquired a note (other than at original issue) may be considered to have acquired a note at a "market discount' if the person's basis in the note is less than the "stated redemption price" at maturity of the note (or the "revised issue price" of a note if the purchased note had OID) by more than a *de minimis* amount (generally less than 0.25% of the stated redemption price of a note at maturity multiplied by the number of remaining whole years to maturity), then the market discount will be deemed to be zero. A U.S. Holder will be considered to have acquired a new note at a market discount if the old note for which such note was exchanged had market discount or if the new note is subsequently acquired (other than at original issue) at a market discount.

Unless a holder elects to include market discount in income currently as it accrues, such holder will be required to treat any principal amount received or gain it realizes on a sale, exchange, retirement or other taxable disposition of a note as ordinary income to the extent of any accrued market discount on the note. In general, market discount on a note will accrue ratably over the remaining term of the note or, at the election of the holder, under a constant yield method. In addition, a holder will be required to defer the deduction of all or a portion of the interest on any indebtedness incurred to purchase or carry a note unless the holder elects to include market discount in income currently. Such an election applies to all debt instruments held by a taxpayer and may not be revoked without the consent of the IRS.

If a holder exchanges or converts a note into common stock in a transaction that is otherwise tax free, any accrued market discount will carry over and generally be recognized upon a disposition of the common stock.

Acquisition Premium

A person that has acquired a note may be considered to have acquired a note with "acquisition premium" if the person's initial tax basis in the note is less than or equal to the sum of all remaining scheduled payments on the note after the acquisition date (other than payments of qualified stated interest), but is in excess of the note's adjusted issue price (as discussed under the caption "—Material United States Federal Income Tax Considerations—Material Federal Income Tax Consequences to U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock—Original Issue Discount"). A U.S. Holder will be considered to have acquired a new note with acquisition premium if the old note for which such note was exchanged had acquisition premium or if the new note is subsequently acquired (other than at original issue) with acquisition premium.

A holder that does not make the election described above to treat all interest as OID is permitted to reduce the daily portions of OID by a fraction, the numerator of which is the excess of a holder's adjusted basis in a note immediately after its acquisition over the adjusted issue price of the note and the denominator of which is the excess of the note's principal amount over the note's adjusted issue price.

Bond Premium

A person that has acquired a note may be considered to have acquired a note with "bond premium" if the person's basis in the note (reduced by an amount equal to the value of the conversion option) is more than the "stated redemption price" at maturity of the note." A U.S. Holder will be considered to have acquired a new note with bond premium if the old note for which such note was exchanged had bond premium or if the new note is subsequently acquired (other than at original issue) with bond premium.

If an election is made, the bond premium may generally be amortized over the term of a note to offset a portion of stated interest that would otherwise be includible in income. Such an election generally applies to all taxable debt instruments held by the holder on or after the first day of the first taxable year for which the election is made, and the election may be terminated only with the consent of the IRS. U.S. Holders that acquire a new note with bond premium should consult their tax advisors regarding the manner in which such premium is calculated and the election to amortize bond premium over the life of the instrument.

Conversion of the New Notes

Conversion of the New Notes into a Combination of our Common Stock and Cash

The U.S. federal income tax treatment of a U.S. Holder's conversion of the new notes into our common stock and cash is uncertain. U.S. Holders should consult their tax advisors to determine the correct treatment of such conversion. It is possible that the conversion may be treated as a partially taxable exchange or as a recapitalization, as briefly discussed below.

Possible Treatment as Part Conversion and Part Redemption

The conversion of a new note into our common stock and cash may be treated for U.S. federal income tax purposes as in part a conversion into stock and in part a payment in redemption of a portion of the new note. In that event, a U.S. Holder would not recognize any income, gain or loss with respect to the portion of the new note considered to be converted into stock, except with respect to any cash received in lieu of a fractional share of stock or any common stock attributable to accrued interest (which will be treated in the manner described below). A U.S. Holder's tax basis in the stock received upon conversion (other than common stock received with respect to accrued interest) generally would be equal to the portion of its tax basis in a new note allocable to the portion of the new note deemed converted. A U.S. Holder's holding period for such common stock generally would include the period during which the U.S. Holder held the convertible note.

With respect to the part of the conversion that would be treated under this characterization as a payment in redemption of the remaining portion of the new note, a U.S. Holder generally would recognize gain or loss equal to the difference between the amount of cash received (other than amounts attributable to accrued interest, which will be treated in the manner described below) and the U.S. Holder's tax basis allocable to such portion of the new note. Gain or loss recognized will be long-term capital gain or loss if the U.S. Holder has held the convertible note for more than one year. In the case of certain non-corporate U.S. Holders (including individuals), long-term capital gains are generally eligible for a reduced rate of U.S. federal income taxation. The deductibility of capital losses is subject to certain limitations under the Code.

Although the law on this point is not entirely clear, a U.S. Holder may allocate its tax basis in a new note among the portion of the new note that is deemed to have been converted and the portion of the new note that is deemed to have been redeemed based on the relative fair market value of our common stock and the amount of cash received upon conversion. In light of the uncertainty in the law, holders are urged to consult their own tax advisors regarding such basis allocation.

Possible Treatment as a Recapitalization

The conversion of a new note into our common stock and cash may instead be treated in its entirety as a recapitalization for U.S. federal income tax purposes, in which case a U.S. Holder would be required to recognize gain on the conversion but would not be allowed to recognize any loss. Accordingly, such tax treatment may be less favorable to a U.S. Holder than if the conversion were treated as a part conversion and part redemption, as described above. If the conversion constitutes a recapitalization, a U.S. Holder generally would recognize gain (but not loss) in an amount equal to the lesser of (i) the excess (if any) of (A) the amount of cash (not including cash received in lieu of fractional shares) and the fair market value of our common stock received (treating fractional shares as received for this purpose) in the exchange (other than any cash or common stock attributable to accrued interest) over (B) the U.S. Holder's tax basis in the new notes, and (ii) the amount of cash received upon conversion (other than cash received in lieu of fractional shares or cash attributable to accrued interest, which will be treated in the manner described below). The U.S. Holder would have an aggregate tax basis in the common stock received in the conversion (other than common stock received with respect to accrued interest) equal to the aggregate tax basis of the new notes converted, decreased by the aggregate amount of cash (other than cash in lieu of fractional shares and cash attributable to accrued interest) received upon conversion and increased by the aggregate amount of gain (if any) recognized upon conversion (other than gain realized as a result of cash received in lieu of fractional shares). The holding period for such common stock received by the U.S. Holder would include the period during which the U.S. Holder held the convertible notes. Gain recognized will be long-term capital gain if the U.S. Holder has held the convertible notes for more than one year. In the case of certain non-corporate U.S. Holders (including individuals), long-term capital gains are generally eligible for a reduced rate of taxation.

Treatment of Cash in Lieu of a Fractional Share

If a U.S. Holder receives cash in lieu of a fractional share of our common stock, such U.S. Holder would be treated as if the fractional share had been issued and then redeemed for cash. Accordingly, a U.S. Holder generally will recognize capital gain or loss with respect to the receipt of cash in lieu of a fractional share measured by the difference between the cash received for the fractional share and the portion of the U.S. Holder's tax basis in the new notes that is allocated to the fractional share.

Treatment of Amounts Attributable to Accrued Interest

Any cash and the value of any common stock received that is attributable to accrued interest on the new notes not yet included in income would be taxed as ordinary interest income. The basis in any shares of our common stock attributable to accrued interest would equal the fair market value of such shares when received. The holding period for any shares of our common stock attributable to accrued interest would begin the day after the date of receipt.

U.S. Holders are urged to consult their tax advisors with respect to the U.S. federal income tax consequences resulting from the exchange of new notes into a combination of cash and our common stock.

Constructive Dividends

Holders of convertible debt instruments such as the new notes may, in certain circumstances, be deemed to have received distributions if the conversion price of such instruments is adjusted (or is not adjusted) and such adjustment (or non-adjustment) has the effect of increasing a U.S. Holder's proportionate interest in our assets or earnings. Adjustments to the conversion price made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing the dilution of the interest of the holders of the debt instruments will generally not be deemed to result in a deemed distribution. Certain of the possible adjustments provided in the new notes (including, without limitation, adjustments in respect of taxable dividends to our stockholders) may not qualify as being pursuant to a bona fide reasonable adjustment formula. If such adjustments are made, you may be deemed

to have received distributions includible in your income in the manner described below under "—Dividends" even though you have not received any cash or property as a result of such adjustments. Conversely, if an event occurs that increases the interests of holders of the new notes and the conversion rate is not adjusted, the resulting increase in the proportionate interests of holders of the new notes could be treated as a taxable stock dividend to such holders. In addition, if an event occurs that dilutes the interests of holders of the new notes and the conversion rate is not adjusted, the resulting increase in the proportionate interests of our stockholders could be treated as a taxable stock dividend to those stockholders.

Although there is no authority directly on point, the IRS may take the position that a constructive dividend deemed paid to a U.S. Holder would not be eligible for the preferential rates of U.S. federal income tax applicable in respect of certain dividends received and that U.S. corporate holders would not be entitled to claim the dividends received deduction with respect to any such constructive dividends. Because a constructive dividend deemed received by a U.S. Holder would not give rise to any cash from which any applicable withholding tax could be satisfied, if we pay backup withholding taxes on behalf of a U.S. Holder (because such U.S. Holder failed to establish an exemption from backup withholding taxes), we may, at our option, set-off any such payment against payments of cash and common stock payable on the new notes. Holders should carefully review the conversion rate adjustment provisions and consult their tax advisors with respect to the tax consequences of any such adjustment.

Dividends

Distributions, if any, made on our common stock generally will be included in your income as ordinary dividend income to the extent of our current or accumulated earnings and profits. Dividends received by individuals for taxable years through December 31, 2012, will generally be taxed at the lower applicable long-term capital gains rates, provided certain holding period requirements are satisfied. The rate reduction will not apply to dividends received to the extent that the U.S. Holder elects to treat dividends as "investment income," which may be offset by investment expense. If a U.S. Holder is a U.S. corporation, it will be able to claim the deduction allowed to U.S. corporations in respect of dividends received from other U.S. corporations equal to a portion of any dividends received, subject to generally applicable limitations on that deduction. In general, a dividend distribution to a corporate U.S. Holder may qualify for the 70% dividends received deduction if the U.S. Holder owns less than 20% of the voting power and value of our stock.

Distributions in excess of amounts treated as dividend income will be treated as a return of capital to the extent of your adjusted tax basis in the common stock and thereafter as capital gain from the sale or exchange of such common stock.

U.S. Holders should consult their tax advisors regarding the holding period and other requirements that must be satisfied in order to qualify for the dividends-received deduction and the reduced maximum tax rate on dividends.

Sale, Exchange, Certain Redemptions or other Taxable Dispositions of Common Stock

Upon a sale or exchange, or upon certain redemptions or other taxable dispositions of our common stock, you generally will recognize capital gain or loss equal to the difference between (i) the amount of cash and the fair market value of any property received upon the sale, exchange or redemption and (ii) your adjusted tax basis in the common stock. Such capital gain or loss will be long-term capital gain or loss if your holding period in the common stock is more than one year at the time of the sale, exchange or redemption. Long-term capital gains recognized by certain non-corporate U.S. Holders, including individuals, will generally be subject to a reduced rate of U.S. federal income tax. Your adjusted tax basis and holding period in common stock received upon a conversion of a new note are determined as discussed above under "—Conversion of the New Notes." The deductibility of capital losses against ordinary income is subject to limitations.

Backup Withholding and Information Reporting

We are required to furnish to the record holders of the new notes and common stock, other than corporations and other exempt holders, and to the IRS, information with respect to interest paid on the new notes and dividends paid on the common stock, and payment of the proceeds received from a disposition of the new notes or shares of common stock.

You may be subject to backup withholding at a statutorily imposed rate (currently 28%) with respect to interest and OID paid on the new notes, dividends paid on the common stock or with respect to proceeds received from a disposition of the new notes or shares of common stock. Certain holders (including, among others, corporations and certain tax-exempt organizations) are generally not subject to backup withholding. You will be subject to backup withholding if you are not otherwise exempt and you (i) fail to furnish your taxpayer identification number (TIN), which, for an individual, is ordinarily his or her social security number; (ii) furnish an incorrect TIN; (iii) are notified by the IRS that you have failed to properly report payments of interest or dividends; or (iv) fail to certify, under penalties of perjury, that you have furnished a correct TIN and that the IRS has not notified you that you are subject to backup withholding. Backup withholding is not an additional tax but, rather, is a method of tax collection. You generally will be entitled to credit any amounts withheld under the backup withholding rules against your U.S. federal income tax liability provided that the required information is furnished to the IRS in a timely manner.

Material Federal Income Tax Consequences to Non-U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock

Interest and OID

Subject to the discussion below concerning backup withholding, generally, any interest or OID paid to a Non-U.S. Holder of a new note that is not United States trade or business income (and, if required by an applicable income tax treaty, not attributable to a U.S. permanent establishment) will not be subject to United States tax if the interest qualifies as “portfolio interest.” Generally interest on the new notes will qualify as portfolio interest and you will not be subject to the 30% United States federal withholding tax with respect to payments of interest on the new notes, provided that:

- the Non-U.S. Holder does not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote within the meaning of Section 871(h)(3) of the Code;
- the Non-U.S. Holder is not a “controlled foreign corporation” that is related to us (actually or constructively) through stock ownership;
- the Non-U.S. Holder is not a bank whose receipt of interest on a new note is described in Section 881(c)(3)(A) of the Code; and
- (a) the Non-U.S. Holder provides it name and address, and certifies, under penalties of perjury, that it is not a United States person (which certification may be made on an IRS Form W-8BEN (or successor form)), or (b) the Non-U.S. Holder holds the new notes through certain foreign intermediaries or certain foreign partnerships and you and the foreign intermediaries or foreign partnerships satisfy the certification requirements of applicable Treasury Regulations.

Special certification rules apply to Non-U.S. Holders that are pass-through entities. Prospective investors should consult their tax advisors regarding the certification requirements for Non-U.S. Holders.

If a Non-U.S. Holder cannot satisfy the requirements described above, it will be subject to the 30% United States federal withholding tax with respect to payments of interest on the new notes, unless it provides us with a properly executed (1) IRS Form W-8BEN (or successor form) claiming an exemption from or reduction in withholding under the benefit of an applicable United States income tax treaty or (2) IRS Form W-8ECI (or

successor form) stating that the interest is not subject to withholding tax because it is effectively connected with the conduct of a United States trade or business. If a Non-U.S. Holder is engaged in a trade or business in the United States and interest on a new notes is effectively connected with your conduct of that trade or business and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment, then, it will be subject to U.S. federal income tax on that interest on a net income basis (although you will be exempt from the 30% withholding tax, provided the certification requirements described above are satisfied) in the same manner as if you were a United States person as defined under the Code. In addition, a Non-U.S. Holder who is a foreign corporation may be subject to a branch profits tax equal to 30% (or lower rate as may be prescribed under an applicable United States income tax treaty) of its earnings and profits for the taxable year, subject to adjustments, that are effectively connected with the conduct of a trade or business in the United States.

Additional Payments

We may be required to pay additional interest to you in certain circumstances described above under the heading “Description of the New Notes –Events of Default.” For a discussion of the impact of additional interest on the new notes, see the discussion under “Material United States Federal Income Tax Considerations—Material Federal Income Tax Consequences to U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock—Additional payments.” It is possible that payments of additional amounts, if any, made to Non-U.S. Holders may be subject to United States federal withholding tax at a rate of 30% unless we receive an IRS Form W-8BEN or an IRS Form W-8ECI from you claiming, respectively, that such payments are subject to reduction or elimination of withholding under an applicable treaty or that such payments are effectively connected with your conduct of a United States trade or business. We will determine if any withholding is required if and when such amounts become payable. If we withhold tax from any payment of additional amounts made to you and such payment were determined not to be subject to United States federal tax, a Non-U.S. Holder generally would be entitled to a refund of any tax withheld provided that the required information is timely furnished to the IRS.

Non-U.S. Holders should consult with their own tax advisors as to the tax considerations that relate to the potential additional interest payments.

Sale, Exchange, Certain Redemptions or other Taxable Dispositions of the New Notes or Common Stock

Subject to the discussion below regarding recent legislation relating to foreign accounts, gain realized by a Non-U.S. Holder on the sale, exchange, conversion (including a conversion of a new note into cash or a combination of cash and our common stock) or on certain redemptions or other taxable dispositions of a new note (except with respect to accrued and unpaid interest, which would be taxable as described above) or a share of common stock generally will not be subject to U.S. federal income tax unless:

- the gain is effectively connected with the conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment);
- the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of sale, exchange or other disposition, and certain conditions are met; or
- in the case of common stock, we are or have been a “United States real property holding corporation” for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that you held our common stock. We do not believe that we are currently, and do not anticipate becoming, a United States real property holding corporation.

If the gain is described in the first bullet point above, a Non-U.S. Holder generally will be subject to U.S. federal income tax on the net gain derived from the sale, exchange, redemption, conversion or other taxable disposition under regular graduated U.S. federal income tax rates. If a Non-U.S. Holder is a corporation that is described in the first bullet point, it will be subject to tax on the net gain generally in the same manner as if it

were a U.S. person as defined under the Code and, in addition, it may be required to pay a branch profits tax at a 30% rate (or such lower rate as may be prescribed under an applicable United States income tax treaty) on any such effectively connected gain. If a Non-U.S. Holder is an individual described in the second bullet point above, it will be subject to a flat 30% U.S. federal income tax on the gain derived from the sale, exchange, redemption, conversion or other taxable disposition, which may be offset by United States source capital losses, even though it is not considered a resident of the United States. Non-United States holders should consult any applicable income tax treaties that may provide for different rules. In addition, such holders are urged to consult their tax advisers regarding the tax consequences of the acquisition, ownership and disposition of the new notes or the common stock.

Dividends

In general, dividends, if any, received by a Non-U.S. Holder with respect to our common stock (and any deemed distributions resulting from certain adjustments, or failures to make certain adjustments, to the conversion price of the new notes, see "Material United States Federal Income Tax Considerations—Material Federal Income Tax Consequences to U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock—Constructive Dividends" above) will be subject to withholding of U.S. federal income tax at a 30% rate, unless such rate is reduced by an applicable United States income tax treaty. Dividends that are effectively connected with the conduct of a trade or business in the United States and, where a tax treaty applies, are attributable to a U.S. permanent establishment, are generally subject to U.S. federal income tax on a net income basis at applicable graduated individual or corporate rates and are exempt from the 30% withholding tax (assuming compliance with certain certification and disclosure requirements). Any such effectively connected dividends received by a Non-U.S. Holder that is a corporation may also, under certain circumstances, be subject to the branch profits tax at a 30% rate or such lower rate as may be prescribed under an applicable United States income tax treaty. Because a constructive dividend deemed received by a Non-U.S. Holder would not give rise to any cash from which any applicable withholding tax could be satisfied, if we pay withholding taxes on behalf of a Non-U.S. Holder, we may, at our option, setoff any such payment against payments of cash and common stock payable on the new notes.

In order to claim the benefit of a United States income tax treaty or to claim exemption from withholding because dividends paid on our common stock are effectively connected with the conduct of a trade or business in the United States, a Non-U.S. Holder must provide a properly executed IRS Form W-8BEN for treaty benefits or W-8ECI for effectively connected income (or such successor form as the IRS designates), prior to the payment of dividends. These forms must be periodically updated. A Non-U.S. Holder may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

Backup Withholding and Information Reporting

A Non-U.S. Holder will not generally be subject to backup withholding with respect to payments of interest, OID, and dividends that we make provided that we do not have actual knowledge or reason to know that the holder is a United States person that is not an exempt recipient and the holder has given us the statement described above under "Material United States Federal Income Tax Considerations—Material Federal Income Tax Consequences to Non-U.S. Holders of the Ownership and Disposition of the New Notes and Our Common Stock—Interest and OID." In addition, the Non-U.S. Holder will not be subject to backup withholding or information reporting with respect to the proceeds of the sale of a new note or a share of common stock within the United States or conducted through certain U.S.-related financial intermediaries, if the payor receives the statement described above and does not have actual knowledge or reason to know that the holder is a United States person, as defined under the Code, that is not an exempt recipient or the holder otherwise establishes an exemption. However, we may be required to report annually to the IRS and to a Non-U.S. Holder the amount of, and the tax withheld with respect to, any interest or dividends paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the holder resides.

Non-U.S. Holders generally will be entitled to credit any amounts withheld under the backup withholding rules against your U.S. federal income tax liability provided that the required information is furnished to the IRS in a timely manner.

Recent Legislation Relating to Foreign Accounts

Recently enacted legislation may impose withholding taxes on certain types of payments made to "foreign financial institutions" (as specifically defined in this new legislation) and certain other non-U.S. entities after December 31, 2012. The legislation imposes a 30% withholding tax on (a) interest payments on, or gross proceeds from the sale or other disposition of, certain obligations and (b) dividend payments on, or gross proceeds from the sale or disposition of, stock, in each case, paid to a foreign financial institution (including financial intermediaries) unless the foreign financial institution enters into an agreement with the U.S. Treasury to, among other things, undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. In addition, the legislation imposes a 30% withholding tax on the same types of payments to a foreign non-financial entity unless the entity certifies that it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. These withholding obligations do not apply to interest payments on, or gross sale proceeds from the sale or disposition of, obligations outstanding prior to March 18, 2012, and therefore will not apply to payments on or with respect to the new notes. However, such legislation will apply to dividend payments with respect to our common stock paid after December 31, 2013, and to the gross proceeds from the sale or disposition of our common stock paid after December 31, 2014. Prospective investors should consult their tax advisors regarding this legislation.

THE PRECEDING DISCUSSION OF CERTAIN US FEDERAL TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON A HOLDER'S PARTICULAR SITUATION. ACCORDINGLY, EACH INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR AS TO PARTICULAR TAX CONSEQUENCES TO IT OF PURCHASING, HOLDING AND DISPOSING OF THE NEW NOTES AND THE COMMON STOCK INTO WHICH THE NEW NOTES MAY BE CONVERTED OR FOR WHICH THE NOTES MAY BE EXCHANGED, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY PROPOSED CHANGES IN APPLICABLE LAWS.

INTERESTS OF DIRECTORS AND EXECUTIVE OFFICERS

To our knowledge, none of our directors, executive officers or controlling persons, or any of their affiliates, beneficially own any old notes or will be tendering any old notes pursuant to the exchange offer. Neither we nor any of our subsidiaries nor, to our knowledge, any of our directors, executive officers or controlling persons, nor any affiliates of the foregoing, have engaged in any transaction in the old notes during the 60 days prior to the date hereof.

INFORMATION AGENT

Georgeson Inc. has been appointed as the information agent for the Exchange Offer. We have agreed to pay the information agent reasonable and customary fees for its services and will reimburse the information agent for its reasonable out of pocket expenses. Any questions regarding the procedures for tendering in the exchange offer and requests for assistance in tendering your old notes, or requests for additional copies of this offering memorandum or the letter of transmittal should be directed to the information agent as set forth below:

199 Water Street, 26th Floor
New York, NY 10038
Banks and Brokers Call (212) 440-9800
All others call Toll-Free (866)-541-3547

TENDER AND PAYING AGENT

The Bank of New York Mellon Trust Company, N.A. has been appointed as the tender and paying agent for the exchange offer. We have agreed to pay the tender and paying agent reasonable and customary fees for its services. All completed letters of transmittal and agent's messages should be directed to the tender and paying agent at the address set forth below.

The Bank of New York Mellon Trust Company, N.A.
The Bank of New York Mellon Corporation
Corporate Trust Operations
Reorganization Unit
101 Barclay Street—7 East
New York, N.Y. 10286
Attn: Mr. David Mauer
Telephone: (212) 815-3687
Fax: (212) 298-1915

We will bear the fees and expenses relating to the exchange offer. We are making the principal solicitation by mail and overnight courier. However, where permitted by applicable law, additional solicitations may be made by facsimile, telephone, email or in person by our officers and regular employees and those of our affiliates. We will also pay the information agent and tender and paying agent reasonable and customary fees for their services and will reimburse them for their reasonable out-of-pocket expenses. We will indemnify the information agent and the tender and paying agent against certain liabilities and expenses in connection with the exchange offer, including liabilities under the federal securities laws.

MISCELLANEOUS

We are not aware of any jurisdiction in the United States in which the making of the exchange offer is not in compliance with applicable law. If we become aware of any such jurisdiction in the United States in which the making of the exchange offer would not be in compliance with applicable law, we will make a reasonable good faith effort to comply with any such law. If, after such reasonable good faith effort, we cannot comply with any such law, the exchange offer will not be made to (nor will surrenders of old notes for exchange in connection with the exchange offer be accepted from or on behalf of) the owners of old notes residing in such jurisdiction.

No person has been authorized to give any information or make any representations other than those contained or incorporated by reference herein or in the accompanying letter of transmittal and other materials, and, if given or made, such information or representations must not be relied upon as having been authorized by us, tender and paying agent or any other person. The statements made in this offering memorandum are made as of the date on the cover page of this offering memorandum, and the statements incorporated by reference are made as of the date of the document incorporated by reference. The delivery of this offering memorandum and the accompanying materials shall not, under any circumstances, create any implication that the information contained herein or incorporated by reference is correct as of a later date.

Recipients of this offering memorandum and the accompanying materials should not construe the contents hereof or thereof as legal, business or tax advice. Each recipient should consult its own attorney, business advisor and tax advisor as to legal, business, tax and related matters concerning the exchange offer.

LETTER OF TRANSMITTAL

PDL BIOPHARMA, INC.

EXCHANGE OFFER FOR
ALL OUTSTANDING
2.875% CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015
(CUSIP Nos. 69329YAB0 and 69329YAA2)
for new 2.875% Series 2011 Convertible Senior Notes due February 15, 2015

Pursuant to the Offering Memorandum dated November 15, 2011

THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON DECEMBER 13, 2011, OR SUCH LATER DATE AND TIME TO WHICH THE EXCHANGE OFFER MAY BE EXTENDED (THE "EXPIRATION TIME"). TENDERS MAY BE WITHDRAWN AT ANY TIME AT OR PRIOR TO THE EXPIRATION TIME.

The tender and paying agent is:

The Bank of New York Mellon Trust Company, N.A.

The Bank of New York Mellon Corporation
Corporate Trust Operations
Reorganization Unit
101 Barclay Street—7 East
New York, N.Y. 10286
Attn: Mr. David Mauer

or

By facsimile transmission
(for eligible institutions only):
(212) 298-1915

Confirm by telephone:
(212) 815-3687

TO TENDER OLD NOTES, THIS LETTER OF TRANSMITTAL OR AN AGENT'S MESSAGE MUST BE DELIVERED OR TRANSMITTED TO THE TENDER AND PAYING AGENT, WITH ALL REQUIRED DOCUMENTATION, AT OR PRIOR TO THE EXPIRATION TIME. TRANSMISSION OF THIS LETTER OF TRANSMITTAL OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE VALID DELIVERY TO THE TENDER AND PAYING AGENT.

The instructions set forth in this Letter of Transmittal should be read carefully before this Letter of Transmittal is completed.

By execution of this Letter of Transmittal, the undersigned acknowledges that he, she or it has received the offering memorandum, dated November 15, 2011 (the "Offering Memorandum"), of PDL BioPharma, Inc., a Delaware corporation (the "Company"), and this Letter of Transmittal, which together constitute the offer of the Company (the "Exchange Offer") to exchange up to $180,000,000 in aggregate principal amount of outstanding 2.875% Convertible Senior Notes due February 15, 2015 (the "Old Notes"), for a like principal amount of new 2.875% Series 2011 Convertible Senior Notes due February 15, 2015 (the "New Notes"), and a cash payment, subject to the terms and conditions set forth therein. Recipients of the Offering Memorandum should carefully read the Offering Memorandum, including the requirements described in the Offering Memorandum with respect to eligibility to participate in the Exchange Offer. Capitalized terms used but not defined herein have the meanings given to them in the Offering Memorandum.

PLEASE READ THIS ENTIRE LETTER OF TRANSMITTAL CAREFULLY BEFORE CHECKING ANY BOX BELOW.

This Letter of Transmittal is to be completed by a holder desiring to tender Old Notes, unless such holder is executing the tender through The Depository Trust Company's ("DTC") ATOP system (as defined in "Terms of the Exchange Offer—Procedures for Tendering" in the Offering Memorandum).

Only registered holders are entitled to tender their Old Notes for exchange in the Exchange Offer. To properly tender old notes, DTC participants must electronically submit their acceptance through DTC's ATOP system or complete, sign and mail or transmit this Letter of Transmittal to the Tender and Paying Agent prior to the Expiration Time. Additionally, the Tender and Paying Agent must receive either a timely confirmation of book-entry transfer of the Old Notes or an Agent's Message (described below) through DTC's ATOP system.

The term "Agent's Message" means a message, electronically transmitted by DTC to the Tender and Paying Agent, forming part of a book-entry transfer stating that DTC has received an express acknowledgement from the tendering holder of the Old Notes that such holder has received and agrees to be bound by, and makes each of the representations and warranties contained in, this Letter of Transmittal, and, further, that such holder agrees that the Company may enforce this Letter of Transmittal against such holder.

Any participant in DTC's system whose name appears on a security position listing as the registered owner of Old Notes and who wishes to make book-entry delivery of Old Notes to the Tender and Paying Agent's account at DTC can execute the tender through DTC's ATOP, for which the Exchange Offer will be eligible, by following the applicable procedures thereof. Upon such tender of Old Notes:

- DTC will verify the tender and execute a book-entry delivery of the tendered Old Notes to the Tender and Paying Agent's account at DTC;
- DTC will send to the Tender and Paying Agent for its acceptance an Agent's Message forming part of such book-entry transfer; and
- transmission of the Agent's Message by DTC will satisfy the terms of the Exchange Offer as to execution and delivery of a Letter of Transmittal by the participant identified in the Agent's Message.

Delivery of documents to DTC does not constitute delivery to the Tender and Paying Agent.

In order to properly complete this Letter of Transmittal, a holder of Old Notes must:

- complete the box entitled "Description of Old Notes Tendered;"
- if appropriate, check and complete the box relating to special issuance instructions;
- complete the box entitled "Sign Here to Tender Your Old Notes in the Exchange Offer;" and

- complete the IRS Form W-9 accompanying this Letter of Transmittal or the applicable IRS Form W-8, which may be obtained from the Tender and Paying Agent or the U.S. Internal Revenue Service at its website: www.irs.gov.

The Exchange Offer may be extended, terminated or amended as provided in the Offering Memorandum. During any such extension of the Exchange Offer, all Old Notes previously tendered and not withdrawn pursuant to the Exchange Offer will remain subject to the Exchange Offer. The Exchange Offer is scheduled to expire at 5:00 p.m., New York City time, on December 13, 2011, unless extended by the Company.

Persons who are beneficial owners of Old Notes through an account maintained by a broker, dealer, commercial bank, trust company or other nominee but are not registered holders and who desire to tender Old Notes should contact their nominee promptly and instruct it to tender on such beneficial owner's behalf.

SIGNATURES MUST BE PROVIDED BELOW.
PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

The undersigned hereby tenders for exchange the Old Notes described in the box below entitled "Description of Old Notes Tendered" pursuant to the terms and conditions described in the Offering Memorandum and this Letter of Transmittal. Tendered Old Notes are being delivered by book-entry transfer made to the account maintained by the Tender and Paying Agent with DTC.

OLD NOTES MUST BE TENDERED BY BOOK ENTRY TRANSFER

PLEASE COMPLETE THE FOLLOWING

Name of Tendering Institution:
DTC Participation Number:
Account Number:
Transaction Code Number
Principal Amount of Old Notes Being Tendered:*   **CUSIP NO. 69329Y AB0** _____   **CUSIP NO. 69329Y AA2** _____   ***Must be tendered in denominations of $1,000 principal amount of integral multiples thereof.***

By crediting Old Notes to the Tender and Paying Agent's account at DTC in accordance with ATOP and by complying with applicable ATOP procedures with respect to the Exchange Offer, including transmitting an Agent's Message to the Tender and Paying Agent in which the holder of the Old Notes acknowledges and agrees to be bound by the terms of this Letter of Transmittal, the participant in ATOP confirms on behalf of itself and the beneficial owners of such Old Notes all provisions of this Letter of Transmittal applicable to it and such beneficial owners as if it had completed the information required herein and executed and delivered this Letter of Transmittal to the Tender and Paying Agent.

Ladies and Gentlemen:

Upon the terms and subject to the conditions of the Exchange Offer, the undersigned hereby tenders to the Company for exchange the Old Notes indicated above. Subject to, and effective upon, acceptance for exchange of the Old Notes tendered herewith, the undersigned hereby sells, assigns and transfers to the Company all right, title and interest in and to all such Old Notes tendered for exchange hereby. The undersigned hereby irrevocably constitutes and appoints the Tender and Paying Agent as the true and lawful agent and attorney-in-fact of the undersigned (with full knowledge that the Tender and Paying Agent also acts as agent of the Company) with respect to such Old Notes, with full power of substitution and resubstitution (such power of attorney being deemed to be an irrevocable power coupled with an interest) to:

- transfer ownership of such Old Notes on the account books maintained by DTC, together, in each such case, with all accompanying evidences of transfer and authenticity to the Company;
- present and deliver such Old Notes for transfer on the books of the Company; and
- receive all benefits or otherwise exercise all rights and incidents of beneficial ownership of such Old Notes, all in accordance with the terms of the Exchange Offer.

The undersigned represents and warrants that he, she, or it has full power and authority to tender, exchange, assign and transfer the Old Notes and to acquire the New Notes issuable upon the exchange of such tendered Old Notes, and that, when the Old Notes are accepted for exchange, the Company will acquire good and unencumbered title to the tendered Old Notes, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim. The undersigned also warrants that he, she, or it will, upon request, execute and deliver any additional documents deemed by the Tender and Paying Agent or the Company to be necessary or desirable to complete the exchange, assignment and transfer of tendered Old Notes or transfer ownership of such Old Notes on the account books maintained by DTC.

The undersigned acknowledges that the Exchange Offer is being made in reliance upon Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act"), to exempt the Exchange Offer from the registration requirements of the Securities Act.

All authority conferred or agreed to be conferred pursuant to this Letter of Transmittal and every obligation of the undersigned hereunder shall be binding upon the successors, assigns, heirs, executors, administrators, trustees in bankruptcy, and personal and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

Old Notes properly tendered may be withdrawn at any time at or prior to the Expiration Time in accordance with the terms of the Offering Memorandum and this Letter of Transmittal.

The Exchange Offer is subject to certain conditions, some of which may be waived or modified by the Company, in whole or in part, at any time and from time to time, as described in the Offering Memorandum under the caption "Terms of the Exchange Offer—Conditions of the Exchange Offer." The undersigned recognizes that as a result of such conditions the Company may not be required to accept for exchange, or to issue New Notes in exchange for, any of the Old Notes validly tendered hereby. All tendering holders, by execution of this Letter of Transmittal, waive any right to receive any notice of the acceptance or rejection of their Old Notes for exchange.

The Company is not aware of any jurisdiction in which the making of the Exchange Offer or the tender of Old Notes in connection therewith would not be in compliance with the laws of such jurisdiction. If the making of the Exchange Offer would not be in compliance with the laws of any jurisdiction, the Exchange Offer will not be made to the registered holders residing in such jurisdiction.

Unless otherwise indicated under "Special Issuance Instructions," please credit the account of the undersigned maintained at DTC appearing under the table "Description of Old Notes Tendered" with any Old

Notes not accepted for exchange or any New Notes issued and cash paid in exchange for Old Notes. The undersigned recognizes that the Company has no obligation pursuant to the special issuance instructions below to transfer any Old Notes from the name of the holder thereof if the Company does not accept for exchange any of the Old Notes so tendered or if such transfer would not be in compliance with any transfer restrictions applicable to such Old Notes.

SPECIAL ISSUANCE INSTRUCTIONS
(SEE INSTRUCTIONS 1, 6, 7 AND 8)

To be completed ONLY if (i) New Notes issued and cash paid in exchange for the Old Notes are to be credited to an account maintained at DTC other than the account indicated above, or (ii) Old Notes tendered that are not exchanged are to be returned by credit to an account maintained at DTC other than the account indicated above.

Issued to:

Name:_____
(Please Print)

Address:_____
_____
_____
(Including Zip Code)

_____
(Taxpayer Identification Number or Social Security Number)

Credit New Notes issued and cash paid in exchange for the Old Notes, or Old Notes not exchanged, to the DTC account set forth below:

_____
(DTC Account Number)

Name:_____
(Please Print)

Address:_____
_____
_____
(Including Zip Code)

_____
(Taxpayer Identification Number or Social Security Number)

SIGN HERE TO TENDER YOUR OLD NOTES IN THE EXCHANGE OFFER

_____

Signature of holder of Old Notes

Dated: _____, 2011

Must be signed by the registered holder of Old Notes exactly as the name appears on a security position listing or by a person authorized to become a registered holder by endorsements and documents transmitted herewith. If signature is by an attorney-in-fact, executor, administrator, trustee, guardian, officer of a corporation or other person acting in a fiduciary or representative capacity, please provide the following information and see Instruction 6.

Capacity (Full Title):_____

Name:_____

(Please type or print)

Address:_____

(Include Zip Code)

Area Code and Telephone Number:_____

GUARANTEE OF SIGNATURE
(If required—see Instructions 1 and 6)

Authorized Signature:_____

Name:_____

(Please type or print)

Title:_____

Name of Eligible Institution:_____

Address:_____

(Include Zip Code)

Area Code and Telephone Number:_____

Dated: _____, 2011

IMPORTANT: COMPLETE AND SIGN THE IRS FORM W-9
ACCOMPANYING THIS LETTER OF TRANSMITTAL, OR THE APPROPRIATE IRS FORM W-8,
AS APPLICABLE

INSTRUCTIONS

Forming Part of the Terms and Conditions of the Exchange Offer

1. *Guarantee of Signature.* Any signature on this Letter of Transmittal need not be guaranteed if the Old Notes tendered hereby are tendered:

- by the registered holder of Old Notes thereof, unless such holder has completed the box entitled "Special Issuance Instructions" above; or
- for the account of an Eligible Institution. The term "Eligible Institution" means an institution that is a member in good standing of a Medallion Signature Guarantee Program recognized by the Tender and Paying Agent, for example, the Securities Transfer Agents Medallion Program, the Stock Exchanges Medallion Program or the New York Stock Exchange Medallion Signature Program. An Eligible Institution includes firms that are members of a registered national securities exchange, members of the National Association of Securities Dealers, Inc., commercial banks or trust companies having an office in the United States or certain other eligible guarantors.

In all other cases, any signature on this Letter of Transmittal must be guaranteed by an Eligible Institution.

2. *Delivery of this Letter of Transmittal*. In order for a holder of Old Notes to tender all or any portion of such holder's Old Notes, the Tender and Paying Agent must receive either a properly completed and duly executed Letter of Transmittal (or a manually signed facsimile thereof) or an Agent's Message with respect to such holder, a confirmation of the book-entry transfer of the Old Notes being tendered into the Tender and Paying Agent's account at DTC and any other required documents, at or prior to the Expiration Time. **Delivery of the documents to DTC does not constitute delivery to the Tender and Paying Agent.**

The method of delivery to the Tender and Paying Agent of this Letter of Transmittal and all other required documents is at the election and risk of the holder of Old Notes. If such delivery is by mail, it is suggested that holders use properly insured registered mail, return receipt requested, and that the mailing be sufficiently well in advance of the Expiration Time to permit delivery to the Tender and Paying Agent at or prior to such date. The transmission to the Tender and Paying Agent of this Letter of Transmittal and all other required documents will be deemed made when actually received or confirmed by the Tender and Paying Agent.

All tendering holders, by execution of this Letter of Transmittal, waive any right to receive any notice of the acceptance or rejection of their Old Notes for exchange.

3. *Inadequate Space*. If the space provided in the box entitled "Description of Old Notes Tendered" above is not adequate, the principal amounts of Old Notes tendered should be listed on a separate signed schedule affixed hereto.

4. *Withdrawal of Tenders*. A tender of Old Notes may be withdrawn at any time at or prior to the Expiration Time by delivery of a written or facsimile notice of withdrawal to the Tender and Paying Agent at the address set forth on the cover of this Letter of Transmittal. To be effective, a notice of withdrawal must:

- be received by the Tender and Paying Agent at or prior to the Expiration Time;
- specify the name of the person having tendered the Old Notes to be withdrawn;
- identify the Old Notes to be withdrawn (including the principal amount of such Old Notes);
- specify the name and number of the account at the book-entry transfer facility to be credited with the withdrawn Old Notes and otherwise comply with the procedures of DTC;
- include a statement that such holder is withdrawing his, her or its election to have such Old Notes exchanged;

- be signed by the holder in the same manner as the original signature on the Letter of Transmittal by which such Old Notes were tendered, with such signature guaranteed by an Eligible Institution (unless such withdrawing holder is an Eligible Institution) or be accompanied by documents of transfer (including a signature guarantee by an Eligible Institution) sufficient to permit the trustee under the Indenture to register the transfer of such Old Notes into the name of the person withdrawing the tender; and
- specify the name in which any such Old Notes are to be registered, if different from that of the person tendering the Old Notes.

The Tender and Paying Agent will credit properly withdrawn Old Notes to the tendering holder's account at DTC promptly following receipt of the notice of withdrawal. The Company will determine all questions as to the form and validity (including time of receipt) of any notice of withdrawal of a tender, in the Company's reasonable discretion, which determination shall be final and binding.

Any Old Notes so withdrawn will be deemed not to have been validly tendered for exchange for purposes of the Exchange Offer. Any tendered Old Notes are not accepted for payment for any reason pursuant to the terms and conditions of the Exchange Offer will be credited to the tendering holder's account at DTC promptly after the Expiration Time or the termination of the Exchange Offer. Old Notes validly withdrawn may thereafter be re-tendered at any time prior to the Expiration Time by following the procedures described under "Terms of the Exchange Offer—Procedures for Tendering" in the Offering Memorandum.

5. *Partial Tenders*. Tenders of Old Notes will be accepted only in denominations of $1,000 or an integral multiple thereof. If a tender for exchange is to be made with respect to less than the entire principal amount of any Old Notes, fill in the two lines in the box entitled "Principal Amount of Old Notes Being Tendered," with the principal amount of Old Notes with the indicated CUSIP number that are tendered for exchange, as more fully described in the footnote thereto. A blank line in the box will indicate that the holder is tendering all of such holder's Old Notes with the indicated CUSIP number.

6. *Signatures on this Letter of Transmittal; Bond Powers and Endorsements.*

- If this Letter of Transmittal is signed by the registered holder of the Old Notes tendered for exchange hereby, the signature(s) on this Letter must be exactly the same as the name(s) that appear(s) on the security position listing of DTC in which such holder of Old Notes is a participant, without alteration or enlargement or any change whatsoever.
- If any of the Old Notes tendered hereby are owned of record by two or more joint owners, all such owners must sign this Letter of Transmittal.
- If any Old Notes tendered hereby are registered in different names, it will be necessary to complete, sign and submit as many separate Letters of Transmittal as there are different registrations of such Old Notes.
- If this Letter of Transmittal or any certificates or bond powers are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing, and proper evidence satisfactory to the Company of its authority to so act must be submitted, unless waived by the Company.
- If the Old Notes or the New Notes issued in exchange for the Old Notes are to be issued in the name of a person other than the registered holder of the Old Notes tendered for exchange hereby, this Letter of Transmittal must be accompanied by bond powers or other documents of transfer sufficient to permit the trustee under the indenture to register the transfer of such Old Notes into the name of such person.

7. *Transfer Taxes*. Except as set forth in this Instruction 7, holders who tender their Old Notes for exchange will not be obligated to pay any transfer taxes in connection with the exchange. If, however, New Notes issued in the Exchange Offer are to be delivered to, or are to be issued in the name of, any person other than the holder of the Old Notes tendered, or if a transfer tax is imposed for any reason other than the exchange of Old Notes in

connection with the Exchange Offer, then the holder must pay these transfer taxes, whether imposed on the registered holder or on any other person. If satisfactory evidence of payment of or exemption from these taxes is not submitted with this Letter of Transmittal, the amount of these transfer taxes will be billed directly to the tendering holder.

8. *Special Issuance Instructions*. If the New Notes to be issued and cash paid in exchange for Old Notes, or if any Old Notes not tendered or not accepted for exchange are to be issued to a person other than the person signing this Letter of Transmittal, the box entitled "Special Issuance Instructions" on this Letter of Transmittal should be completed. Holders of Old Notes tendering Old Notes may request that Old Notes not accepted for exchange, or New Notes to be issued and cash paid in exchange for Old Notes, be credited to such other account maintained at DTC as such holder may designate. In such event, all signatures on this Letter of Transmittal must be guaranteed by an Eligible Institution.

9. *Irregularities*. All questions as to the forms of all documents and the validity of (including time of receipt) and acceptance of the tenders and withdrawals of Old Notes will be determined by the Company, in its sole discretion, which determination shall be final and binding. Alternative, conditional or contingent tenders will not be considered valid. The Company reserves the absolute right to reject any or all tenders of Old Notes that are not in proper form or the acceptance of which would, in the Company's opinion, be unlawful. The Company also reserves the right to waive any defects or irregularities as to the tender of any particular Old Notes. The Company's interpretation of the terms and conditions of the Exchange Offer (including the instructions in this Letter of Transmittal) will be final and binding. Any defect or irregularity in connection with tenders of Old Notes must be cured within such time as the Company determines, unless waived by the Company. Tenders of Old Notes shall not be deemed to have been made until all defects or irregularities have been waived by the Company or cured. Neither the Company nor the Tender and Paying Agent, nor any other person, will be under any duty to give notice of any defects or irregularities in tenders of Old Notes, or will incur any liability to registered holders or beneficial owners of Old Notes for failure to give such notice.

10. *Waiver of Conditions*. To the extent permitted by applicable law, the Company reserves the right to waive any and all conditions to the Exchange Offer as described under "Terms of the Exchange Offer—Conditions of the Exchange Offer" in the Offering Memorandum, and accept for exchange any Old Notes tendered. To the extent that the Company waives any condition to the Exchange Offer, it will waive such condition as to all Old Notes.

11. *Tax Identification Number and Backup Withholding*. Federal income tax law generally requires that a holder of Old Notes whose tendered Old Notes are accepted for exchange (the "Payee"), provide the Tender and Paying Agent (the "Payor") with such Payee's correct Taxpayer Identification Number ("TIN"), which, in the case of a Payee who is an individual, is such Payee's social security number. If the Payor is not provided with the correct TIN or an adequate basis for an exemption, such Payee may be subject to various penalties and backup withholding at the applicable withholding rate (which is currently 28%) on reportable payments that are made to the Payee with respect to the New Notes. Backup withholding is not an additional tax; rather the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may be obtained provided that the required information is timely furnished to the Internal Revenue Service (the "IRS").

To prevent backup withholding, each *Payee* who is a "United States person" for U.S. federal income tax purposes must provide the Tender and Paying Agent with such Payee's correct TIN by completing the IRS Form W-9 accompanying this Letter of Transmittal, certifying that the TIN provided is correct and that:

- the Payee is a U.S. citizen or other U.S. person (as defined in the enclosed Instructions to IRS Form W-9 (the "W-9 Instructions");
- the Payee is not subject to backup withholding because (a) the Payee is exempt from backup withholding, (b) the Payee has not been notified by the IRS that such Payee is subject to backup

withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified the Payee that such Payee is no longer subject to backup withholding.

If the Payee does not have a TIN, such Payee should consult "Part I. Taxpayer Identification Number (TIN)" in the W-9 Instructions for instructions on applying for a TIN. A Payee who has not been issued a TIN and has applied for a TIN or intends to apply for a TIN in the near future should write "Applied For" in the space for the TIN in Part I of the IRS Form W-9, and should sign and date the IRS Form W-9. If such a Payee does not provide his, her or its TIN to the Tender and Paying Agent by the time of the payment of any reportable payment, backup withholding will apply to such payment.

If the Old Notes are held in more than one name or are not in the name of the actual owner, consult the W-9 Instructions for information on which TIN to report.

A Payee who is not a "United States person" for U.S. federal income tax purposes should provide either a Form W-8BEN or other applicable Form W-8, properly completed and signed under penalties of perjury, attesting to such Payee's foreign status and to other matters set forth on the relevant form.

Exempt Payees (including, among others, certain corporations and certain foreign individuals) are not subject to these backup withholding and reporting requirements. To prevent possible erroneous backup withholding, an exempt Payee who is a "United States person" for U.S. federal income tax purposes must enter its correct TIN in Part I of the IRS Form W-9, check the box labeled "Exempt payee" and sign and date the form. See the W-9 Instructions for additional instructions. An exempt Payee who is not a "United States person" for U.S. federal income tax purposes must complete and submit an appropriate Form W-8, signed under penalty of perjury attesting to such exempt status. Such form may be obtained from the Tender and Paying Agent or the U.S. Internal Revenue Service at its website: www.irs.gov.

IRS CIRCULAR 230 DISCLOSURE. TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY TAX ADVICE CONTAINED IN THIS COMMUNICTION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (II) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN.

12. *Requests for Assistance or Additional Copies*. Requests for assistance with respect to the procedures for the Exchange Offer or for additional copies of the Offering Memorandum, this Letter of Transmittal, or the W-9 Instructions may be directed to Georgeson Inc., the information agent, toll-free at (866) 541-3547.

13. *Incorporation of this Letter of Transmittal*. This Letter of Transmittal shall be deemed to be incorporated in, and acknowledged and accepted by, a tender through DTC's ATOP procedures by any participant on behalf of itself and the beneficial owners of any Old Notes so tendered by such participant.

IMPORTANT—THIS LETTER OF TRANSMITTAL WITH ANY REQUIRED SIGNATURE GUARANTEES, OR AN AGENT'S MESSAGE IN LIEU THEREOF, TOGETHER WITH ALL OTHER REQUIRED DOCUMENTS AND CONFIRMATION OF BOOK-ENTRY TRANSFER MUST BE RECEIVED BY THE TENDER AND PAYING AGENT AT OR PRIOR TO THE EXPIRATION TIME.

Form **W-9**
(Rev. December 2011)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type See **Specific Instructions** on page 2.

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C = C corporation, S = S corporation, P = partnership) u _____
☐ Other (see instructions) u

☐ Exempt payee

Address (number, street, and apt. or suite no.)

City, state, and ZIP code

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
___ – ___ – ____

Employer identification number
___ – _____

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here **Signature of U.S. person** u **Date** u

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

— An individual who is a U.S. citizen or U.S. resident alien,
— A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
— An estate (other than a foreign estate), or
— A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

— The U.S. owner of a disregarded entity and not the entity,
— The U.S. grantor or other owner of a grantor trust and not the trust, and
— The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

Disregarded entity. Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over $600 required to be reported and direct sales over $5,000 [1]	Generally, exempt payees 1 through 7 [2]

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at *www.ssa.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: *A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.*

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account [1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor [2]
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee [1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner [1]
5. Sole proprietorship or disregarded entity owned by an individual	The owner [3]
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor *
For this type of account:	**Give name and EIN of:**
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity [4]
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

***Note.** Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

— Protect your SSN,

— Ensure your employer is protecting your SSN, and

— Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov*. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: *spam@uce.gov* or contact them at *www.ftc.gov/idtheft* or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

**LETTER TO BROKERS, DEALERS, COMMERCIAL BANKS,
TRUST COMPANIES AND OTHER NOMINEES**

PDL BIOPHARMA, INC.

**EXCHANGE OFFER FOR
ALL OUTSTANDING
2.875% CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015
(CUSIP Nos. 69329YAB0 and 69329YAA2)
for new 2.875% Series 2011 Convertible Senior Notes due February 15, 2015**

Pursuant to the Offering Memorandum dated November 15, 2011

THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON DECEMBER 13, 2011, UNLESS EXTENDED (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED FROM TIME TO TIME, THE "EXPIRATION TIME"). TENDERS MAY BE WITHDRAWN AT ANY TIME AT OR PRIOR TO THE EXPIRATION TIME.

To Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees:

PDL BioPharma, Inc., a Delaware corporation (the "Company"), is offering to exchange (the "Exchange Offer"), upon the terms and subject to the conditions set forth in the Offering Memorandum dated November 15, 2011 (the "Offering Memorandum"), and the accompanying Letter of Transmittal (the "Letter of Transmittal"), up to $180,000,000 in aggregate principal amount of outstanding 2.875% Convertible Senior Notes due February 15, 2015 (the "Old Notes"), for a like principal amount of new 2.875% Series 2011 Convertible Senior Notes due February 15, 2015 (the "New Notes"), and a cash payment.

As set forth in the Offering Memorandum, the terms of the New Notes will be substantially the same as the terms of the Old Notes, except that the New Notes will contain (i) a net share settlement feature and (ii) a conditional conversion feature. As a result of these new features, the anti-dilution provisions and settlement procedures for the New Notes have been modified, and clarifying language was added to the anti-dilution provisions in conformity with our 3.75% Convertible Senior Notes due May 15, 2015, which also convert on a net share settlement basis. The Offering Memorandum and the Letter of Transmittal more fully describe the Exchange Offer. Capitalized terms used but not defined herein have the respective meanings given to them in the Offering Memorandum.

We are requesting that you contact your clients for whom you hold Old Notes regarding the Exchange Offer. For your information and for forwarding to your clients for whom you hold Old Notes registered in your name or in the name of your nominee, we are enclosing the following documents:

1. Offering Memorandum dated November 15, 2011;
2. The Letter of Transmittal for your use and for the information of your clients;

3. A form of letter that may be sent to your clients for whose account you hold Old Notes registered in your name or the name of your nominee, with space provided for obtaining such clients' instructions with regard to the Exchange Offer; and

4. IRS Form W-9 and Instructions on IRS Form W-9.

Your prompt action is required. The Exchange Offer will expire at 5:00 p.m., New York City time on December 13, 2011, unless extended. Old Notes tendered pursuant to the Exchange Offer may be withdrawn at any time at or prior to the Expiration Time.

To properly tender old notes, you must submit your acceptance via DTC's ATOP system (as defined in "Terms of the Exchange Offer—Procedures for Tendering" in the Offering Memorandum) or complete, sign and mail or transmit the Letter of Transmittal to the Tender and Paying Agent prior to the Expiration Time. Additionally, the Tender and Paying Agent must receive either a timely confirmation of book-entry transfer of the Old Notes or an agent's message through DTC's ATOP system, all in accordance with the instructions set forth in the Letter of Transmittal and the Offering Memorandum.

The Company will, upon request, reimburse brokers, dealers, commercial banks and trust companies for reasonable and necessary costs and expenses incurred by them in forwarding the Offering Memorandum and the related documents to the beneficial owners of Old Notes held by such brokers, dealers, commercial banks and trust companies as nominee or in a fiduciary capacity. The Company will pay or cause to be paid all transfer taxes applicable to the exchange of Old Notes pursuant to the Exchange Offer, except as set forth in Instruction 7 of the Letter of Transmittal.

Any inquiries you may have with respect to the procedure for tendering Old Notes pursuant to the Exchange Offer, or requests for additional copies of the enclosed materials, should be directed to Georgeson Inc., the Information Agent for the Exchange Offer, toll-free at (866) 541-3547.

Very truly yours,

PDL BIOPHARMA, INC.

NOTHING HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU OR ANY OTHER PERSON AS AN AGENT OF THE COMPANY OR THE TENDER AND PAYING AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENTS ON BEHALF OF ANY OF THEM WITH RESPECT TO THE EXCHANGE OFFER, EXCEPT FOR STATEMENTS EXPRESSLY MADE IN THE OFFERING MEMORANDUM OR THE LETTER OF TRANSMITTAL.

LETTER TO CLIENTS

PDL BIOPHARMA, INC.

EXCHANGE OFFER FOR
ALL OUTSTANDING
2.875% CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015
(CUSIP Nos. 69329YAB0 and 69329YAA2)
for new 2.875% Series 2011 Convertible Senior Notes due February 15, 2015

Pursuant to the Offering Memorandum dated November 15, 2011

THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON DECEMBER 13, 2011, UNLESS EXTENDED (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED FROM TIME TO TIME, THE "EXPIRATION TIME"). TENDERS MAY BE WITHDRAWN AT ANY TIME AT OR PRIOR TO THE EXPIRATION TIME.

To our Clients:

Enclosed for your consideration is the offering memorandum dated November 15, 2011 (the "Offering Memorandum"), and the accompanying Letter of Transmittal (the "Letter of Transmittal") that together constitute the offer (the "Exchange Offer") by PDL BioPharma, Inc., a Delaware corporation (the "Company"), to exchange up to $180,000,000 in aggregate principal amount of outstanding 2.875% Convertible Senior Notes due February 15, 2015 (the "Old Notes"), for a like principal amount of new 2.875% Series 2011 Convertible Senior Notes due February 15, 2015 (the "New Notes"), and a cash payment, upon the terms and subject to the conditions set forth in the Offering Memorandum and the Letter of Transmittal. As set forth in the Offering Memorandum, the terms of the New Notes will be substantially the same as the terms of the Old Notes, except that the New Notes will contain (i) a net share settlement feature and (ii) a conditional conversion feature. As a result of these new features, the anti-dilution provisions and settlement procedures for the New Notes have been modified, and clarifying language was added to the anti-dilution provisions in conformity with our 3.75% Convertible Senior Notes due May 15, 2015, which also convert on a net share settlement basis. The Offering Memorandum and the Letter of Transmittal more fully describe the Exchange Offer. Capitalized terms used but not defined herein have the meanings given to them in the Offering Memorandum.

This material is being forwarded to you as the beneficial owner of the Old Notes carried by us in your account, but not registered in your name. **A tender of such Old Notes can be made only by us as the registered holder for your account and pursuant to your instructions. The enclosed Letter of Transmittal is furnished to you for your information only and cannot be used to tender Old Notes.**

Accordingly, we request instructions as to whether you wish us to tender on your behalf the Old Notes held by us for your account, pursuant to the terms and conditions set forth in the enclosed Offering Memorandum and Letter of Transmittal.

The Exchange Offer will expire at 5:00 p.m., New York City time, on December 13, 2011, unless extended by the Company. If you desire to exchange your Old Notes in the Exchange Offer, your instructions should be forwarded to us as promptly as possible in order to permit us to tender the Old Notes on your behalf at or prior to the Expiration Time in accordance with the provisions of the Exchange Offer. Any Old Notes tendered pursuant to the Exchange Offer may be withdrawn at any time at or prior to the Expiration Time.

Your attention is directed to the following:

1. The Exchange Offer is described in and subject to the terms and conditions set forth in the Offering Memorandum and the Letter of Transmittal.
2. The Exchange Offer is for any and all Old Notes.
3. Subject to the terms and conditions of the Exchange Offer, the Company will accept for exchange promptly following the Expiration Time all Old Notes validly tendered and will issue New Notes and make the cash payment promptly after such acceptance.
4. Any transfer taxes incident to the transfer of Old Notes from the holder to the Company will be paid by the Company, except as otherwise provided in Instruction 7 of the Letter of Transmittal.
5. The Exchange Offer expires at 5:00 p.m., New York City time, on December 13, 2011, unless extended by the Company. If you desire to tender any Old Notes pursuant to the Exchange Offer, we must receive your instructions in ample time to permit us to effect a tender of the Old Notes on your behalf at or prior to the Expiration Time.

Pursuant to the Letter of Transmittal, you acknowledge that the Exchange Offer is being made in reliance upon Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act"), to exempt the Exchange Offer from the registration requirements of the Securities Act.

The enclosed "Instructions to Registered Holder from Beneficial Owner" form contains an authorization by you, as the beneficial owner of Old Notes, for us to make, among other things, the foregoing acknowledgments on your behalf.

We urge you to read the enclosed Offering Memorandum and Letter of Transmittal in conjunction with the Exchange Offer carefully before instructing us to tender your Old Notes. If you wish to tender any or all of the Old Notes held by us for your account, please so instruct us by completing, executing, detaching and returning to us the instruction form attached hereto.

None of the Old Notes held by us for your account will be tendered unless we receive written instructions from you to do so. Unless a specific contrary instruction is given, your signature on the attached "Instructions to Registered Holder from Beneficial Holder" shall constitute an instruction to us to tender ALL of the Old Notes held by us for your account.

PDL BIOPHARMA, INC.

Instructions to Registered Holder
from Beneficial Owner
of
2.875% CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015
(CUSIP Nos. 69329YAB0 and 69329YAA2)

The undersigned hereby acknowledges receipt of the offering memorandum dated November 15, 2011 (the "Offering Memorandum") of PDL BioPharma, Inc., a Delaware corporation (the "Company"), and the accompanying Letter of Transmittal (the "Letter of Transmittal"), that together constitute the offer (the "Exchange Offer") to exchange up to $180,000,000 in aggregate principal amount of outstanding 2.875% Convertible Senior Notes due February 15, 2015 (the "Old Notes"), for a like principal amount of new 2.875% Series 2011 Convertible Senior Notes due 2015 (the "New Notes"), and a cash payment, upon the terms and subject to the conditions set forth in the Offering Memorandum and the Letter of Transmittal.

This will instruct you, the registered holder, as to the action to be taken by you relating to the Exchange Offer with respect to the Old Notes held by you for the account of the undersigned, on the terms and subject to the conditions in the Offering Memorandum and Letter of Transmittal.

The aggregate principal amount of the Old Notes held by you for the account of the undersigned is (fill in the amount):

$_____ of the 2.875% Convertible Senior Notes due February 15, 2015 (CUSIP No. 69329YAB0)

$_____ of the 2.875% Convertible Senior Notes due February 15, 2015 (CUSIP No. 69329YAB0)

With respect to the Exchange Offer, the undersigned hereby instructs you (check appropriate box):

☐ To *TENDER* the following Old Notes held by you for the account of the undersigned (insert principal amount of Old Notes to be tendered, if less than all):

$_____ of the 2.875% Convertible Senior Notes due February 15, 2015 (CUSIP No. 69329YAB0)

$_____ of the 2.875% Convertible Senior Notes due February 15, 2015 (CUSIP No. 69329YAB0)

☐ *NOT* to tender any Old Notes held by you for the account of the undersigned.

If the undersigned is instructing you to tender the Old Notes held by you for the account of the undersigned, the undersigned agrees and acknowledges that you are authorized:

- to make, on behalf of the undersigned (and the undersigned, by its signature below, hereby makes to you), the representations, warranties and acknowledgments contained in the Letter of Transmittal that are to be made with respect to the undersigned as a beneficial owner of the Old Notes.
- to agree, on behalf of the undersigned, as set forth in the Letter of Transmittal; and
- to take such other action as necessary under the Offering Memorandum or the Letter of Transmittal to effect the valid tender of Old Notes.

SIGN HERE

Name of Beneficial Owner:_____

Signature:_____

Capacity (full title) [(1)]:_____

Address:_____

Telephone Number:_____

Taxpayer Identification Number or Social Security Number:_____

☐ **CHECK HERE IF YOU ARE A BROKER DEALER**

Date:_____, 2011

(1) Please provide if signature is by an attorney-in-fact, executor, administrator, trustee, guardian, officer of a corporation or other person acting in a fiduciary or representative capacity.

PDL BIOPHARMA, INC.

2.875% SERIES 2011 CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015

INDENTURE
DATED AS OF DECEMBER __, 2011

THE BANK OF NEW YORK MELLON TRUST COMPANY, N. A.
AS TRUSTEE

CROSS-REFERENCE TABLE

This Cross-Reference Table is not a part of the Indenture.

TIA Section	Indenture Section
310(a)(1)	8.1
(a)(2)	8.1
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	8.1
(b)	8.8; 8.10; 11.2
311(a)	8.11
(b)	8.11
(c)	N.A.
312(a)	2.5
(b)	N.A.
(c)	N.A.
313(a)	None
(b)(1)	N.A.
(b)(2)	None
(c)	None
(d)	None
314(a)	5.3; 11.2
(b)	N.A.
(c)(1)	11.4
(c)(2)	11.4
(c)(3)	N.A.
(d)	N.A.
(e)	11.4
315(a)	8.1(b)
(b)	8.5; 11.2
(c)	8.1(a)
(d)	8.1(c)
(e)	7.11
316(a)(last sentence)	11.6
(a)(1)(A)	7.5
(a)(1)(B)	7.4
(a)(2)	N.A.
(b)	7.7
317(a)(1)	7.8
(a)(2)	7.9
(b)	2.4
318(a)	None

N.A. means Not Applicable.

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THIS INDENTURE dated as of December [•], 2011, is between PDL BioPharma, Inc., a corporation duly organized under the laws of the State of Delaware (the "Company"), and The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States, as Trustee (the "Trustee").

In consideration of the premises and the purchase of the Securities by the Holders thereof, both parties agree as follows for the benefit of the other and for the equal and ratable benefit of the registered Holders of the Company's 2.875% Series 2011 Convertible Senior Notes due February 15, 2015.

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 DEFINITIONS.

"Additional Shares Table" means the table set forth in Schedule I hereto.

"Affiliate" means, with respect to any specified person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control", when used with respect to any person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Registrar, Paying Agent or Conversion Agent.

"Applicable Conversion Rate" means, at the time any determination thereof is to be made, the Initial Conversion Rate as adjusted pursuant to Sections 3.10 and 4.6.

"Applicable Procedures" means, with respect to any transfer or exchange of beneficial ownership interests in a Global Security, the rules and procedures of the Depositary, in each case to the extent applicable to such transfer or exchange.

"Bid Solicitation Agent" means the Company or an investment bank as may be appointed, from time to time, by the Company to solicit market bid quotations for the Notes.

"Board of Directors" means either the board of directors of the Company or any committee of the Board of Directors authorized to act for it with respect to this Indenture.

"Business Day" means each day that is not a Legal Holiday.

"Capital Stock" means (a) in the case of a corporation, corporate stock, (b) in the case of an association or business entity, shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distribution of the assets of, the issuing person.

"Cash" or "cash" means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

"Cash Settlement Averaging Period" with respect to any Security means the 40 consecutive Trading Day period beginning on, and including, the third Trading Day immediately after such Conversion Date, except that "Cash Settlement Averaging Period" means, (i) with respect to any Conversion Date occurring after the Company has given a Notice of Redemption, the 40 consecutive Trading Day period beginning on, and including, the 42nd Scheduled Trading Day prior to the applicable Redemption Date, and (ii) with respect to any other Conversion Date occurring during the period beginning on, and including, August 15, 2014, and ending at close of business on the second Scheduled Trading Day immediately prior to the Final Maturity Date, the 40 consecutive Trading Day period beginning on, and including, the 42nd Scheduled Trading Day prior to the Final Maturity Date.

"Certificated Security" means a Security that is in substantially the form attached hereto as Exhibit A and that does not include the information or the schedule called for by footnotes 1 and 3 thereof.

"close of business" means 5:00 p.m. (New York City time).

"Closing Date" means December [•], 2011.

"Closing Price" of the Common Stock on any date means the last reported sales price or, in case no such reported sale takes place on such date, the average of the reported closing bid and ask prices in either case on the Nasdaq Global Select Market or, if the Common Stock is not listed or admitted to trading or, if not listed or admitted to trading on the Nasdaq Global Select Market or any national securities exchange, the last reported sales price of the Common Stock as quoted on the NASDAQ Global Select Market or, in case no reported sales take place, the average of the closing bid and ask prices as quoted on the NASDAQ Global Select Market or any comparable system, the closing sales price or, in case no reported sale takes place, the average of the closing bid and ask prices, as furnished by any two members of the National Association of Securities Dealers, Inc. selected from time to time by the Company for that purpose. If no such prices are available, the "Closing Price" shall be the fair value of a share of Common Stock as determined in good faith by the Board of Directors.

"Common Stock" means the common stock of the Company, $0.01 par value, as it exists on the date of this Indenture, and any shares of any class or classes of capital stock of the Company resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, however, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion of Securities shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Company" means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Company.

"Conversion Price" means, in respect of each Security, as of any date, $1,000, divided by the Conversion Rate as of such date.

"Corporate Trust Office" means the office of the Trustee at which at any particular time the trust created by this Indenture shall be administered which office at the date of the execution of this Indenture is located at 700 South Flower Street, Suite 500, Los Angeles, California 90017, Attention: Corporate Trust Administration or at any other time at such other address as the Trustee may designate from time to time by notice to the Company.

"Daily Conversion Value" means, for each of the 40 consecutive Trading Days during the Cash Settlement Averaging Period, one fortieth (1/40th) of the product of (i) the Applicable Conversion Rate multiplied by (ii) the Daily VWAP of the Common Stock on such Trading Day.

"Daily Settlement Amount" has the meaning specified in Section 4.3(b).

"Daily Share Amount" has the meaning specified in Section 4.3(b)(ii).

"Daily VWAP" means, in respect of the Common Stock on any Trading Day, the per share volume-weighted average price on the NASDAQ Global Select Market as displayed under the heading "Bloomberg VWAP" on Bloomberg page "PDLI.Q <equity> VAP" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day as determined in a commercially reasonable manner by the Board of Directors or by a nationally recognized independent investment banking firm retained for the purpose by the Company, using a volume-weighted average price method). The Daily VWAP shall be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"Default" or "default" means, when used with respect to the Securities, any event which is or, after notice or passage of time or both, would be an Event of Default.

"Exchange Agreement Securities" means Securities issued pursuant to one or more agreements entered into between the Company and certain acquirers who are acquiring the Securities solely in exchange for other securities of the Company.

"Exchange Act" means the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Ex-Dividend Date" means, in respect of any issuance, dividend or distribution, the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market (used to determine the Closing Price), regular way, without the right to receive such issuance, dividend or distribution from the Company, whether directly or indirectly by due bills or otherwise.

"Final Maturity Date" means February 15, 2015.

"Fundamental Change" means the occurrence of any of the following at a time after the Securities are originally issued:

(a) The Common Stock (or other common stock into which the Securities are convertible or American Depository shares representing such common stock) is neither traded on the NASDAQ Global Select Market, the NASDAQ Global Market, the New York Stock Exchange or another United States national securities exchange nor quoted on an established automated over-the-counter trading market in the United States; or

(b) any Person acquires beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of the Company's Capital Stock entitling the Person to exercise 50% or more of the total voting power of all shares of the Company's Capital Stock entitled to vote generally in elections of directors, other than an acquisition by the Company, any of its Subsidiaries or any of its employee benefit plans; or

(c) the Company merges or consolidates with or into any other Person (other than a Subsidiary of the Company), another Person merges with or into the Company, or the Company conveys, sells, transfers or leases all or substantially all of its assets to another Person, other than any transaction:

(i) that does not result in a reclassification, conversion, exchange or cancellation of any outstanding Common Stock;

(ii) pursuant to which the holders of Common Stock immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of the Capital Stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after the transaction; or

(iii) that is effected solely to change the Company's jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the surviving entity.

For purposes of this definition, whether a Person is a "beneficial owner" will be determined in accordance with Rule 13d-3 under the Exchange Act and "Person" includes any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

"Fundamental Change Repurchase Date" means the date specified as such in the notice delivered to Holders pursuant to Section 3.9(c) hereof.

"GAAP" means generally accepted accounting principles in the United States of America as in effect as of the date of this Indenture, including those set forth in (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, (2) the statements and pronouncements of the Financial Accounting Standards Board, (3) such other statements by such other entity as approved by a significant segment of the accounting profession and (4) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in registration statements filed under the Securities Act and periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"Global Security" means a permanent Security that is in substantially the form attached hereto as Exhibit A and that includes the information and schedule called for by footnotes 1 and 3 thereof and which is deposited with the Depositary or its custodian and registered in the name of the Depositary or its nominee.

"Holder" or "Securityholder" means the person in whose name a Security is registered on the Primary Registrar's books.

"Indenture" means this Indenture as amended or supplemented from time to time pursuant to the terms of this Indenture.

"Indirect Participant" means an entity that, with respect to any Depositary, clears through or maintains a direct or indirect, custodial relationship with a Participant.

"Initial Conversion Rate" means [•] shares of Common Stock per $1,000 principal amount of Securities.

"Issuance Date" means the date on which the Securities are first authenticated and issued.

"Majority-owned" for the purposes of this definition means having "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the total voting power of the respective Person's Voting Stock.

"Market Disruption Event" means (i) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session on any Scheduled Trading Day or (ii) the occurrence or existence, prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock, for more than a one half-hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

"Officer" means the Chairman or any Co-Chairman of the Board, any Vice Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Controller, the Secretary or any Assistant Controller or Assistant Secretary of the Company.

"Officers' Certificate" means a certificate signed by two Officers; provided, however, that for purposes of Sections 4.7 and 5.3, "Officers' Certificate" means a certificate signed by the principal executive officer, principal financial officer or principal accounting officer of the Company and by one other Officer.

"open of business" means 9:00 a.m. (New York City time).

"Opinion of Counsel" means a written opinion from legal counsel. The counsel may be an employee of or counsel to the Company.

"Participant" means a Person who has an account with the Depositary.

"Person" or "person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Principal" or "principal" of a debt security, including the Securities, means the principal of the security plus, when appropriate, the premium, if any, on the security.

"Public Acquirer Change of Control" means any event constituting a Fundamental Change that would otherwise give Holders the right to cause the Company to repurchase the Securities under Section 3.9 where either (a) the acquirer or (b) if not the acquirer, a direct or indirect majority-owned Subsidiary of the acquirer or (c) if not the acquirer or any direct or indirect majority-owned Subsidiary of the acquirer, a corporation by which the acquirer is majority-owned has a class of common stock (or American Depository Shares representing such common stock) traded on a U.S. national securities exchange or quoted on the NASDAQ Global Select Market or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change.

"Public Acquirer Common Stock" means the class of common stock (or American Depository Shares representing such common stock) of an entity referred to in sections (a), (b) or (c) of the first sentence of the definition of "Public Acquirer Change of Control."

"Redemption Date" when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to this Indenture.

"Redemption Price" when used with respect to any Security to be redeemed, means the price fixed for such redemption pursuant to this Indenture, as set forth in the form of Security annexed as Exhibit A hereto.

"Rule 144" means Rule 144 under the Securities Act or any successor to such Rule.

"Rule 144A" means Rule 144A under the Securities Act or any successor to such Rule.

"Scheduled Trading Day" means a day that is scheduled to be a Trading Day. If the Common Stock is not listed or admitted for trading, "Scheduled Trading Day" means a Business Day.

"SEC" means the Securities and Exchange Commission.

"Securities" means the Series 2011 2.875% Convertible Senior Notes due February 15, 2015 or any of them (each, a "Security"), as amended or supplemented from time to time, that are issued under this Indenture, including any Exchange Agreement Securities and any Additional Securities.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Securities Custodian" means the Trustee, as custodian with respect to the Securities in global form, or any successor thereto.

"Significant Subsidiary" means, in respect of any Person, a Subsidiary of such Person that would constitute a "significant subsidiary", as such term is defined under Rule 1-02 of Regulation S-X under the Securities Act and the Exchange Act.

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

"TIA" means the Trust Indenture Act of 1939, as amended, and the rules and regulations thereunder as in effect on the date of this Indenture, except as provided in Section 10.3, and except to the extent any amendment to the Trust Indenture Act expressly provides for application of the Trust Indenture Act as in effect on another date.

"Trading Day" means, with respect to any security, each day (i) which is Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which securities are not generally traded on the principal exchange or market in which such security is traded and (ii) on which there is no Market Disruption Event.

"Trading Price" means, per $1,000 principal amount of the Securities on any date of determination, the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for $2,000,000 principal amount of the Securities at approximately 3:30 p.m., New York City time, on such determination date from three independent U.S. nationally recognized securities dealers selected by the Company; provided that, if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but only two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for $2,000,000 principal amount of the Securities from a U.S. nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of Securities shall be deemed to be less than 98% of the product of the Closing Price of the Common Stock and the Applicable Conversion Rate.

"Trustee" means the party named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture, and thereafter means the successor.

"Trust Officer" when used with respect to the Trustee, means any vice president, any assistant vice president, any senior trust officer or assistant trust officer, any trust officer, or any other officer associated with the corporate trust department of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such person's knowledge of and familiarity with the particular subject.

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

"Voting Stock" of a Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

SECTION 1.2 OTHER DEFINITIONS

Term	Defined in Section
Additional Securities	2.14
Additional Shares	3.10
Agent Members	2.1(b)
Bankruptcy Law	7.1
Company Order	2.2
Conversion Agent	2.3
Conversion Date	4.2
Custodian	7.1
Depositary	2.1(a)
DTC	2.1(a)
Event of Default	7.1
Fundamental Change Repurchase Price	3.9(a)
Indenture Shares	4.9
Legal Holiday	11.7
Maximum Shares	4.9
Paying Agent	2.3
Primary Registrar	2.3
Public Acquisition Notice	3.11
Reference Property	4.8
Registrar	2.3
Settlement Amount	4.3(a)
Stock Price	3.10(b)

SECTION 1.3 RESERVED.

SECTION 1.4 RULES OF CONSTRUCTION.

Unless the context otherwise requires:

(A) a term has the meaning assigned to it;

(B) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(C) words in the singular include the plural, and words in the plural include the singular;

(D) provisions apply to successive events and transactions;

(E) the term “merger” includes a statutory share exchange and the term “merged” has a correlative meaning;

(F) the masculine gender includes the feminine and the neuter;

(G) references to agreements and other instruments include subsequent amendments thereto; and

(H) “herein”, “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2
THE SECURITIES

SECTION 2.1 FORM AND DATING.

The Securities and the Trustee’s certificate of authentication shall be substantially in the respective forms set forth in Exhibit A, which Exhibit is incorporated in and made part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage. The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication. The Securities are being offered and sold by the Company pursuant to an exchange offer whereby certain initial acquirers are acquiring the Securities solely in exchange for other securities of the Company.

(a) Global Securities. The Securities issued on the Closing Date are being offered and sold in reliance on Section 3(a)(9) of the Securities Act, shall be issued in the form of one or more Global Securities which shall be deposited on behalf of the acquirers of the Securities represented thereby with the Trustee, at its Corporate Trust Office, as custodian for the depositary, The Depository Trust Company (“DTC”) (such depositary, or any successor thereto, being hereinafter referred to as the “Depositary”), and registered in the name of its nominee, Cede & Co., duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of these Global Securities may from time to time be increased or decreased by adjustments made on the records of the Securities Custodian as hereinafter provided, subject in each case to compliance with the Applicable Procedures.

(b) Global Securities In General. Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, purchases or conversions of such Securities. Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding

Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depositary.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary or under the Global Security, and the Depositary (including, for this purpose, its nominee) may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (A) prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or (B) impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(c) Book Entry Provisions. The Company shall execute and the Trustee shall, in accordance with this Section 2.1(c), authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of the Depositary, (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (iii) shall bear legends substantially to the following effect:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY."

SECTION 2.2 EXECUTION AND AUTHENTICATION.

An Officer shall sign the Securities for the Company by manual or facsimile signature attested by the manual or facsimile signature of the Secretary or an Assistant Secretary of the Company. Typographic and other minor errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Security which has been authenticated and delivered by the Trustee.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

On the Closing Date, the Company shall issue, and the Trustee shall authenticate and make available for delivery, Global Securities in the aggregate principal amount of $[•]. After the Closing Date, the Company may issue, and the Trustee shall authenticate and make available for delivery, Additional Securities or Exchange Agreement Securities issued pursuant to Section 2.14. The Trustee shall so authenticate and make available for delivery Securities upon receipt of a written order or orders of the Company signed by two Officers of the Company (a "Company Order"). The Company Order shall specify the amount of Securities to be authenticated and the date on which each original issue of Securities is to be authenticated.

The Company at any time or from time to time may, without the consent of any Holder, issue Additional Securities pursuant to Section 2.14, which Additional Securities shall be entitled to all of the benefits of this Indenture. Such Additional Securities will be deemed Securities for all purposes hereunder, including without limitation in determining the necessary Holders who may take the actions or consent to the taking of actions as specified in this Indenture.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent shall have the same rights as an Agent to deal with the Company or an Affiliate of the Company.

The Securities shall be issuable only in registered form without coupons and only in denominations of $1,000 principal amount and any integral multiple thereof.

SECTION 2.3 REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

The Company shall maintain one or more offices or agencies where Securities may be presented for registration of transfer or for exchange (each, a "Registrar"), one or more offices or agencies where Securities may be presented for payment (each, a "Paying Agent"), one or more offices or agencies where Securities may be presented for conversion (each, a "Conversion Agent") and one or more offices or agencies where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will at all times

maintain a Paying Agent, Conversion Agent, Registrar and an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served in the Borough of Manhattan, The City of New York. One of the Registrars (the "Primary Registrar") shall keep a register of the Securities and of their transfer and exchange.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent, Conversion Agent or agent for service of notices and demands in any place required by this Indenture, or fails to give the foregoing notice, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent (except for the purposes of Section 5.1 and Article 9).

The Company hereby initially designates the Trustee as Paying Agent, Registrar, Custodian and Conversion Agent, and each of the Corporate Trust Office of the Trustee and the office or agency of the Trustee in the Borough of Manhattan, The City of New York (which shall initially be The Bank of New York Mellon, an Affiliate of the Trustee, as agent of the Trustee located at 101 Barclay Street, Floor 4, New York, New York 10286, Attention: Corporate Trust Administration, one such office or agency of the Company for each of the aforesaid purposes.

SECTION 2.4 PAYING AGENT TO HOLD MONEY IN TRUST.

Prior to 11:00 a.m., New York City time, on each due date of the principal of or interest, if any, on any Securities, the Company shall deposit with a Paying Agent a sum sufficient to pay such principal or interest, if any, so becoming due. A Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the payment of principal of or interest, if any, on the Securities, and shall notify the Trustee of any default by the Company (or any other obligor on the Securities) in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall, before 11:00 a.m., New York City time, on each due date of the principal of or interest on any Securities, segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such Paying Agent. Upon doing so, the Paying Agent (other than the Company) shall have no further liability for the money.

SECTION 2.5 SECURITYHOLDER LISTS.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Primary Registrar, the Company shall furnish to the Trustee on or before each semiannual interest payment date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.6 TRANSFER AND EXCHANGE.

(a) Subject to compliance with any applicable additional requirements contained in Section 2.12, when a Security is presented to a Registrar with a request to register a transfer thereof or to exchange such Security for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested; provided, however, that every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form and, if applicable, a transfer certificate each in the form included in Exhibit A, and in form satisfactory to the Registrar duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Security for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.3, the Company shall execute and the Trustee shall authenticate Securities of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto, and provided, that this sentence shall not apply to any exchange pursuant to Section 2.10, 2.12(a), 3.6, 3.11, 4.2 (last paragraph) or 11.5.

Neither the Company, any Registrar nor the Trustee shall be required to exchange or register a transfer of (i) any Securities for a period of 15 days next preceding any mailing of a notice of Securities to be redeemed, (ii) any Securities or portions thereof selected or called for redemption (except, in the case of redemption of a Security in part, the portion thereof not to be redeemed) or (iii) any Securities or portions thereof in respect of which a notice pursuant to Section 3.9(d) hereof has been delivered and not withdrawn by the Holder thereof (except, in the case of the purchase of a Security in part, the portion thereof not to be purchased).

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

(b) Any Registrar appointed pursuant to Section 2.3 hereof shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Securities upon transfer or exchange of Securities.

(c) Each Holder agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Security in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Agent Members or other beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to

examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.7 REPLACEMENT SECURITIES.

If any mutilated Security is surrendered to the Company, a Registrar or the Trustee, or the Company, a Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company, the applicable Registrar and the Trustee such security or indemnity as will be required by them to save each of them harmless, then, in the absence of notice to the Company, such Registrar or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be redeemed or purchased by the Company pursuant to Article 3, the Company in its discretion may, instead of issuing a new Security, pay, redeem or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section 2.7, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.

Every new Security issued pursuant to this Section 2.7 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.7 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.8 OUTSTANDING SECURITIES.

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those converted pursuant to Article 4, those delivered to it for cancellation or surrendered for transfer or exchange and those described in this Section 2.8 as not outstanding.

If a Security is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Company receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If a Paying Agent (other than the Company or an Affiliate of the Company) holds on a Redemption Date, a Fundamental Change Repurchase Date or the Final Maturity Date money

sufficient to pay the principal of (including premium, if any) and accrued interest on Securities (or portions thereof) payable on that date, then on and after such Redemption Date, Fundamental Change Repurchase Date or the Final Maturity Date, as the case may be, such Securities (or portions thereof, as the case may be) shall cease to be outstanding and interest on them shall cease to accrue; provided, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefore satisfactory to the Trustee has been made.

Subject to the restrictions contained in Section 2.9, a Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

SECTION 2.9 TREASURY SECURITIES.

In determining whether the Holders of the required principal amount of Securities have concurred in any notice, direction, waiver or consent, Securities owned by the Company or any other obligor on the Securities or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities and that the pledgee is not the Company or any other obligor on the Securities or any Affiliate of the Company or of such other obligor.

SECTION 2.10 TEMPORARY SECURITIES.

Until definitive Securities are ready for delivery, the Company may prepare and execute, and, upon receipt of a Company Order, the Trustee shall authenticate and deliver, temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company with the consent of the Trustee considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate and deliver definitive Securities in exchange for temporary Securities.

SECTION 2.11 CANCELLATION.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee or its agent any Securities surrendered to them for transfer, exchange, redemption, payment or conversion. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Securities surrendered for transfer, exchange, redemption, payment, conversion or cancellation and shall deliver the canceled Securities to the Company. The Company may not issue any new Securities to replace any Securities that any Holder has converted pursuant to Article 4.

SECTION 2.12 ADDITIONAL TRANSFER AND EXCHANGE REQUIREMENTS.

(a) No transfer of a Security to any Person shall be effective under this Indenture or the Securities unless and until such Security has been registered in the name of such Person. Notwithstanding any other provisions of this Indenture or the Securities, transfers of a Global Security, in whole or in part, shall be made only in accordance with this Section 2.12.

(b) The transfer and exchange of beneficial interests in the Global Securities shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures.

(c) As used in Section 2.12(b), the term "transfer" encompasses any sale, pledge, transfer, hypothecation or other disposition of any Security.

(d) (i) Notwithstanding any other provisions of this Indenture or the Securities, a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depositary or one or more nominees thereof, provided that a Global Security may be exchanged for Securities registered in the names of any person designated by the Depositary in the event that (A) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days, (B) the Company has provided the Depositary with written notice that it has decided to discontinue use of the system of book-entry transfer through the Depositary or any successor Depositary or (C) an Event of Default has occurred and is continuing. Any Global Security exchanged pursuant to clauses (A) or (B) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (C) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Security issued in exchange for a Global Security or any portion thereof shall be a Global Security; provided that any such Security so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Security.

(ii) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully-registered book entry form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Security, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(iii) Subject to the provisions of clause (v) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members and persons that

may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(iv) In the event of the occurrence of any of the events specified in clause (i) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form, without interest coupons.

(v) Neither Agent Members nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

SECTION 2.13 CUSIP NUMBERS.

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

SECTION 2.14 ADDITIONAL SECURITIES.

If authorized by a resolution of the Board of Directors, the Company shall be entitled to issue additional Securities under this Indenture (“Additional Securities”) which shall have substantially identical terms as the Securities, other than with respect to the date of issuance, issue price and the amount of interest payable on the first interest payment date applicable thereto; provided that such issuance shall be made in compliance with this Indenture; provided, further, that no Additional Securities may be issued with the same “CUSIP”, “ISIN” or “Common Code” number as other Securities unless it is so permitted in accordance with applicable law. The Securities issued on the Closing Date and any Additional Securities shall be treated as a single class for all purposes under this Indenture.

With respect to any Additional Securities, the Company shall set forth in an Officers’ Certificate, a copy of which shall be delivered to the Trustee, or in a supplemental indenture, the following information:

(1) the aggregate principal amount of Securities outstanding immediately prior to the issuance of such Additional Securities;

(2) the aggregate principal amount of such Additional Securities to be authenticated and delivered pursuant to this Indenture;

(3) the issue price, if any, and the issue date of such Additional Securities and the amount of interest payable on the first interest payment date applicable thereto;

(4) the "CUSIP", "ISIN" or "Common Code" number, as applicable, of such Additional Securities; and

(5) whether or not such Additional Securities are Exchange Agreement Securities.

In connection with the authentication of any Additional Securities, the Trustee shall receive, and will be fully protected in relying upon, an Opinion of Counsel stating:

(1) if the form of such Securities has been established by or pursuant to a Board Resolution as permitted by Section 2.14, that such form has been established in conformity with the provisions of this Indenture,

(2) if the terms of such Securities have been established by or pursuant to a Board Resolution as permitted by Section 2.14, that such terms have been established in conformity with the provisions of this Indenture,

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company enforceable in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting creditors' rights and by general principles of equity; and

(4) that all conditions precedent to the execution and delivery by the Company of such Securities have been complied with, and the issuance of the Securities is in compliance with the Indenture.

ARTICLE 3
REDEMPTION AND PURCHASES

SECTION 3.1 OPTIONAL REDEMPTION.

(a) The Company shall not have the option to redeem the Securities pursuant to this Section 3.1 prior to August 15, 2014. Thereafter, the Company shall have the option to redeem the Securities, in whole or in part, at a redemption price equal to 100% of the aggregate principal amount of the Securities to be redeemed, plus accrued and unpaid interest thereon, to the Redemption Date.

(b) Any redemption pursuant to this Section 3.1 shall be made pursuant to the provisions of Section 3.2 through 3.7 hereof.

SECTION 3.2 RIGHT TO REDEEM; NOTICE TO TRUSTEE.

If the Company elects to redeem Securities pursuant to Section 3.1 and paragraph 6 of the Securities, it shall notify the Trustee at least 45 days prior to the Redemption Date as fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee) of the Redemption Date and the principal amount of Securities to be redeemed. If fewer than all of the Securities are to be redeemed, the record date relating to such redemption shall be selected by the Company and given to the Trustee, which record date shall not be less than ten days after the date of notice to the Trustee.

SECTION 3.3 SELECTION OF SECURITIES TO BE REDEEMED.

If less than all of the Securities are to be redeemed, unless the procedures of the Depositary provide otherwise, the Trustee shall, at least 10 days but not more than 60 days prior to the Redemption Date, select the Securities to be redeemed. The Trustee shall make the selection from the Securities outstanding and not previously called for redemption, by lot or otherwise in accordance with applicable procedures of DTC. Securities in denominations of $1,000 may only be redeemed in whole. The Trustee may select for redemption portions (equal to $1,000 or any integral multiple thereof) of the principal of Securities that have denominations larger than $1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption. Securities which have been converted after a selection of Securities to be redeemed has been made shall be treated by the Trustee as no longer outstanding and thus not eligible for redemption.

SECTION 3.4 NOTICE OF REDEMPTION.

At least 10 days but not more than 60 days before a Redemption Date, the Company shall mail or cause to be mailed (or transmitted electronically in accordance with DTC procedures) a notice of redemption to each Holder of Securities to be redeemed at such Holder's address as it appears on the Primary Registrar's books.

The notice shall identify the Securities (including CUSIP numbers) to be redeemed and shall state:

(1) the Redemption Date;

(2) the Redemption Price;

(3) the Applicable Conversion Rate;

(4) the name and address of each Paying Agent and Conversion Agent;

(5) that Securities called for redemption must be presented and surrendered to a Paying Agent to collect the Redemption Price;

(6) that Holders who wish to convert Securities must surrender such Securities for conversion no later than the close of business on the Business Day immediately preceding the Redemption Date and must satisfy the other requirements set forth in paragraph 9 of the Securities;

(7) that, unless the Company defaults in making the payment of the Redemption Price, interest on Securities called for redemption shall cease accruing on and after the Redemption Date and the only remaining right of the Holder shall be to receive payment of the Redemption Price plus accrued interest, if any, up to but not including the Redemption Date, upon presentation and surrender to a Paying Agent of the Securities; and the Redemption Date, upon presentation and surrender of such Security, a new Security or Securities in aggregate principal amount equal to the unredeemed portion thereof will be issued.

(8) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the Redemption Date, upon presentation and surrender of such Security, a new Security or Securities in aggregate principal amount equal to the unredeemed portion thereof will be issued.

If any of the Securities to be redeemed is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to redemptions. At the Company's written request to the Trustee, upon reasonable prior notice (which shall be no less than 5 Business Days prior to the date of the notice of redemption), which request shall (i) be irrevocable once given and (ii) set forth all relevant information required by clauses (1) through (8) of the preceding paragraph, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense.

SECTION 3.5 EFFECT OF NOTICE OF REDEMPTION.

Once notice of redemption is mailed, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice, together with accrued interest, if any, except for Securities that are converted in accordance with the provisions of Article 4. Upon presentation and surrender to a Paying Agent, Securities called for redemption shall be paid at the Redemption Price, plus accrued interest up to but not including the Redemption Date; provided that if the Redemption Date falls after an interest payment record date and on or before an interest payment date, then the interest will be payable to the Holders in whose name the Securities are registered at the close of business on the interest payment record date.

SECTION 3.6 DEPOSIT OF REDEMPTION PRICE.

Prior to 11:00 a.m. New York City time, on the Redemption Date, the Company shall deposit with a Paying Agent (or, if the Company acts as Paying Agent, shall segregate and hold in trust) an amount of money (in immediately available funds if deposited on such Redemption Date) sufficient to pay the Redemption Price of and accrued interest on all Securities to be redeemed on that date, other than Securities or portions thereof called for redemption on that date

which have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of the conversion of Securities pursuant to Article 4 or, if such money is then held by the Company in trust and is not required for such purpose, it shall be discharged from the trust.

SECTION 3.7 SECURITIES REDEEMED IN PART.

Upon presentation and surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

SECTION 3.8 RESERVED.

SECTION 3.9 REPURCHASE AT OPTION OF THE HOLDER UPON A FUNDAMENTAL CHANGE.

(a) Subject to the satisfaction of the requirements of this Section 3.9, if a Fundamental Change occurs at any time prior to the Final Maturity Date, each Holder will, upon receipt of the notice of the occurrence of a Fundamental Change described in Section 3.9(c), have the right (subject to the Company's rights upon delivery of a Public Acquisition Notice, as defined in Section 3.11) to require the Company to repurchase any or all of such Holder's

Securities for cash in an amount equal to 100% of the principal amount of the Securities to be repurchased plus accrued and unpaid interest, if any, to (but not including) the Fundamental Change Repurchase Date (the "Fundamental Change Repurchase Price"), unless such Fundamental Change Repurchase Date falls after an interest payment record date and on or prior to the corresponding interest payment date, in which case the Fundamental Change Repurchase Price will not include the amount of accrued and unpaid interest payable on such interest payment date, and such accrued and unpaid interest will be paid to the Holder of record at the close of business on the corresponding interest payment record date.

(b) Notwithstanding the foregoing, Holders will not have the right to require the Company to repurchase any Securities if a Fundamental Change described in clause (b) or (c) in the definition of Fundamental Change occurs (and the Company will not be required to deliver the notice described in Section 3.9(c)), if either:

(1) the Closing Price for any five Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the effective date of the Fundamental Change or the date of the public announcement of the Fundamental Change, in the case of a Fundamental Change relating to an acquisition of Capital Stock under clause (b) of the definition of Fundamental Change, or the period of ten consecutive Trading Days ending immediately before the effective date of the Fundamental Change, in the case of a Fundamental Change relating to a merger, consolidation, asset sale or otherwise under clause (c) of the definition of Fundamental Change, equals or exceeds 105% of the quotient of $1,000 divided by the Applicable Conversion Rate in effect on each of those five Trading Days; or

(2) at least 95% of the consideration paid for the Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' or appraisal rights) in a merger or consolidation or a conveyance, sale, transfer or lease otherwise constituting a Fundamental Change under clause (b) and/or (c) of the definition of Fundamental Change consists of shares of Capital Stock (or American Depository Shares representing such Capital Stock) traded on the NASDAQ Global Select Market, the NASDAQ Global Market, the New York Stock Exchange or another United States national securities exchange or quoted on an established automated over-the-counter trading market in the United States (or will be so traded or quoted immediately following the merger or consolidation) and as a result of the merger or consolidation the Securities become convertible into shares of such Capital Stock (or American Depository Shares representing such Capital Stock), subject to the provisions set forth under Section 4.3 of this Indenture.

(c) Subject to Section 3.9(b) and 3.11, on or before the 15th day after the effective date of a Fundamental Change (which fundamental Change results in the Holders of such Securities having the right to cause the Company to repurchase their securities) the Company will provide to all Holders of the Securities, the Trustee and the Paying Agent a notice of the occurrence of the Fundamental Change and of the resulting repurchase right. Such notice shall state:

(1) the events causing the Fundamental Change;

(2) whether the Fundamental Change falls under clause (b) or (c) of the definition of Fundamental Change, in which case the conversion adjustments described in Section 3.10 will be applicable;

(3) the effective date of the Fundamental Change;

(4) the last date on which a Holder may exercise its repurchase right;

(5) the Fundamental Change Repurchase Price;

(6) the Fundamental Change Repurchase Date;

(7) the name and address of the Paying Agent and the Conversion Agent;

(8) the Applicable Conversion Rate and any adjustments to the Applicable Conversion Rate;

(9) that the Securities with respect to which a Fundamental Change repurchase notice has been given by the Holder may be converted only if the Holder withdraws the Fundamental Change repurchase notice as described in clause (d) below; and

(10) the procedures that Holders must follow to require the Company to repurchase their Securities and to withdraw any repurchase notice.

Substantially simultaneously with providing such notice, the Company will issue a press release and publish the information through a public medium customary for such press releases.

(d) To exercise the repurchase right in connection with a Fundamental Change, a Holder must, before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date, deliver the Securities to be purchased to the Paying Agent, duly endorsed for transfer, or effect book-entry transfer of the Securities to the Paying Agent, and must deliver the Fundamental Change repurchase notice duly completed to the Paying Agent. The Fundamental Change repurchase notice must state:

(1) if the Securities are certificated, the certificate numbers of the Securities to be delivered for repurchase;

(2) the portion of the principal amount of the Securities to be repurchased, which must be equal to $1,000 or an integral multiple thereof; and

(3) that the Securities are to be repurchased by the Company pursuant to the applicable provisions of the Securities and this Indenture.

If the Securities are not in certificated form, the repurchase notice must comply with the Applicable Procedures.

A Holder may withdraw any Fundamental Change repurchase notice (in whole or in part) by a written notice of withdrawal delivered to the Paying Agent prior to the close of business on

the Business Day prior to the Fundamental Change Repurchase Date. The notice of withdrawal must state:

(1) the principal amount of the Securities for which the repurchase notice has been withdrawn;

(2) if certificated Securities have been issued, the certificate numbers of the withdrawn Securities; and

(3) the principal amount, if any, that remains subject to the repurchase notice. If the Securities are not in certificated form, the withdrawal notice must comply with the Applicable Procedures.

(e) The Company must repurchase the Securities for which a Fundamental Change repurchase notice has been delivered and not withdrawn no less than 20 and no more than 35 days after the date of the Company's notice of the occurrence of the relevant Fundamental Change, subject to extension to comply with applicable law. To receive payment of the Fundamental Change Repurchase Price, a Holder must either effect book-entry transfer or deliver the Securities, together with necessary endorsements, to the office of the Paying Agent after delivery of the repurchase notice. Holders will receive payment of the Fundamental Change Repurchase Price promptly following the later of the Fundamental Change Repurchase Date or the time of book-entry transfer or the delivery of the Securities. If the Paying Agent holds money sufficient to pay the Fundamental Change Repurchase Price of the Securities on or prior to the Business Day following the Fundamental Change Repurchase Date, then:

(1) the Securities will cease to be outstanding and interest, if any, will cease to accrue (whether or not book-entry transfer of the Securities is made or whether or not the Securities are delivered to the Paying Agent); and

(2) all other rights of the Holder will terminate (other than the right to receive the Fundamental Change Repurchase Price upon delivery or transfer of the Securities).

SECTION 3.10 ADJUSTMENT TO APPLICABLE CONVERSION RATE UPON A FUNDAMENTAL CHANGE.

(a) If and only to the extent that a Holder converts Securities in connection with a Fundamental Change described in clause (b) or (c) of the definition of Fundamental Change (and subject to the Company's rights upon delivery of a Public Acquisition Notice as defined in Section 3.11), the Company will increase the Applicable Conversion Rate for the Securities surrendered for conversion by a number of additional shares (the "Additional Shares") as described in this Section 3.10; provided, however, that no increase will be made in the case of a Fundamental Change if at least 95% of the consideration paid for the Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' or appraisal rights) in such Fundamental Change transaction consists of shares of Capital Stock (or American Depository Shares representing such Capital Stock) traded on the NASDAQ Global Select Market, the NASDAQ Global Market, the New York Stock Exchange or another United States national securities exchange or quoted an established automated over-the-counter trading market in the United States (or that will be so traded or quoted immediately following the transaction) and as a result of such Fundamental Change transaction the Securities become convertible into the consideration paid for the Common Stock (consisting, as described above, of at least 95% such Capital Stock (or American Depositary Shares representing such Capital Stock)), subject to the provisions set forth under Section 4.3 of this Indenture.

(b) The number of Additional Shares will be determined by reference to the Additional Shares Table, based on the effective date of the Fundamental Change transaction and the price (the "Stock Price") paid per share of Common Stock in such Fundamental Change transaction. If holders of Common Stock receive only cash in such Fundamental Change transaction, the Stock Price will be the cash amount paid per share of Common Stock. Otherwise, the Stock Price will be the average of the Closing Prices of the Common Stock on each of the five consecutive Trading Days prior to but not including the effective date of the Fundamental Change.

(c) A conversion of Securities by a Holder will be deemed for these purposes to be "in connection with" a Fundamental Change if the conversion notice is received by the Conversion Agent on or subsequent to the effective date of the Fundamental Change and prior to the 45th day following the effective date of the Fundamental Change (or, if earlier and to the extent applicable, the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date).

(d) The Stock Prices set forth in the first row of the Additional Shares Table (i.e., the column headers) will be adjusted as of any date on which the Applicable Conversion Rate is adjusted, as described in Section 4.6. The adjusted Stock Prices will equal (i) the Stock Prices applicable immediately prior to such adjustment, multiplied by (ii) a fraction, (A) the numerator of which is the Applicable Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and (B) the denominator of which is the Applicable Conversion Rate as so adjusted. The number of Additional Shares will be adjusted in the same manner and for the same events as the Applicable Conversion Rate as set forth in Section 4.6.

(e) The exact Stock Price and effective date of the Fundamental Change may not be set forth on the Additional Shares Table; in which case, if the Stock Price is:

(1) between two Stock Price amounts on the Additional Shares Table or the effective date of the Fundamental Change is between two dates on the Additional Shares 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 Price amounts and the two dates, as applicable, based on a 365-day year;

(2) more than $[—] per share (subject to adjustment), no Additional Shares will be issued upon conversion; and

(3) less than $[—] per share (subject to adjustment), no Additional Shares will be issued upon conversion.

(f) Notwithstanding the foregoing, in no event will the total number of shares of Common Stock issuable upon conversion exceed [Ÿ] per $1,000 principal amount of Securities, subject to adjustment in the same manner and for the same events as the Applicable Conversion Rate as set forth in Section 4.6.

SECTION 3.11 PUBLIC ACQUIRER CHANGE OF CONTROL.

(a) Within 15 Trading Days prior to but not including the expected effective date of a Public Acquirer Change of Control, the Company will provide a notice (a "Public Acquisition Notice") to all Holders, the Trustee, any Paying Agent and any Conversion Agent describing the anticipated Public Acquirer Change of Control and stating whether the Company will:

(1) elect to adjust the Applicable Conversion Rate and related conversion obligation as described in this Section 3.11, in which case the Holders will not have the right to require the Company to repurchase their Securities as described in Section 3.9 and will not have the right to the Applicable Conversion Rate adjustment described in Section 3.10; or

(2) not elect to adjust the Applicable Conversion Rate and related conversion obligation as described in this Section 3.11, in which case the Holders will have the right (if applicable) to require the Company to repurchase their Securities as described in Section 3.9 and/or the right (if applicable) to an Applicable Conversion Rate adjustment as described in Section 3.10, in each case in accordance with the respective provisions of those Sections.

(b) Notwithstanding any other provision of this Section 3.11, the Company will not provide such notice if the expected effective date of a Public Acquirer Change of Control is on or after the 42nd Scheduled Trading Day prior to the Final Maturity Date and, whether or not such notice is provided, no election to adjust the Applicable Conversion Rate and related conversion obligation as described in this Section 3.11 shall be effective if the actual effective date of a Public Acquirer Change of Control is on or after the 42nd Scheduled Trading Day prior to the Final Maturity Date.

(c) If the Public Acquisition Notice indicates that the Company is making the election described in Section 3.11(a)(1), then the Applicable Conversion Rate and the related conversion obligation shall be adjusted such that from and after the effective date of the Public Acquirer Change of Control, Holders of the Securities will be entitled to convert their Securities into cash and, if applicable, a number of shares of Public Acquirer Common Stock based on the calculation of the Settlement Amount pursuant to Section 4.3 (and, for such purposes, references to Common Stock in Section 4.3 shall be deemed to be references to the Public Acquirer Common Stock) and the Applicable Conversion Rate will be adjusted by multiplying the Applicable Conversion Rate in effect immediately before the Public Acquirer Change of Control by a fraction:

(1) the numerator of which will be (A) in the case of a consolidation, merger or binding share exchange, pursuant to which Common Stock is converted into cash, securities or other property, the average value of all cash and any other consideration (as determined by the Board of Directors) paid or payable per share of Common Stock or (B) in the case of any other Public Acquirer Change of Control, the average of the Closing Price of the Common Stock for the five consecutive Trading Days prior to but excluding the effective date of such Public Acquirer Change of Control; and

(2) the denominator of which will be the average of the Closing Price of the Public Acquirer Common Stock for the five consecutive Trading Days prior to but excluding the effective date of such Public Acquirer Change of Control.

SECTION 3.12 COMPLIANCE WITH SECURITIES LAWS UPON PURCHASE OF SECURITIES.

In connection with any offer to purchase or purchase of Securities under Section 3.9, the Company shall (a) comply with Rule 13e-4 and Rule 14e-1 (or any successor to either such Rule), if applicable, under the Exchange Act, (b) file the related Schedule TO (or any successor or similar schedule, form or report) if required under the Exchange Act, and (c) otherwise comply with all federal and state securities laws in connection with such offer to purchase or purchase of Securities, all so as to permit the rights of the Holders and obligations of the Company under Sections 3.9 through 3.12 to be exercised in the time and in the manner specified therein.

SECTION 3.13 REPAYMENT TO THE COMPANY.

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.9 exceeds the aggregate Fundamental Change Repurchase Price together with interest, if any, thereon of the Securities or portions thereof that the Company is obligated to purchase, then promptly after the Fundamental Change Repurchase Date, the Trustee or a Paying Agent, as the case may be, shall return any such excess cash to the Company.

ARTICLE 4
CONVERSION

SECTION 4.1 CONVERSION PRIVILEGE.

Subject to the further provisions of this Article 4 and paragraph 10 of the Securities, a Holder of a Security may convert the principal amount of such Security (or any portion thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof) at any time prior to the close of business on the last Business Date prior to the Final Maturity Date, at the Applicable Conversion Rate in effect on the Conversion Date; provided, however, that, if such Security is called for redemption or submitted or presented for purchase pursuant to Article 3, such conversion right shall terminate at the close of business on the Business Day immediately preceding the Redemption Date or Fundamental Change Repurchase Date, as the case may be, for such Security or such earlier date as the Holder presents such Security for redemption or for purchase (unless the Company shall default in making the redemption payment or Fundamental Change Repurchase Price payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed or purchased, as the case may be), (x) prior to the close of business on the Business Day immediately preceding August 15, 2014, only upon satisfaction of one or more of the conditions described in clauses (i) through (iv) below and (y) on or after August 15, 2014, at any time prior to the close of business on the second Scheduled Trading Day immediately preceding February 15, 2015, irrespective of the conditions described in clauses (i) through (v) below:

(i) Prior to the close of business on the Business Day immediately preceding August 15, 2014, a Holder of Securities may surrender all or a portion of its Securities for conversion in any fiscal quarter (and only during such fiscal quarter) after the fiscal quarter ending December 31, 2011, if the Closing Price of the Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding fiscal quarter exceeds 130% of the Conversion Price on the last day of such preceding fiscal quarter. The Company shall determine at the beginning of each fiscal quarter after the fiscal quarter ending December 31, 2011, whether the Securities are convertible as a result of the price of the Common Stock, and if the Company determines that the Securities are convertible in accordance with this Section 4.1(i), the Company shall notify the Trustee and the Conversion Agent in writing.

(ii) Prior to the close of business on the Business Day immediately preceding August 15, 2014, a Holder of Securities may surrender Securities for conversion during the five Business Day period immediately after any five consecutive Trading Day period in which the Trading Price per $1,000 principal amount of Securities, as determined following a request by a Holder of Securities in accordance with the procedures set forth in this Section 4.01(ii), for each Trading Day of such period was less than 98% of the product of the Closing Price of the Common Stock and the Applicable Conversion Rate on each such Trading Day (the "Trading Price Condition"), subject to compliance with the procedures and conditions set forth in this Section 4.01(ii) concerning the obligation to make a trading price determination, in which event the Trading Price Condition shall be met. The Bid Solicitation Agent shall have no obligation to determine the Trading Price of the Securities in accordance with this Section 4.01(ii) unless requested by the Company, and the Company shall have no obligation to make such request unless a Holder of Securities provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Securities would be less than 98% of the product of the Closing Price of the Common Stock and the Applicable Conversion Rate. Promptly following receipt of such evidence, the Company shall instruct the Bid Solicitation Agent to determine (or, if the Company is then acting as Bid Solicitation Agent, the Company shall determine) the Trading Price of the Securities beginning on the next Trading Day and on each successive Trading Day until such Trading Day on which the Trading Price per $1,000 principal amount of Securities is greater than or equal to 98% of the product of the Closing Price of the Common Stock and the Applicable Conversion Rate. If, upon presentation of such reasonable evidence by the Holder, the Company does not so instruct the Bid Solicitation Agent to obtain (or, if the Company is then acting as Bid Solicitation Agent, the Company does not obtain) bids when required, the Trading Price per $1,000 principal amount of the Securities shall be deemed to be less than 98% of the product of the Closing Price of the Common Stock and the Applicable Conversion Rate on each day the Company fails to do so. If the Trading Price Condition has been met, the Company shall, as soon as practicable following the condition being met, so notify the Holders, the Trustee and the Conversion Agent in writing. If, at any time after the Trading Price Condition has been met, the Trading Price per $1,000 principal amount of Securities is greater than or equal to 98% of the product of the Closing Price of the Common Stock and the Applicable Conversion Rate for such date, the Company shall so notify the holders of the Securities, the Trustee and the Conversion Agent in writing.

(iii) A Holder may surrender its Securities for conversion if the Company calls such Securities for redemption as provided in Article 3, at any time prior to the close of business on the last Business Day immediately preceding the Redemption Date, even if the

Securities are not otherwise convertible at such time, after which time the Holder's right to convert its Securities pursuant to this Section 4.1 will expire unless the Company defaults in the payment of the Redemption Price.

(iv) Prior to the close of business on the Business Day immediately preceding August 15, 2014, if the Company elects to:

(A) distribute to all or substantially all holders of Common Stock rights or warrants entitling them for a period expiring within 60 calendar days after the record date for such distribution, to subscribe for or purchase shares of Common Stock at a price per share less than the Closing Price of a share of Common Stock on the Trading Day immediately preceding the declaration date for such distribution; or

(B) distribute to all or substantially all holders of Common Stock assets, debt securities or rights to purchase securities of the Company, which distribution has a per share value, as determined by the Board of Directors, exceeding 10% of the Closing Price of the Common Stock on the Trading Day immediately preceding the declaration date for such distribution,

then, in each case, the Company shall notify the Holders at least 20 Business Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender Securities for conversion at any time from, and including, the date the Company mails such notice until the earlier of the close of business on the Business Day immediately prior to such Ex-Dividend Date or the date of the Company's announcement that such distribution shall not take place, even if the Securities are not otherwise convertible at such time. No Holder may exercise its right to convert its Securities under the provisions of this Section 4.01(iii) if such Holder otherwise may participate in such distribution without conversion (based upon the Applicable Conversion Rate and upon the same terms as holders of the Common Stock).

(v) Prior to the close of business on the Business Day immediately preceding August 15, 2014, if a transaction or event that constitutes a Fundamental Change occurs, Holders may surrender Securities for conversion at any time from and after the date which is 25 Scheduled Trading Days prior to the anticipated effective date of such transaction until the 45th day following the effective date of such transaction (or, if earlier and to the extent applicable, the close of business on the second Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date). The Company shall notify Holders of the anticipated effective date of the Fundamental Change (i) as soon as practicable following the date the Company publicly announces such transaction but in no event less than 25 Scheduled Trading Days prior to the anticipated effective date of such transaction; or (ii) if the Company does not have knowledge of such transaction at least 25 Scheduled Trading Days prior to the anticipated effective date of such transaction, within one Business Day of the date upon which the Company receives notice, or otherwise becomes aware, of such transaction, but in no event later than the actual effective date of such transaction. The Company shall update its notice promptly if the anticipated effective date subsequently changes.

The Initial Conversion Rate is subject to adjustment as provided in this Article 4.

Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

A Security in respect of which a Holder has delivered a notice pursuant to Section 3.9 exercising the option of such Holder to require the Company to purchase such Security may be converted only if such notice is withdrawn by a written notice of withdrawal delivered to a Paying Agent prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date in accordance with Section 3.9.

A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted its Securities to Common Stock, and only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article 4.

SECTION 4.2 CONVERSION PROCEDURE.

(a) In order to exercise the conversion privilege with respect to any interest in a Global Security, a Holder must complete the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and pay the funds, if any, required by Section 4.3(d) and any transfer or similar tax, if required, and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depositary. In order to exercise the conversion privilege with respect to any definitive Securities, the Holder of any such Securities to be converted, in whole or in part, shall:

(i) complete and manually sign the conversion notice provided on the back of the Security (the "Conversion Notice") or a facsimile of the Conversion Notice;

(ii) deliver the Conversion Notice, which is irrevocable, and the Security to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents,

(iv) pay the funds, if any, required under Section 4.3(d); and

(v) pay all transfer or similar tax, if required.

The date on which the Holder satisfies all of those requirements is the "Conversion Date." The Conversion Agent shall, as promptly as possible, and in any event within two (2) Business Days of the receipt thereof, provide the Company with notice of any conversion by a Holder of the Securities.

(b) Each Conversion Notice shall state the name or names (with address or addresses) in which any certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. All such Securities surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Securities, be duly endorsed by, or be accompanied by instruments of

transfer in form satisfactory to the Company duly executed by, the Holder or his duly authorized attorney.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion immediately prior to the close of business on the relevant Conversion Date; provided, however, that the person in whose name the certificate or certificates for the number of shares of Common Stock, if any, that shall be issuable upon such conversion in respect of any Trading Day during a Cash Settlement Averaging Period, if applicable, shall become the holder of record of such shares of Common Stock as of the close of business on the last Trading Day of such Cash Settlement Averaging Period.

Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Security equal in principal amount to the unconverted portion of the Security surrendered.

SECTION 4.3 SETTLEMENT UPON CONVERSION.

(a) Upon conversion of any Security, except as set forth in Section 4.3(f), on the third Trading Day immediately following the last Trading Day of the relevant Cash Settlement Averaging Period, the Company shall deliver to converting Holders, in respect of each $1,000 principal amount of Securities being converted, a "Settlement Amount" equal to the sum of the Daily Settlement Amounts for each of the 40 consecutive Trading Days during the related Cash Settlement Averaging Period for such Security.

(b) The "Daily Settlement Amount," for each of the 40 consecutive Trading Days during the Cash Settlement Averaging Period, shall consist of:

(i) cash equal to the lesser of $25.00 and the Daily Conversion Value, and

(ii) to the extent the Daily Conversion Value exceeds $25.00, a number of shares of Common Stock (the "Daily Share Amount") equal to (x) the difference between the Daily Conversion Value and $25.00, divided by (y) the Daily VWAP of the Common Stock for such Trading Day.

(c) Subject to Section 4.3(d), upon conversion, Holders shall not receive any separate cash payment for accrued and unpaid interest, unless such conversion occurs between a regular record date and the interest payment date to which it relates. Nothing in this Section

shall affect the right of a Holder in whose name any Security is registered at the close of business on a record date to receive the interest payable on such Security on the related interest payment date in accordance with the terms of this Indenture and the Securities.

(d) Upon the conversion of any Securities, the Holder shall not be entitled to receive any additional cash payment for accrued and unpaid interest, except to the extent specified below. The Company's delivery to the Holder of cash and, if applicable, Common Stock, together with any cash payment for any fractional share of Common Stock, into which a Security is convertible shall be deemed to satisfy in full the Company's obligation to pay the principal amount of the Securities so converted and accrued and unpaid interest to, but not including, the Conversion Date. As a result, accrued and unpaid interest to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the foregoing, if Securities are converted between close of business on a regular record date for the payment of interest and the open of business on the next interest payment date, Holders of such Securities at the close of business on such regular record date shall receive the interest payable on such Securities on the corresponding interest payment date notwithstanding the conversion. Securities surrendered for conversion during the period from the close of business on any regular record date to the open of business on the immediately following interest payment date must be accompanied by funds equal to the amount of interest payable on the next interest payment date on the Securities so converted; provided that no such payment need be made (i) for conversions following the regular record date immediately preceding February 15, 2015, (ii) for Securities or portions thereof called for redemption or presented for purchase upon a Fundamental Change on a Redemption Date or Fundamental Change Repurchase Date, as the case may be, during the period beginning at the close of business on a regular record date and ending at the opening of business on the first Business Day after the next succeeding interest payment date, or if such interest payment date is not a Business Day, the second such Business Day, or (iii) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such Security.

(e) The Company will not issue fractional shares of Common Stock upon conversion of Securities. If multiple Securities shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be issuable upon the conversion of any Securities, the Company will pay an amount in cash in lieu of fractional shares of Common Stock based on the Daily VWAP of the Common Stock on the last Trading Day of the relevant Cash Settlement Averaging Period.

(f) The Company shall, subject to the exceptions set forth in this Section 4.3(f), deliver the conversion consideration in respect of any Securities that a Holder converts by the third Trading Day immediately following the last Trading Day of the Cash Settlement Averaging Period. However, if prior to the Conversion Date for any Securities, the Common Stock has been replaced by Reference Property consisting solely of cash (pursuant to the provisions set forth in Section 4.8), the Company shall deliver the conversion consideration due in respect of conversion on the tenth Trading Day immediately following the relevant Conversion Date. Notwithstanding the foregoing, if any information required in order to calculate the conversion consideration deliverable shall not be available as of the applicable

settlement date, the Company shall deliver the additional shares of Common Stock resulting from that adjustment on the Third Trading Day after the earliest Trading Day on which such calculation can be made.

SECTION 4.4 TAXES ON CONVERSION.

If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon such conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Company (through its stock transfer agent) may refuse to deliver the certificate representing the Common Stock being issued in a name other than the Holder's name until the Company (through its stock transfer agent) receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulation.

SECTION 4.5 COMPANY TO PROVIDE STOCK.

The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock to permit the conversion of the Securities from time to time as such Securities are presented for conversion (assuming that, at the time of the computation of such number of shares or securities, all such Securities would be converted by a single Holder).

All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or on the NASDAQ Global Select Market or other over-the-counter market or such other market on which the Common Stock is then listed or quoted; provided, however, that if rules of such automated quotation system or exchange permit the Company to defer the listing of such Common Stock until the first conversion of the Securities into Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Securities in accordance with the requirements of such automated quotation system or exchange at such time.

SECTION 4.6 ANTI-DILUTION ADJUSTMENTS.

The Applicable Conversion Rate will be subject to adjustment, without duplication, upon the occurrence of any of the following events:

(a) the Company pays a dividend or makes a distribution on the Common Stock, payable exclusively in shares of Common Stock, in which event, the conversion rate in effect immediately before the open of business on the Ex-Dividend Date for that dividend or distribution will be increased by multiplying: (x) the Applicable Conversion Rate; by (y) a fraction, (1) the numerator of which shall be the number of shares of Common Stock outstanding immediately after such dividend or other distribution, and (2) the denominator of which shall be the number of shares of Common Stock outstanding immediately before such dividend or distribution.

Any adjustment made pursuant to this Section 4.6(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If any dividend or distribution of the type described in this Section 4.6(a) is declared but not so paid or made, the Applicable Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Applicable Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) the Company issues to all or substantially all holders of Common Stock rights or warrants that allow such holders to purchase shares of Common Stock for a period expiring within 60 days from the date of issuance of the rights or warrants at less than the current market price, by multiplying: (x) the Applicable Conversion Rate; by (y) a fraction, (1) the numerator of which is the sum of the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such issuance, and the total number of shares of Common Stock issuable pursuant to such rights or warrants, and (2) the denominator of which is the sum of the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such issuance, and the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants divided by the average of the Closing Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution.

Any increase made under this Section 4.6(b) shall be made successively whenever any such rights or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent such rights or warrants are not exercised prior to their expiration or termination, the Applicable Conversion Rate shall be decreased to the Applicable Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. To the extent such rights or warrants are not so issued, the Applicable Conversion Rate shall be decreased to be the Applicable Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred. For the purposes of this Section 4.6(b), in determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than the average

of the Closing Prices of Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of such distribution, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on the exercise thereof, with the value of such consideration, if other than cash, as shall be determined by the Board of Directors.

(c) the Company:

(1) subdivides or splits the outstanding shares of Common Stock into a greater number of shares; or

(2) combines or reclassifies the outstanding shares of Common Stock into a smaller number of shares;

then the Applicable Conversion Rate will be adjusted by multiplying (x) the Applicable Conversion Rate; by (y) a fraction, (1) the numerator of which is the number of shares of Common Stock outstanding immediately after such subdivision, split or combination, as the case may be, and (2) the denominator of which is the number of shares of Common Stock outstanding immediately prior to such subdivision, split or combination, as the case may be.

Any adjustment made pursuant to this Section 4.6(c) shall become effective immediately after the open of business on the effective date for such share split, share combination or reclassification. As used in this Section 4.6(c), “effective date” means, in respect of any transaction, the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market (used to determine the Closing Price), regular way, reflecting the transaction.

(d) the Company distributes to all or substantially all holders of Common Stock evidences of indebtedness, securities or assets or certain rights to purchase its securities (provided, however, that if these rights are only exercisable upon the occurrence of specified triggering events, then the Applicable Conversion Rate will not be adjusted until the triggering events occur), but excluding:

(1) dividends or distributions described in paragraph (a) above;

(2) rights or warrants described in paragraph (b) above;

(3) dividends or distributions paid exclusively in cash described in paragraph (f), (g) or (h) below (the “distributed assets”),

in which event (other than in the case of a spin-off as described below), the conversion rate in effect immediately before the open of business on the Ex-Dividend Date for that distribution will be increased by multiplying:

(x) the Applicable Conversion Rate; by

(y) a fraction, (1) the numerator of which is the current market price of the Common Stock and (2) the denominator of which is the current market price of the Common Stock minus the fair market value, as determined by the Board of Directors,

whose determination in good faith will be conclusive, of the portion of those distributed assets applicable to one share of Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

For purposes of this paragraph (d) (unless otherwise stated), the "current market price" of the Common Stock means the average of the Closing Prices of the Common Stock for the five consecutive Trading Days ending on the Trading Day prior to the Ex-Dividend Date for such distribution, and the new Applicable Conversion Rate shall take effect immediately after the open of business on the Ex-Dividend Date for such distribution.

If such distribution is not so paid or made, the Applicable Conversion Rate shall be decreased to be the Applicable Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, in cases where (x) the fair market value per share of Common Stock of the distributed assets as of the open of business on the Ex-Dividend Date for such distribution equals or exceeds the current market price of the Common Stock, or (y) the current market price of the Common Stock exceeds the fair market value per share of Common Stock of the distributed assets by less than $1.00, in lieu of the foregoing adjustment, the Holder will have the right to receive upon conversion, in addition to the cash and, if applicable, number of shares of Common Stock which such Holder is entitled to receive, the distributed assets the Holder would have received if the Holder had already owned a number of shares of Common Stock equal to the Applicable Conversion Rate immediately prior to the record date for the distribution.

(e) In respect of a dividend or other distribution of shares of Capital Stock of any class or series, or similar equity interests, of or relating to a Subsidiary of the Company or other business unit, referred to herein as a "spin-off", the Applicable Conversion Rate in effect immediately before the open of business on the Ex-Dividend Date for that distribution will be increased by multiplying:

(x) the Applicable Conversion Rate; by

(y) an adjustment factor equal to the sum of the daily adjustments for each of the ten consecutive Trading Days beginning on the Ex-Dividend Date of the spin-off.

For purposes of this paragraph (e) (unless otherwise stated), the "daily adjustment" for any given Trading Day is equal to a fraction, the numerator of which is the closing price of the Common Stock on that Trading Day plus the closing price of the portion of those shares of Capital Stock or similar equity interests so distributed applicable to one share of the Common Stock on that Trading Day, and the denominator of which is the product of 10 and the closing price of the Common Stock on that Trading Day. The adjustment to the Applicable Conversion Rate in the event of a spin-off will occur immediately after the open of business on the day after the tenth Trading Day from, and including, the Ex-Dividend Date of the spin-off, but shall be given effect as of the open of business on the Ex-Dividend Date for the spin-off. If the Ex-Dividend Date for the spin-off is less than ten Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of any conversion, references within this Section 4.6(e) to ten consecutive Trading Days shall be deemed replaced, for purposes of

calculating the affected daily Applicable Conversion Rates in respect of that conversion, with such lesser number of Trading Days as shall elapse from, and including, the Ex-Dividend Date for the spin-off to, and including, the last Trading Day of such Cash Settlement Averaging Period. For purposes of determining the Applicable Conversion Rate, in respect of any conversion during the ten consecutive Trading Days commencing on the Ex-Dividend Date for any spin-off, references within the portion of this Section 4.6(e) to ten consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such spin-off to, but excluding, the relevant Conversion Date.

(f) the Company makes a distribution consisting exclusively of cash to all or substantially all holders of outstanding shares of Common Stock, in which event the Applicable Conversion Rate on the Ex-Dividend Date for such distribution will be adjusted by multiplying:

(1) the Applicable Conversion Rate immediately prior to the open of business on the Ex-Dividend Date for such distribution; by

(2) a fraction, (A) the numerator of which is the current market price of the Common Stock, and (B) the denominator of which is the current market price of the Common Stock, minus the amount per share of such distribution.

Notwithstanding the foregoing, in cases where (i) the amount per share of Common Stock of such distribution equals or exceeds the current market price of the Common Stock or (ii) the current market price of the Common Stock exceeds the amount per share of Common Stock of such distribution by less than $1.00, in lieu of the foregoing adjustment, the Holder will have the right to receive upon conversion, in addition to the cash and, if applicable, number of shares of Common Stock which such Holder is entitled to receive, such distribution the Holder would have received if the Holder had already owned a number of shares of Common Stock equal to the Applicable Conversion Rate immediately prior to the record date.

For purposes of this paragraph (f), the “current market price” of the Common Stock means the average of the Closing Prices of the Common Stock for the five consecutive Trading Days ending on the Trading Day prior to the Ex-Dividend Date for such cash distribution, and the new Applicable Conversion Rate shall take effect immediately after the open of business on the Ex-Dividend Date for such distribution.

If any distribution described in this Section 4.6(f) is declared but not so paid or made, the Applicable Conversion Rate shall be readjusted to the Applicable Conversion Rate that would then be in effect if such distribution had not been declared.

(g) the Company or one of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock, in which event, to the extent the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the current market price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer, as the case may be, the Applicable Conversion Rate will be adjusted by multiplying:

(1) the Applicable Conversion Rate immediately prior to the open of business on the Trading Day next succeeding the last day on which tender or exchange may be made; by

(2) a fraction, (A) the numerator of which will be the sum of (1) the fair market value, as determined by the Board of Directors, of the aggregate consideration payable for all shares of Common Stock the Company or any such Subsidiary purchases in the tender or exchange offer and (2) the product of (x) the number of shares of Common Stock outstanding less any such purchased shares and (y) the current market price of the Common Stock on the Trading Day next succeeding the date of the expiration of the tender or exchange offer, and (B) the denominator of which will be the product of (1) the number of shares of Common Stock outstanding, including any such purchased shares, and (2) the current market price of the Common Stock on the Trading Day next succeeding the date of expiration of the tender or exchange offer.

The adjustment to the Conversion Rate under this Section 4.6(g) shall be given effect at the open of business on the Trading Day next succeeding the date of the expiration of the tender or exchange offer. For purposes of this Section 4.6(g) (unless otherwise stated) the "current market price" of the Common Stock means the average of the Closing Prices of the Common Stock for the five consecutive Trading Days commencing on, and including, the Trading Day next succeeding the date of the expiration of the tender or exchange offer. If the Trading Day next succeeding the date of expiration of the tender or exchange offer is less than five consecutive Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of any conversion, references in this Section 4.6(g) to five consecutive Trading Days shall be deemed replaced, for purposes of calculating the affected daily Conversion Rates in respect of that conversion, with such lesser number of Trading Days as shall elapse from, and including, the Trading Day next succeeding the date of expiration of the tender or exchange offer to, and including, the last Trading Day of such Cash Settlement Averaging Period. For purposes of determining the Applicable Conversion Rate, in respect of any conversion during the five consecutive Trading Days commencing on the Trading Day next succeeding the date of expiration of the tender or exchange offer, references in this Section 4.6(g) to five consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the date of expiration of the tender or exchange offer to, but excluding, the relevant Conversion Date.

(h) the Company or one of its Subsidiaries makes a payment in respect of a repurchase of the Common Stock, the consideration for which exceeded the then-prevailing market price of the Common Stock (such amount being the "repurchase premium"), and that repurchase, together with any other repurchases of Common Stock by the Company or a Subsidiary involving a repurchase premium concluded within the preceding 12 months, resulted in the payment by the Company and its Subsidiaries of an aggregate consideration exceeding an amount equal to 10% of the market capitalization of the Common Stock, the Applicable Conversion Rate will be adjusted by multiplying:

(1) the Applicable Conversion Rate; by

(2) a fraction, (A) the numerator of which is the current market price of the Common Stock and (B) the denominator of which is (1) the current market price of the Common

Stock, minus (2) the quotient of (x) the aggregate amount of all of the repurchase premiums paid in connection with such repurchases and (y) the number of shares of Common Stock outstanding on the day next succeeding the date of the repurchase triggering the adjustment, as determined by the Board of Directors; provided that no adjustment to the Applicable Conversion Rate shall be made to the extent the Applicable Conversion Rate is not increased as a result of the above calculation; and provided further that the repurchases of Common Stock effected by the Company, its Subsidiaries or their respective agents in conformity with Rule 10b-18 under the Exchange Act will not be included in any adjustment to the Applicable Conversion Rate made under this paragraph (h). For purposes of this paragraph (h), (i) the market capitalization will be calculated by multiplying (A) the current market price of the Common Stock by (B) the number of shares of Common Stock then outstanding on the date of the repurchase triggering the adjustment, (ii) the current market price will be the average of the Closing Prices of the Common Stock for the five consecutive Trading Days beginning on the Trading Day next succeeding the date of the repurchase triggering the adjustment, and (iii) in determining the repurchase premium, the "then-prevailing market price" of the Common Stock will be the average of the Closing Prices of the Common Stock for the five consecutive Trading Days ending on the relevant repurchase date.

The adjustment to the Conversion Rate under this Section 4.6(h) shall be given effect at the open of business on the Trading Day next succeeding the date of the repurchase triggering the adjustment. If the Trading Day next succeeding the date of the repurchase triggering the adjustment is less than five consecutive Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of any conversion, references in this Section 4.6(h) to five consecutive Trading Days shall be deemed replaced, for purposes of calculating the affected daily Conversion Rates in respect of that conversion, with such lesser number of Trading Days as shall elapse from, and including, the Trading Day next succeeding the date of the repurchase triggering the adjustment to, and including, the last Trading Day of such Cash Settlement Averaging Period. For purposes of determining the Applicable Conversion Rate, in respect of any conversion during the five consecutive Trading Days commencing on the Trading Day next succeeding the date of the repurchase triggering the adjustment, references in this Section 4.6(g) to five consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the date of the repurchase triggering the adjustment to, but excluding, the relevant Conversion Date.

In addition to the adjustments set forth above, the Company may increase the Applicable Conversion Rate as the Board of Directors considers advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of Capital Stock (or rights to acquire Capital Stock) or from any event treated as such for income tax purposes. The Company may also, from time to time, to the extent permitted by applicable law, increase the Applicable Conversion Rate by any amount for any period of at least 20 days if the Board of Directors has determined that such increase would be in the Company's best interests. If the Board of Directors makes such a determination, it will be conclusive. The Company will give Holders at least 15 days' notice of such an increase in the Applicable Conversion Rate.

No adjustment to the Applicable Conversion Rate or a Holder's ability to convert its Securities will be made if the Holder otherwise participated in the distribution without conversion.

The Applicable Conversion Rate will not be adjusted:

(1) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(2) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries;

(3) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding clause (2) and outstanding as of the date the Securities were first issued;

(4) for a change in the par value of the Common Stock; or

(5) for accrued and unpaid interest, if any.

If a Holder will receive shares of Common Stock upon conversion of Securities, then the Holder will also receive any associated rights under any stockholder rights plan the Company may adopt, whether or not the rights have separated from the Common Stock at the time of conversion unless, prior to conversion, the rights have expired, terminated or been redeemed or exchanged.

Substantially simultaneously with an adjustment of the Applicable Conversion Rate, the Company will disseminate a press release detailing the new Applicable Conversion Rate and other relevant information.

(i) If:

(i) the Company is required to satisfy its conversion obligation through delivery of a combination of cash and Common Stock and shares of Common Stock are deliverable to settle the Daily Settlement Amount for a given Trading Day within the Cash Settlement Averaging Period applicable to Securities that a Holder has converted,

(ii) any distribution or transaction set forth in Section 4.6(a), Section 4.6(b), Section 4.6(c), Section 4.6(d), Section 4.6(e), Section 4.6(f), Section 4.6(g) or Section 4.6(h) has not yet resulted in an adjustment to the Applicable Conversion Rate on the Trading Day in question, and

(iii) the shares the Holder shall receive in respect of such Trading Day are not entitled to participate in the relevant distribution or transaction (because they were not held on a related record date or otherwise),

then the Company shall adjust the number of shares that it delivers to the Holder in respect of the relevant Trading Day to reflect the relevant distribution or transaction.

SECTION 4.7 TRUSTEE'S DISCLAIMER.

The Trustee shall have no duty to determine when an adjustment under this Article 4 should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of that fact or the correctness of any such adjustment, and shall be protected in relying upon, an Officers' Certificate. In addition, in no event shall the Trustee or Conversion Agent be responsible for making any calculations under this Indenture or for determining the Closing Price, the Conversion Price, the Daily VWAP, the Trading Price Condition, the number of Additional Shares to be delivered, the amounts to be paid or for monitoring any stock price. For the avoidance of doubt, the Trustee and Conversion Agent shall rely conclusively on the calculations and information provided to them by the Company. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article 4.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 6.1, but may accept as conclusive evidence of the correctness thereof, and shall be fully protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 6.1.

SECTION 4.8 EFFECT OF RECAPITALIZATION, RECLASSIFICATION, CONSOLIDATION, MERGER OR SALE

In the case of a reclassification, consolidation, merger, sale or transfer of assets or other transactions pursuant to which all or substantially all of the Common Stock would be converted into other securities, cash or property ("Reference Property"), the Holders shall be entitled thereafter to convert Securities into the kind and amount of other securities, cash or property that the Holder of a number of shares of the Common Stock equal to the Applicable Conversion Rate would have owned or been entitled to receive upon such transaction; provided, however, that (i) at and after the effective time of such a reclassification, consolidation, merger, sale or transfer of assets or other transactions, the conversion obligation shall be calculated and settled in accordance with Section 4.3 such that (A) any amount payable in cash upon conversion of the Notes as set forth under Section 4.3 shall continue to be payable as set forth in Section 4.3, (B) the number of shares of Common Stock deliverable upon conversion of the Notes under Section 4.3, if any, shall be instead deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such reclassification, consolidation, merger, sale or transfer of assets or other transactions and (C) the Daily VWAP shall be calculated based on the value of a unit of Reference Property that a holder of one share of Common Stock would have been entitled to receive in such reclassification, consolidation, merger, sale or transfer of assets or other transactions and (ii) if the Company has exercised its option under Section 3.11(a)(1), the right to convert Securities into Common Stock will instead be changed into a right to convert Securities into Public Acquirer Common Stock in accordance with Section 3.11.

SECTION 4.9 LIMITATION ON ISSUANCES OF COMMON STOCK

(a) Notwithstanding anything to the contrary in this Indenture, unless the Company shall have received the shareholder approval described in Section 4.9(c) (which the Company shall have no obligation to seek), the Company shall not issue any shares of Common Stock pursuant to this Indenture (such shares, "Indenture Shares") if, after giving effect to such issuance, the aggregate number of Indenture Shares issued pursuant to this Indenture (after adjusting any previous issuances for any subsequent events that would give rise to an adjustment to the Applicable Conversion Rate pursuant to this Article 4) would exceed the "Maximum Shares" as calculated at the time of the proposed issuance by multiplying (x) 0.1999 by (y) the number of shares of Common Stock outstanding on the date of the original issuance of the Securities, as appropriately adjusted for any subsequent event that would give rise to a change in the Applicable Conversion Rate pursuant to this Article 4.

(b) In no event will the Company take any action that would require adjustment to the Applicable Conversion Rate, nor will the Company adjust the Applicable Conversion Rate, if such Applicable Conversion Rate adjustment would require the Company to issue, upon conversion of the Securities, a number of shares of Common Stock that would require the Company to obtain prior stockholder approval under the rules and regulations of the NASDAQ Global Select Market, and, if applicable, the rules of the exchange or quotation system on which the Common Stock is then traded, without obtaining such prior stockholder approval.

(c) The restrictions of Section 4.9(a) shall automatically terminate if and when the stockholders of the Company duly approve the issuance of shares of Common Stock under this Indenture in excess of the Maximum Shares for purposes of NASDAQ Listing Rule 5635(d) or any successor rule or any rule of any other principal exchange on which the Common Stock is then traded.

(d) For the avoidance of doubt, the Applicable Conversion Rate for purposes of determining the "Maximum Shares" issuable pursuant to Section 4.9(a) shall be determined pursuant to Section 4.6, without giving effect to any Additional Shares that would be added to the Conversion Rate pursuant to Section 3.10.

SECTION 4.10 CALCULATIONS.

Except as otherwise expressly provided in this Indenture, the Company shall be responsible for making all calculations called for under this Indenture and the Securities. These calculations include, but are not limited to, determinations of any Closing Price of the Common Stock, the Conversion Price, the Daily VWAP, the Trading Price Condition, accrued interest payable on the Securities and the Applicable Conversion Rate. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Securities. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent (if different than the Trustee), and each of the Trustee and Conversion Agent (if different than the Trustee) is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder of Securities upon the request of that Holder at the sole cost and expense of the Company.

ARTICLE 5
COVENANTS

SECTION 5.1 PAYMENT OF SECURITIES.

The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities and this Indenture. An installment of principal (including premium, if any) or interest shall be considered paid on the date it is due if the Paying Agent (other than the Company) holds by 11:00 a.m., New York City time, on that date money, deposited by the Company or an Affiliate thereof, sufficient to pay the installment. The Company shall, (in immediately available funds) to the fullest extent permitted by law, pay interest on overdue principal (including premium, if any) and overdue installments of interest at the rate borne by the Securities per annum.

Payment of the principal of (and premium, if any) and any interest on the Securities shall be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York (which shall initially be the office or agency of the Trustee in New York City), in Cash; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address appears in the Register; provided further that a Holder with an aggregate principal amount in excess of $2,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions to the Company and the Trustee at least 10 Business Days prior to the payment date.

SECTION 5.2 SEC REPORTS.

The Company shall file all reports and other information and documents which it is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, and within 15 days after it files them with the SEC, the Company shall file copies of all such reports, information and other documents with the Trustee. It is agreed that the filing of such reports via the SEC's EDGAR system shall constitute "filing" of such reports with the Trustee for purposes of this Section 5.2.

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

SECTION 5.3 COMPLIANCE CERTIFICATES.

The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Company (beginning with the fiscal year ending December 31, 2011), an Officers' Certificate as to the signer's knowledge of the Company's compliance with all conditions and covenants on its part contained in this Indenture and stating whether or not the signer knows of any default or Event of Default. If such signer knows of such a default or Event of Default, the Officers' Certificate shall describe the default or Event of Default and the efforts to remedy the

same. For the purposes of this Section 5.3, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture. The Company shall, within 30 calendar days, upon becoming aware of any Event of Default, deliver to the Trustee a statement specifying such Event of Default.

SECTION 5.4 FURTHER INSTRUMENTS AND ACTS.

Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

SECTION 5.5 MAINTENANCE OF CORPORATE EXISTENCE.

Subject to Article 6, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

SECTION 5.6 STAY, EXTENSION AND USURY LAWS.

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of, premium, if any, or interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 6
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 6.1 COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(1) in case the Company shall consolidate with or merge into another Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an

indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and the conversion rights shall be provided for in accordance with Article 4, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Company) formed by such consolidation or into which the Company shall have been merged or by the Person which shall have acquired the Company's assets;

(2) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

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

SECTION 6.2 SUCCESSOR SUBSTITUTED.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 6.1, there shall be an adjustment to the Applicable Conversion Rate and the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 7
DEFAULT AND REMEDIES

SECTION 7.1 EVENTS OF DEFAULT.

An "Event of Default" shall occur if:

(1) the Company defaults in the payment of any interest on any Security when the same becomes due and payable and the default continues for a period of 30 days;

(2) the Company defaults in the payment of any principal of (including, without limitation, any premium, if any, on) any Security when the same becomes due and payable (whether at maturity, upon redemption, on a Fundamental Change Repurchase Date or otherwise) or fails to comply with its obligation to convert the Securities in accordance with the Indenture upon exercise of a Holder's right in accordance with Article 4 hereof;

(3) the Company fails to comply with any of its other agreements contained in the Securities or this Indenture and the default continues for the period and after the notice specified below;

(4) the Company defaults in the payment of the purchase price of any Security when the same becomes due and payable;

(5) the Company fails to provide notice of a Fundamental Change to the Trustee and to each Holder if required by Section 3.9 for a period of 30 days after notice of failure to do so;

(6) any indebtedness under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company or any Significant Subsidiary (all or substantially all of the outstanding voting securities of which are owned, directly or indirectly, by the Company) or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any Significant Subsidiary (all or substantially all of the outstanding voting securities of which are owned, directly or indirectly, by the Company) (an "Instrument") with an aggregate outstanding principal amount then outstanding in excess of $25,000,000, whether such indebtedness now exists or shall hereafter be created, is not paid at final maturity of the Instrument (either at its stated maturity or upon acceleration thereof), and such indebtedness is not discharged, or such acceleration is not rescinded or annulled, within a period of 30 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the outstanding Securities a written notice specifying such default and requiring the Company to cause such indebtedness to be discharged or cause such default to be cured or waived or such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder;

(7) the Company or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case or proceeding;

(B) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property; or

(D) makes a general assignment for the benefit of its creditors; or

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Significant Subsidiary in an involuntary case or proceeding;

(B) appoints a Custodian of the Company or any Significant Subsidiary or for all or substantially all of the property of the Company or any Significant Subsidiary; or

(C) orders the liquidation of the Company or any Significant Subsidiary; and in each case the order or decree remains unstayed and in effect for 60 consecutive days.

The term "Bankruptcy Law" means Title 11 of the United States Code (or any successor thereto) or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

A default under clause (3) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding notify the Company and the Trustee, in writing of the default, and the Company does not cure the default within 60 days after receipt of such notice. The notice given pursuant to this Section 7.1 must specify the default, demand that it be remedied and state that the notice is a "Notice of Default." When any default under this Section 7.1 is cured, it ceases.

The Trustee shall not be charged with knowledge of any Event of Default unless written notice from the Company, a Paying Agent, or any Holder thereof shall have been received by a Trust Officer at the Corporate Trust Office of the Trustee, and such notice references this Indenture.

SECTION 7.2 ACCELERATION.

If an Event of Default (other than an Event of Default specified in clause (7) or (8) of Section 7.1) occurs and is continuing, the Trustee may, by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding may, by notice to the Company and the Trustee, declare all unpaid principal to the date of acceleration on the Securities then outstanding (if not then due and payable) to be due and payable upon any such declaration, and the same shall become and be immediately due and payable. If an Event of Default specified in clause (7) or (8) of Section 7.1 occurs, all unpaid principal of the Securities then outstanding shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Holders of a majority in aggregate principal amount of the Securities then outstanding by notice to the Trustee may rescind an acceleration and its consequences if (a) all existing Events of Default, other than the nonpayment of the principal of the Securities which has become due solely by such declaration of acceleration, have been cured or waived; (b) to the extent the payment of such interest is lawful, interest (calculated at the rate per annum borne by the Securities) on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; (c) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (d) all payments due to the Trustee and any predecessor Trustee under Section 8.7 have been made. No such rescission shall affect any subsequent default or impair any right consequent thereto.

Notwithstanding the foregoing, the Company may, at its option, elect that the sole remedy for an Event of Default relating to its failure to comply with the Company's obligation to file reports with the SEC in accordance with Section 5.2 (a "Filing Failure") shall for the first one hundred eighty (180) days after the occurrence of such Event of Default (the "Extension Period") consist exclusively of the right of Holders to receive a fee (the "Extension Fee") accruing at the rate of 1.00% per annum of the aggregate principal amount of Securities that are then outstanding, on the terms and in the manner described below. Any Extension Fee shall be paid at the same times and in the same manner as interest shall be paid in accordance with this Indenture. The Extension Fee shall accrue on the Securities that are then outstanding from the first day of the Event of Default to, but excluding, the earlier of (i) the date on which the Company has made the filings initially giving rise to the Filing Failure and (ii) the date that is one hundred eighty (180) days after the occurrence of the Event of Default. The Company must give written notice of its election to pay the Extension Fee prior to the occurrence of the Event of Default. On the 181st day after such Event of Default (if the Event of Default relating to the reporting obligations is not cured or waived prior to such 181st day), the Securities shall be subject to acceleration as provided in this Section 7.2. This right shall not affect the rights of Holders of Securities if any other Event of Default occurs under the Indenture. If the Company does not pay the Extension Fee on a timely basis in accordance with this Section 7.2, the Securities shall be subject to acceleration as provided in this Section 7.2. Notwithstanding the foregoing, if an additional Filing Failure occurs during an Extension Period, the Securities will be subject to acceleration for such additional Filing Failure at the end of the Extension Period for the first Filing Failure to the extent it has not been remedied before the end of the first Extension Period, provided, however, that to the extent the Company has agreed to pay an additional Extension Fee in accordance with the terms of this Section 7.2 as to such additional Filing Failure, and the first Filing Failure has been remedied before the end of the first Extension Period, the Securities will not be subject to acceleration until the end of the additional Extension Period as to such additional Filing Failure. For the avoidance of doubt, notwithstanding the occurrence of multiple overlapping Filing Failures, the aggregate amount of all Extension Fees paid in a year shall not exceed 1.00% per annum of the aggregate principal amount of the Securities that are outstanding as of the beginning of such year.

SECTION 7.3 OTHER REMEDIES.

If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy by proceeding at law or in equity to collect the payment of the principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

SECTION 7.4 WAIVER OF DEFAULTS AND EVENTS OF DEFAULT.

Subject to Sections 7.7 and 10.2, the Holders of a majority in aggregate principal amount of the Securities then outstanding by notice to the Trustee may waive an existing default or Event of Default and its consequence, except a default or Event of Default in the payment of the principal of, premium, if any, or interest on any Security, a failure by the Company to convert any Securities in accordance with the provisions of the Securities and this Indenture or any default or Event of Default in respect of any provision of this Indenture or the Securities which, under Section 10.2, cannot be modified or amended without the consent of the Holder of each Security affected. When a default or Event of Default is waived, it is cured and ceases.

SECTION 7.5 CONTROL BY MAJORITY.

The Holders of a majority in aggregate principal amount of the Securities then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of another Holder or the Trustee, or that may involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it; provided, however, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 7.6 LIMITATIONS ON SUITS.

A Holder may not pursue any remedy with respect to this Indenture or the Securities (except actions for payment of overdue principal or interest or for the conversion of the Securities pursuant to Article 4) unless:

(1) the Holder gives to the Trustee written notice of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of the then outstanding Securities make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee reasonable indemnity to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities then outstanding.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over such other Securityholder.

SECTION 7.7 RIGHTS OF HOLDERS TO RECEIVE PAYMENT AND TO CONVERT.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of the principal of and interest on the Security, on or after the respective due dates expressed in the Security and this Indenture, to convert such Security in accordance with Article 4 and to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

SECTION 7.8 COLLECTION SUIT BY TRUSTEE.

If an Event of Default in the payment of principal or interest specified in clause (1) or (2) of Section 7.1 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or another obligor on the Securities for the whole amount of principal and accrued interest remaining unpaid, together with, to the extent that payment of such interest is lawful, interest on overdue principal and on overdue installments of interest, in each case at the rate per annum borne by the Securities and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 7.9 TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 8.7, and to the extent that such payment of the reasonable compensation, expenses, disbursements and advances in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or, on behalf of any Holder, to authorize, accept or adopt any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 7.10 PRIORITIES.

If the Trustee collects any money pursuant to this Article 7, it shall pay out the money in the following order:

First, to the Trustee for amounts due under Section 8.7;

Second, to Holders for amounts due and unpaid on the Securities for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal (including premium, if any) and interest, respectively; and

Third, the balance, if any, to the Company or to such other person a court of competent jurisdiction may determine. The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 7.10.

SECTION 7.11 UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 7.11 does not apply to a suit made by the Trustee, a suit by a Holder pursuant to Section 7.7, or a suit by Holders of more than 10% in aggregate principal amount of the Securities then outstanding.

ARTICLE 8
TRUSTEE

SECTION 8.1 DUTIES OF TRUSTEE.

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

(b) Except during the continuance of an Event of Default:

(1) the Trustee need perform only those duties as are specifically set forth in this Indenture and no others and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, shall examine any certificates and opinions which by any provision hereof are specifically required to be delivered to the Trustee to determine whether or

not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of subsection (b) of this Section 8.1;

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

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 7.5.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers unless the Trustee shall have received adequate indemnity in its opinion against potential costs and liabilities incurred by it relating thereto.

(e) Every provision of this Indenture that in any way relates to the Trustee is subject to subsections (a), (b), (c) and (d) of this Section 8.1.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

SECTION 8.2 RIGHTS OF TRUSTEE.

Subject to Section 8.1:

(a) The Trustee may rely conclusively on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, which shall conform to Section 11.4(b). The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through its agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection in

respect of any such action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office, and such notice references the Securities and this Indenture.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

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

(k) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

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

SECTION 8.3 INDIVIDUAL RIGHTS OF TRUSTEE.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or an Affiliate of the Company with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Sections 8.10 and 8.11.

SECTION 8.4 TRUSTEE'S DISCLAIMER.

The Trustee makes no representation as to the validity, priority or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement in the recitals contained herein or the Securities other than its certificate of authentication.

SECTION 8.5 NOTICE OF DEFAULT OR EVENTS OF DEFAULT.

If a default or an Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Securityholder notice of the default or Event of Default within 90 days after it is known to the Trustee. However, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of Securityholders, except in the case of a default or an Event of Default in payment of the principal of or interest on any Security.

SECTION 8.6 RESERVED.

SECTION 8.7 COMPENSATION AND INDEMNITY.

The Company shall pay to the Trustee from time to time such compensation (as agreed to from time to time by the Company and the Trustee in writing) for its services (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Company shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances incurred or made by it. Such expenses may include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee or any predecessor Trustee (which for purposes of this Section 8.7 shall include its officers, directors, employees and agents) for, and hold it harmless against, any and all loss, liability or expense including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), (including reasonable legal fees and expenses) incurred by it in connection with the acceptance or administration of its duties under this Indenture or any action or failure to act as authorized or within the discretion or rights or powers conferred upon the Trustee hereunder including the reasonable costs and expenses of the Trustee and its counsel in defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity. The Company need not pay for any settlement without its written consent, which shall not be unreasonably withheld.

The Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by it resulting from its gross negligence or bad faith.

To secure the Company's payment obligations in this Section 8.7, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except such money or property held in trust to pay the principal of and interest on the Securities.

When the Trustee incurs expenses or renders services after an Event of Default specified in clause (7) or (8) of Section 7.1 occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law. The obligations of the Company under this Section 8.7 shall survive the termination or satisfaction and discharge of this Indenture or the resignation or removal of the Trustee for any reason.

SECTION 8.8 REPLACEMENT OF TRUSTEE.

The Trustee may resign by so notifying the Company. The Holders of a majority in aggregate principal amount of the Securities then outstanding may remove the Trustee by so notifying the Trustee and may, with the Company's written consent, appoint a successor Trustee. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 8.10;

(2) the Trustee is adjudged a bankrupt or an insolvent;

(3) a receiver or other public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. The resignation or removal of a Trustee shall not be effective until a successor Trustee shall have delivered the written acceptance of its appointment as described below.

If a successor Trustee does not take office within 45 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of 10% in principal amount of the Securities then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee at the expense of the Company.

If the Trustee fails to comply with Section 8.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee and be released from its obligations (exclusive of any liabilities that the retiring Trustee may have incurred while acting as Trustee) hereunder, the resignation or removal of the retiring Trustee shall become effective, and the

successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Holder.

A retiring Trustee shall not be liable for the acts or omissions of any successor Trustee after its succession.

Notwithstanding replacement of the Trustee pursuant to this Section 8.8, the Company's obligations under Section 8.7 shall continue for the benefit of the retiring Trustee.

SECTION 8.9 SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets (including the administration of this Indenture) to, another corporation, by sale or otherwise, the resulting, surviving or transferee corporation, without any further act, shall be the successor Trustee, provided such transferee corporation shall qualify and be eligible under Section 8.10. Such successor Trustee shall promptly mail notice of its succession to the Company and each Holder.

SECTION 8.10 ELIGIBILITY; DISQUALIFICATION.

The Trustee shall always satisfy the requirements of paragraphs (1), (2) and (5) of TIA Section 310(a). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least $50,000,000. If at any time the Trustee shall cease to satisfy any such requirements, it shall resign immediately in the manner and with the effect specified in this Article 8. The Trustee shall be subject to the provisions of TIA Section 310(b). Nothing herein shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b).

SECTION 8.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

SECTION 8.12 MAY HOLD SECURITIES.

The Trustee, any Paying Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent or such other agent.

SECTION 8.13 MONEY HELD IN TRUST.

The Trustee, any Paying Agent or any other agent of the Company shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

ARTICLE 9
SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 9.1 SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities herein expressly provided for and except as further provided below), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at the Final Maturity Date within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of clause (i), (ii) or (iii) above, has irrevocably deposited or caused to be irrevocably deposited with the Trustee or a Paying Agent (other than the Company or any of its Affiliates) as trust funds in cash in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal (including premium, if any) and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Final Maturity Date or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 8.7 shall survive and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the provisions of

Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.12, 3.9, 3.10, 3.11, 3.12 and 11.5, Article 4, the last paragraph of Section 5.2 and this Article 9, shall survive until the Securities have been paid in full.

SECTION 9.2 APPLICATION OF TRUST MONEY.

Subject to the provisions of Section 9.3, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money deposited with it pursuant to Section 9.1 and shall apply the deposited money in accordance with this Indenture and the Securities to the payment of the principal of and interest on the Securities.

SECTION 9.3 REPAYMENT TO COMPANY.

The Trustee and each Paying Agent shall promptly pay to the Company upon request any excess money (i) deposited with them pursuant to Section 9.1 and (ii) held by them at any time.

The Trustee and each Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years after a right to such money has matured; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment, may at the expense of the Company cause to be mailed to each Holder entitled to such money notice that such money remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Holders entitled to money must look to the Company for payment as return unclaimed funds to the Company, the Trustee shall from time to time deliver all unclaimed funds to or as directed by applicable escheat authorities, as determined by the Trustee in its sole discretion, in accordance with the customary practices and procedures of the Trustee. Any unclaimed funds held by the Trustee pursuant to this Section 9.3 shall be held uninvested and without any liability for interest.

SECTION 9.4 RESERVED.

SECTION 9.5 RESERVED.

SECTION 9.6 RESERVED.

SECTION 9.7 REINSTATEMENT.

If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 9.2 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company’s obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 9.1 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 9.2; provided, however, that if the Company has made any payment of the principal of or interest on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive any such payment from the money held by the Trustee or such Paying Agent.

ARTICLE 10
AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 10.1 WITHOUT CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to or consent of any Securityholder:

(a) to comply with Section 6.1;

(b) to cure any ambiguity, defect or inconsistency;

(c) to make any other change that does not adversely affect the rights of any Securityholder;

(d) to comply with the provisions of the TIA;

(e) to add to the covenants of the Company for the equal and ratable benefit of the Securityholders or to surrender any right, power or option conferred upon the Company;

(f) to secure the Company's obligations with respect to the Securities; or

(g) to appoint a successor Trustee.

SECTION 10.2 WITH CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding. The Holders of at least a majority in aggregate principal amount of the Securities then outstanding may waive compliance in a particular instance by the Company with any provision of this Indenture or the Securities without notice to any Securityholder. However, notwithstanding the foregoing but subject to Section 10.4, without the written consent of each Securityholder affected, an amendment, supplement or waiver, including a waiver pursuant to Section 7.4, may not:

(a) change the stated maturity of the principal of, or interest on, any Security;

(b) reduce the principal amount of, or any premium or interest on, any Security;

(c) reduce the amount of principal payable upon acceleration of the maturity of any Security;

(d) change the place or currency of payment of principal of, or any premium or interest on, any Security;

(e) impair the right to institute suit for the enforcement of any payment on, or with respect to, any Security;

(f) modify the provisions with respect to the purchase right of Holders pursuant to Article 3 upon a Fundamental Change in a manner adverse to Holders;

(g) adversely affect the right of Holders to convert Securities other than as provided in or under Article 4 of this Indenture;

(h) reduce the percentage of the aggregate principal amount of the outstanding Securities whose Holders must consent to a modification or amendment;

(i) reduce the percentage of the aggregate principal amount of the outstanding Securities necessary for the waiver of compliance with certain provisions of this Indenture or the waiver of certain defaults under this Indenture; and

(j) modify any of the provisions of this Section or Section 7.4, except to increase any such percentage or to provide that certain provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Security affected thereby.

It shall not be necessary for the consent of the Holders under this Section 10.2 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 10.2 becomes effective, the Company shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

To the extent that the Company or any of the Subsidiaries hold any Securities, such Securities shall be disregarded for purposes of voting in connection with any notice, waiver, consent or direction requiring the vote or concurrence of Securityholders.

SECTION 10.3 RESERVED.

SECTION 10.4 REVOCATION AND EFFECT OF CONSENTS.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

After an amendment, supplement or waiver becomes effective, it shall bind every Securityholder, unless it makes a change described in any of clauses (a) through (j) of Section 10.2. In that case the amendment, supplement or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

SECTION 10.5 NOTATION ON OR EXCHANGE OF SECURITIES.

If an amendment, supplement or waiver changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

SECTION 10.6 TRUSTEE TO SIGN AMENDMENTS, ETC.

The Trustee shall sign any amendment or supplemental indenture authorized pursuant to this Article 10 if the amendment or supplemental indenture does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, in its sole discretion, but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be entitled to receive and, subject to Section 8.1, shall be fully protected in relying upon, an Opinion of Counsel stating that such amendment or supplemental indenture is authorized or permitted by this Indenture. The Company may not sign an amendment or supplement indenture until the Board of Directors approves it.

SECTION 10.7 EFFECT OF SUPPLEMENTAL INDENTURES.

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

ARTICLE 11
MISCELLANEOUS

SECTION 11.1 RESERVED.

SECTION 11.2 NOTICES.

Any demand, authorization notice, request, consent or communication shall be given in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by delivery in person or mail by first-class mail, postage prepaid, or by guaranteed overnight courier) to the following facsimile numbers:

If to the Company, to:

PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer or General Counsel
Facsimile No.: (775) 832-8501
Phone No.: (775) 832-8500

If to the Trustee, to:

The Bank of New York Mellon Trust Company, N.A.
700 South Flower St., Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Administration
Facsimile No.: (213) 630-6298
Phone No.: (213) 630-6256

Such notices or communications shall be effective when received.

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Securityholder shall be mailed by first-class mail or delivered by an overnight delivery service or by other electronic means to it at its address shown on the register kept by the Primary Registrar.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication to a Securityholder is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods (including pdf files). If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

SECTION 11.3 RESERVED.

SECTION 11.4 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

(a) Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee at the request of the Trustee:

(1) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent (including any covenants, compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including any covenants, compliance with which constitutes a condition precedent) have been complied with.

(b) Each Officers' Certificate and Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that the person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; provided however, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

SECTION 11.5 RECORD DATE FOR VOTE OR CONSENT OF SECURITYHOLDERS.

The Company (or, in the event deposits have been made pursuant to Section 9.1, the Trustee) may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall not be more than thirty (30) days prior to the date of the commencement of solicitation of such action. Notwithstanding the provisions of Section 10.4, if a record date is fixed, those persons who were Holders of Securities at the close of business on such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

SECTION 11.6 RULES BY TRUSTEE, PAYING AGENT, REGISTRAR AND CONVERSION AGENT.

The Trustee may make reasonable rules (not inconsistent with the terms of this Indenture) for action by or at a meeting of Holders. Any Registrar, Paying Agent or Conversion Agent may make reasonable rules for its functions.

SECTION 11.7 LEGAL HOLIDAYS.

A "Legal Holiday" is a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York and the state in which the Corporate Trust Office is located are not required to be open. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the

intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 11.8 GOVERNING LAW.

This Indenture and the Securities shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 11.9 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 11.10 NO RECOURSE AGAINST OTHERS.

All liability described in paragraph 19 of the Securities of any director, officer, employee or shareholder, as such, of the Company is waived and released.

SECTION 11.11 SUCCESSORS.

All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 11.12 MULTIPLE COUNTERPARTS.

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent the same agreement.

SECTION 11.13 SEPARABILITY.

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

SECTION 11.14 TAX TREATMENT.

The Company agrees, and by acceptance of beneficial ownership in the Securities each beneficial holder of the Securities will be deemed to have agreed, for United States federal income tax purposes to treat the Securities as indebtedness that is not subject to the contingent payment debt instrument regulations under Treas. Reg. Sec. 1.1275-4.

SECTION 11.15 RESERVED.

SECTION 11.16 TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 11.17 WAIVER OF JURY TRIAL

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date and year first above written.

PDL BIOPHARMA, INC.

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

By: _____
Name:
Title:

Schedule I

Additional Shares Table

The following table sets forth the hypothetical Stock Price and number of Additional Shares per $1,000 principal amount of Securities:

Effective Date	$[—]	$[—]	$[—]	$[—]	$[—]	$[—]	$[—]	$[—]	$[—]
February 15, 2011	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]
February 15, 2012	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]
February 15, 2013	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]
February 15, 2014	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]
February 15, 2015	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]	[—]

EXHIBIT A

[FORM OF FACE OF SECURITY]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS NOTE IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.][1]

[1] These paragraphs should be included only if the Security is a Global Security.

PDL BIOPHARMA, INC.

CUSIP No.:

2.875% SERIES 2011 CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015

PDL BIOPHARMA, Inc., a Delaware corporation (the "Company", which term shall include any successor corporation under the Indenture referred to on the reverse hereof), promises to pay to Cede & Co., or registered assigns, the principal sum of _____ Dollars ($_____) on February 15, 2015, or such greater or lesser amount as is indicated on the Schedule of Exchanges of Notes on the other side of this Note.

Interest Payment Dates: February 15 and August 15, commencing February 15, 2012

Record Dates: February 1 and August 1

This Note is convertible as specified on the other side of this Note. Additional provisions of this Note are set forth on the other side of this Note.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

PDL BIOPHARMA, INC.

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

The Bank of New York Mellon Trust Company, N.A., as Trustee

_____
Authorized Signatory

[FORM OF REVERSE SIDE OF SECURITY]

PDL BIOPHARMA, INC.
2.875% SERIES 2011 CONVERTIBLE SENIOR NOTES DUE FEBRUARY 15, 2015

1. INTEREST

PDL BioPharma, Inc., a Delaware corporation (the "Company", which term shall include any successor corporation under the Indenture hereinafter referred to), promises to pay interest on the principal amount of this Security at the rate of 2.875% per annum. The Company shall pay interest semiannually on February 15 and August 15 of each year, commencing on February 15, 2012. Interest on the Securities shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from August 15, 2011; provided, however, that if there is not an existing default in the payment of interest and if this Security is authenticated between a record date referred to on the face hereof and the next succeeding interest payment date, interest shall accrue from such interest payment date. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. METHOD OF PAYMENT

The Company shall pay interest on this Security (except defaulted interest) to the person who is the Holder of this Security at the close of business on February 1 or August 1, as the case may be, next preceding the related interest payment date. The Holder must surrender this Security to a Paying Agent to collect payment of principal. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. The Company may, however, pay principal and interest in respect of any Certificated Security by check or wire payable in such money; provided, however, that a Holder with an aggregate principal amount in excess of $2,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions to the Company and the Trustee at least 10 Business Days prior to the payment date.

3. PAYING AGENT, REGISTRAR AND CONVERSION AGENT

Initially, The Bank of New York Mellon Trust Company, N.A. (the "Trustee", which term shall include any successor trustee under the Indenture hereinafter referred to) will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar or Conversion Agent without notice to the Holder. The Company or any of its Subsidiaries may, subject to certain limitations set forth in the Indenture, act as Paying Agent or Registrar.

4. INDENTURE, LIMITATIONS

This Security is one of a duly authorized issue of Securities of the Company designated as its 2.875% Convertible Senior Securities due February 15, 2015 (the "Securities"), issued under an Indenture, dated as of December [•], 2011 (together with any supplemental indentures thereto, the "Indenture"), between the Company and the Trustee. The terms of this Security

include, and are subject to, the terms of the Indenture. The Securities are unsecured obligations of the Company. The Indenture does not limit other debt of the Company, secured or unsecured.

5. OPTIONAL REDEMPTION

The Securities are subject to redemption, at any time on or after August 15, 2014, on at least 10 days and no more than 60 days notice, in whole or in part, at the election of the Company, at a redemption price equal to 100% of the aggregate principal amount of the Securities to be redeemed together with accrued interest up to but not including the Redemption Date; provided that if the redemption date falls after an interest payment record date and on or before an interest payment date, interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant record dates.

No sinking fund is provided for the Securities.

6. NOTICE OF REDEMPTION

Notice of redemption will be mailed by first-class mail at least 10 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at its registered address. Securities in denominations larger than $1,000 may be redeemed in part, but only in whole multiples of $1,000. On and after the Redemption Date, subject to the deposit with the Paying Agent of funds sufficient to pay the Redemption Price plus accrued interest, if any, accrued to, but excluding, the Redemption Date, interest shall cease to accrue on Securities or portions of them called for redemption.

7. REPURCHASE OF NOTES AT OPTION OF HOLDER UPON A FUNDAMENTAL CHANGE

Subject to the terms and conditions of the Indenture (including the rights of the Company upon delivery of a Public Acquisition Notice as described in Section 3.11 of the Indenture and Section 8 hereof), if a Fundamental Change occurs at any time prior to the Final Maturity Date, each Holder will, upon receipt of the notice of the occurrence of a Fundamental Change, have the right to require the Company to repurchase any or all of such Holder's Securities for cash in an amount equal to 100% of the Principal Amount of the Securities to be purchased plus accrued and unpaid interest, if any, to (but not including) the Fundamental Change Repurchase Date, unless such Fundamental Change Repurchase Date falls after an interest payment record date and on or prior to the corresponding interest payment date, in which case the Fundamental Change Repurchase Price will not include the amount of accrued and unpaid interest payable on such interest payment date and such accrued and unpaid interest will be paid to the Holder of record at the close of business on the corresponding interest payment record date. Subject to Sections 3.9(b) and 3.11 of the Indenture, on or before the 15th day after the effective date of a Fundamental Change, the Company will provide to all Holders of the Securities and the Trustee and Paying Agent a notice of the occurrence of the Fundamental Change and of the resulting repurchase right. To exercise the repurchase right, a Holder must deliver the Fundamental Change repurchase notice duly completed to the Paying Agent as described in the Indenture.

Notwithstanding the foregoing, the Holders will not have the right to require the Company to repurchase any Securities if a Fundamental Change described in clause (b) or (c) in

the definition of Fundamental Change occurs (and the Company will not be required to deliver the notice described in Section 3.9(c) of the Indenture), if either:

(1) the Closing Price for any five Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the effective date of the Fundamental Change or the date of the public announcement of the Fundamental Change, in the case of a Fundamental Change relating to an acquisition of Capital Stock under clause (b) of the definition of Fundamental Change, or the period of ten consecutive Trading Days ending immediately before the effective date of the Fundamental Change, in the case of a Fundamental Change relating to a merger, consolidation, asset sale or otherwise under clause (c) of the definition of Fundamental Change, equals or exceeds 105% of the quotient of $1,000 divided by the Applicable Conversion Rate in effect on each of those five Trading Days; or

(2) at least 95% of the consideration paid for the Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' or appraisal rights) in a merger or consolidation or a conveyance, sale, transfer or lease otherwise constituting a Fundamental Change under clause (b) and/or (c) of the definition of Fundamental Change consists of shares of Capital Stock (or American Depository Shares representing such Capital Stock) traded on the New York Stock Exchange or another United States national securities exchange or quoted on the NASDAQ Global Select Market or another established automated over-the-counter trading market in the United States (or will be so traded or quoted immediately following the merger or consolidation) and as a result of the merger or consolidation the Securities become convertible into shares of such Capital Stock (or American Depository Shares representing such Capital Stock), subject to the provisions set forth under Section 4.3 of the Indenture.

Holders have the right to withdraw any Fundamental Change repurchase notice, in whole or in part, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Fundamental Change Repurchase Price of all Securities or portions thereof to be purchased as of the Fundamental Change Repurchase Date, has been deposited with the Paying Agent on or prior to the Business Day following the Fundamental Change Repurchase Date, all interest shall cease to accrue on such Securities (or portions thereof) immediately after such Fundamental Change Repurchase Date and the Holder thereof shall have no other rights as such other than the right to receive the Fundamental Change Repurchase Price, upon surrender of such Securities.

8. PUBLIC ACQUIRER CHANGE OF CONTROL

Within fifteen Trading Days prior to but not including the expected effective date of a Fundamental Change that is also a Public Acquirer Change of Control, subject to certain exceptions set forth in the Indenture, the Company will provide a Public Acquisition Notice to all Holders, the Trustee, any Paying Agent and any Conversion Agent describing the anticipated Public Acquirer Change of Control and stating whether the Company will:

(i) elect the adjust the Applicable Conversion Rate and related conversion obligation as described in Section 3.11 of the Indenture, in which case the Holders will not have

the right to require the Company repurchase their Securities as described in Section 3.9 of the Indenture and will not have the right to the Applicable Conversion Rate adjustment described in Section 3.10 of the Indenture; or

(ii) not elect to adjust the Applicable Conversion Rate and related conversion obligation as described in Section 3.11 of the Indenture, in which case the Holders will have the right to require the Company to repurchase their Securities as described in Section 3.9 of the Indenture and/or the right to an Applicable Conversion Rate adjustment as described in Section 3.10 of the Indenture, in each case in accordance with the respective provisions of those Sections.

If the Public Acquisition Notice indicates that the Company is making the election described in clause (i) above, then the Applicable Conversion Rate and the related conversion obligation shall be adjusted such that from and after the effective date of the Public Acquirer Change of Control, Holders of the Securities will be entitled to convert their Securities into cash and, if applicable, a number of shares of Public Acquirer Common Stock pursuant to Section 3.11 of the Indenture.

9. CONVERSION

As provided in and subject to the terms of the Indenture, a Holder of a Security may, during periods and upon the occurrence of conditions specified in the Indenture, convert the principal amount of such Security (or any portion thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof) into cash up to the aggregate principal amount of the Securities to be converted and if applicable, shares of Common Stock, in respect of the remainder, if any, at any time prior to the close of business on the last Business Day prior to the Final Maturity Date, at the Applicable Conversion Rate in effect on the Conversion Date; provided, however, that, if such Security is called for redemption or submitted or presented for purchase pursuant to Article 3 of the Indenture, such conversion right shall terminate at the close of business on the Business Day immediately preceding the Redemption Date or Fundamental Change Repurchase Date, as the case may be, for such Security or such earlier date as the Holder presents such Security for redemption or for purchase (unless the Company shall default in making the redemption payment or Fundamental Change Repurchase Price payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed or purchased, as the case may be).

The Initial Conversion Rate means [•] shares of Common Stock per $1,000 principal amount of Securities, subject to adjustment under certain circumstances as provided in the Indenture. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the Closing Price (as defined in the Indenture) of the Common Stock on the Trading Day immediately prior to the Conversion Date.

To convert a Security that is a Global Security, a Holder must complete the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and pay the funds, if any, required by Section 4.3(d) of the Indenture and any transfer or similar tax, if required, and the Conversion Agent must be informed of the conversion

in accordance with the customary practice of the Depositary. To convert a Security that is a definitive Security, a Holder must (a) complete and manually sign the conversion notice set forth below, or a facsimile of such notice, and deliver such notice, which is irrevocable, to a Conversion Agent, (b) surrender the Security to a Conversion Agent, (c) if required, furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, (d) pay the funds, if any, required under Section 4.3(d) of the Indenture and (e) pay all transfer or similar tax, if required. Securities so surrendered for conversion (in whole or in part) during the period from the close of business on any regular record date to the opening of business on the next succeeding interest payment date (excluding Securities or portions thereof called for redemption or subject to purchase upon a Fundamental Change on a Redemption Date or Fundamental Change Repurchase Date, as the case may be, during the period beginning at the close of business on a regular record date and ending at the opening of business on the first Business Day after the next succeeding interest payment date, or if such interest payment date is not a Business Day, the second such Business Day) shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such interest payment date on the principal amount of such Security then being converted, and such interest shall be payable to such registered Holder notwithstanding the conversion of such Security, subject to the provisions of this Indenture relating to the payment of defaulted interest by the Company. If the Company defaults in the payment of interest payable on such interest payment date, the Company shall promptly repay such funds to such Holder. A Holder may convert a portion of a Security equal to $1,000 or any integral multiple thereof.

A Security in respect of which a Holder had delivered a Fundamental Change repurchase notice exercising the option of such Holder to require the Company to purchase such Security may be converted only if the Fundamental Change repurchase notice is withdrawn in accordance with the terms of the Indenture.

10. RESERVED

11. DENOMINATIONS, TRANSFER, EXCHANGE

The Securities are in registered form, without coupons, in denominations of $1,000 and integral multiples of $1,000. A Holder may register the transfer of or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or other governmental charges that may be imposed in relation thereto by law or permitted by the Indenture.

12. PERSONS DEEMED OWNERS

The Holder of a Security may be treated as the owner of it for all purposes.

13. UNCLAIMED MONEY

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Company at its written request, subject to applicable unclaimed property law. After that, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

14. AMENDMENT, SUPPLEMENT AND WAIVER

Subject to certain exceptions, the Indenture or the Securities may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding, and an existing default or Event of Default and its consequence or compliance with any provision of the Indenture or the Securities may be waived in a particular instance with the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. Without the consent of or notice to any Holder, the Company and the Trustee may amend or supplement the Indenture or the Securities to, among other things, cure any ambiguity, defect or inconsistency or make any other change that does not adversely affect the rights of any Holder.

15. SUCCESSOR ENTITY

When a successor corporation assumes all the obligations of its predecessor under the Securities and the Indenture in accordance with the terms and conditions of the Indenture, the predecessor corporation (except in certain circumstances specified in the Indenture) shall be released from those obligations.

16. DEFAULTS AND REMEDIES

Under the Indenture, an Event of Default includes: (i) default for 30 days in payment of any interest on any Securities; (ii) default in payment of any principal (including, without limitation, premium, if any) on the Securities when due or failure to comply with its obligation to convert the Securities in accordance with the Indenture upon exercise of a Holder’s right in accordance with Article 4 thereof; (iii) failure by the Company for 60 days after notice to it to comply with any of its other agreements contained in the Indenture or the Securities; (iv) default in the payment of certain indebtedness of the Company or a Significant Subsidiary; (v) the Company fails to provide a notice of a Fundamental Change within 30 days after notice of failure to timely deliver the same; and (vi) certain events of bankruptcy, insolvency or reorganization of the Company or any Significant Subsidiary. If an Event of Default (other than as a result of certain events of bankruptcy, insolvency or reorganization of the Company) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding may declare all unpaid principal to the date of acceleration on the Securities then outstanding to be due and payable immediately, all as and to the extent provided in the Indenture. If an Event of Default occurs as a result of certain events of bankruptcy, insolvency or reorganization of the Company, unpaid principal of the Securities then outstanding shall become due and payable immediately without any declaration or other act

on the part of the Trustee or any Holder, all as and to the extent provided in the Indenture. Holders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Securities. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Securities then outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal or interest) if it determines that withholding notice is in their interests. The Company is required to file periodic reports with the Trustee as to the absence of default.

17. TRUSTEE DEALINGS WITH THE COMPANY

The Bank of New York Mellon Trust Company, N.A., the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from and perform services for the Company or an Affiliate of the Company, and may otherwise deal with the Company or an Affiliate of the Company, as if it were not the Trustee.

18. NO RECOURSE AGAINST OTHERS

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture nor for any claim based on, in respect of or by reason of such obligations or their creation. The Holder of this Security by accepting this Security waives and releases all such liability. The waiver and release are part of the consideration for the issuance of this Security.

19. AUTHENTICATION

This Security shall not be valid until the Trustee or an authenticating agent manually signs the certificate of authentication on the other side of this Security.

20. ABBREVIATIONS AND DEFINITIONS

Customary abbreviations may be used in the name of the Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and UGMA (= Uniform Gifts to Minors Act).

All terms defined in the Indenture and used in this Security but not specifically defined herein are defined in the Indenture and are used herein as so defined.

21. INDENTURE TO CONTROL; GOVERNING LAW

In the case of any conflict between the provisions of this Security and the Indenture, the provisions of the Indenture shall control. This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: PDL BioPharma, Inc., 932 Southwood Boulevard, Incline Village, Nevada 89451, Attention: Investor Relations.

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Security to

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint

_____

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Your Signature:

Date: _____ _____

(Sign exactly as your name appears on the other side of this Note)

*Signature guaranteed by:

By: _____

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

CONVERSION NOTICE

The undersigned owner of this Security hereby irrevocably exercises the option to convert this Security, or a portion hereof (which is $1,000 or an integral multiple hereof) below designated, into cash up to the aggregate principal amount of the Securities to be converted and if applicable, shares of Common Stock in respect of the remainder, in accordance with the terms of the Indenture referred to in this Security, and directs that cash payable and any shares of Common Stock issuable and deliverable upon conversion, together with any payment for fractional shares of Common Stock, and any Securities representing any unconverted principal amount hereof, be paid or issued and delivered, as the case may be, to the registered Holder hereof unless a different name has been indicated below.

To convert only part of this Security, state the principal amount to be converted (must be $1,000 or an integral multiple of $1,000): $_____.

If you want the registration of any shares of Common Stock and Notes issued in another person's name, fill in the form below:

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

(Print or type assignee's name, address and zip code)

Your Signature:

Date: _____ _____

(Sign exactly as your name appears on the other side of this Note)

*Signature guaranteed by:

By: _____

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

Participant Name and Number

OPTION TO ELECT REPURCHASE
UPON A FUNDAMENTAL CHANGE

To: PDL BioPharma, Inc.

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from PDL BioPharma, Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to redeem the entire principal amount of this Security, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Note at the Fundamental Change Repurchase Price, together with accrued interest to, but excluding, such date, to the registered Holder hereof.

Dated: _____

_____

Signature(s)

Signature(s) must be guaranteed by a qualified guarantor institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

_____

Signature Guaranty

Principal amount to be redeemed
(in an integral multiple of $1,000, if less than all):

_____

NOTICE: The signature to the foregoing Election must correspond to the name as written upon the face of this Security in every particular, without alteration or any change whatsoever.

_____

Participant Name and Number

SCHEDULE OF EXCHANGES OF SECURITY[2]

The following exchanges, redemptions, repurchases or conversions of a part of this global Note have been made:

Date of Exchange (or Increase)	Amount of Decrease in Principal Amount of this Global Security	Amount of Increase in Principal Amount of this Global Security	Principal Amount of this Global Security Following Such Decrease	Authorized Signatory of Securities Custodian

[2] This schedule should be included only if the Security is a Global Security.