
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of Earliest Event Reported): May 10, 2011

PDL BioPharma, Inc.

(Exact name of Company as specified in its charter)

000-19756

(Commission File Number)

Delaware
(State or Other Jurisdiction
of Incorporation)

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

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

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

Underwriting Agreement

On May 10, 2011, PDL BioPharma, Inc. (the "Company") entered into an underwriting agreement (the "Underwriting Agreement") with each of Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC and JMP Securities LLC (the "Underwriters"), relating to the issuance and sale of \$135,000,000 aggregate principal amount of the Company's 3.75% Convertible Senior Notes due 2015 (or \$155,250,000 if the underwriters exercise their over-allotment option in full) (the "Notes"). Under the terms of the Underwriting Agreement, the Company granted the Underwriters an option, exercisable for up to 13 days, to purchase up to an additional \$20,250,000 principal amount of the Notes solely to cover over-allotments, if any. On May 12, 2011, the Underwriters exercised their full over-allotment option to purchase the additional Notes.

The offering was made pursuant to the Company's shelf registration statement on Form S-3 (File No. 333-174052), which became effective on May 9, 2011, as supplemented by the preliminary prospectus supplement filed with the Securities and Exchange Commission (the "Commission") on May 9, 2011, and the prospectus supplement filed with the Commission on May 12, 2011.

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

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

Indenture

On May 16, 2011, the Company closed its previously announced public offering of the Notes. In connection with the issuance of the Notes, the Company entered into an Indenture (the "Base Indenture") with The Bank of New York Mellon Trust Company, N.A. as trustee (the "Trustee"), as supplemented by a supplemental indenture thereto, between the Company and the Trustee, and of even date therewith (the "Supplemental Indenture," and together with the Base Indenture, the "Indenture").

The terms of the Notes are governed by the Indenture. The Notes bear interest at a rate of 3.75% per annum on the principal amount thereof, payable semi-annually in arrears on May 1 and November 1 of each year, beginning on November 1, 2011, to holders of record at the close of business on the preceding April 15 and October 15, respectively. The Notes will mature on May 1, 2015, unless earlier repurchased or converted. The Company may not redeem the Notes prior to their stated maturity date.

Holders may convert their Notes under the following conditions at any time prior to the close of business on the second scheduled trading day immediately preceding the stated 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 June 30, 2011, if the last reported sale price of Company 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 notes on the last day of such preceding fiscal quarter;
- 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 Notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of Company common stock and the conversion rate of that day; or
- upon the occurrence of specified corporate transactions as described in the Indenture.

In addition, holders may convert their Notes at their option at any time beginning on November 1, 2014, and ending on the close of business on the second scheduled trading day immediately preceding the stated maturity date of the Notes, without regard to the foregoing circumstances.

The initial conversion rate for the Notes will be 126.2985 shares of the Company's common stock per \$1,000 principal amount of Notes, which is equivalent to an initial conversion price of approximately \$7.92 per share of common stock, subject to adjustments upon the occurrence of certain specified events as set forth in the Indenture. Upon conversion, the Company will be required to pay cash and, if applicable, deliver shares of the Company's common stock as more fully described in the Indenture.

In addition, upon the occurrence of a fundamental change (as defined in the Indenture), holders of the Notes may require the Company to repurchase the Notes at a purchase price of 100% of the principal amount of the Notes, plus any accrued and unpaid interest, if any, to but not including the fundamental change repurchase date. Holders who convert their Notes in connection with a make-whole fundamental change, as defined in the Indenture, may be entitled to a make-whole premium in the form of an increase in the conversion rate.

The events of default, which may result in the acceleration of the maturity of the Notes, include default by the Company in the payment of principal of the Notes, default by the Company in the payment of interest on the Notes when due and the continuance of such default for a period of 30 days, failure by the Company to perform certain of its agreements required under the Indenture if such failure continues for 60 days after notice is given in accordance with the Indenture, failure by the Company to pay the repurchase price of any Note when due upon a fundamental change, failure by the Company to comply with its conversion obligations upon exercise of a holder's conversion right under the Indenture, failure by the Company to provide timely notice of a

fundamental change, if required, and such failure continues for 30 days after notice of such failure is given, failure by the Company to timely discharge certain other indebtedness, and certain events of bankruptcy or insolvency involving the Company.

If an event of default, other than an event of default involving bankruptcy or insolvency of the Company, occurs and is continuing, either the Trustee or the holders of at least 25% in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may declare 100% of the principal amount of, and accrued and unpaid interest (including additional interest, if any) on all the Notes then outstanding, to be due and payable immediately. If an event of default involving bankruptcy or insolvency events with respect to the Company occurs, then 100% of the principal amount of, and all accrued and unpaid interest on, all the Notes, will automatically become immediately due and payable without any notice or other action by the Trustee or any holder. Notwithstanding the foregoing, the Company may elect, at its option, that the sole remedy for an event of default relating to certain failures by the Company to comply with certain reporting covenants in the Indenture consist exclusively of the right of the holders of the Notes to receive additional interest on the Notes.

The foregoing description of the Base Indenture, attached as Exhibit 4.5 to the Company's Registration Statement on Form S-3 (Registration No. 333-174052) filed with the Securities and Exchange Commission, and the Supplemental Indenture and related Form of Note, which are attached to this Current Report as Exhibits 4.1 and 4.2, respectively. The Base Indenture, Supplemental Indenture and Form of Note are incorporated herein by reference.

Convertible Note Hedge Transactions

On May 10 and May 12, 2011, in connection with the offering of the Notes (including the exercise of the overallotment option provided in the Underwriting Agreement), the Company entered into privately negotiated note hedge transactions with respect to its common stock with counterparties that include affiliates of some of the Underwriters.

The convertible note hedge transactions cover, subject to customary anti-dilution adjustments, the number of shares of the Company's common stock that will initially underlie the Notes. The convertible note hedge transactions are intended generally to reduce the potential dilution to the Company's outstanding common stock upon conversion of the Notes in the event that the market price per share of the common stock is greater than the strike price. The Company paid approximately \$20.7 million in connection with the convertible note hedge transactions.

Warrant Transactions

On May 10 and May 12, 2011, in connection with the offering of the Notes, the Company also entered into privately negotiated warrant transactions with the hedge counterparties, whereby the Company sold to the counterparties warrants to acquire, subject to customary anti-dilution adjustments, approximately 19.6 million shares of common stock at a strike price of \$9.315 per share, also subject to adjustment, which represents a premium of approximately 50% over the last reported sale price of the

Company's common stock of \$6.21 on May 10, 2011. The warrant transactions could have a dilutive effect to the extent that the market price of the Company's common stock exceeds the applicable strike price of the warrants. As consideration for the warrants, the Company received approximately \$10.9 million. The warrants were sold in private placements to the counterparties thereto pursuant to the exemptions from the registration requirements of the Securities Act of 1933, as amended, afforded by Section 4(2) thereof.

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

The disclosure set forth under the heading Indenture in Item 1.01 of this Current Report is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth under the heading Warrant Transactions of this Current Report is incorporated by reference into this Item 3.02.

Item 8.01 Other Events.

On May 16, 2011, the Company issued a press release announcing the closing of an offering of \$155.25 million of its 3.75% Convertible Senior Notes due May 2015. The press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement, dated May 10, 2011, by and between PDL BioPharma, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the underwriters.
4.1	Supplemental Indenture, dated May 16, 2011, between the Company and The Bank of New York Mellon Trust Company, N.A, as trustee.
4.2	Form of 3.75% Convertible Senior Note due 2015 (incorporated by reference to Exhibit 4.1 hereto).
5.1	Opinion of Gibson, Dunn & Crutcher LLP, dated May 16, 2011.
23.1	Consent of Gibson, Dunn & Crutcher LLP (included as part of exhibit 5.1).
99.1	Press Release, dated May 16, 2011.

SIGNATURES

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

PDL BIOPHARMA, INC.
(Company)

By: /s/ Christine R. Larson
Christine R. Larson
Vice President and Chief Financial Officer

Dated: May 16, 2011

EXHIBIT INDEX

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PDL BIOPHARMA, INC.

(a Delaware corporation)

\$135,000,000

3.75% Convertible Senior Notes Due 2015

UNDERWRITING AGREEMENT

Dated: May 10, 2011

PDL BIOPHARMA, INC.

(a Delaware corporation)

\$135,000,000

3.75% Convertible Senior Notes Due 2015

UNDERWRITING AGREEMENT

May 10, 2011

Merrill Lynch, Pierce, Fenner & Smith Incorporated

as Representative of the several Underwriters

One Bryant Park
New York, New York 10036

Ladies and Gentlemen:

PDL BioPharma, Inc., a Delaware corporation (the "Company"), confirms its agreement with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and each of the other Underwriters named in Schedule A hereto (collectively, the "Underwriters," which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Merrill Lynch is acting as representative (in such capacity, the "Representative"), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective principal amounts set forth in said Schedule A of \$135,000,000 aggregate principal amount of the Company's 3.75% Convertible Senior Notes Due 2015 (the "Initial Securities") and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option to purchase all or any part of an additional \$20,250,000 aggregate principal amount of its 3.75% Convertible Senior Notes Due 2015 (the "Option Securities" and, together with the Initial Securities, the "Securities") to cover overallotments. The Securities are to be issued pursuant to an indenture dated as of May 16, 2011 (the "Base Indenture") between the Company and Bank of New York Mellon Trust Company, N. A., as trustee (the "Trustee"). Certain terms of the Securities will be established pursuant to a supplemental indenture dated as of May 16, 2011 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture").

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

The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") an automatic shelf registration statement on Form S-3 (File No. 333-174052) covering the public offering and sale of certain securities, including the Securities, under the Securities Act of 1933, as amended (the "1933 Act"), and the rules and regulations promulgated thereunder (the "1933 Act Regulations"), which automatic shelf registration statement became effective under Rule 462(e) under the 1933 Act Regulations ("Rule 462(e)"). Such registration statement, as of any time, means such registration statement as amended by any post-effective amendments thereto to such time, including the

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

In connection with the offering and sale of the Securities by the Company pursuant to the terms of this Agreement, the Company is entering into convertible note hedge and warrant transactions with one or more of the Underwriters or affiliates thereof pursuant to confirmation letters, dated as of the date hereof, subject to an agreement in the form of the ISDA 2002 Master Agreement (the “Hedge and Warrant Documentation”). This Agreement, the Indenture, the Securities and the Hedge and Warrant Documentation are referred to herein collectively as the “Operative Documents.”

As used in this Agreement:

“Applicable Time” means 4:30p.m., New York City time, on May 10, 2011 or such other time as agreed by the Company and the Representative.

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

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

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

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

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

SECTION 1. Representations and Warranties.

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

(i) Registration Statement and Prospectuses. The Company meets the requirements for use of Form S-3 under the 1933 Act. The Registration Statement is an “automatic shelf registration statement” (as defined in Rule 405) and the Securities have been and remain eligible for registration by the Company on such automatic shelf registration statement. Each of the Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective and at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act Regulations, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the 1933 Act Regulations. Each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

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

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

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

(iii) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. Any offer that is a written communication relating to the Securities made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 under the 1933 Act Regulations (“Rule 163”) and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

(iv) Well-Known Seasoned Issuer. (A) At the original effectiveness of the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the 1933 Act (whether such amendment was by post-effective amendment or incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Securities in reliance on the exemption of Rule 163, and (D) as of the Applicable Time, the Company was and is a “well-known seasoned issuer” (as defined in Rule 405).

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

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

(vii) Financial Statements; Non-GAAP Financial Measures. The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly, in all material respects, the consolidated financial position of the Company and its consolidated subsidiaries at the dates indicated and the consolidated statement of operations, stockholders’ equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”) applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly, in all material respects, in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly, in all material respects, the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus, or incorporated by reference therein, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable.

(viii) No Material Adverse Change in Business. Except as otherwise stated therein, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, (A) there has been no material adverse change, or

any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a “Material Adverse Effect”), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, that are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) except for dividends on the Company’s common stock, par value \$0.01 per share (the “Common Stock”), in an amount consistent with the prior quarter, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

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

(x) Good Standing of Subsidiaries. Each subsidiary of the Company listed on Exhibit 21.1 to the Company’s Form 10-K filed for the year ended December 31, 2010 (each, a “Subsidiary” and, collectively, the “Subsidiaries”) has been duly organized or formed and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package or the Prospectus or as would not result in a Material Adverse Effect, all of the issued and outstanding capital stock or other equity or ownership interest of each Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock or other equity or ownership interest of any Subsidiary were issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary. The only subsidiaries of the Company are QHP Royalty Sub LLC, BTI Acquisition I Corp., and BioTransplant Incorporated.

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

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

(xiii) Authorization of the Hedge and Warrant Documentation. Each of the Hedge and Warrant Documentation has been duly authorized and, when duly executed and delivered by the Company, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xiv) Authorization of the Indenture. The Indenture has been duly authorized by the Company and duly qualified under the 1939 Act and, when duly executed and delivered by the Company and the Trustee, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xv) Authorization of the Securities and the Common Stock. The Securities have been duly authorized and, at the Closing Time, will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and will be in the form contemplated by, and entitled to the benefits of, the Indenture. The shares of Common Stock issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon such conversion in accordance with the terms of the Securities, will be validly issued and will be fully paid and non-assessable; no holder of such shares will be subject to personal liability by reason of being such a holder; and the issuance of such shares upon such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company.

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

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

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

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

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

(xxi) Absence of Proceedings. Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries that, if resolved against the Company as of the date hereof, would result in a Material Adverse Effect, or that, if resolved as of the date hereof, would materially and adversely affect their respective properties or assets or the consummation of the transactions contemplated in the Operative Documents or the performance by the Company of its obligations hereunder; and the aggregate of

all pending legal or governmental proceedings to which the Company or any such subsidiary is a party or of which any of their respective properties or assets is the subject which are not described in the Registration Statement, the General Disclosure Package and the Prospectus, including ordinary routine litigation incidental to the business, would not, if resolved against the Company as of the date hereof, result in a Material Adverse Effect.

(xxii) Accuracy of Exhibits. There are no contracts or documents which are required to be described in the General Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement which have not been so described and filed as required.

(xxiii) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by the Operative Documents, except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the NASDAQ Stock Market LLC, state securities laws or the rules of Financial Industry Regulatory Authority, Inc. ("FINRA").

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

(xxv) Title to Property. The Company and its subsidiaries have good and marketable title to all real property owned by them and good title to all other properties (excluding intangible properties covered by Section 1(a)(xxvi)) owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (A) are described in the Registration Statement, the General Disclosure Package and the Prospectus or (B) do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries; and all of the leases and subleases material to the business of the Company and its subsidiaries, considered as one enterprise, and under which the Company or any of its subsidiaries holds properties described in the Registration Statement, the General Disclosure Package or the Prospectus, are in full force and effect, and neither the Company nor any such subsidiary has received any written notice of any claim that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease, in each case, where such claim if adversely determined would result in a Material Adverse Effect.

(xxvi) Possession of Intellectual Property. The Company and its subsidiaries own or possess or have the valid right and title to the Patents (collectively, the Patents are U.S. Patent No. 5,585,089; 5,693,761; 5,693,762; 6,180,37 and European Patent No. EP 0 451 216 B (inclusive of Supplementary Protection Certificates based thereon)), necessary to carry on the business now operated by them, except where the failure to so own, possess, or license or have other rights to use would not result in a Material Adverse Effect, and except as described in the Registration Statement, the General Disclosure Package and the Prospectus; neither the Company nor any of its subsidiaries has received any notice or claim of infringement of or conflict with, and to the Company's knowledge, the operation of the Company's business does not infringe or conflict with, the intellectual property rights of others except where, singly or in the aggregate, such infringement would not result in a Material Adverse Effect; to the Company's knowledge no third party is infringing or in conflict with any of the Patents, except where such infringement would not result in a Material Adverse Effect; except as set forth or contemplated in the Registration Statement, the General Disclosure Package and the Prospectus, each of the Patents is owned solely by the Company and, except for those patent claims described as having been found invalid in the Registration Statement, the General Disclosure Package, or the Prospectus, to the Company's knowledge, none of the Patents is invalid or unenforceable; except as described in the Company's Registration Statement, the General Disclosure Package and the Prospectus, and to the Company's knowledge, the Company has substantially complied with, and each counter party is in substantial compliance with, the terms of any agreement pursuant to which the Patents have been licensed to or from the Company, except where such non-compliance would not result in a Material Adverse Effect.

(xxvii) Environmental Laws. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus or would not, singly or in the aggregate, result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or, to the Company's knowledge, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxviii) Accounting Controls and Disclosure Controls. The Company and each of its subsidiaries maintain effective internal control over financial reporting (as defined under Rule 13-a15 and 15d-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to

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

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

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

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

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

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

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

(xxxv) Foreign Corrupt Practices Act. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain reasonable policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxvi) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the “Money Laundering Laws”); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxvii) OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is currently the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any of its subsidiaries, joint venture partners or other person, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

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

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

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) *Initial Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price set forth in Schedule A, the aggregate principal amount of Initial Securities set forth in Schedule A, plus any additional principal amount of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject to such adjustments as the Representative in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(b) *Option Securities*. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase the Option Securities, at the price set forth in Schedule A. The option hereby granted may be exercised at any time after the date hereof and prior to the latest permissible Date of Delivery hereunder and may be exercised in whole or in part from time to time only for the purpose of covering overallocments made in connection with the offering and distribution of the Initial Securities upon notice by the Representative to the Company setting forth the amount of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representative, but shall not be later than seven full business days after the exercise of said option, nor in any event (a) prior to the Closing Time or (b) later than the 12th day following the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total principal amount of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total principal amount of Initial Securities, plus any additional principal amount of Option Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject to such adjustments as the Representative in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(c) *Payment*. Payment of the purchase price for, and delivery of certificates for, the Initial Securities shall be made at the offices of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006, or at such other place as shall be agreed upon by the Representative and the Company, at 9:00 A.M. (New York City time) on the third (fourth, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representative and the Company (such time and date of payment and delivery being herein called "Closing Time").

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

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

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

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

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

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

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

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

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

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

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

(h) *Listing.* The Company will use its best efforts to effect and maintain the listing of the Common Stock on the Nasdaq Global Select Market.

(i) *Restriction on Sale of Securities.* During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representative, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company (including, without limitation, the Company's 2005 Equity Incentive Plan), (D) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the Registration Statement, the General Disclosure Package and the Prospectus, (E) the entry into the transactions contemplated by the Hedge and Warrant Documentation or (F) any shares of Common Stock issued in connection with strategic relationships or acquisitions of businesses, licenses, assets, technologies or products; provided, however, that any such issuance in connection with such strategic relationships or acquisitions of businesses, licenses, assets, technologies or products shall not exceed 10% of the shares of Common Stock outstanding immediately prior to such issuance. Nothing in this Section 3(i) shall prevent the Company from filing any registration statements on Form S-8 or S-4 relating to the issuance of securities pursuant to clauses (A), (B), (C), (D), (E) or (F) set forth in this Section 3(i). Notwithstanding the foregoing, if (1) during the last 17 days of the 90-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs or (2) prior to the expiration of the 90-day restricted period, the Company announces that it will issue an earnings release or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day restricted period, the restrictions imposed in this clause (i) shall continue to apply until the expiration of the 18-day period beginning on the date of the issuance of the earnings release or the occurrence of the material news or material event, unless the Representative waives, in writing, such extension.

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

(k) *Final Term Sheet; Issuer Free Writing Prospectuses.* The Company will prepare a final term sheet (the “Final Term Sheet”), in the form set forth in Schedule C hereto, reflecting the final terms of the Securities, in form and substance satisfactory to the Representative, and shall file such Final Term Sheet as an “issuer free writing prospectus” pursuant to Rule 433 prior to the close of business two business days after the date hereof; provided that the Company shall furnish the Representative with copies of any such Final Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representative or counsel to the Underwriters shall object. The Company agrees that, unless it obtains the prior written consent of the Representative, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representative will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B-2 hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representative. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representative as an “issuer free writing prospectus,” as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representative and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

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

(m) *Reserved Shares.* The Company will reserve and keep available at all times, free of preemptive rights, the full number of shares issuable upon conversion of the Securities.

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

SECTION 4. Payment of Expenses.

(a) *Expenses.* The Company will pay or cause to be paid all expenses incident to the performance of their obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each

amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) preparation, issuance and delivery of the Securities to the Underwriters and the Common Stock issuable upon conversion thereof, (iv) the physical preparation of the Hedge and Warrant Documentation, (v) the fees and disbursements of the Company's counsel, accountants and other advisors, (vi) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto, (vii) all fees and expenses of the Trustee and any expenses of any transfer agent or registrar for the Securities or the Common Stock issuable upon conversion of the Securities, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show, (ix) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA of the terms of the sale of the Securities, (x) the fees and expenses incurred in connection with the listing of the Common Stock issuable upon conversion of the Securities on the Nasdaq Global Select Market and (xi) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by the Underwriters caused by a breach of the representation contained in the third sentence of Section 1(a)(ii). For the avoidance of doubt, the Company will not pay or otherwise be responsible for the fees or expenses of counsel for the Underwriters, except as provided in clause (vi) of this Section 4(a) in respect of the preparation of the Blue Sky Survey.

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

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

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

(b) *Opinions of Counsel for Company.* At the Closing Time, the Representative shall have received the favorable opinions, dated the Closing Time, of Gibson, Dunn & Crutcher LLP, counsel for the Company, and the general counsel for the Company, in form and substance reasonably satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters to the effect set forth in Exhibit A and Exhibit B, respectively, attached hereto.

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

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

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

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

(g) *Approval of Listing.* At the Closing Time, the Common Stock issuable upon conversion of the Securities shall have been approved for listing on the Nasdaq Global Select Market, subject only to official notice of issuance.

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

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

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

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

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

(iii) Opinion of Counsel for Underwriters. If requested by the Representative, the favorable opinion of Cleary Gottlieb Steen & Hamilton LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

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

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

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

SECTION 6. Indemnification.

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

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

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

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

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

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

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

(d) *Actions against Parties; Notification.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for the reasonable fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

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

The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any unreimbursed legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

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

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

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

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

SECTION 9. Termination of Agreement.

(a) *Termination.* The Representative may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representative, since the time of execution of this Agreement or since the respective dates as of which

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

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

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

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

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

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

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either the (i) Representative or (ii) the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order

to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term “Underwriter” includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to Merrill Lynch at One Bryant Park, New York, New York 10036, attention of Syndicate Department, with a copy to ECM Legal; notices to the Company shall be directed to it at 932 Southwood Boulevard, Incline Village, Nevada 89451, attention of Danny Hart, and with a copy to Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071, attention of Dhiya El-Saden.

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

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

SECTION 14. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

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

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

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

SECTION 18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

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

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

Very truly yours,

PDL BIOPHARMA, INC.

By /s/ John P. McLaughlin

Title: John P. McLaughlin

President & Chief Executive Officer

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

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By /s/ Clemence Rasigni

Clemence Rasigni

Managing Director

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

SCHEDULE A

1. The initial public offering price of the Securities shall be 100.00% of the principal amount thereof, plus accrued interest, if any, from the date of issuance.
2. The purchase price to be paid by the Underwriters for the Securities shall be 96.80% of the principal amount thereof.
3. The interest rate on the Securities shall be 3.75% per annum.
4. The conversion rate for the Securities shall be 126.2985 shares per \$1,000 principal amount of the Securities.

Name of Underwriter	Principal Amount of Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$101,250,000
RBC Capital Markets, LLC	27,000,000
JMP Securities LLC	6,750,000
Total	<u>\$135,000,000</u>

Sch A-1

SCHEDULE B

Free Writing Prospectuses

Final Term Sheet

Sch B - 1

SCHEDULE C

Final Term Sheet

Sch C - 1

Pricing Term Sheet
Dated as of May 10, 2011

\$135,000,000
PDL BioPharma, Inc.
3.75% Convertible Senior Notes due 2015
Final Term Sheet

The information in this pricing term sheet should be read together with the prospectus dated May 9, 2011 as supplemented by the preliminary prospectus supplement dated May 9, 2011 relating to the offering by PDL BioPharma, Inc. of its 3.75% Convertible Senior Notes due 2015, including the documents incorporated by reference therein (collectively, the "preliminary prospectus").

Issuer:	PDL BioPharma, Inc. ("PDL")
Ticker / Exchange for Common Stock:	PDLI / NASDAQ Global Select Market
Notes:	3.75% Convertible Senior Notes due 2015 (the "notes")
Aggregate Principal Amount Offered:	\$135.0 million aggregate principal amount of notes (\$155.25 million if the underwriter's overallotment option is exercised in full)
Use of Proceeds:	PDL expects to receive net proceeds of approximately \$130.1 million (or approximately \$149.7 million if the underwriters exercise their overallotment option in full), after deducting underwriting discounts and estimated fees and expenses related to the offering of the notes. PDL expects to use (i) up to approximately \$112.1 million of the net proceeds to fund the repurchase from time to time or redemption of its 2.00% Convertible Senior Notes due February 15, 2012 and (ii) approximately \$18.0 million of the net proceeds to purchase a convertible note hedge to reduce the dilutive impact of the conversion feature of the notes on its outstanding shares of common stock. PDL also expects to receive approximately \$9.5 million in proceeds from the warrant transactions described in the preliminary prospectus.
Maturity:	May 1, 2015, unless earlier converted or repurchased
Annual Interest Rate:	3.75% per annum
Interest Payment Dates:	Interest will accrue from May 16, 2011, and will be payable semiannually in arrears on May 1 and November 1 of each year, beginning on November 1, 2011.

	Per Note	Without Option	With Option
Public Offering Price	100%	\$135,000,000	\$155,250,000
Underwriting Discount	3.20%	\$4,320,000	\$4,968,000
Proceeds, Before Expenses, to PDL:	96.80%	\$130,680,000	\$150,282,000

Trading: The notes will not be listed on any securities exchange or included in any automatic quotation system.

Trade Date: May 10, 2011

Settlement Date: May 16, 2011

Last Reported Sale Price of Common Stock, on NASDAQ on May 10, 2011: \$6.21 per share

Conversion Premium: Approximately 27.5% above the Last Reported Sale Price of Common Stock

Initial Conversion Price: Approximately \$7.92 per share of Common Stock

Initial Conversion Rate: 126.2985 shares of common stock per \$1,000 principal amount of notes, subject to adjustment

Warrant Strike Price: \$9.315, subject to adjustment, which represents a premium of approximately 50% over the Last Reported Sale Price of Common Stock

Dilution Adjustments: Adjustments for events including payment of any dividend to all or substantially all holders of common stock

Book-Running Manager: Merrill Lynch, Pierce, Fenner & Smith Incorporated

Co-Managers: RBC Capital Markets, LLC and JMP Securities LLC

CUSIP Number: 69329Y AC8

ISIN Number: US69329YAC84

Impact on Balance Sheet: Under Accounting Standards Codification 470-20, the liability and equity components of the notes are accounted for separately. The expected characterization of the principal amount of the notes is as follows (in millions):

Deferred tax liabilities	\$ 5.8
Long-term debt	118.5
Additional paid-in-capital	10.7
Total	<u>\$135.0</u>

Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change:

The following table sets forth the number of additional shares by which the conversion rate of the notes will be increased for conversions in connection with a make-whole fundamental change, based on hypothetical stock prices and effective dates set forth below:

Effective Date of Fundamental Change	Stock Price									
	\$ 6.21	\$ 6.50	\$ 7.00	\$ 7.92	\$ 8.00	\$ 9.00	\$ 10.00	\$ 15.00	\$ 20.00	\$ 30.00
May 16, 2011	34.7320	30.9582	25.8056	19.4688	19.0569	15.1222	12.6613	7.4775	5.2805	3.0991
May 1, 2012	34.7320	29.7852	23.8851	16.8503	16.4093	12.3658	10.0586	5.8304	4.1289	2.4353
May 1, 2013	34.7320	28.5705	21.6544	13.6724	13.1956	9.0745	7.0424	4.0267	2.8601	1.6947
May 1, 2014	34.7320	27.5477	18.3835	9.1945	8.6911	4.8760	3.5268	2.0798	1.4804	0.8791
May 1, 2015	34.7320	27.5476	16.5586	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

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 is between two effective 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 \$30.00 per share (subject to adjustment), no additional shares will be added to the conversion rate; and
- less than \$6.21 per share (subject to adjustment), no additional shares will be added to the conversion rate.

Despite the foregoing, in no event will the conversion rate, including any additional shares issuable under the table above, exceed 161.0305 shares per \$1,000 principal amount of notes, subject to adjustment in the same manner and for the same events as the conversion rate as set forth under “Description of Notes—Anti-Dilution Adjustments” in the preliminary prospectus supplement.

The Issuer has filed a registration statement (including a preliminary prospectus supplement and the accompanying prospectus) with the U.S. Securities and Exchange Commission (SEC) for the offering to which this communication relates. Before you invest, you should read the preliminary prospectus supplement and accompanying prospectus in that registration statement and the other documents the Issuer has filed with the SEC for more complete information about the Issuer and the offering. You may get these documents for free by visiting EDGAR on the SEC’s website at <http://www.sec.gov>. Alternatively, copies may be obtained from BofA Merrill Lynch at (866) 500-5408.

This communication should be read in conjunction with the preliminary prospectus supplement dated May 9, 2011 and the accompanying prospectus dated May 9, 2011. The information in this communication supersedes the information in the preliminary prospectus supplement and the accompanying prospectus to the extent it is inconsistent with the information in such preliminary prospectus supplement and accompanying prospectus.

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

SCHEDULE D

List of Persons and Entities Subject to Lock-up

John P. McLaughlin
Frederick Frank
Jody S. Lindell
Paul W. Sandman
Harold E. Selick
Christine R. Larson
Christopher L. Stone
Caroline Krumel
Danny J Hart, Jr.

Sch D - 1

FORM OF OPINION OF COMPANY'S COUNSEL
TO BE DELIVERED PURSUANT TO SECTION 5(b) OF THE UNDERWRITING AGREEMENT

(a) The Company is a validly existing a corporation in good standing under the laws of the State of Delaware.

(b) The Company has the requisite corporate power and authority to own its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to execute and deliver the Operative Documents and perform its obligations thereunder.

(c) The authorized capital stock of the Company is as set forth in the Registration Statement, the General Disclosure Package and the Prospectus under the caption "Capitalization".

(d) Each Subsidiary is validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its incorporation or formation.

(e) The execution, delivery and performance of the Underwriting Agreement have been duly authorized by all necessary corporate action on the part of the Company. The Underwriting Agreement has been duly executed and delivered by the Company.

(f) The execution, delivery and performance of the Indenture have been duly authorized by all necessary corporate action on the part of the Company. The Indenture has been duly executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

(g) The execution, deliver and performance of each of the Hedge and Warrant Documentation have been duly authorized by all necessary corporate action on the part of the Company. The Hedge and Warrant Documentation have been duly executed and delivered by the Company and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

(h) The execution, delivery and performance of the Securities have been duly authorized by all necessary corporate action on the part of the Company. The Securities have been executed and delivered by the Company and, when duly authenticated in accordance with the provisions of the Indenture and paid for by the Underwriters as provided in the Underwriting Agreement, will constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

(i) The Indenture has been duly qualified under the 1939 Act.

(j) Insofar as the statements in the Registration Statement, the Disclosure Package, and the Prospectus purport to describe specific provisions of the Common Stock, Indenture, Securities and Hedge and Warrant Documentation, such statements present in all material respects an accurate summary of such provisions.

(k) The Securities are convertible into shares of Common Stock of the Company in accordance with the terms of the Indenture. The shares of such Common Stock initially issuable upon conversion of the Securities pursuant to the conversion ratio set forth in the Indenture as in effect on the Closing Date have been duly authorized and reserved for issuance upon such conversion and, when issued upon such conversion as provided in the Indenture, will be validly issued, fully paid and nonassessable and will not be subject to any preemptive or other similar right created by the Company's certificate of incorporation and the General Corporation Law of the State of Delaware.

(l) Excluding the documents incorporated by reference into the Registration Statement, any required filing of each prospectus relating to the Securities (including the Prospectus) pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b) (without reference to Rule 424(b)(8)).

(m) To the extent that the statements in the Prospectus under the caption "Certain U.S. Federal Income Tax Considerations," purport to describe specific provisions of the Internal Revenue Code of 1986, as amended, or the rules and regulations thereunder, such statements present in all material respects an accurate summary of such provisions.

(n) The execution, delivery and performance by the Company of the Underwriting Agreement, the Hedge and Warrant Documentation or the Indenture do not (i) violate or require the consent, approval, filing with, authorization or order of any court or governmental agency or body of the State of New York or the United States of America under any law or regulation of the State of New York or the United States of America that, in our experience, is generally applicable to transactions in the nature of those contemplated by the Transaction Documents or (ii) violate or require the consent, approval, filing with, authorization or order of any court or governmental agency or body of the State of Delaware under the Delaware General Corporation Law. We are expressing no opinion in this paragraph regarding federal or state securities laws.

(o) The execution, delivery and performance by the Company of each of the Operative Documents to which it is a party and the issuance of the Securities to the Underwriters (i) do not and will not violate the certificate of incorporation or bylaws of the Company, and (ii) do not and will not breach the terms of (a) any agreement identified to us in the certificate attached hereto as Exhibit A or (b) any order, judgment or decree of any court or other agency of government identified to us in the certificate attached hereto as Exhibit A, in either case based solely on our review of such agreements, orders, judgments or decrees.

(p) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in Prospectus, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

Negative Assurance Letter Coverage:

Based solely on the certificate of the Company attached as Annex A hereto, we are of the view that the Registration Statement has become effective under the 1933 Act. To our knowledge, based solely upon telephonic confirmation from the Staff of the Commission on May [___], 2012, as of the time of such confirmation no stop order suspending the effectiveness of the Registration Statement has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

We have participated in conferences with officers and other representatives of the Company, representatives of the independent auditors of the Company and your representatives and counsel at which the contents of the Registration Statement, the General Disclosure Package and the

Prospectus and related matters were discussed. Because the purpose of our professional engagement was not to establish or confirm factual matters and because we did not independently undertake to verify the accuracy, completeness or fairness of the statements set forth in the Registration Statement, the General Disclosure Package or the Prospectus, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the General Disclosure Package or the Prospectus except insofar as such statements specifically relate to us. The documents incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus were prepared and filed by the Company without our participation. Our identification of information as constituting the General Disclosure Package is for the limited purpose of making the statements set forth in this letter. We express no opinion or belief as to the conveyance of the General Disclosure Package or the Prospectus or the information contained therein to investors generally or to any particular investors at any particular time or in any particular manner.

On the basis of the foregoing, and except for the financial statements and schedules, statistical information derived from the financial statements and other information of an accounting or financial nature and the Statement of Eligibility on Form T-1 of the Trustee included or incorporated by reference therein, as to which we express no opinion or belief, no facts have come to our attention that led us to believe: (a) that the Registration Statement, at the time it became effective (which, for purposes of this letter, shall mean May [9], 2011), or the Prospectus, as of the date of the Final Term Sheet, were not appropriately responsive in all material respects to the requirements of the Securities Act and the Trust Indenture Act and the applicable rules and regulations of the Commission thereunder; or (b)(i) that the Registration Statement, at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, or necessary to make the statements therein not misleading, (ii) that the General Disclosure Package, at the Applicable Time, included an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or (iii) that the Prospectus, as of its date or as of the date hereof, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

FORM OF OPINION OF COMPANY'S GENERAL COUNSEL
TO BE DELIVERED PURSUANT TO SECTION 5(b) OF THE UNDERWRITING AGREEMENT

(a) To the best of such counsel's knowledge, the statements set forth in the Registration Statement, the General Disclosure Package and the Prospectus under the headings "Patents and Technology Out-License Agreements" and "Legal Proceedings", provide a fair summary of the matters described and do not contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, misleading.

(b) As of the date hereof, the Company owns good and exclusive title to each of the patents listed in Exhibit A (the "Patents") and the other intellectual property rights referenced in the Registration Statement, the General Disclosure Package and the Prospectus (together with the Patents, the "Company IP"), which, to the best of such counsel's knowledge, are free and clear of debtor liens and security interests, except to the extent that the Company has granted certain license rights to its licensees under the Patents. To the best of such counsel's knowledge, as of the date hereof, each of the Patents is valid and subsisting, all fees currently due in connection with such Patents have been paid, and all documents, information, recordations and certificates in connection with such Patents required to be filed have been properly filed with the relevant patent authorities, except where such failures would not result in a Material Adverse Effect. To the best of such counsel's knowledge, as of the date hereof, no facts or challenges exist that may preclude the Company or any of its subsidiaries from having valid license rights or clear title to the Patents, or that is likely to lead to a finding of unenforceability or invalidity of any such rights or any portion thereof, including with respect to the preparation, filing or prosecution of the Patents, except for such facts or challenges that would not result in a Material Adverse Effect.

(c) To the best of such counsel's knowledge, as of the date hereof, each contract listed on Exhibit B hereto constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms without violation of law, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(d) To the best of such counsel's knowledge, as of the date hereof, except as described in the Registration Statement, the General Disclosure Package and the Prospectus or as would not constitute a Material Adverse Effect, (i) there are no legal or other proceedings pending or threatened with respect to the Patents, including as to its enforceability, scope, or validity, (ii) none of Company or any of its subsidiaries is infringing, misappropriating or otherwise violating any intellectual property rights of others, and has not received notice of or had any such claim made, and (iii) there are no actual or alleged infringements, misappropriations or other violations by others of any of the Patents.

(e) The documents incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus (other than the financial statements and supporting schedules included therein or omitted therefrom, as to which such counsel need express no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the 1934 Act and the 1934 Act Regulations.

(f) Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, to my knowledge, the Company is not party to any pending legal proceeding, or legal proceeding that has been overtly threatened in writing, to which the Company or any subsidiary is a party, or to which the property of the Company or any subsidiary is subject, before or brought by any Governmental Entity, that if resolved against the Company as of the date hereof, would result in a Material Adverse Effect, or, if resolved against the Company as of the date hereof, would materially and adversely affect the properties or assets thereof or the consummation of the transactions contemplated in the Registration Statement, the General Disclosure Package or the Prospectus or the performance by the Company of its obligations thereunder.

(g) All descriptions in the Registration Statement, the General Disclosure Package and the Prospectus of contracts and other documents to which the Company or its subsidiaries are a party are accurate in all material respects; to my knowledge, there are no franchises, contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be described or referred to in the Registration Statement, the General Disclosure Package and the Prospectus other than those described or referred to therein or filed or incorporated by reference as exhibits thereto.

May 10, 2011

Merrill Lynch, Pierce, Fenner & Smith Incorporated,

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

One Bryant Park
New York, New York 10036

Re: Proposed Public Offering by PDL BioPharma, Inc.

Dear Sirs:

The undersigned, a stockholder and an officer and/or director of PDL BioPharma, Inc., a Delaware corporation (the "Company"), understands that Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") proposes to enter into an Underwriting Agreement (the "Underwriting Agreement") with the Company providing for the public offering of \$135,000,000 aggregate principal amount of the Company's 3.75% Convertible Senior Notes Due 2015 (the "Securities"). In recognition of the benefit that such an offering will confer upon the undersigned as a stockholder and an officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees, subject to the terms and conditions set forth herein, with each underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on the date that is 90 days from the date of the Underwriting Agreement (the "Lock-Up Period"), the undersigned will not, without the prior written consent of Merrill Lynch, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the "Lock-Up Securities"), or exercise any right with respect to the registration of any of the Lock-up Securities, or file or cause to be filed any registration statement in connection therewith, under the Securities Act of 1933, as amended, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

Notwithstanding the foregoing, if:

(1) during the last 17 days of the Lock-up Period, the Company issues an earnings release or material news or a material event relating to the Company occurs; or

(2) prior to the expiration of the Lock-up Period, the Company announces that it will release earnings results or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the Lock-up Period,

the restrictions imposed by this lock-up agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless Merrill Lynch waives, in writing, such extension.

The undersigned agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this lock-up agreement during the period from the date of this lock-up agreement to and including the 34th day following the expiration of the initial Lock-up Period, it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has received written confirmation from the Company that the Lock-up Period (as may have been extended pursuant to the previous paragraph) has expired.

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

(i) as a *bona fide* gift or gifts;

(ii) by testate or intestate succession;

(iii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this lock-up agreement, “immediate family” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin) and lineal descendants thereof;

(iv) as a distribution to members, limited partners or stockholders of the undersigned;

(v) if the undersigned holds the Lock-Up Securities as a trustee of a trust, to such trust’s beneficiaries; or

(vi) to the undersigned’s direct or indirect affiliates or subsidiaries or to any investment fund or other entity controlled or managed by the undersigned.

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

trigger any public filing requirement and the undersigned does not make any such public filing or other public announcement, or (5) the disposition or sale of any Lock-Up Securities pursuant to any existing contract, instruction or plan entered into pursuant to a Rule 10b5-1 Plan in existence as of the date hereof.

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

This letter agreement shall automatically terminate and the undersigned shall be released from his or her or its obligations hereunder if any of the following occurs: (i) the Company notifies you in writing that it does not intend to proceed with the offering of the Securities; or (ii) for any reason after the execution of the Underwriting Agreement, the Underwriting Agreement shall be terminated (other than the provisions thereof that survive termination) prior to the consummation of the purchase of the Securities in accordance with the terms of the Underwriting Agreement.

Very truly yours,

Signature: _____

Print Name: _____

PDL BIOPHARMA, INC.

as Issuer

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

as Trustee

SUPPLEMENTAL INDENTURE

Dated as of May 16, 2011

\$155,250,000

3.75% Convertible Senior Notes due 2015

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SUPPLEMENTAL INDENTURE, dated as of May 16, 2011, between PDL BioPharma, Inc., a Delaware corporation (the “Company”), and The Bank of New York Mellon Trust Company, N.A, as trustee (the “Trustee”) under the Indenture dated as of May 16, 2011, between the Company and the Trustee (as amended or supplemented from time to time in accordance with the terms thereof, the “Original Indenture”).

RECITALS OF THE COMPANY

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

WHEREAS, Section 10.01 of the Original Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Original Indenture to establish the form and terms of Securities of any series as contemplated by Section 2.01 of the Original Indenture;

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

WHEREAS, pursuant to the terms of the Original Indenture, the Company desires to establish a new series of its Securities to be known as its “3.75% Convertible Senior Notes due 2015” (the “Notes”), the form and substance of such Notes and the terms, provisions and conditions thereof to be set forth as provided in the Original Indenture and this Supplemental Indenture;

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note and the Form of Notice of Conversion, Form of Fundamental Change Repurchase Notice and Form of Assignment and Transfer contemplated under the terms of the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture, and all requirements necessary to make (i) this Supplemental Indenture a valid instrument in accordance with its terms, and (ii) the Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed, and the execution and delivery of this Supplemental Indenture have been duly authorized in all respects.

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Scope of Supplemental Indenture.

The changes, modifications and supplements to the Original Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and shall only govern the terms of, the Notes, which may be issued from time to time, and shall not apply to any other Securities that may be issued under the Original Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. The provisions of this Supplemental Indenture shall supersede any corresponding provisions in the Original Indenture.

Section 1.02. Definitions.

Except as otherwise provided in this Supplemental Indenture, all words, terms and phrases defined in the Original Indenture (but not otherwise defined herein) shall have the same meaning herein as in the Original Indenture. To the extent terms defined herein differ from terms defined in the Original Indenture the terms defined herein will govern for purposes of this Supplemental Indenture and the Notes. For all purposes of this Supplemental Indenture and the Notes, except as otherwise expressly provided or unless the context otherwise requires:

“Additional Interest” has the meaning specified in Section 5.02.

“Additional Notes” has the meaning specified in Section 2.01.

“Additional Shares” has the meaning specified in Section 4.06(a).

“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 in accordance with Section 4.01(a)(ii).

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the banking institutions in New York City are authorized or obligated by law or executive order to close or be closed.

“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 Settlement Averaging Period” with respect to any Note means (i) if the relevant Conversion Date occurs prior to November 1, 2014, the 40 consecutive Trading Day period beginning on, and including, the third Trading Day immediately after such Conversion Date, and (ii) if the relevant Conversion Date occurs during the period beginning on, and including,

November 1, 2014 and ending at close of business, on the second Scheduled Trading Day immediately prior to the Stated Maturity, the 40 consecutive trading day period beginning on, and including, the 42nd Scheduled Trading Day prior to the Stated Maturity.

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

“Common Stock” means the shares of common stock, par value \$0.01 per share, of the Company as such shares of common stock exist on the date of this Supplemental Indenture, subject to Section 4.07.

“Conversion Agent” means the Trustee or such other office or agency designated by the Company where Notes may be presented for conversion. The Conversion Agent shall initially be the Trustee.

“Conversion Date” has the meaning specified in Section 4.02(b).

“Conversion Notice” has the meaning specified in Section 4.02(b).

“Conversion Price” means, in respect of each Note, as of any date, \$1,000, divided by the Conversion Rate as of such date.

“Conversion Rate” means, initially, 126.2985 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment as set forth herein.

“Custodian” has the meaning specified in Section 5.01.

“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 multiplied by (ii) the Daily VWAP of the Common Stock on such Trading Day.

“Daily Settlement Amount” has the meaning specified in Section 4.03(b).

“Daily Share Amount” has the meaning specified in Section 4.03(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 “PDL.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.

“Definitive Notes” means Notes that are Definitive Securities.

“Depository” or “Depositary” has the meaning set forth in the Original Indenture, which shall initially be DTC until a successor Depository shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Depository” shall mean such successor Depository.

“Effective Date” has the meaning specified in Section 4.06(b).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“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 Last Reported Sale 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.

“Expiration Date” has the meaning specified in Section 4.04(e).

“Expiration Time” has the meaning specified in Section 4.04(e).

“Fundamental Change” means the occurrence of any of the following:

(1) the Common Stock (or other common stock into which the Notes are then convertible or American Depositary Shares representing such common stock) is not traded on the NASDAQ Global Select Market or another United States national securities exchange;

(2) any person, including any syndicate or group deemed to be a “person” under Section 13(d) of the Exchange Act, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Company’s common equity representing more than 50% 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 the Company becomes aware that such a filing is required but has not been made);

(3) consummation of any binding share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which shares of the Company’s Capital Stock shall be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than the Company or one or more of the Company’s Subsidiaries (any such exchange, offer, consolidation, merger, transaction or series of transactions being referred to in this Supplemental Indenture as an “event”) other than any transaction:

(a) that does not result in a reclassification, conversion, exchange or cancellation of the Company’s outstanding Common Stock;

- (b) pursuant to which the holders of the Common Stock immediately prior to such 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 with such holders' proportional voting power immediately after such event being in substantially the same proportions as their respective voting power before such event; or
 - (c) which is effected solely to change the Company's jurisdiction of incorporation to another U.S. jurisdiction and results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or
- (4) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company.

Notwithstanding the foregoing, a Fundamental Change as a result of clause (2) or (3) above shall not be deemed to have occurred (and the Company is not required to deliver any notice with respect thereto) as a result of a transaction described in clause (3) in which at least 90% of the consideration paid for the 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 (3) above consists of Publicly Traded Securities and, as a result of such transaction or transactions the Notes become convertible into such consideration, subject to the provisions set forth under Section 4.03 of this Supplemental Indenture.

After any transaction in which the Common Stock is replaced by the securities of another entity, should one occur, following completion of any related Make-Whole Fundamental Change period and any related Fundamental Change Repurchase Date, references to the Company in this definition of "Fundamental Change" shall apply to such other entity instead. In addition, a filing that would otherwise constitute a Fundamental Change under clause (2) above shall not constitute a Fundamental Change if (x) the filing occurs in connection with a transaction in which the Common Stock is replaced by the securities of another entity and (y) no such filing is made or is in effect with respect to common equity representing more than 50% of the voting power of such other entity.

"Fundamental Change Company Notice" has the meaning specified in Section 3.01(b).

"Fundamental Change Repurchase Date" has the meaning specified in Section 3.01(a).

"Fundamental Change Repurchase Notice" has the meaning specified in Section 3.01(a)(i).

"Fundamental Change Repurchase Price" has the meaning specified in Section 3.01(a).

"Global Note" means any Note that is a Global Security.

“Indenture” means the Original Indenture, as originally executed and as amended or supplemented from time to time by one or more indentures supplemental thereto applicable to the Notes, including this Supplemental Indenture, entered into pursuant to the applicable provisions of the Indenture, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern the Original Indenture, this Supplemental Indenture and any other such supplemental indenture, respectively.

“Initial Notes” has the meaning specified in Section 2.01.

“Interest Payment Date” means, with respect to the payment of interest on the Notes, each May 1 and November 1 of each year.

“Last Reported Sale Price” of the Common Stock on any date means the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is listed for trading. The Last Reported Sale Price shall be determined without reference to after-hours or extended market trading. If the Common Stock is not listed for trading on a U.S. securities exchange on the relevant date, the “Last Reported Sale Price” shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by Pink OTC Markets Group, Inc. or a similar organization. If the Common Stock is not so quoted, the “Last Reported Sale Price” shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of three U.S. nationally recognized independent investment banking firms selected by the Company for this purpose.

“Make-Whole Fundamental Change” means any transaction or event that constitutes a Fundamental Change under clause (1), (2) or (3) of the definition of Fundamental Change thereof (in the case of any Fundamental Change described in clause (3) of the definition thereof, determined without regard to subclause (3) (b) in such definition, but subject to the paragraphs immediately following clause (4) of the definition thereof).

“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.

“Merger Event” has the meaning specified in Section 4.07(a).

“Note” or “Notes” has the meaning specified in the fourth paragraph of the recitals of this Supplemental Indenture, and shall include any Additional Notes issued pursuant to Section 2.01 hereof.

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

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

“Paying Agent” has the meaning set forth in the Original Indenture, which shall initially be the Trustee, and shall be the Person authorized by the Company to pay the principal amount of, interest on, or Fundamental Change Repurchase Price of, any Notes on behalf of the Company.

“Place of Payment” means, for purposes of the Notes, New York, New York.

“Publicly Traded Securities” means, in respect of a transaction described in clause (3) of the definition of Fundamental Change, shares of Capital Stock traded on the New York Stock Exchange, the NASDAQ Global Select Market or another U.S. national securities exchange, or which shall be so traded immediately following the transaction or transactions in connection with which this definition is applied.

“Regular Record Date” means, with respect to the payment of interest on the Notes, the April 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on May 1 and the October 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on November 1.

“Reference Property” has the meaning specified in Section 4.07(a).

“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.

“Settlement Amount” has the meaning specified in Section 4.03(a).

“Spin-Off” has the meaning specified in Section 4.04(c).

“Stated Maturity” means, with respect to any Note and the payment of the principal amount thereof, May 1, 2015.

“Stock Price” has the meaning specified in Section 4.06(b).

“Trading Day” means a day on which (i) trading in the Common Stock generally occurs on the primary exchange or quotation system on which the Common Stock then trades or is quoted, and (ii) there is no Market Disruption Event. If the Common Stock (or other security for which a Last Reported Sale Price must be determined) is not listed or traded, “Trading Day” means a Business Day.

“Trading Price” per \$1,000 principal amount of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for \$2,000,000 principal amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent 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 Notes from a U.S. nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate.

“Trading Price Condition” has the meaning specified in Section 4.01(a)(ii).

“U.S.” means the United States of America.

“Valuation Period” has the meaning specified in Section 4.04(c).

Section 1.03. Rules of Construction.

Unless the context otherwise requires:

(1) a term has the meaning assigned to it herein and all terms defined in the Original Indenture (but not otherwise defined herein) have the meanings assigned to them therein;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP and all accounting determinations shall be made in accordance with GAAP;

(3) “or” is not exclusive and “including” means “including without limitation”;

(4) words in the singular include the plural, and in the plural include the singular;

(5) “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Supplemental Indenture as a whole (including any Authorizing Resolution or supplemental indenture relating to the relevant Series) and not to any particular Article, Section or other subdivision;

(6) all exhibits are incorporated by reference herein and expressly made a part of this Indenture; and

(7) any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” this Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by this Indenture or such provision, as the case may be.

ARTICLE II

THE SECURITIES

Section 2.01. Title and Terms; Payments.

There is hereby established pursuant to Sections 2.01 and 2.02 of the Original Indenture a series of Securities designated the “3.75% Convertible Senior Notes due 2015” initially limited in aggregate principal amount to \$155,250,000 (as increased by the aggregate principal amount of any Additional Notes issued pursuant to this section 2.01), except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to this Indenture.

The principal amount of Notes then outstanding shall be payable at Stated Maturity.

The Company may, without the consent of the Holders of the Notes, hereafter issue additional notes (“Additional Notes”) under the Indenture with the same terms as the Notes issued on the date of this Supplemental Indenture (the “Initial Notes”) in an unlimited aggregate principal amount; provided that, if issued with the same CUSIP number as the Initial Notes, such Additional Notes must be fungible with the Initial Notes for United States federal income tax and securities law purposes. Any such Additional Notes shall constitute a single series together with the Initial Notes for all purposes hereunder, including, without limitation, for purposes of any waivers, supplements or amendments to the Indenture requiring the approval of Holders of the Notes and any offers to purchase the Notes. Holders of such Additional Notes shall vote together with the Holders of the Notes as one class.

The Form of Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer shall be substantially as set forth in Exhibits A, B, C and D, respectively, hereto, which are incorporated into and shall be deemed a part of this Supplemental Indenture, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined to be necessary or appropriate by the officers of the Company executing such Notes, as evidenced by their execution of the Notes.

The Company shall pay the principal of and interest on any Global Note in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Global Note. The Company shall pay the principal of any Definitive Notes at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer. The Company may, however, change the Paying Agent or Registrar for the Notes without prior notice to the Holders thereof, and the Company may act as Paying Agent or Registrar for the Notes. Interest on any Definitive Notes shall be payable (i) to Holders of Definitive Notes having an aggregate principal amount of Notes of \$5,000,000 or less, by check mailed to the Holders of such Notes at their address in the Security Register and (ii) to Holders having an aggregate

principal amount of Definitive Notes in excess of \$5,000,000, either by check mailed to each Holder at its address in the Security Register or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until that Holder notifies, in writing, the Registrar to the contrary.

Section 2.02. Book-Entry Provisions for Global Notes.

(a) The Notes initially shall be issued in the form of one or more Global Notes without interest coupons (i) registered in the name of Cede & Co., as nominee of the Depository and (ii) delivered to the Trustee as custodian for the Depository.

(b) Definitive Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Note if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for the Global Note and a successor depository is not appointed by the Company within 90 days of such notice, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed by the Company within 90 days of such cessation, or (iii) an Event of Default has occurred and is continuing. Definitive Notes shall not be otherwise issuable. For the avoidance of doubt, this Section 2.02 supersedes the provisions of Section 2.15 of the Original Indenture to the extent inconsistent therewith.

Section 2.03. Reporting Requirement.

The Company shall deliver to the Trustee within 15 days after the same is required to be filed with the SEC (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), copies of the quarterly and annual reports and of the information, documents and other reports, if any, that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, and the Company shall otherwise comply with the requirements of Trust Indenture Act Section 314(a). Any quarterly or annual report or other information, document or other report that the Company files with the SEC pursuant to Section 13 or 15(d) of the Exchange Act on the SEC's EDGAR system shall be deemed to constitute delivery of such filing to the Trustee as of the time of such filing. The Trustee does not have the duty to review such information, documents or reports, is not considered to have notice of the content of such information, documents or reports and does not have a duty to verify the accuracy of such information, documents or reports.

ARTICLE III

FUNDAMENTAL CHANGES AND REPURCHASES THEREUPON

Section 3.01. Repurchase at Option of Holders Upon a Fundamental Change.

(a) Generally. If a Fundamental Change occurs at any time prior to the Stated Maturity, then each Holder of Notes shall have the right, at such Holder's option, to require the Company to repurchase for cash any or all of such Holder's Notes, or any portion of the initial principal amount thereof, that is equal to an integral multiple of \$1,000, on a date specified by the Company that is no earlier than the 20th business day following the date of, and no later

than the 35th business day following the date of, delivery of the Fundamental Change Company Notice (such date, the “Fundamental Change Repurchase Date”), at a purchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon to, but not including, the Fundamental Change Repurchase Date (the “Fundamental Change Repurchase Price”); provided, however, that if a Fundamental Change Repurchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which such Regular Record Date relates, the interest payable in respect of such Interest Payment Date shall be payable to the Holders of record as of the corresponding Regular Record Date and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of the Notes to be repurchased pursuant to this Article 3 and shall not include any accrued and unpaid interest. The requirement for the Company to repurchase any Notes on the Fundamental Change Repurchase Date shall be subject to extension to comply with applicable law.

Repurchases of Notes under this Section 3.01 shall be made, at the option of the Holder thereof, upon:

- (i) delivery to the Paying Agent by a Holder of a duly completed notice (the “Fundamental Change Repurchase Notice”) in the form set forth on the reverse of the Note as Exhibit C thereto, if the Notes are Definitive Notes, or in compliance with the Depository’s procedures for tendering interests in Global Notes, if the Notes are not Definitive Notes, in each case prior to the close of business on the second Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date; and
- (ii) delivery of the Notes, in the case of Definitive Notes, to the Paying Agent appointed by the Company (together with all necessary endorsements for transfer), or book-entry transfer of the Notes, in compliance with the procedures of the Depository, such delivery or transfer being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

- (i) if such Notes are Definitive Notes, the certificate numbers of such Notes;
- (ii) the portion of the principal amount of such Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (iii) that such Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture;

provided, however, that if such Notes are in global form, the Fundamental Change Repurchase Notice must also comply with appropriate procedures of the Depository.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 3.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Scheduled Trading Day immediately preceding

the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.03.

Notwithstanding the foregoing, the Company shall not be required to repurchase the Notes in accordance with this Section 3.01 if a third party makes an offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 3.01 and purchases all Notes validly tendered and not withdrawn under such fundamental change repurchase offer.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(b) Fundamental Change Company Notice. On or before the 15th business day after the date on which Fundamental Change becomes effective, which Fundamental Change results in Holders of Notes having the right to cause the Company to repurchase their Notes (the “effective date”), the Company shall provide to all Holders of record of the Notes, the Trustee and the Paying Agent (in the case of any Paying Agent other than the Trustee) a notice (the “Fundamental Change Company Notice”) of the occurrence of such Fundamental Change and of the Repurchase right at the option of the Holders arising as a result thereof. Such notice shall be given pursuant to 12.02 of the Original Indenture, in the case of any Global Notes, in accordance with the procedures of the Depository for providing notices. Simultaneously with providing such Fundamental Change Company Notice, the Company shall issue a press release and shall publish such information through a public medium customary for such press releases.

Each Fundamental Change Company Notice shall specify:

- (i) the events causing a Fundamental Change;
- (ii) whether such Fundamental Change is a Make-Whole Fundamental Change, in which case the adjustments in Section 4.06 shall be applicable;
- (iii) the effective date of the Fundamental Change;
- (iv) the last date on which a Holder of Notes may exercise the repurchase right pursuant to this Article 3;
- (v) the Fundamental Change Repurchase Price;
- (vi) the Fundamental Change Repurchase Date;
- (vii) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (viii) the Conversion Rate and any adjustments to the Conversion Rate;
- (ix) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the Indenture; and

(x) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Repurchase rights of the Holders of Notes or affect the validity of the proceedings for the Repurchase of the Notes pursuant to this Section 3.01.

(c) No Payment During Events of Default. There shall be no repurchase of any Notes pursuant to this Section 3.01 if there has occurred and is continuing an Event of Default with respect to the Notes (other than an Event of Default that is cured by the payment of the Fundamental Change Repurchase Price of the Notes). The Paying Agent shall promptly return to the respective Holders thereof any Definitive Notes held by it during the continuance of an Event of Default (other than an Event of Default that is cured by the payment of the Fundamental Change Repurchase Price with respect to the Notes) and shall deem canceled any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depository, in which case, upon such return and cancellation, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.02. Effect of Fundamental Change Repurchase Notice.

Upon receipt by the Paying Agent of the Fundamental Change Repurchase Notice specified in Section 3.01 hereof, the Holder of the Note in respect of which such Fundamental Change Repurchase Notice was given shall (unless such Fundamental Change Repurchase Notice is withdrawn in accordance with Section 3.03 hereof) thereafter be entitled to receive solely the Fundamental Change Repurchase Price in money or securities with respect to such Note. Such Fundamental Change Repurchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on the later of (x) the Fundamental Change Repurchase Date with respect to such Note (provided the conditions in Section 3.01 hereof have been satisfied) and (y) the time of delivery or book-entry transfer of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01 hereof.

Section 3.03. Withdrawal of Fundamental Change Repurchase Notice.

A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Company Notice at any time prior to the close of business on the second Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date, specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted;
- (ii) if Definitive Notes have been issued, the certificate numbers of the withdrawn Notes; and
- (iii) the principal amount, if any, of such Notes that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of an integral multiple of \$1,000;

provided, however, that if Definitive Notes have not been issued, the notice must comply with appropriate procedures of the Depository.

The Paying Agent shall promptly return to the respective Holders thereof any Definitive Notes with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with the provisions of this Section 3.03.

Section 3.04. Deposit of Fundamental Change Repurchase Price.

Prior to 11:00 a.m. (local time in The City of New York) on the Fundamental Change Repurchase Date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the Fundamental Change Repurchase Price of all the Notes or portions thereof that are to be repurchased as of the Fundamental Change Repurchase Date. If the Paying Agent holds money or securities sufficient to pay the Fundamental Change Repurchase Price of the Notes on the Business Day following the Fundamental Change Repurchase Date for which a Fundamental Change Repurchase Notice has been tendered and not withdrawn in accordance with this Supplemental Indenture on the Fundamental Change Repurchase Date, then as of such Fundamental Change Repurchase Date, (a) such Notes shall cease to be outstanding and interest shall cease to accrue thereon (whether or not book-entry transfer of such Notes is made or such Notes have been delivered to the Paying Agent) and (b) all other rights of the Holders in respect thereof shall terminate (other than the right to receive the Fundamental Change Repurchase Price and previously accrued and unpaid interest upon delivery or book-entry transfer of such Notes).

Section 3.05. Notes Repurchased in Whole or in Part.

Any Note that is to be repurchased, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires in the case of Definitive Notes, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not repurchased.

Section 3.06. Covenant to Comply With Applicable Laws Upon Repurchase of Notes.

In connection with any offer to repurchase Notes under Section 3.01 hereof, the Company shall, in each case if required, (i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable, (ii) file a Schedule TO or any successor or similar schedule if required under the Exchange Act and (iii) otherwise comply with all federal and state securities laws so as to permit the rights and

obligations under Section 3.01 to be exercised in the time and in the manner specified in Section 3.01.

Section 3.07. Repayment to the Company.

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.04 exceeds the aggregate Fundamental Change Repurchase Price of the Notes or portions thereof that the Company is obligated to repurchase as of the Fundamental Change Repurchase Date, then, following the Fundamental Change Repurchase Date, the Paying Agent shall promptly return any such excess to the Company.

ARTICLE IV

CONVERSION

Section 4.01. Right to Convert.

(a) Subject to and upon compliance with the provisions of this Supplemental Indenture, each Holder of Notes shall have the right, at such Holder's option, to convert the principal amount of any such Notes, or any portion of such principal amount equal to an integral multiple of \$1,000, at the Conversion Rate in effect on the Conversion Date for such Notes, (x) prior to the close of business on the Business Day immediately preceding November 1, 2014, only upon satisfaction of one or more of the conditions described in clauses (i) through (iv) below and (y) on or after November 1, 2014, at any time prior to the close of business on the second Scheduled Trading Day immediately preceding May 1, 2015 irrespective of the conditions described in clauses (i) through (iv) below:

(i) Prior to the close of business on the Business Day immediately preceding November 1, 2014, a Holder of Notes may surrender all or a portion of its Notes for conversion in any fiscal quarter (and only during such fiscal quarter) after the fiscal quarter ending June 30, 2011 if the Last Reported Sale 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 June 30, 2011 whether the Notes are convertible as a result of the price of the Common Stock, and if the Company determines that the Notes are convertible in accordance with this Section 4.01(a)(i), the Company shall notify the Trustee and the Conversion Agent.

(ii) Prior to the close of business on the Business Day immediately preceding November 1, 2014, a Holder of Notes may surrender Notes 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 Notes, as determined following a request by a Holder of Notes in accordance with the procedures set forth in this Section 4.01(a)(ii), for each Trading Day of such period was less than 98% of the product of the Last Reported Sale Price of the Common Stock and the 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(a)(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 Notes in accordance with this Section 4.01(a)(ii) unless requested by the Company, and the Company shall have no obligation to make such request unless a Holder of Notes provides the Company and the Trustee with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes would be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the 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 Notes 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 Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. 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 Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the 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. If, at any time after the Trading Price Condition has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such date, the Company shall so notify the holders of the Notes, the Trustee and the Conversion Agent by the same mechanism.

(iii) Prior to the close of business on the Business Day immediately preceding November 1, 2014, if the Company elects to:

(A) distribute to all or substantially all holders of Common Stock 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 Common Stock at a price per share less than the Last Reported Sale 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 Last Reported Sale 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 of the Notes at least 20 Business Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender Notes 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 Notes are not otherwise convertible at such time. No Holder may exercise its right to convert its Notes under the provisions of this Section 4.01(a)(iii) if such Holder otherwise may participate in such distribution without conversion (based upon the Conversion Rate and upon the same terms as holders of the Common Stock).

(iv) Prior to the close of business on the Business Day immediately preceding November 1, 2014, if a transaction or event that constitutes a Fundamental Change (but without regard to the exclusion of transactions involving Publicly Traded Securities in the paragraph following clause (4) of that definition) or a Make-Whole Fundamental Change occurs, Holders may surrender Notes 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 or Make-Whole Fundamental Change, as the case may be, (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.

(b) From and after November 1, 2014, notwithstanding anything herein to the contrary, Notes may be converted at any time until the close of business on the second Scheduled Trading Day immediately preceding May 1, 2015.

Section 4.02. Conversion Procedures.

(a) Each Note shall be convertible at the office of the Conversion Agent and, if applicable, in accordance with the procedures of the Depository.

(b) In order to exercise the conversion privilege with respect to any interest in a Global Note, the Holder must complete the appropriate instruction form for conversion pursuant to the Depository's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company or the Conversion Agent, and pay the funds, if any, required by Section 4.03(d) and all transfer or similar taxes if required pursuant to Section 4.08, and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depository. In order to exercise the conversion privilege with respect to any Definitive Notes, the Holder of any such Notes to be converted, in whole or in part, shall:

(i) complete and manually sign the conversion notice provided on the back of the Note (the “Conversion Notice”) or a facsimile of the Conversion Notice;

(ii) deliver the Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents,

(iv) pay the funds, if any, required under Section 4.03(d); and

(v) if required, pay all transfer or similar taxes as set forth in Section 4.08.

The date on which the Holder satisfies all of the applicable requirements set forth in this Section 4.02(b) 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 Notes.

(c) 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 Notes surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Notes, 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.

(d) In case any Notes of a denomination greater than \$1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Notes so surrendered, without charge, new Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

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 an 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.

(e) Upon the conversion of an interest in Global Notes, the Trustee (or other Conversion Agent appointed by the Company) shall make a notation on such Global Notes as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

(f) Notwithstanding the foregoing, a Note in respect of which a Holder has delivered a Fundamental Change Repurchase Notice exercising such Holder’s option to require the Company to repurchase such Note may be converted only if such notice of exercise is withdrawn in accordance with Article 3 hereof prior to the close of business on the second

Section 4.03. Settlement Upon Conversion.

(a) Upon conversion of any Note, except as set forth in Section 4.03(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 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 for such Note.

(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 4.03(d), upon conversion, Holders shall not receive any separate cash payment for accrued and unpaid interest or Additional Interest, if any, unless such conversion occurs between a Regular Record Date and the Interest Payment Date to which it relates.

(d) Upon the conversion of any Notes, the Holder shall not be entitled to receive any additional cash payment for accrued and unpaid interest or Additional Interest, if any, 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 Note is convertible shall be deemed to satisfy in full the Company's obligation to pay the principal amount of the Notes so converted and accrued and unpaid interest and Additional Interest, if any, to, but not including, the Conversion Date. As a result, accrued and unpaid interest and Additional Interest, if any, 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 Notes 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 Notes at the close of business on such Regular Record Date shall receive the interest and Additional Interest, if any, payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes 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 and Additional Interest, if any, payable on the next Interest Payment Date on the Notes so converted; provided that no such payment need be made (i) for conversions following the Regular Record Date immediately preceding May 1, 2015, (ii) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular

Record Date and on or prior to the corresponding 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 such Note.

(e) The Company shall not issue fractional shares of Common Stock upon conversion of Notes. If multiple Notes 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 Notes (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 Notes, the Company shall make payment therefor 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 4.03(f), deliver the conversion consideration in respect of any Notes 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 Converted Notes, the Common Stock has been replaced by Reference Property consisting solely of cash (pursuant to the provisions set forth in Section 4.04), 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 4.04. Adjustment of Conversion Rate.

The Conversion Rate shall be adjusted from time to time by the Company if any of the events set forth in this Section 4.04 occurs, without duplication, except that the Company shall not make any adjustment to the Conversion Rate if Holders of Notes participate, as a result of holding the Notes, in any of the transactions described under Section 4.04(a) (but only with respect to stock dividends or distributions), Section 4.04(b), Section 4.04(c), and Section 4.04(d), at the same time as holders of the Common Stock participate, without having to convert their Notes, as if such Holders held a number of shares of Common Stock equal to the Conversion Rate in effect for such Notes immediately prior to the Ex-Dividend Date for such event multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

Except as set forth in this Section 4.04 and in Sections 4.06 and 4.12, the Company shall not adjust the Conversion Rate.

(a) If the Company, at any time or from time to time while any of the Notes are outstanding, issues solely shares of its Common Stock as a dividend or distribution on all or substantially all of its shares of Common Stock, or if the Company effects a share split or share combination on its Common Stock, then the Conversion Rate shall be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where

CR_0 = The Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Business Day immediately following the effective date of such share split or share combination, as the case may be;

CR = The Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Business Day immediately following the effective date of such share split or share combination, as the case may be;

OS_0 = The number of shares of Common Stock outstanding immediately prior to such dividend, distribution, share split or share combination, as the case may be; and

OS = The number of shares of Common Stock outstanding immediately after such dividend, distribution, share split or share combination, as the case may be.

Any adjustment made pursuant to this Section 4.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 4.04(a) is declared but not so paid or made, the 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 Conversion Rate that would then be in effect if such dividend or distribution had not been declared. As used in this Section 4.04(a), "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 Last Reported Sale Price), regular way, reflecting the transaction.

(b) If the Company, at any time or from time to time while any of the Notes are outstanding, issues to all or substantially all holders of the Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of the Common Stock at a price per share less than the average of the Last Reported Sale Prices of Common Stock for the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be adjusted based on the following formula (provided that the Conversion Rate shall be readjusted to the extent that such rights, options or warrants are not exercised prior to their expiration or are not distributed):

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CR_0 = The Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = The Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

OS_0 = The number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

X = The total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = The number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants divided by the average of the Last Reported Sale Prices of 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 4.04(b) shall be made successively whenever any such rights, options, or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent such rights, options or warrants are not exercised prior to their expiration or termination, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. To the extent such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to be the 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 4.04(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 Last Reported Sale 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, options 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) If the Company, at any time or from time to time while the Notes are outstanding, distributes shares of any class of Capital Stock of the Company, evidences of its indebtedness or other assets or property to all or substantially all holders of the Common Stock of the Company, excluding:

- (i) dividends or distributions (including share splits) pursuant to Section 4.04(a), Section 4.04(b) or Section 4.04(e);
- (ii) dividends or distributions paid exclusively in cash pursuant to Section 4.04(d); and

(iii) Spin-Offs to which the provisions set forth in this Section 4.04(c) shall apply;

then the Conversion Rate shall be adjusted based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending, and including, on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the shares of capital stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

If (a) the fair market value (as determined by the Board of Directors) of the shares of capital stock, evidences of indebtedness, assets or property so distributed with respect to one share of Common Stock as of the open of business on the Ex-Dividend Date for such distribution is equal to or greater than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution or (b) the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution exceeds the then fair market value of the portion of the shares of capital stock, evidences of indebtedness or other assets or property so distributed applicable to one share of Common Stock by less than \$1.00 (*provided, however, that such \$1.00 amount shall be adjusted as of any date on which the Conversion Rate of the Notes is adjusted as set forth in this Section 4.04 by the inverse of the adjustment factor applied to the Conversion Rate*), in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of a Note shall have the right to receive on conversion in respect of each Note held by such Holder, in addition to the number of shares of Common Stock to which such Holder is entitled to receive, the amount and kind of securities and assets such Holder would have received had such Holder already owned a number of shares of Common Stock

equal to the Conversion Rate immediately prior to the record date for the distribution of the securities or assets.

With respect to an adjustment pursuant to this Section 4.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit and such capital stock is listed or quoted (or shall be listed or quoted upon consummation of the Spin-Off) on a national securities exchange, over-the-counter market or reasonably comparable U.S. equivalent (a "Spin-Off"), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV - MP_0}{MP_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

CR = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;

FMV = the average of the Last Reported Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock (determined for purposes of the definition of Last Reported Sale Price as if such capital stock or similar equity interest were the Common Stock) over the first ten consecutive Trading-Day period immediately following, and including, the Ex-Dividend Date of the Spin-Off (such period, the "Valuation Period"); and

MP_0 = the average of the Last Reported Sale Prices of Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 4.04(c) shall occur immediately after the open of business on the day after the last day of the Valuation Period, 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 Section 4.04(c) 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 the portion of this Section 4.04(c) 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.

(d) (i) If the Company makes or pays any cash dividend or distribution made to all or substantially all holders of Common Stock (other than distributions pursuant to Section 4.04(e)), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR_0 = The Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = The Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

SP_0 = The average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

C = The amount in cash per share the Company pays or distributes to holders of the Common Stock.

In the case of an adjustment pursuant to this Section 4.04(d), such adjustment shall become effective immediately after the open of business on the Ex-Dividend Date for the relevant dividend or distribution. If any dividend or distribution described in this Section 4.04(d) is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such distribution had not been declared.

If (a) the amount in cash per share the Company pays or distributes to holders its Common Stock is equal to or greater than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution or (b) the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution exceeds the amount in cash per share the Company pays or distributes to holders of its Common Stock by less than \$1.00 (*provided, however*, that such \$1.00 amount shall be adjusted as of any date on which the Conversion Rate of the Notes is adjusted as set forth in this Section 4.04 by the inverse of the adjustment factor applied to the Conversion Rate), in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of a Note shall have the right to receive on conversion in respect of each Note held by such Holder, in addition to the number of shares of Common Stock to which such Holder is entitled to receive, the amount in cash per share such Holder would have received had such Holder already owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the record date for the distribution of the securities or assets.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock (subject to the tender offer rules under the

Exchange Act then applicable), other than an odd-lot offer, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices per share of Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “Expiration Date”), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the Expiration Date;

CR = the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the “Expiration Time”) such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer);

OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading-Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate under this Section 4.04(e) shall be given effect at the open of business on the Trading Day next succeeding the Expiration Date. If the Trading Day next succeeding the Expiration Date is less than 10 consecutive Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of any conversion, references in this Section 4.04(e) 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 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 10 consecutive Trading Days commencing on the Trading Day next succeeding the Expiration Date, references in this Section 4.04(e) to 10 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.

(f) The Company from time to time is permitted (but not required) to increase the Conversion Rate by any amount for any period of time of at least 20 Business Days if the Board of Directors shall have made a determination that such increase would be in the best interests of the Company. The Company shall not take any action that would result in adjustment of the Conversion Rate, in such a manner as to result in the reduction of the Conversion Price to less than the par value per share of the Common Stock. Whenever the Conversion Rate is increased pursuant to this Section 4.04(f), the Company shall, as soon as practicable following the adjustment, notify the Holders of the Notes.

(g) The Company may (but shall not be required to) increase the Conversion Rate, in addition to any adjustments pursuant to Section 4.04(a), 4.04(b), 4.04(c), 4.04(d), 4.04(e) or 4.04(f), to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

(h) Adjustments to the Conversion Rate shall be calculated to the nearest one ten-thousandth of a share. No adjustment to the Conversion Rate shall be required to be made for the Company's issuance of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right, option or warrant to purchase shares of Common Stock or such convertible or exchangeable securities, other than as provided in this Section 4.04 and in Section 4.12 hereof.

(i) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. As soon as practicable following the adjustment, the Company shall notify the Holders of the Notes of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(j) For purposes of this Section 4.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(k) Notwithstanding anything to the contrary in this Article 4, no adjustment to the Conversion Rate shall be made:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the date the Notes were first issued;

(iv) for a change in the par value of the Common Stock; or

(v) for accrued and unpaid interest on the Notes.

(l) The Company shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company shall carry forward and take into account in any future adjustment any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustment, regardless of whether the aggregate adjustment is less than 1%, (i) upon any Conversion Date of Notes and (ii) on each Trading Day of any Cash Settlement Averaging Period.

(m) 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 Notes that a Holder has converted,

(ii) any distribution or transaction set forth in Section 4.04(a), Section 4.04(b), Section 4.04(c), Section 4.04(d) or Section 4.04(e) has not yet resulted in an adjustment to the 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 4.05. [Reserved].

Section 4.06. Adjustments Upon Certain Fundamental Changes.

(a) If a Make-Whole Fundamental Change occurs and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "Additional Shares") as set forth in this Section 4.06. A conversion of Notes by a Holder shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the notice of conversion of the Notes is received by

the Conversion Agent on or subsequent to the Effective Date of the Make-Whole Fundamental Change and prior to the 45th day following the Effective Date of the Make-Whole Fundamental Change (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).

(b) The number of Additional Shares, if any, shall be determined by reference to the table attached as Schedule A hereto, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "Effective Date") and the price (the "Stock Price") paid or deemed paid per share of the Common Stock in the Make-Whole Fundamental Change. If the holders of the Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (3) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share of the Common Stock. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock on each of the five consecutive Trading Days prior to but not including the Effective Date of the Make-Whole Fundamental Change.

The exact Stock Prices and Effective Dates may not be set forth in the table in Schedule A, in which case, if the Stock Price is:

(i) between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year.

(ii) more than \$30.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate.

(iii) less than \$6.21 per share (subject to adjustments in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate, as increased by any Additional Shares applicable, exceed 161.0305 per \$1,000 principal amount of Notes, subject to adjustments in the same manner and for the same events as the Conversion Rate as set forth in Section 4.04.

(c) The Stock Prices set forth in the column headings of the table in Schedule A hereto shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to such 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 set forth in such table shall be adjusted in the same manner and for the same events as the Conversion Rate as set forth in Section 4.04.

(d) The Company shall notify the Holders of Notes of the Effective Date of any Make-Whole Fundamental Change by issuing a press release (and make the press release available on the Company's website) announcing such Effective Date as soon as practicable and in any event no later than one Business Day after the Effective Date of such Make-Whole Fundamental Change.

Section 4.07. Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale.

(a) If any of the following events occur:

- (i) any reclassification of the Common Stock;
- (ii) a consolidation, merger, combination or binding share exchange involving the Company; or
- (iii) a sale or conveyance to another Person of all or substantially all of the Company's property and assets;

(any event as set forth in clauses (i), (ii), or (iii) above a "Merger Event") in each case, in which holders of the Common Stock would be entitled to receive cash, securities or other property for their shares of the Common Stock ("Reference Property"), the Holders shall be entitled thereafter to convert their Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of the Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive upon such transaction; provided, however, that at and after the effective time of the Merger Event the conversion obligation shall be calculated and settled in accordance with Section 4.03 such that (i) any amount payable in cash upon conversion of the Notes as set forth under Section 4.03 shall continue to be payable as set forth in Section 4.03, (ii) the number of shares of Common Stock deliverable upon conversion of the Notes under Section 4.03, 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 Merger Event and (iii) 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 Merger Event.

If, as a result of the Merger Event, each share of Common Stock is converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (x) the Reference Property into which the Notes shall be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election, and (y) the unit of Reference Property for purposes of the foregoing sentence shall refer to the consideration referred to in clause (x) attributable to one share of Common Stock.

(b) The Company shall not become a party to any such Merger Event unless its terms are consistent with this Section 4.07

Section 4.08. Taxes on Shares Issued.

The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue or delivery of shares of Common Stock on conversion of Notes pursuant hereto; provided, however, that if such documentary, stamp or similar issue or transfer tax is due because the Holder of such Notes has requested that shares of Common Stock be issued in a name other than that of the Holder of the Notes converted, then such taxes shall be paid by the Holder, and the Company shall not be required to issue or deliver any stock certificate evidencing such shares unless and until the Holder shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 4.09. Reservation of Shares; Shares to be Fully Paid; Compliance With Governmental Requirements; Listing of Common Stock.

The Company shall reserve, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to satisfy conversion of the Notes from time to time as such Notes are presented for conversion (assuming that, at the time of the computation of such number of shares or securities, all such Notes would be converted by a single Holder).

The Company covenants that all shares of Common Stock that may be issued upon conversion of Notes shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder).

The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of Notes on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

Section 4.10. Responsibility of Trustee.

The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine or calculate the Conversion Rate, to determine whether any facts exist which may require any adjustment of the Conversion Rate, or to confirm the accuracy of any such adjustment when made or the appropriateness of the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any other securities or property that may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and the Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 4. The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including its capacity as

Section 4.11. Notice to Holders Prior to Certain Actions.

In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 4.04; or

(b) the Company shall authorize the granting to the holders of all or substantially all of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants that would require an adjustment in the Conversion Rate pursuant to Section 4.04 or Section 4.12 hereof; or

(c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale, lease or transfer of all or substantially all of the assets of the Company and its consolidated Subsidiaries; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Subsidiaries;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Supplemental Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder of Notes at such Holder's address appearing on a list of Holders of Notes, which the Company shall provide to the Trustee, as promptly as practicable but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend (or any other distribution) or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights, options or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, lease, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend (or any other distribution), reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up; provided, that any notice required under this Section 4.11 in respect of any regular cash dividend consistent in amount with the Company's historical practice may be made through the issuance of a press release containing the stipulated information rather than through the procedures otherwise provided for in this Section 4.11.

Section 4.12. Stockholder Rights Plan.

Each share of Common Stock issued upon conversion of Notes pursuant to this Article 4 shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any stockholder rights plan adopted by the Company, as the same may be amended from time to time. Notwithstanding the foregoing, if prior to any conversion such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement, the Conversion Rate shall be adjusted at the time of separation as if the Company had distributed to all holders of the Common Stock, shares of the Company's capital stock, evidences of indebtedness or other assets or property as set forth in Section 4.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

ARTICLE V

REMEDIES

Section 5.01. Events of Default.

The Notes shall not be subject to Section 6.01 of the Original Indenture. In lieu thereof, the Notes shall be subject to the following provisions of Section 5.01 of this Supplemental Indenture.

An "Event of Default" on the Notes occurs if, voluntarily or involuntarily, whether by operation of law or otherwise, any of the following shall occur:

(a) failure by the Company to pay principal on any Note when due;

(b) failure by the Company to pay any interest, including any Additional Interest, on any Note when due if such failure continues for 30 days;

(c) failure by the Company to perform any other agreement required of the Company in the Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (a), (b), (d), (e) or (f) in this definition hereof) if such failure continues for 60 days after notice is given in accordance with the notice provisions in this Section 5.01;

(d) failure by the Company to pay the Fundamental Change Repurchase Price of any Note when due (following a Fundamental Change);

(e) failure by the Company to comply with its obligation to convert the Notes in accordance with the Indenture upon exercise of a Holder's conversion right in accordance with Article 4 hereof;

(f) failure by the Company to provide a Fundamental Change Company Notice pursuant to Section 3.01(b) when due if such failure continues for 30 days after notice of the Company's failure to provide such Fundamental Change Company Notice;

(g) indebtedness for money borrowed by the Company or one of its Significant Subsidiaries (or any group of subsidiaries that, taken together, would constitute a Significant Subsidiary) whether such indebtedness now exists or shall hereafter be created, 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 60 days after written notice as provided in this Section 5.01;

(h) the Company or any Subsidiary that is a Significant Subsidiary (or any group of subsidiaries that, taken together, would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy Law:

- (i) commences a voluntary case,
- (ii) consents to the entry of an order for relief against it in an involuntary case,
- (iii) consents to the appointment of a Custodian of it or for all or substantially all of its Property, or
- (iv) makes a general assignment for the benefit of its creditors;

(i) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (i) is for relief against the Company or any Subsidiary that is a Significant Subsidiary (or any group of subsidiaries that, taken together, would constitute a Significant Subsidiary) as debtor in an involuntary case,
- (ii) appoints a Custodian of the Company or any Significant Subsidiary (or any group of subsidiaries that, taken together, would constitute a Significant Subsidiary) or a Custodian for all or substantially all of the Property of the Company, or
- (iii) orders the liquidation of the Company or any Significant Subsidiary (or any group of subsidiaries that, taken together, would constitute a Significant Subsidiary),

and the order or decree remains unstayed and in effect for 60 days.

A Default as set forth in subclause (c) or (g) above shall not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25 percent in principal amount of the then outstanding Notes notify the Company and the Trustee, of the Default and (except in the case of a default with respect to Article Five of the Original Indenture (as modified by Article IX of this Supplemental Indenture)) the Company does not cure the Default within 60 days after written notice is given. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, it ceases to exist, without any action by the Trustee or any other Person.

The term "Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Section 5.02. Additional Interest.

Notwithstanding any provisions of the Indenture to the contrary, if the Company so elects, the sole remedy for an Event of Default relating to any obligation to file documents and reports with the Trustee as required by Section 314(a)(1) of the Trust Indenture Act, or Section 2.03 of this Supplemental Indenture, shall for the first 180 days following the occurrence of such Event of Default consist exclusively of the right to receive additional interest on the Notes accruing at the rate of (x) 0.25% per annum of the aggregate principal amount of Notes that are then outstanding for each day during the 90-day period beginning on, and including, the occurrence of such an Event of Default during which such Event of Default is continuing and (y) 0.50% per annum of the aggregate principal amount of the Notes that are then outstanding for each day during the 90-day period beginning on, and including, the 91st day following, and including, the occurrence of such an Event of Default during which such Event of Default is continuing, on the terms and in the manner set forth in this Section 5.02 (“Additional Interest”). Any Additional Interest shall be paid at the same times and in the same manner as regular interest shall be paid in accordance with Section 2.01. Additional Interest shall accrue on the 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 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. In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of an Event of Default described in the preceding sentence, the Company must give written notice to Holders of the Notes, the Trustee and the Paying Agent of such election prior to the date on which such Event of Default occurs. Upon the failure to timely give all Holders, the Trustee and the Paying Agent such notice or to pay such Additional Interest, the Notes shall be subject to immediate acceleration as provided in Section 6.02 of the Original Indenture. On the 181st day after such Event of Default occurs (if such Event of Default is not cured or waived prior to such 181st day), the Notes shall be subject to acceleration as provided in Section 6.02 of the Original Indenture. Notwithstanding the foregoing, if an additional filing failure occurs during an extension period, the Notes shall 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 Additional Interest as to such additional filing failure, and the first filing failure has been remedied before the end of the first extension period, the Notes shall 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 Additional Interest paid in a year shall not exceed 0.50% per annum of the aggregate principal amount of the Notes that are outstanding as of the beginning of such year. This Section 5.02 shall not affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default. Whenever in the Indenture there is mentioned, in any context, the payment of interest on, or in respect of, any Note, such mention shall be deemed to include mention of the payment of Additional Interest provided for in this Section 5.02 to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of this Section 5.02, and express mention of the payment of Additional Interest (if applicable) in any provision shall not be construed as excluding Additional Interest in those provisions where such express mention is not made.

Section 5.03. Acceleration.

References in Section 6.02 of the Original Indenture to subclauses (5) or (6) of Section 6.01 shall be replaced by reference to subclauses (h) or (i) of Section 5.01 of this Supplemental Indenture for purposes of the Notes.

Section 5.04. Limitation on Suits.

References in clause (2) of Section 6.06 of the Original Indenture to “a majority” shall be replaced with “25%” for purposes of the Notes. In addition, the limitations on suits do not apply to a suit instituted by a Holder of the Notes for the enforcement of payment of the principal or interest (including Additional Interest) on any Note on or after the applicable due date or the right to convert the Note in accordance with the Indenture.

Section 5.05. Collection Suit by Trustee.

References in Section 6.08 of the Original Indenture to subclauses (1) or (2) of Section 6.01 shall be replaced by references to subclauses (a) or (b) of Section 5.01 of this Supplemental Indenture for purposes of the Notes.

ARTICLE VI

SATISFACTION AND DISCHARGE

Section 6.01. Satisfaction and Discharge of the Supplemental Indenture.

(a) The satisfaction and discharge provisions set forth in this Section 6.01 shall, with respect to the Notes, supersede in their entirety those in Section 8.01 of the Original Indenture, and all references in the Original Indenture to Section 8.01 thereof and satisfaction and discharge provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Section 6.01 and the satisfaction and discharge provisions set forth in this Section 6.01, respectively. When (i) the Company shall deliver to the Registrar for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (ii) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether at Stated Maturity for the payment of the principal amount thereof, on any Fundamental Change Repurchase Date or following the last day of the applicable Cash Settlement Averaging Period upon conversion or otherwise) and the Company shall deposit with the Trustee, in trust, or deliver to the Holders, as applicable, cash funds and shares of Common Stock, as applicable, sufficient to pay all amounts due (and shares of Common Stock deliverable following conversion, if applicable) on all of such Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest due, accompanied by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional reasonably satisfactory to the Trustee, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company,

then this Supplemental Indenture shall cease to be of further effect (except as to (A) rights hereunder of Holders of the Notes to receive all amounts owing upon the Notes and the other rights, duties and obligations of Holders of the Notes, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (B) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 7.02(b) of the Original Indenture and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Supplemental Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee, including the fees and expenses of its counsel, and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Supplemental Indenture or the Notes.

ARTICLE VII

SUPPLEMENTAL INDENTURES

Section 7.01. Amendments or Supplements Without Consent of Holders.

(a) In addition to any permitted amendment or supplement to the Indenture pursuant to Section 10.01 of the Original Indenture, the Company and the Trustee may amend or supplement the Indenture or the Notes without notice to or the consent of any Holder of the Notes:

- (i) to add to the covenants of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company; or
- (ii) to appoint a successor trustee with respect to the Notes.

(b) The below specified subclauses of Section 10.01 of the Original Indenture shall be modified in their application to the Notes as follows:

(i) the phrase "in this Indenture or the Notes in a manner that does not adversely affect to a material extent the rights of any Holder" shall be added after "cure any ambiguity, omission, defect or inconsistency" in subclause (1) of Section 10.01 of the Original Indenture; and

(ii) in applying subclause (11) of Section 10.01 of the Original Indenture to the Notes, the reference therein to the "final offering memorandum" shall be deemed to be to the prospectus dated May 9, 2011, as supplemented by the Supplemental Prospectus dated May 10, 2011 with respect to the Notes.

Section 7.02. Amendments, Supplements or Waivers With Consent of Holders.

The Company and the Trustee may amend the Indenture with respect to the Notes as provided in Section 10.02 of the Original Indenture. Notwithstanding the foregoing provision

and in addition to the provisions of Section 10.01 of the Original Indenture, without the consent of each Holder of an outstanding Note affected thereby, no amendment or waiver, including a waiver in relation to a past Event of Default, may:

- (a) reduce the amount of principal payable upon acceleration of the maturity of the Notes; or
- (b) change the stated maturity of the principal of, or interest on, any Note.

The following language shall be added to the end of subclause (3) of Section 10.02 of the Original Indenture for purposes of the Notes: “in a manner adverse to Holders in the case of provisions with respect to the repurchase right of Holders upon a Fundamental Change (as defined in the Supplemental Indenture in respect of the Notes).” In addition the following language shall be added to the end of subclause (7) of Section 10.02 of the Original Indenture for purposes of the Notes: “except to increase the percentage required for modification or waiver or to provide for consent of each affected Holder of Notes”.

For the avoidance of doubt, the above-referenced provisions shall be deemed included in the cross reference to clauses (1) through (9) of Section 10.02 of the Original Indenture found in Section 10.04 of the Original Indenture.

Section 7.03. Notice of Amendment or Supplement.

After any amendment or supplement to the Indenture or the Notes becomes effective, the Company shall provide to Holders, pursuant to the procedures set forth in Section 12.02 of the Original Indenture, a notice briefly describing such amendment or supplement and shall make such notice available on the Company’s website, provided that any failure to give such notice to all the Holders, or any defect in such notice, shall not impair or affect the validity of such amendment or supplement.

ARTICLE VIII

INAPPLICABLE PROVISIONS OF THE ORIGINAL INDENTURE

Section 8.01. Redemption.

The provisions of Article 3 of the Original Indenture shall not apply to the Notes.

ARTICLE IX

Section 9.01. When Company May Merge, etc. The Notes shall be subject to Article 5 of the Original Indenture. In addition, for purposes of the Notes, the following language shall be added to subclause (1) of Section 5.01 of the Original Indenture after ... “under the laws of the United States or any state thereof or the District of Columbia...” (and before “and the Successor assumes ...”) and shall apply to the Notes:

“or a corporation, limited liability company, partnership or trust organized and existing under the laws of a jurisdiction outside the United States; provided, however, that in the

case of a transaction where the resulting, surviving or transferee person is organized under the laws of a foreign jurisdiction, the Company may not consummate the transaction unless (v) such person has common stock or American Depositary Shares representing such common stock traded on a national securities exchange in the United States; (w) such person has a worldwide total market capitalization of its equity securities (before giving effect to such consolidation or disposition) of at least \$5 billion; (x) such person has consented to service of process in the United States; (y) the Company has made provision for the satisfaction of its obligations to repurchase the Notes following a Fundamental Change, if any; and (z) the Company has obtained an opinion of tax counsel experienced in such matters to the effect that, under the then-existing U.S. federal tax laws, there would be no material adverse tax consequences to Holders of the Notes resulting from such transaction”.

The penultimate paragraph of Section 5.01 of the Original Indenture shall not apply to the Notes.

ARTICLE X

MISCELLANEOUS

Section 10.01. Governing Law.

THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THIS SUPPLEMENTAL INDENTURE AND EACH OF THE NOTES.

Section 10.02. Payments on Business Days.

If any Interest Payment Date or the Stated Maturity of the Notes or any earlier required repurchase date would fall on a day that is not a Business Day, the required payment shall be made on the next succeeding Business Day and no interest on such payment shall accrue in respect of the delay.

Section 10.03. No Security Interest Created.

Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 10.04. Trust Indenture Act.

This Supplemental Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof or the Original Indenture that is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 10.05. Benefits of Indenture.

Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Conversion Agent, any Bid Solicitation Agent, any authenticating agent, any Registrar and their successors hereunder or the Holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

Section 10.06. Calculations.

Except as otherwise expressly provided in this Supplemental Indenture, the Company shall be responsible for making all calculations called for under this Supplemental Indenture and the Notes. These calculations include, but are not limited to, determinations of any Last Reported Sale Price of the Common Stock, accrued interest payable on the Notes and the 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 Notes. 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 Notes upon the request of that Holder at the sole cost and expense of the Company. 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.

Section 10.07. Table of Contents, Headings, Etc.

The table of contents and the titles and headings of the articles and sections of this Supplemental 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 10.08. Execution in Counterparts.

This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.09. Severability.

In the event any provision of this Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

[Remainder of the page intentionally left blank]

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

PDL BIOPHARMA, INC.

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President & Chief Executive Officer

[Trustee Signature Follows]

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By: /s/ Teresa Petta

Name: Teresa Petta

Title: Vice President

SCHEDULE A

The following table sets forth the numbers of Additional Shares to be received per \$1,000 initial principal amount of Notes pursuant to Section 4.06 of this Supplemental Indenture based on hypothetical Stock Prices and Effective Dates.

Effective Date of Fundamental Change	Stock Price									
	\$6.21	\$6.50	\$7.00	\$7.92	\$8.00	\$9.00	\$10.00	\$15.00	\$20.00	\$30.00
May 16, 2011	34.7320	30.9582	25.8056	19.4688	19.0569	15.1222	12.6613	7.4775	5.2805	3.0991
May 1, 2012	34.7320	29.7852	23.8851	16.8503	16.4093	12.3658	10.0586	5.8304	4.1289	2.4353
May 1, 2013	34.7320	28.5705	21.6544	13.6724	13.1956	9.0745	7.0424	4.0267	2.8601	1.6947
May 1, 2014	34.7320	27.5477	18.3835	9.1945	8.6911	4.8760	3.5268	2.0798	1.4804	0.8791
May 1, 2015	34.7320	27.5476	16.5586	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

Sc. A - 1

EXHIBIT A

[FORM OF FACE OF NOTE]

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE 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) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

Ex. A - 1

PDL BIOPHARMA, INC.

3.75% Convertible Senior Note due 2015

No. []

Initially \$[]

CUSIP No. 69329Y AC8

PDL BioPharma, Inc., a Delaware corporation (herein called the “Company”, which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay CEDE & CO., or registered assigns, [] (\$[]) (or such lesser principal amount as shall be specified in the “Schedule of Exchanges of Securities” attached hereto) on May 1, 2015 unless earlier converted or repurchased, and to pay interest thereon as set forth in the manner, at the rates and to the Persons set forth in the Indenture.

Interest Payment Dates: May 1 and November 1, commencing November 1, 2011.

Regular Record Dates: April 15 and October 15.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[Remainder of page intentionally left blank]

Ex. A - 2

IN WITNESS WHEREOF, PDL BIOPHARMA, INC. has caused this instrument to be signed manually or by facsimile by its duly authorized officers.

Dated: May 16, 2010

PDL BIOPHARMA, INC.

By:
Name:
Title:

Attest:

By:
Name:
Title:

CERTIFICATE OF AUTHENTICATION

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

Dated: May 16, 2010

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee**

By:
Name:
Title:

Ex. A - 3

PDL BIOPHARMA, INC.

3.75% Convertible Senior Note due 2015

This Note is one of a duly authorized issue of Securities of the Company (herein called the "Notes"), issued under an Indenture dated as of May 16, 2011, as amended and supplemented from time to time in accordance with the terms thereof (herein called the "Original Indenture") and as further supplemented by the Supplemental Indenture dated as of May 16, 2011 (herein called the "Supplemental Indenture" and the Original Indenture, as supplemented by the Supplemental Indenture, the "Indenture") by and between the Company and The Bank of New York Mellon Trust Company, N.A., herein called the "Trustee", and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. Additional Notes may be issued in an unlimited aggregate principal amount, subject to conditions specified in the Indenture.

1. INTEREST

This Note shall bear interest at a rate of 3.75% per annum from May 16, 2011 or from the most recent date to which interest had been paid or provided to, but excluding, the next scheduled Interest Payment Date, until the principal hereof shall be repaid. Interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months. Interest is payable semi-annually in arrears on each May 1 and November 1, commencing on November 1, 2011, to the Person in whose name this Note (or one or more predecessor securities) is registered at the close of business on the Regular Record Date for such interest. Additional Interest shall be payable at the option of the Company on the terms set forth in Section 5.02 of the within-mentioned Supplemental Indenture.

The Company shall pay interest on overdue principal, and, to the extent lawful, on overdue interest, in each case at a rate of 3.75% per annum. Interest not paid when due and any interest on principal or interest not paid when due will be paid to Holders on a special record date, which will be the 15th day preceding the date fixed by the Company for the payment of such interest, whether or not such day is a Business Day. At least 15 days before a special record date, the Company will send to each Holder and to the Trustee a notice that sets forth the special record date, the payment date and the amount of interest to be paid.

2. MATURITY DATE

The Notes shall mature on May 1, 2015.

3. METHOD OF PAYMENT

The Company shall pay the principal of and interest on any Global Note in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Global Note. The Company shall pay the principal of any Definitive Notes at the office or agency designated by the Company for that purpose. The Company has initially designated the

Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer. The Company may, however, change the Paying Agent or Registrar for the Notes without prior notice to the Holders thereof, and the Company may act as Paying Agent or Registrar for the Notes. Interest on any Definitive Notes shall be payable (i) to Holders of Definitive Notes having an aggregate principal amount of Notes of \$5,000,000 or less, by check mailed to the Holders of such Notes at their address in the Security Register and (ii) to Holders having an aggregate principal amount of Definitive Notes in excess of \$5,000,000, either by check mailed to each Holder at its address in the Security Register or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until that Holder notifies, in writing, the Registrar to the contrary.

As provided in and subject to the provisions of the Indenture, the Company shall make all payments and deliveries in respect of the Fundamental Change Repurchase Price and the principal amount on the Stated Maturity thereof, as the case may be, to the holder who surrenders a Note to the Paying Agent to collect such payments in respect of the Note. The Company shall pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

4. PAYING AGENT, REGISTRAR, CONVERSION AGENT.

Initially, The Bank of New York Mellon Trust Company, N.A. (the "Trustee") shall act as Paying Agent, Registrar and Conversion Act. The Issuer may change Paying Agent, Registrar or Conversion Agent without prior notice.

5. NO REDEMPTION

This Note is not subject to redemption at the option of the Company and, for the avoidance of doubt, this Note is not subject to the provisions of Article 3 of the Original Indenture.

6. FUNDAMENTAL CHANGES AND REPURCHASES THEREUPON

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

7. CONVERSION

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during periods and upon the occurrence of conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding May 1, 2015, to convert this Note or a portion thereof that is \$1,000 or an integral multiple thereof, into cash up to the aggregate principal amount of the Notes to be converted and if applicable, shares of Common Stock, in respect of the remainder, if any, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

8. SATISFACTION AND DISCHARGE

The provisions in Section 6.01 of the Supplemental Indenture supersede the entirety of Section 8.01 of the Original Indenture with respect to this Note.

9. DENOMINATIONS, TRANSFER, EXCHANGE

As provided in the Indenture and subject to limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, shall be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in denominations of \$1,000 and in integral multiples of \$1,000 in excess thereof. As provided in the Indenture and subject to limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

10. DEFAULTS AND REMEDIES

As provided in and subject to the provisions of the Indenture, in case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of and interest on all Notes may be declared due and payable, by either the Trustee or Holders of not less than 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture; provided that upon the occurrence of an Event of Default specified in Section 5.01(h) or (i) of the Supplemental Indenture, the principal amount of, and interest on, all the Notes shall automatically become due and payable.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Note at the time, place and rate, and in the coin and currency, herein prescribed.

11. AMENDMENT, SUPPLEMENT AND WAIVER

The Indenture permits, with exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Notes at the time outstanding.

The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

12. PERSONS DEEMED OWNERS

The Holder of a Note may be treated as the owner of it for all purposes.

13. DEFINITIONS

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

14. AUTHENTICATION

Unless the certificate of authentication hereon has been executed by the Trustee or an authenticating agent by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

15. INDENTURE TO CONTROL; GOVERNING LAW

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control. This Note, for all purposes, shall be governed by and construed in accordance with the laws of the State of New York.

16. ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= as joint tenants with right of Survivorship and not as tenants in common), UGMA (= Uniform Gifts to Minors Act), CUST (= Custodian).

Additional abbreviations may also be used though not in the above list.

SCHEDULE A

SCHEDULES OF EXCHANGES OF NOTES

PDL BIOPHARMA, INC.

3.75 % Convertible Senior Notes due 2015

The initial principal amount of this Global Note is ONE HUNDRED FIFTY-FIVE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$155,250,000). The following, exchanges, repurchases or conversions of a part of this Global Security have been made:

<u>Date of Exchange</u>	<u>Amount of Decrease in Principal Amount of this Note</u>	<u>Amount of Increase in Principal Amount of this Note</u>	<u>Principal Amount of this Global Note following Each Increase of Decrease</u>	<u>Signature of Authorized Officer of Trustee</u>

EXHIBIT B

[FORM OF NOTICE OF CONVERSION]

To: PDL BioPharma, Inc.

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, 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 Notes 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 Note, 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 Notes 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. Subject to exceptions set forth in the Indenture, if this notice is being delivered on a date after the close of business on a Regular Record Date and prior to the opening of business on the related Interest Payment Date, this notice is accompanied by payment of an amount equal to the interest payable on such Interest Payment Date of the principal of this Note to be converted. If any shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect hereto. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Principal amount to be converted (in an integral multiple of \$1,000, if less than all):

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the other side of this Security)

*Signature guaranteed by:

By: _____

* This 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.

Signature Guarantee

Fill in for registration of any shares of Common Stock and Notes if to be issued otherwise than to the registered Holder.

Agent to transfer this Security on the books of the Company. The Agent may substitute another to act for him or her.

(Name)

(Address)

Please print Name and Address
(including zip code number)

Social Security or other Taxpayer
Identifying Number

EXHIBIT C

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: PDL BioPharma, Inc.

The undersigned registered owner of this Note hereby 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 specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of this Note and the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of certificated Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

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

Social Security or Other Taxpayer Identification Number

Principal amount to be repurchased (in an integral multiple of \$1,000, if less than all):

\$ _____, 000

NOTICE: The signature on the Fundamental Change Repurchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT D

[FORM OF ASSIGNMENT AND TRANSFER]

For value received hereby sell(s), assign(s) and transfer(s) unto security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints the books of the Company, with full power of substitution in the premises.

(Please insert social to transfer the said Note on

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the other side of this Security)

*Signature guaranteed by:

By: _____

* This 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.

May 16, 2011

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

Re: PDL BioPharma, Inc.
Registration Statement on Form S-3 (File No. 333-174052)

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-3, File No. 333-174052, of PDL BioPharma, Inc., a Delaware corporation (the "Company"), filed with the Securities and Exchange Commission (the "Commission") pursuant to Rule 462 under the Securities Act of 1933, as amended (the "Securities Act"), on May 9, 2011 (the "Registration Statement"), the preliminary prospectus supplement and prospectus related thereto filed with the Commission pursuant to Rule 424(b) under the Securities Act on May 9, 2011, a final pricing term sheet dated May 10, 2011 in the form filed with the Commission pursuant to Rule 433 under the Securities Act on May 11, 2011, and the final prospectus supplement in the form filed with the Commission pursuant to Rule 424(b) under the Securities Act on May 16, 2011 in connection with the offering by the Company of its 3.75% Convertible Senior Notes due 2015 (the "Notes") and shares of common stock of the Company, par value \$0.01 per share (the "Shares"), issuable upon conversion of the Notes. The Notes are being issued pursuant to the Indenture dated as of May 16, 2011 (the "Base Indenture"), between the Company and The Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee"), as supplemented by that certain Supplemental Indenture dated as of May 16, 2011 (the "Supplemental Indenture," and together with the Base Indenture, the "Indenture"), between the Company and the Trustee. In connection with the issuance of the Notes, the Company has entered into an Underwriting Agreement, dated as of May 10, 2011 (the "Underwriting Agreement"), between the Company and the representative of the several underwriters named therein (the "Underwriters").

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

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

1. When the Notes have been duly executed and authenticated as specified in the Indenture and delivered to and paid for by the Underwriters pursuant to the Underwriting Agreement, the Notes will constitute valid and binding obligations of the Company.

2. When issued and delivered upon conversion of the Notes in accordance with the terms of the Indenture, the Shares will be validly issued, fully paid and non-assessable.

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

A. The opinion in paragraph 1 above is subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors' generally, including the effect of statutory or other laws regarding fraudulent transfers or preferential transfers, and (ii) general principles of equity, including concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

B. We express no opinion regarding the effectiveness of (i) any waiver of stay, extension or usury laws or of unknown future rights, (ii) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws, and (iii) any waiver of the right to jury trial.

C. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the United States of America and, to the extent relevant for our opinions herein, the Delaware General Corporation Law. This opinion is limited to the effect of the current state of the laws of the State of New York and the United States of America and the Delaware General Corporation Law and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption "Legal Matters" in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under

PDL BioPharma, Inc.

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Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

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**PDL BioPharma Inc. Completes Issuance of \$155.25 Million of
Convertible Senior Notes Due May 2015**

INCLINE VILLAGE, NV, May 16, 2011 – PDL BioPharma, Inc. (PDL, the Company) (NASDAQ: PDLI) today announced it has completed the issuance of \$155.25 million in aggregate principal amount of its 3.75% Convertible Senior Notes due May 2015 (the “Notes”) in an underwritten public offering. The initial conversion rate is 126.2985 shares of common stock per \$1,000 principal amount of the Notes or an initial conversion price of approximately \$7.92 per share of common stock. BofA Merrill Lynch was the sole book-running manager for the offering. Included in the total amount issued is \$20.25 million over-allotment option exercised by the underwriter on May 12, 2011. In connection with the offering of the Notes, the Company entered into privately negotiated convertible note hedge transactions with counterparties that included the underwriters and privately negotiated warrant transactions with the hedge counterparties relating to the same number of shares of the Company’s common stock. The shares of the Company’s common stock issuable upon conversion of the Notes or exercise of the warrants have been reserved for issuance by the Company and listed on the NASDAQ Stock Market.

About PDL BioPharma

PDL pioneered the humanization of monoclonal antibodies and, by doing so, enabled the discovery of a new generation of targeted treatments for cancer and immunologic diseases. PDL is focused on maximizing the value of its antibody humanization patents and related assets. The Company receives royalties on sales of a number of humanized antibody products marketed by leading pharmaceutical and biotechnology companies today based on patents which expire in late 2014. For more information, please visit www.pdl.com.

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