

BofA Finance LLC

Form 424B2

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**Registration Statement No. 333-213265**

**The information in this preliminary pricing supplement is not complete and may be changed. This preliminary pricing supplement is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

Subject to Completion. Dated January 25, 2018

**BofA Finance LLC**

\$

Digital Basket-Linked Notes due , 2020

**Fully and Unconditionally Guaranteed by**

**Bank of America Corporation**

**The notes do not bear interest.** The amount that you will be paid on your notes on the stated maturity date (expected to be the third scheduled business day after the determination date) is based on the performance of a weighted basket comprised of the EURO STOXX 50<sup>®</sup> Index (37% weighting), the FTSE<sup>®</sup> 100 Index (23% weighting), the TOPIX<sup>®</sup> (23% weighting), the Swiss Market Index (9% weighting) and the S&P<sup>®</sup>/ASX 200 Index (8% weighting), as measured from the trade date to and including the determination date (expected to be between 30 and 33 months after the trade date). The initial basket level is 100 and the final basket level will equal the sum of the products, as calculated for each basket underlier, of: (i) the final index level divided by (ii) the initial index level (set on the trade date and may be higher or lower than the actual closing level of the basket underlier on the trade date) multiplied by (iii) the applicable initial weighted value for the basket underlier. If the final basket level on the determination date is greater than or equal to the initial basket level, the return on your notes will be positive. If the final basket level declines from the initial basket level, you will be exposed to any decrease in the final basket level. In this case, the return on your notes will be negative. You may lose some or all of your investment in the notes.

To determine your payment at maturity, we will calculate the basket return, which is the percentage increase or decrease in the final basket level from the initial basket level. On the stated maturity date, for each \$1,000 face amount of your notes, you will receive an amount in cash equal to:

if the basket return is *zero or positive* (the final basket level is *equal to or greater than* the initial basket level), the greater of (i) the threshold settlement amount, which is expected to be between \$1,334.40 and \$1,393.20 (set on the trade date), and (ii) the sum of (a) \$1,000 plus (b) the product of (1) \$1,000 times (2) the basket return;

if the basket return is *negative* (the final basket level is *less than* the initial basket level), the *sum* of (i) \$1,000 *plus* (ii) the product of (a) \$1,000 times (b) the basket return. **This amount will be less than \$1,000.**

**Declines in one basket underlier may offset increases in the other basket underliers. Due to the unequal weighting of each basket underlier, the performances of the EURO STOXX 50<sup>®</sup> Index, the FTSE<sup>®</sup> 100 Index and the TOPIX<sup>®</sup> will have a significantly larger impact on your return on the notes than the performance of the Swiss Market Index or the S&P<sup>®</sup>/ASX 200 Index.**

**The notes will not be listed on any securities exchange. Investment in the notes involves certain risks, including the credit risk of BofA Finance LLC (“BofA Finance”), as issuer of the notes, and the credit risk of Bank of America Corporation (“BAC” or the “Guarantor”), as guarantor of the notes. Potential purchasers of the notes**

should consider the information in “Risk Factors” beginning on page PS-18 of this pricing supplement, page PS-5 of the accompanying product supplement, page S-4 of the accompanying prospectus supplement, and page 7 of the accompanying prospectus.

*As of the date of this pricing supplement, the initial estimated value of the notes at the time of pricing is expected to be between \$953.10 and \$973.40 per \$1,000 in face amount. See “Summary Information” beginning on page PS-6 of this pricing supplement, “Risk Factors” beginning on page PS-18 of this pricing supplement and “Structuring the Notes” on page PS-47 of this pricing supplement for additional information. The actual value of your notes at any time will reflect many factors and cannot be predicted with accuracy.*

<b>Original issue date:</b>	, 2018	<b>Price to public<sup>(2)</sup>:</b>	[100.00]% of the face amount
<b>Underwriting discount<sup>(1)(2)</sup>:</b>	[2.53]% of the face amount	<b>Net proceeds to the issuer:</b>	[97.47]% of the face amount

<sup>(1)</sup> Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”), an affiliate of BofA Finance, will participate as selling agent in the distribution of the notes. See “Supplemental Plan of Distribution—Conflicts of Interest” on page PS-46 of this pricing supplement.

<sup>(2)</sup> The price to public for certain investors will be between [97.47]% and 100.00% of the face amount, reflecting a foregone underwriting discount with respect to such notes; see “Supplemental Plan of Distribution—Conflicts of Interest” on page PS-46 of this pricing supplement.

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this pricing supplement or the accompanying prospectus, prospectus supplement or product supplement. Any representation to the contrary is a criminal offense. The notes and the related guarantee of the notes by the Guarantor are unsecured and are not savings accounts, deposits, or other obligations of a bank. The notes are not guaranteed by Bank of America, N.A. or any other bank, are not insured by the Federal Deposit Insurance Corporation or any other governmental agency.**

**BofA Merrill Lynch**

Selling Agent

The price to public, underwriting discount and net proceeds listed above relate to the notes we sell initially. We may decide to sell additional notes after the date of this pricing supplement, at prices to public and with underwriting discounts and net proceeds that differ from the amounts set forth above. The return (whether positive or negative) on your investment in notes will depend in part on the price to public you pay for such notes.

MLPF&S and any of our other broker-dealer affiliates may use this pricing supplement in the initial sale of the notes. In addition, MLPF&S and any of our other broker-dealer affiliates may use this pricing supplement in a market-making transaction in a note after its initial sale. ***Unless MLPF&S or any of our other broker-dealer affiliates informs the purchaser otherwise in the confirmation of sale, this pricing supplement is being used in a market-making transaction.***

### **About Your Prospectus**

The notes are unsecured senior notes issued by BofA Finance, a direct, wholly-owned subsidiary of BAC. Payments on the notes are fully and unconditionally guaranteed by the Guarantor. This prospectus includes this pricing supplement and the accompanying documents listed below. This pricing supplement constitutes a supplement to the documents listed below and should be read in conjunction with those documents:

Product supplement EQUITY-1 dated January 24, 2017:

<https://www.sec.gov/Archives/edgar/data/70858/000119312517016445/d331325d424b5.htm>

Series A MTN prospectus supplement dated November 4, 2016 and prospectus dated November 4, 2016:

<https://www.sec.gov/Archives/edgar/data/70858/000119312516760144/d266649d424b3.htm>

The information in this pricing supplement supersedes any conflicting information in the documents listed above. In addition, some of the terms or features described in the listed documents may not apply to your notes.

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**Digital Basket-Linked Notes due , 2020**

**INVESTMENT THESIS**

You should be willing to forgo interest payments and accept the risk of losing your entire investment in exchange for the potential to earn a return of at least between 33.44% and 39.32% if the basket return is zero or positive.

**DETERMINING THE CASH SETTLEMENT AMOUNT**

At maturity, for each \$1,000 face amount, the investor will receive (in each case as a percentage of the face amount):

if the basket return is *zero or positive* (the Final Basket Level is *equal to or greater than* the Initial Basket Level), the greater of (i) the Threshold Settlement Amount, which is expected to be between 133.44% and 139.32% (set on the trade date), and (ii) the sum of (a) 100.00% plus (b) the basket return; or

if the Final Basket Level is less than the Initial Basket Level, the sum of (i) 100.00% plus (ii) the basket return.

**If the Final Basket Level declines from the Initial Basket Level, the return on the notes will be negative, and the investor could lose their entire investment in the notes.**

**KEY TERMS**

**Issuer:** BofA Finance LLC (“BofA Finance”)

**Guarantor:** Bank of America Corporation (“BAC”)

**Basket Underliers:** The EURO STOXX 50® Index (Bloomberg symbol, “SX5E Index”); the FTSE®100 Index (Bloomberg symbol, “UKX Index”); the TOPIX® (Bloomberg symbol, “TPX Index”); the Swiss Market Index (Bloomberg symbol, “SMI Index”); and the S&P®ASX 200 Index (Bloomberg symbol, “AS51 Index”).

**Face Amount:** \$ in the aggregate; each note will have a face amount equal to \$1,000

**Trade Date:**

**Settlement Date:** Expected to be the fifth scheduled business day following the trade date

**Determination Date:**

Expected to be between 30 and 33 months following the trade date

**Stated Maturity Date:**

Expected to be the third scheduled business day following the Determination Date

**Initial Weighted Value:**

The initial weighted value for each of the Basket Underliers is expected to equal the *product* of the initial weight of that Basket Underlier *times* the Initial Basket Level. The initial weight of each Basket Underlier is shown in the table below:

Basket Underlier	Initial Weight in Basket
EURO STOXX 50® Index	37.00%
FTSE® 100 Index	23.00%
TOPIX®	23.00%
Swiss Market Index	9.00%
S&P®/ASX 200 Index	8.00%

**Initial Index Level:**

The Initial Index Level of each Basket Underlier will be set on the trade date, and may be higher or lower than its actual closing level on the trade date

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The Final Index Level of each Basket Underlier will be its closing level on the Determination Date, subject to the occurrence of certain

**Final Index**

**Level:** market disruption events, as described beginning on page PS-8 of this

pricing supplement.

**Initial Basket**

**Level:** 100

The *sum* of the following: (1) the Final Index Level of the EURO STOXX 50<sup>®</sup> Index *divided* by the Initial Index Level of the EURO STOXX 50<sup>®</sup> Index, *multiplied* by the initial weighted value of the EURO STOXX 50<sup>®</sup> Index *plus* (2) the Final Index Level of the FTSE<sup>®</sup> 100 Index *divided* by the Initial Index Level of the FTSE<sup>®</sup> 100 Index, *multiplied* by the initial weighted value of the FTSE<sup>®</sup> 100 Index *plus* (3) the Final Index Level of the TOPIX<sup>®</sup> *divided* by the Initial Index Level of the TOPIX<sup>®</sup>, *multiplied* by the initial weighted value of the TOPIX<sup>®</sup> *plus* (4) the Final Index Level of the Swiss Market Index *divided* by the Initial Index Level of the Swiss Market Index, *multiplied* by the initial weighted value of the Swiss Market Index *plus* (5) the Final Index Level of the S&P<sup>®</sup>/ASX 200 Index *divided* by the Initial Index Level of the S&P<sup>®</sup>/ASX 200 Index, *multiplied* by the initial weighted value of the S&P<sup>®</sup>/ASX 200 Index.

**Final Basket**

**Level:** Index *plus* (3) the Final Index Level of the TOPIX<sup>®</sup> *divided* by the Initial Index Level of the TOPIX<sup>®</sup>, *multiplied* by the initial weighted value of the TOPIX<sup>®</sup> *plus* (4) the Final Index Level of the Swiss Market Index *divided* by the Initial Index Level of the Swiss Market Index, *multiplied* by the initial weighted value of the Swiss Market Index *plus* (5) the Final Index Level of the S&P<sup>®</sup>/ASX 200 Index *divided* by the Initial Index Level of the S&P<sup>®</sup>/ASX 200 Index, *multiplied* by the initial weighted value of the S&P<sup>®</sup>/ASX 200 Index.

**Basket**

**Return:**

The *quotient* of (i) the Final Basket Level *minus* the Initial Basket Level *divided* by (ii) the Initial Basket Level, expressed as a positive or negative percentage.

**Threshold**

**Settlement**

Expected to be between \$1,334.40 and \$1,393.20. The actual Threshold Settlement Amount will be determined on the trade date.

**Amount:**

**CUSIP/ISIN:** 09709TCX7/US09709TCX72

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**HYPOTHETICAL PAYMENT AT MATURITY\***

<b>Hypothetical Final Basket Level (as % of Initial Basket Hypothetical Cash Settlement Amount (as % of Face Level)</b>	<b>Amount</b>
160.000%	160.000%
150.000%	150.000%
140.000%	140.000%
<b>133.440 %</b>	<b>133.440 %</b>
130.000%	133.440%
120.000%	133.440%
110.000%	133.440%
105.000%	133.440%
<b>100.000 %</b>	<b>133.440 %</b>
90.000%	90.000%
80.000%	80.000%
75.000%	75.000%
50.000%	50.000%
25.000%	25.000%
<b>0.000 %</b>	<b>0.000 %</b>

\*Assumes a Threshold Settlement Amount set at the bottom of the Threshold Settlement Amount range (expected to be between 133.44% and 139.32% of the face amount).

**RISKS**

Please read the section entitled “Risk Factors” of this pricing supplement as well as the risks and considerations described in “Risk Factors” beginning on page PS-5 of the accompanying product supplement, page S-4 of the accompanying prospectus supplement, and page 7 of the accompanying prospectus.

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**SUMMARY INFORMATION**

*We refer to the notes we are offering by this pricing supplement as the “offered notes” or the “notes”. Each of the offered notes has the terms described below. Capitalized terms used but not defined in this pricing supplement have the meanings set forth in the accompanying product supplement, prospectus supplement and prospectus. Unless otherwise indicated or unless the context requires otherwise, all references in this pricing supplement to “we,” “us,” “our,” or similar references are to BofA Finance, and not to BAC (or any other affiliate of BofA Finance).*

*This section is meant as a summary and should be read in conjunction with the accompanying product supplement, prospectus supplement and prospectus. This pricing supplement supersedes any conflicting provisions of the documents listed above.*

**Key Terms**

<b>Issuer:</b>	BofA Finance LLC (“BofA Finance”)
<b>Guarantor:</b>	Bank of America Corporation (“BAC”) The EURO STOXX 50 <sup>®</sup> Index (Bloomberg symbol, “SX5E Index”), as published by STOXX Limited (“STOXX”); the FTSE100 Index (Bloomberg symbol, “UKX Index”), as published by FTSE Russell (“FTSE”); the TOPIX (Bloomberg symbol, “TPX Index”), as maintained by the Tokyo Stock Exchange, Inc. (“TSE”); the Swiss Market Index (Bloomberg symbol, “SMI Index”), as published by SIX Group Ltd. (“SIX Group”); and the S&P ASX 200 Index (Bloomberg symbol, “AS51 Index”), as published by S&P Dow Jones Indices LLC (“S&P”); see “The Basket and the Basket Underliers” below.
<b>Basket Underliers:</b>	
<b>Specified Currency:</b>	U.S. dollars (“\$”)
<b>Face Amount:</b>	Each note will have a face amount of \$1,000; \$ _____ in the aggregate for all the offered notes; the aggregate face amount of the offered notes may be increased if we, at our sole option, decide to sell an additional amount of the offered notes on a date subsequent to the date of this pricing supplement. The amount we will pay you at the stated maturity date for your notes will not be adjusted based on the price to public you pay for your notes, so if you acquire notes at a premium (or discount) to face amount and hold them to the stated maturity date, it could affect your investment in a number of ways. The return on your investment in such notes will be lower (or higher) than it would have been had you purchased the notes at face amount. See “Risk Factors — If You Purchase Your Notes at a Premium to Face Amount, the Return on Your Investment Will Be Lower Than the Return on Notes Purchased at Face Amount and the Impact of Certain Key Terms of the Notes Will Be Negatively Affected” on page PS-20 of this pricing supplement. For each \$1,000 face amount of your notes, we will pay you on the stated maturity date an amount in cash equal to:
<b>Purchase at Amount Other Than the Face Amount:</b>	
<b>Cash Settlement Amount:</b>	if the Basket Return is zero or positive (the Final Basket Level is equal to or greater than the Initial Basket Level), the greater of (i) the Threshold Settlement Amount, which is expected to be between \$1,334.40 and \$1,393.20 (set on the trade date), and (ii) the sum of (a) \$1,000 plus (b) the product of (1) \$1,000 times (2) the basket return; or
<b>Threshold Settlement Amount:</b>	if the Final Basket Level is <i>less than</i> the Initial Basket Level, the sum of (i) \$1,000 plus (ii) the product of (a) \$1,000 times (b) the Basket Return. In this case, the Cash Settlement Amount will be less than the face amount of the notes, and you will lose some or all of the face amount. Expected to be between \$1,334.40 and \$1,393.20 per \$1,000 face amount of the notes (to be set on the trade date)

**Trade Date:**  
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**Original Issue Date (Settlement Date):** Expected to be the fifth scheduled business day following the trade date (to be set on the trade date)

**Determination Date:** A specified date that is expected to be between 30 and 33 months following the trade date (to be set on the trade date), subject to postponement of up to five scheduled trading days, as set forth in the section “Description of the Notes—Certain Terms of the Notes—Events Relating to Calculation Days” of the accompanying product supplement

**Stated Maturity Date:** A specified date that is expected to be the third scheduled business day following the Determination Date (to be set on the trade date), subject to postponement as set forth below and in the section “Description of the Notes—Certain Terms of the Notes—Events Relating to Calculation Days” of the accompanying product supplement

**Initial Basket Level:** 100

**Initial Weighted Value:** The Initial Weighted Value for each of the Basket Underliers is expected to equal the product of the initial weight of that Basket Underlier times the Initial Basket Level. The initial weight of each Basket Underlier is shown in the table below:

Basket Underlier	Initial Weight in Basket	Initial Index Level
EURO STOXX 50 <sup>®</sup> Index	37%	
FTSE <sup>®</sup> 100 Index	23%	
TOPIX <sup>®</sup>	23%	
Swiss Market Index	9%	
S&P <sup>®</sup> /ASX 200 Index	8%	

**Initial Index Level:** The closing level or an intraday level of each Basket Underlier on the trade date, as determined by the calculation agent in its sole discretion and which may be higher or lower than the actual closing level of that Basket Underlier on the trade date.

**Final Index Level:** The closing level of each Basket Underlier on the Determination Date, except in the limited circumstances described under “—Market Disruption Events” below and “Description of the Notes – Certain Terms of the Notes – Events Relating to Calculation Days,” “– Adjustments to an Index” and “– Discontinuance of an Index” in the accompanying product supplement.

**Final Basket Level:** The *sum* of the following: (1) the Final Index Level of the EURO STOXX 50<sup>®</sup> Index *divided* by the Initial Index Level of the EURO STOXX 50<sup>®</sup> Index, *multiplied* by the Initial Weighted Value of the EURO STOXX 50<sup>®</sup> Index *plus* (2) the Final Index Level of the FTSE<sup>®</sup> 100 Index *divided* by the Initial Index Level of the FTSE<sup>®</sup> 100 Index, *multiplied* by the Initial Weighted Value of the FTSE<sup>®</sup> 100 Index *plus* (3) the Final Index Level of the TOPIX<sup>®</sup> *divided* by the Initial Index Level of the TOPIX<sup>®</sup>, *multiplied* by the Initial Weighted Value of the TOPIX<sup>®</sup> *plus* (4) the Final Index Level of the Swiss Market Index *divided* by the Initial Index Level of the Swiss Market Index, *multiplied* by the Initial Weighted Value of the Swiss Market Index *plus* (5) the Final Index Level of the S&P<sup>®</sup>/ASX 200 Index *divided* by the Initial Index Level of the S&P<sup>®</sup>/ASX 200 Index, *multiplied* by the Initial Weighted Value of the S&P<sup>®</sup>/ASX 200 Index.

**Closing Level of the Basket Underliers:** The closing level of a Basket Underlier on any trading day will be the official closing level of that Basket Underlier or any successor index (as defined in the accompanying product supplement) on any trading day for the that Basket Underlier, published by the corresponding Basket Underlier Sponsor on such trading day for such underlier.

**Basket Return:** The *quotient* of (1) the Final Basket Level *minus* the Initial Basket Level *divided* by (2) the Initial Basket Level, expressed as a positive or negative percentage

**Market Disruption Events:** The following replaces in its entirety the section entitled “Description of the Notes—Market Disruption Events—Indices” in the accompanying product supplement:

With respect to any given trading day, any of the following will be a Market Disruption Event with respect to a Basket Underlier:

- a suspension, absence or material limitation of trading in Basket Underlier Stocks (as defined below) constituting 20% or more, by weight, of that Basket Underlier on their respective primary markets, in each case for more than two consecutive hours of trading or during the one-half hour before the close of trading in that market, as determined by the calculation agent in its sole discretion,
- a suspension, absence or material limitation of trading in option or futures contracts, if available, relating to that Basket Underlier or to Basket Underlier Stocks constituting 20% or more, by weight, of that Basket Underlier in their respective primary markets for those contracts, in each case for more than two consecutive hours of trading or during the one-half hour before the close of trading in that market, as determined by the calculation agent in its sole discretion, or
- Basket Underlier Stocks constituting 20% or more, by weight, of that Basket Underlier, or option or futures contracts, if available, relating to that Basket Underlier or to Basket Underlier Stocks constituting 20% or more, by weight, of that Basket Underlier do not trade on what were the respective primary markets for those Basket Underlier Stocks or contracts, as determined by the calculation agent in its sole discretion,

and, in the case of any of these events, the calculation agent determines in its sole discretion that the event could materially interfere with the ability of us or any of our affiliates or a similarly situated party to unwind all or a material portion of a hedge that could be effected with respect to the notes. For more information about hedging by us and/or any of our affiliates, see “Supplemental Use of Proceeds” on page PS-16 of product supplement EQUITY-1.

The following events will not be Market Disruption Events with respect to the Basket Underliers:

- a limitation on the hours or numbers of days of trading, but only if the limitation results from an announced change in the regular business hours of the relevant market, and
- a decision to permanently discontinue trading in the option or futures contracts relating to a Basket Underlier or to any Basket Underlier Stock.

For this purpose, an “absence of trading” in the primary securities market on which a Basket Underlier Stock, or on which option or futures contracts, if available, relating to a Basket Underlier or to any Basket Underlier Stock are traded will not include any time when that market is itself closed for trading under ordinary circumstances. In contrast, a suspension or limitation of trading in a Basket Underlier Stock or in option or futures contracts, if available, relating to a Basket Underlier or to any Basket Underlier Stock in the primary market for that stock or those contracts, by reason of:

- a price change exceeding limits set by that market,

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- an imbalance of orders relating to that Basket Underlier Stock or those contracts, or
  - a disparity in bid and ask quotes relating to that Basket Underlier Stock or those contracts,
- will constitute a suspension or material limitation of trading in the Basket Underliers

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or those contracts in that market.

If a Market Disruption Event occurs or is continuing with respect to a Basket Underlier on the Determination Date, the calculation agent will postpone the determination of the Final Index Level for that Basket Underlier up to five scheduled trading days, but will determine the Final Index Level for any other Basket Underlier for which a Market Disruption Event does not occur on the originally scheduled Determination Date. If the Determination Date is postponed due to a Market Disruption Event, the payment due at maturity may be postponed by the same number of business days, as set forth in the section “Description of the Notes—Certain Terms of the Notes—Events Relating to Calculation Days” of the accompanying product supplement.

- Business Day:** As described under “Description of the Notes—Certain Terms of the Notes—Business Days” in the accompanying product supplement  
(i) with respect to the EURO STOXX 50® Index, a day on which the EURO STOXX 50® Index is scheduled to be calculated and published by the Basket Underlier Sponsor and (ii) with respect to each other Basket Underlier, a day on which (a) the respective principal securities markets for all of the Basket Underlier Stocks that comprise such Basket Underlier are open for trading, (b) the Basket Underlier Sponsor for such Basket Underlier is open for business and (c) such Basket Underlier is calculated and published by the applicable Basket Underlier Sponsor
- Trading Day:**
- No Listing:** The notes will not be listed on any securities exchange or interdealer quotation system
- No Interest:** The notes do not bear interest
- No Redemption:** The notes will not be subject to any optional redemption right or price dependent redemption right
- Events of Default:** If an Event of Default, as defined in the Senior Indenture and in the section entitled “Events of Default and Rights of Acceleration” beginning on page 35 of the accompanying prospectus, with respect to the notes occurs and is continuing, the amount payable to a holder of the notes upon any acceleration permitted under the Senior Indenture will be equal to the amount described under the caption “—Cash Settlement Amount,” calculated as though the date of acceleration were the maturity date of the notes and as though the determination date were the third trading day prior to the date of acceleration. In case of a default in the payment of the notes, the notes will not bear a default interest rate.
- Calculation Agent:** MLPF&S, an affiliate of BofA Finance.
- Selling Agent:** MLPF&S, an affiliate of BofA Finance. See “Supplemental Plan of Distribution— Conflicts of Interest” on page PS-46 of this pricing supplement.
- CUSIP/ISIN:** 09709TCX7/US09709TCX72

The initial estimated value of the notes as of the date of this pricing supplement is set forth on the cover page of this pricing supplement. The final pricing supplement will set forth the initial estimated value of the notes as of the trade date.

**Initial  
Estimated  
Value:**

Payments on the notes, including the Cash Settlement Amount, depend on the credit risk of BofA Finance and BAC and on the performance of the Basket. The economic terms of the notes, including the Threshold Settlement Amount, are based on BAC's internal funding rate, which is the rate it would pay to borrow funds through the issuance of market-linked notes and the economic terms of certain related hedging arrangements it enters into. BAC's internal funding rate is typically lower than the rate it would pay when it issues conventional fixed or floating rate debt securities. This difference in funding rate, as well as the underwriting discount and the hedging related charges described below, will reduce the economic terms of the notes to you and the initial estimated value of the notes. Due to these factors, the public offering price you pay to purchase the notes will be greater than the initial estimated value of the notes as of the trade date.

For more information about the initial estimated value and the structuring of the notes, see "Risk Factors" beginning on page PS-18 and "Structuring the Notes" on page PS-47.

*The trade date, issue date and other dates set forth above are subject to change, and will be set forth in the final pricing supplement relating to the notes.*

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**Supplemental Terms of the Notes**

For purposes of the notes offered by this pricing supplement, all references to each of the following terms used in the accompanying product supplement will be deemed to refer to the corresponding term used in this pricing supplement, as set forth in the table below:

<b>Product Supplement Term</b>	<b>Pricing Supplement Term</b>
pricing date	trade date
maturity date	stated maturity date
calculation day	Determination Date
principal amount	face amount
Market Measure	Basket Underlier
Index	Basket Underlier

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## HYPOTHETICAL EXAMPLES

The following table, examples and chart are provided for purposes of illustration only. They should not be taken as an indication or prediction of future investment results and merely are intended to illustrate the impact that the various hypothetical Final Index Levels, as applicable, on the Determination Date could have on the Cash Settlement Amount at maturity assuming all other variables remain constant.

The examples below are based on a range of Final Basket Levels and Final Index Levels that are entirely hypothetical; the level of the Basket on any day throughout the life of the notes, including the Final Basket Level on the Determination Date, cannot be predicted. The Basket Underliers have been highly volatile in the past — meaning that the level of each Basket Underlier has changed considerably in relatively short periods — and their performances cannot be predicted for any future period.

The information in the following examples reflects hypothetical rates of return on the offered notes assuming that they are purchased on the original issue date at the face amount and held to the stated maturity date. If you sell your notes in a secondary market prior to the stated maturity date, your return will depend upon the market value of your notes at the time of sale, which may be affected by a number of factors that are not reflected in the table below, such as interest rates, the volatility of the Basket Underliers, the creditworthiness of BofA Finance, as issuer, and the creditworthiness of BAC, as guarantor. In addition, the initial estimated value of your notes at the time the terms of your notes are set on the trade date (as determined by reference to pricing models used by us and our affiliates) is less than the original price to public of your notes. For more information on the estimated value of your notes, see “Risk Factors — The Public Offering Price You Pay for the Notes Will Exceed Their Initial Estimated Value” on page PS-18 of this pricing supplement. The information in the table also reflects the key terms and assumptions in the box below.

### Key Terms and Assumptions

Face Amount	\$1,000
Initial Basket Level	100
Hypothetical Threshold Settlement Amount	\$1,334.40 per note (133.44% of the face amount)
Neither a Market Disruption Event nor a non-trading day occurs on the originally scheduled Determination Date, and the Basket Underliers are not discontinued on or prior to such date	
No change in or affecting any of the stocks included in the Basket Underliers (the “Basket Underlier Stocks”) or the method by which the Basket Underlier Sponsors calculate the Basket Underliers	

Notes purchased on original issue date at the face amount and held to the stated maturity date

Moreover, we have not yet set the Initial Index Levels of the Basket Underliers that will serve as the baselines for determining the Basket Return and the amount that we will pay on your notes, if any, at maturity. We will not do so until the Trade Date. As a result, the actual Initial Index Level of a Basket Underlier may differ substantially from its level prior to the Trade Date and may be higher or lower than the actual closing level of that Basket Underlier on the Trade Date.

For these reasons, the actual performance of the Basket over the life of your notes, as well as the amount payable at maturity, if any, may bear little relation to the hypothetical examples shown below or to the historical levels of the Basket Underliers shown elsewhere in this pricing supplement. For information about the historical levels of the Basket Underliers during recent periods, see “The Basket and the Basket Underliers” below. Before investing in the offered notes, you should consult publicly available information to determine the levels of the Basket Underliers between the date of this pricing supplement and the date of your purchase of the offered notes.

Also, the hypothetical examples shown below do not take into account the effects of applicable taxes. Because of the U.S. tax treatment applicable to your notes, tax liabilities could affect the after-tax rate of return on your notes to a comparatively greater extent than the after-tax return on the Basket Underlier Stocks.

The levels in the left column of the table below represent hypothetical Final Basket Levels and are expressed as percentages of the Initial Basket Level. The amounts in the right column represent the hypothetical Cash Settlement Amounts, based on the corresponding hypothetical Final Basket Level, and are expressed as percentages of the face amount of a note (rounded to the nearest one-thousandth of a percent). Thus, a hypothetical Cash Settlement Amount of 100.000% means that the value of the cash payment that we would deliver for each \$1,000 of the outstanding face amount of the offered notes on the stated maturity date would equal 100.000% of the face amount of a note, based on the corresponding hypothetical Final Basket Level and the assumptions noted above.

Hypothetical Final Basket Level	Hypothetical Cash Settlement Amount
(as Percentage of Initial Basket Level)	(as Percentage of Face Amount)
160.000%	160.000%
150.000%	150.000%
140.000%	140.000%
<b>133.440%</b>	<b>133.440%</b>
130.000%	133.440%
120.000%	133.440%
110.000%	133.440%
105.000%	133.440%
<b>100.000%</b>	<b>133.440%</b>
90.000%	90.000%
80.000%	80.000%
75.000%	75.000%
50.000%	50.000%
25.000%	25.000%
<b>0.000%</b>	<b>0.000%</b>

If, for example, the Final Basket Level were determined to be 25.000% of the Initial Basket Level, the Cash Settlement Amount that we would deliver on your notes at maturity would be 25.000% of the face amount of your notes (which would be equal to a Cash Settlement Amount of \$250.00), as shown in the table above. As a result, if you purchased your notes on the original issue date at the face amount and held them to the stated maturity date, you would lose 75.000% of your investment (if you purchased your notes at a premium to face amount you would lose a correspondingly higher percentage of your investment). If the Final Basket Level were determined to be 0.000% of the Initial Basket Level, you would lose your entire investment in the notes. In addition, if the Final Basket Level were determined to be 140.000% of the Initial Basket Level, the Cash Settlement Amount that we would deliver on your notes at maturity would equal the sum of (i) \$1,000 plus (ii) \$1,000 times the basket return, which is greater than the hypothetical Threshold Settlement Amount in this example.

The following chart shows a graphical illustration of the hypothetical Cash Settlement Amounts that we would pay on your notes on the stated maturity date, if the Final Basket Level were any of the hypothetical levels shown on the horizontal axis. The hypothetical Cash Settlement Amounts in the chart are expressed as percentages of the face amount of your notes and the hypothetical Final Basket Levels are expressed as percentages of the Initial Basket Level. The chart shows that any hypothetical Final Basket Level of less than 100.000% (the section left of the 100.000% marker on the horizontal axis) would result in a hypothetical Cash Settlement Amount of less than 100.000% of the face amount of your notes (the section below the 100.000% marker on the vertical axis) and, accordingly, in a loss of principal to the holder of the notes.



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The examples on the following pages illustrate the hypothetical Cash Settlement Amount at maturity based on hypothetical Final Index Levels of each Basket Underlier, calculated based on the key terms and assumptions above. The hypothetical Initial Index Level for each Basket Underlier of 100.00 has been chosen for illustrative purposes only and does not represent a likely Initial Index Level for that Basket Underlier. For historical data regarding the actual closing levels of the Basket Underliers, please see the historical information set forth below under “The Basket and the Basket Underliers.”

The levels in Column A represent the hypothetical Initial Index Levels for each Basket Underlier, and the levels in Column B represent the hypothetical Final Index Levels for each Basket Underlier. The percentages in Column C represent the hypothetical Final Index Levels in Column B expressed as percentages of the corresponding hypothetical Initial Index Levels in Column A. The amounts in Column D represent the applicable Initial Weighted Value for each Basket Underlier, and the amounts in Column E represent the products of the percentages in Column C times the corresponding amounts in Column D. The Final Basket Level for each example is shown beneath each example, and will equal the sum of the five products shown in Column E. The Basket Return for each example is shown beneath the Final Basket Level for such example, and will equal the quotient of (i) the Final Basket Level for such example minus the Initial Basket Level divided by (ii) the Initial Basket Level, expressed as a percentage. The numbers shown below may have been rounded for ease of analysis.



In this example, all of the hypothetical Final Index Levels for the Basket Underliers are greater than the applicable hypothetical Initial Index Levels, which results in the hypothetical Final Basket Level being greater than the Initial Basket Level of 100.00. Since the hypothetical Final Basket Level is greater than the Initial Basket Level, the hypothetical Cash Settlement Amount for each \$1,000 face amount of your notes will equal:

Cash Settlement Amount = the greater of (i) the hypothetical Threshold Settlement Amount and (ii) the sum of \$1,000 *plus* \$1,000 *times* the basket return;

= the greater of (i) \$1,334.40 and (ii)  $\$1,000 + \$1,000 \times 6.97\%$

= the greater of (i) \$1,334.40 and (ii) \$1,069.70

Cash Settlement Amount = \$1,334.40

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In this example, the hypothetical Final Index Levels for all of the Basket Underliers are less than the applicable hypothetical Initial Index Levels, which results in the hypothetical Final Basket Level being less than the Initial Basket Level of 100.00. Since the hypothetical Final Basket Level of 56.35 is less than the Initial Basket Level of 100.00, the hypothetical Cash Settlement Amount for each \$1,000 face amount of your notes will equal:

$$\text{Cash Settlement Amount} = \$1,000 + (\$1,000 \times -43.65\%) = \$563.50$$

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The Cash Settlement Amounts shown above are entirely hypothetical; they are based on levels of the Basket Underlier that may not be achieved on the Determination Date and on assumptions that may prove to be erroneous. The actual market value of your notes on the stated maturity date or at any other time, including any time you may wish to sell your notes, may bear little relation to the hypothetical Cash Settlement Amounts shown above, and these amounts should not be viewed as an indication of the financial return on an investment in the offered notes. The hypothetical Cash Settlement Amounts on notes held to the stated maturity date in the examples above assume you purchased your notes at their face amount and have not been adjusted to reflect the actual price to public you pay for your notes. The return on your investment (whether positive or negative) in your notes will be affected by the amount you pay for your notes. If you purchase your notes for a price other than the face amount, the return on your investment will differ from, and may be significantly lower than, the hypothetical returns suggested by the above examples. Please read “Risk Factors — If You Purchase Your Notes at a Premium to Face Amount, the Return on Your Investment Will Be Lower Than the Return on Notes Purchased at Face Amount and the Impact of Certain Key Terms of the Notes Will Be Negatively Affected” below.

Payments on the notes are economically equivalent to the amounts that would be paid on a combination of other instruments. For example, payments on the notes are economically equivalent to a combination of an interest-bearing bond bought by the holder and one or more options entered into between the holder and us (with one or more implicit option premiums paid over time). The discussion in this paragraph does not modify or affect the terms of the notes or the U.S. federal income tax treatment of the notes, as described elsewhere in this pricing supplement.

*We cannot predict the actual Final Basket Level or what the market value of your notes will be on any particular trading day, nor can we predict the relationship between the level of each Basket Underlier and the market value of your notes at any time prior to the stated maturity date. The actual amount that you will receive, if any, at maturity and the rate of return on the offered notes will depend on the actual Initial Index Level of each Basket Underlier and the Threshold Settlement Amount, which we will set on the Trade Date, and the actual Basket Return determined by the calculation agent as described above. Moreover, the assumptions on which the hypothetical returns are based may turn out to be inaccurate. Consequently, the amount of cash to be paid in respect of your notes, if any, on the stated maturity date may be very different from the information reflected in the examples and chart above.*

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## RISK FACTORS

*An investment in your notes is subject to the risks described below, as well as the risks and considerations described in the accompanying prospectus, prospectus supplement and product supplement. You should carefully review these risks and considerations as well as the terms of the notes described herein and in the accompanying prospectus, prospectus supplement and product supplement. Your notes are a riskier investment than ordinary debt securities. Also, your notes are not equivalent to investing directly in the Basket Underlier Stocks, i.e., with respect to a Basket Underlier to which your stocks are linked, the stocks comprising such Basket Underlier. You should carefully consider whether the offered notes are suited to your particular circumstances.*

### **You May Lose Your Entire Investment in the Notes**

You can lose your entire investment in the notes. The cash payment on your notes, if any, on the stated maturity date will be based on the performance of the Basket as measured from the Initial Basket Level to the Final Basket Level on the Determination Date. If the Final Basket Level is *less than* the Initial Basket Level, you will have a loss for each \$1,000 of the face amount of your notes equal to the *product* of the Basket Return *times* \$1,000. Thus, you will be exposed to any decrease in the Final Basket Level, and the return on your investment will be negative. You may lose your entire investment in the notes, which would include any premium to face amount you paid when you purchased the notes.

Also, the market price of your notes prior to the stated maturity date may be significantly lower than the purchase price you pay for your notes. Consequently, if you sell your notes before the stated maturity date, you may receive far less than the amount of your investment in the notes.

### **Any Payment on the Notes Is Subject to Our Credit Risk and the Credit Risk of the Guarantor, and Actual or Perceived Changes in Our or the Guarantor's Creditworthiness Are Expected to Affect the Value of the Notes**

The notes are our senior unsecured debt securities. Any payment on the notes will be fully and unconditionally guaranteed by the Guarantor. The notes are not guaranteed by any entity other than the Guarantor. As a result, your receipt of the Cash Settlement Amount at maturity will be dependent upon our ability and the ability of the Guarantor to repay our obligations under the notes on the stated maturity date, regardless of the level of the Basket. No assurance can be given as to what our financial condition or the financial condition of the Guarantor will be on the stated maturity date. If we and the Guarantor become unable to meet our respective financial obligations as they become due, you may not receive the amounts payable under the terms of the notes.

In addition, our credit ratings and the credit ratings of the Guarantor are assessments by ratings agencies of our respective abilities to pay our obligations. Consequently, our or the Guarantor's perceived creditworthiness and actual or anticipated decreases in our or the Guarantor's credit ratings or increases in the spread between the yield on our respective securities and the yield on U.S. Treasury securities (the "credit spread") prior to the stated maturity date may adversely affect the market value of the notes. However, because your return on the notes depends upon factors in addition to our ability and the ability of the Guarantor to pay our respective obligations, such as the level of the Basket, an improvement in our or the Guarantor's credit ratings will not reduce the other investment risks related to the notes.

### **We Are a Finance Subsidiary and, as Such, Will Have Limited Assets and Operations**

We are a finance subsidiary of BAC and will have no assets, operations or revenues other than those related to the issuance, administration and repayment of our debt securities that are guaranteed by the Guarantor. As a finance subsidiary, to meet our obligations under the notes, we are dependent upon payment or contribution of funds and/or repayment of outstanding loans from the Guarantor and/or its other subsidiaries. Therefore, our ability to make



payments on the notes may be limited. In addition, we will have no independent assets available for distributions to holders of the notes if they make claims in respect of the notes in a bankruptcy, resolution or similar proceeding. Accordingly, any recoveries by such holders may be limited to those available under the related guarantee by the Guarantor, and that guarantee will rank equally with all other unsecured senior obligations of the Guarantor.

**The Public Offering Price You Pay for the Notes Will Exceed Their Initial Estimated Value**

The initial estimated value of the notes that is provided in this preliminary pricing supplement, and that will be provided in the final pricing supplement, are each an estimate only, determined as of a particular point in time by reference to our and our affiliates' pricing models. These pricing models consider certain assumptions and variables, including our credit spreads and those of the Guarantor, the Guarantor's internal funding rate, mid-market terms on hedging transactions, expectations on interest rates, dividends and volatility, price-sensitivity

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analysis, and the expected term of the notes. These pricing models rely in part on certain forecasts about future events, which may prove to be incorrect.

The initial estimated value does not represent a minimum or maximum price at which we, the Guarantor, MLPF&S or any other entities would be willing to purchase your notes in any secondary market (if any exists) at any time. The value of your notes at any time after the date of this pricing supplement will vary based on many factors that cannot be predicted with accuracy, including our and the Guarantor's creditworthiness and changes in market conditions.

If you attempt to sell the notes prior to maturity, their market value may be lower than the price you paid for them and lower than their initial estimated value. This is due to, among other things, changes in the levels of the Basket Underliers, the Guarantor's internal funding rate, and the inclusion in the public offering price of the underwriting discount and the hedging related charges, all as further described in "Structuring the Notes" below. These factors, together with various credit, market and economic factors over the term of the notes, are expected to reduce the price at which you may be able to sell the notes in any secondary market and will affect the value of the notes in complex and unpredictable ways.

**The Price of the Notes That May Be Paid by MLPF&S (and Which May Be Reflected on Customer Account Statements) May Be Higher than the Then-Current Estimated Value of the Notes for a Limited Time Period After the Trade Date**

As agreed by MLPF&S and the distribution participants, for approximately a three-month period after the trade date, MLPF&S expects to offer to buy the notes in the secondary market at a price that will exceed the estimated value of the notes at that time. The amount of this excess, which represents a portion of the underwriting discount and the hedging-related charges expected to be realized by MLPF&S and the distribution participants over the term of the notes, will decline to zero on a straight line basis over that three-month period. Accordingly, the estimated value of your notes during this initial three-month period may be lower than the value shown on your customer account statements. Thereafter, if MLPF&S buys or sells your notes, it will do so at prices that reflect the estimated value determined by reference to its pricing models at that time. Any price at any time after the trade date will be based on then-prevailing market conditions and other considerations, including the performances of the Basket Underliers and the remaining term of the notes. However, none of us, the Guarantor, MLPF&S or any other party is obligated to purchase your notes at any price or at any time, and we cannot assure you that any party will purchase your notes at a price that equals or exceeds the initial estimated value of the notes.

**We Cannot Assure You that a Trading Market for Your Notes Will Ever Develop or Be Maintained**

We will not list the notes on any securities exchange. We cannot predict how the notes will trade in any secondary market or whether that market will be liquid or illiquid.

The development of a trading market for the notes will depend on the Guarantor's financial performance and other factors, including changes in the levels of the Basket Underliers. The number of potential buyers of your notes in any secondary market may be limited. We anticipate that MLPF&S will act as a market-maker for the notes, but none of us, the Guarantor or MLPF&S is required to do so. There is no assurance that any party will be willing to purchase your notes at any price in any secondary market. MLPF&S may discontinue its market-making activities as to the notes at any time. To the extent that MLPF&S engages in any market-making activities, it may bid for or offer the notes. Any price at which MLPF&S may bid for, offer, purchase, or sell any notes may differ from the values determined by pricing models that it may use, whether as a result of dealer discounts, mark-ups, or other transaction costs. These bids, offers, or completed transactions may affect the prices, if any, at which the notes might otherwise trade in the market.

In addition, if at any time MLPF&S were to cease acting as a market-maker as to the notes, it is likely that there would be significantly less liquidity in the secondary market. In such a case, the price at which the notes could be sold likely

would be lower than if an active market existed.

**The Amount Payable on Your Notes Is Not Linked to the Level of Each Basket Underlier at Any Time Other than the Determination Date**

The Final Basket Level will be based on the closing levels of each Basket Underlier on the Determination Date (subject to adjustment as described elsewhere in this pricing supplement). Therefore, if the closing levels of the Basket Underliers decreased significantly on the Determination Date, the Cash Settlement Amount for your notes may be significantly less than it would have been had the Cash Settlement Amount been linked to the closing levels of the Basket Underliers prior to such decrease in the levels of the Basket Underliers. Although the actual levels of the Basket Underliers on the stated maturity date or at other times during the life of your notes may be higher than

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the closing levels of the Basket Underliers on the Determination Date, you will not benefit from the closing levels of the Basket Underliers at any time other than on the Determination Date.

### **Your Notes Will Not Bear Interest**

You will not receive any interest payments on your notes. As a result, even if the Cash Settlement Amount payable for your notes on the stated maturity date exceeds the face amount of your notes, the overall return you earn on your notes may be less than you would have earned by investing in a non-indexed debt security of comparable maturity that bears interest at a prevailing market rate.

### **The Probability that the Final Basket Level Will Be Less Than the Initial Basket Level Will Depend in Part on the Volatility of the Basket Underliers**

“Volatility” refers to the frequency and magnitude of changes in the levels of the Basket Underliers. The greater the expected volatility with respect to the Basket Underliers on the trade date, the higher the expectation as of the trade date that the Final Basket Level could be less than the Initial Basket Level, indicating a higher expected risk of loss on the notes. The terms of the notes are set, in part, based on expectations about the volatility of the Basket Underliers as of the trade date. The volatility of the Basket Underliers can change significantly over the term of the notes. The level of the Basket could fall sharply, which could result in a significant loss of principal. You should be willing to accept the downside market risk of the Basket and the potential to lose a significant amount of your principal at maturity.

### **You Have No Shareholder Rights or Rights to Receive Any Basket Underlier Stock**

Investing in your notes will not make you a holder of any of the Basket Underlier Stocks. Neither you nor any other holder or owner of your notes will have any rights with respect to the Basket Underlier Stocks, including voting rights, any right to receive dividends or other distributions, any rights to make a claim against the Basket Underlier Stocks or any other rights of a holder of the Basket Underlier Stocks. Your notes will be paid in cash and you will have no right to receive delivery of any Basket Underlier Stocks.

### **The Publisher of a Basket Underlier May Adjust such Basket Underlier in a Way that Affects Its Levels, and the Publisher Has No Obligation to Consider Your Interests**

The publisher of a Basket Underlier can add, delete, or substitute the components included in that Basket Underlier or make other methodological changes that could change its level. A new security included in a Basket Underlier may perform significantly better or worse than the replaced security, and the performance will impact the level of that Basket Underlier. Additionally, the publisher of a Basket Underlier may alter, discontinue, or suspend calculation or dissemination of that Basket Underlier. Any of these actions could adversely affect the value of your notes. The publisher of a Basket Underlier will have no obligation to consider your interests in calculating or revising that Basket Underlier.

### **The Lower Performance of One Basket Underlier May Offset an Increase in One or More Other Basket Underliers**

Changes in the level of one or more of the Basket Underliers may be offset by changes in the levels of the other Basket Underliers. As a result, any return on the Basket – and thus on your notes – may be reduced or eliminated, which will have the effect of reducing the amount payable in respect of your notes at maturity. In addition, due to the different initial weighted values, changes in the levels of some Basket Underliers will have a more substantial impact on the level of the Basket than similar changes in the levels of the other Basket Underliers.

### **We May Sell Additional Notes at a Different Issue Price**

At our sole option, we may decide to sell an additional aggregate face amount of the notes subsequent to the date of this pricing supplement. The price to public of the notes in the subsequent sale may differ substantially (higher or lower) from the original price to public you paid as provided on the cover of this pricing supplement.

**If You Purchase Your Notes at a Premium to Face Amount, the Return on Your Investment Will Be Lower Than the Return on Notes Purchased at Face Amount and the Impact of Certain Key Terms of the Notes Will Be Negatively Affected**

The Cash Settlement Amount will not be adjusted based on the price to public you pay for the notes. If you purchase notes at a price that differs from the face amount of the notes, then the return on your investment in such notes held to the stated maturity date will differ from, and may be substantially less than, the return on notes purchased at face amount. If you purchase your notes at a premium to face amount and hold them to the stated maturity date, the return on your investment in the notes will be lower than it would have been had you purchased the notes at face amount or a discount to face amount.

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**If the Levels of the Basket Underliers Change, the Market Value of Your Notes May Not Change in the Same Manner**

Your notes may trade quite differently from the performances of the Basket Underliers. Changes in the levels of the Basket Underliers may not result in a comparable change in the market value of your notes. We discuss some of the reasons for this disparity under “ — The Market Value of the Notes Will Be Affected by Various Factors That Interrelate in Complex Ways, and Their Market Value May Be Less Than the Face Amount” below.

**Trading and Hedging Activities by Us, the Guarantor and Any of Our Other Affiliates May Affect Your Return on the Notes and Their Market Value**

We, the Guarantor and our other affiliates, including MLPF&S, and any other distributors of the notes may buy or sell the securities represented by the Basket Underliers, or futures or options contracts on the Basket Underliers or those securities, or other listed or over-the-counter derivative instruments linked to the Basket Underliers or the Basket Underlier Stocks. We, the Guarantor and any of our other affiliates, including MLPF&S, and any other distributors of the notes may execute such purchases or sales for our own or their own accounts, for business reasons, or in connection with hedging our obligations under the notes. These transactions could affect the value of these securities and, in turn, the value of the Basket Underliers in a manner that could be adverse to your investment in the notes. On or before the applicable trade date, any purchases or sales by us, the Guarantor or other entities (including for the purpose of hedging anticipated exposures) may affect the level of the Basket Underliers or the Basket Underlier Stocks. Consequently, the levels of the Basket Underliers or the prices of the Basket Underlier Stocks may change subsequent to the trade date of an issue of the notes, adversely affecting the market value of the notes.

We, the Guarantor or one or more of our other affiliates, including MLPF&S, and any other distributors of the notes may also engage in hedging activities that could affect the level of the Basket Underliers on the trade date. In addition, these activities may decrease the market value of your notes prior to maturity, and may affect the amounts to be paid on the notes. We, the Guarantor or one or more of our other affiliates, including MLPF&S, and any other distributors of the notes may purchase or otherwise acquire a long or short position in the notes and may hold or resell the notes. For example, MLPF&S may enter into these transactions in connection with any market making activities in which they engage. We cannot assure you that these activities will not adversely affect the levels of the Basket Underliers, the market value of your notes prior to maturity or the amounts payable on the notes.

**Our Trading, Hedging and Other Business Activities May Create Conflicts of Interest With You**

We, the Guarantor or one or more of our other affiliates, including MLPF&S, and any other distributors of the notes may engage in trading activities related to the Basket Underliers and to the Basket Underlier Stocks that are not for your account or on your behalf. We, the Guarantor or one or more of our other affiliates, including MLPF&S, and any other distributors of the notes also may issue or underwrite other financial instruments with returns based upon the Basket Underliers. These trading and other business activities may present a conflict of interest between your interest in the notes and the interests we, the Guarantor and our other affiliates, including MLPF&S, and any other distributors of the notes may have in our proprietary accounts, in facilitating transactions, including block trades, for our or their other customers, and in accounts under our or their management. These trading and other business activities, if they influence the levels of the Basket Underliers or secondary trading in your notes, could be adverse to your interests as a beneficial owner of the notes.

We expect to enter into arrangements or adjust or close out existing transactions to hedge our obligations under the notes. We, the Guarantor or our other affiliates, including MLPF&S, and any other distributors of the notes also may enter into hedging transactions relating to other notes or instruments, some of which may have returns calculated in a manner related to the notes. We may enter into such hedging arrangements with one of our affiliates. Our affiliates or such other distributors may enter into additional hedging transactions with other parties relating to the notes and the Basket Underliers. This hedging activity is expected to result in a profit to those engaging in the hedging activity,

which could be more or less than initially expected, or the hedging activity could also result in a loss. We and these other entities will price these hedging transactions with the intent to realize a profit, regardless of whether the value of the notes increases or decreases. Any profit in connection with such hedging activities will be in addition to any other compensation that we or other parties receive for the sale of the notes, which creates an additional incentive to sell the notes to you.

**There May Be Potential Conflicts of Interest Involving the Calculation Agent, Which Is an Affiliate of Ours. We Have the Right to Appoint and Remove the Calculation Agent**

MLPF&S will be the calculation agent for the notes and, as such, will make a variety of determinations relating to the notes, including the amounts that will be paid on the notes. Under some circumstances, these duties could result in a conflict of interest between its status as our affiliate and its responsibilities as calculation agent. These

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conflicts could occur, for instance, in connection with the calculation agent's determination as to whether a Market Disruption Event has occurred. The calculation agent will be required to carry out its duties in good faith and use its reasonable judgment. However, because we expect that the Guarantor will control the calculation agent, potential conflicts of interest could arise.

**The Market Value of the Notes Will Be Affected by Various Factors That Interrelate in Complex Ways, and Their Market Value May Be Less Than the Face Amount**

If you wish to liquidate your investment in the notes prior to maturity, your only option would be to sell them in the secondary market. At that time, there may be an illiquid market for your notes or no market at all. Even if you were able to sell your notes, there are many factors outside of our control that may affect their market value, such as the level and the volatility of the Basket Underliers, economic and other conditions generally, interest rates, dividend yields on the securities represented by the Basket Underliers, exchange rate movements and volatility, our and the guarantor's financial condition and creditworthiness, time to maturity. The impact of any one factor may be offset or magnified by the effect of another factor. See "Risk Factors—General Risks Relating to the Notes—The notes are not designed to be short-term trading instruments and if you attempt to sell the notes prior to maturity, their market value, if any, will be affected by various factors that interrelate in complex ways, and their market value may be less than the principal amount" beginning on page PS-6 of product supplement EQUITY-1.

**An Investment in the Notes Is Subject to Risks Associated with Foreign Securities Markets**

The Basket tracks the value of certain foreign equity securities. You should be aware that investments in securities linked to the value of foreign equity securities involve particular risks. The foreign securities markets comprising the Basket Underliers may have less liquidity and may be more volatile than U.S. or other securities markets and market developments may affect foreign markets differently from U.S. or other securities markets. Direct or indirect government intervention to stabilize these foreign securities markets, as well as cross-shareholdings in foreign companies, may affect trading prices and volumes in these markets. Also, there is generally less publicly available information about foreign companies than about those U.S. companies that are subject to the reporting requirements of the Securities and Exchange Commission, and foreign companies are subject to accounting, auditing and financial reporting standards and requirements that differ from those applicable to U.S. reporting companies.

Prices of securities in foreign countries are subject to political, economic, financial and social factors that apply in those geographical regions. These factors, which could negatively affect those securities markets, include the possibility of recent or future changes in a foreign government's economic and fiscal policies, the possible imposition of, or changes in, currency exchange laws or other laws or restrictions applicable to foreign companies or investments in foreign equity securities and the possibility of fluctuations in the rate of exchange between currencies, the possibility of outbreaks of hostility and political instability and the possibility of natural disaster or adverse public health development in the region. Any one of these factors, or the combination of more than one of these factors, could negatively affect such foreign securities markets and the prices of securities therein. Further, geographical regions may react to global factors in different ways, which may cause the prices of securities in a foreign securities market to fluctuate in a way that differs from those of securities in the U.S. securities market or other foreign securities markets. Foreign economies may differ favorably or unfavorably from the U.S. economy in important respects such as growth of gross national product, rate of inflation, capital reinvestment, resources and self-sufficiency.

**Your Notes Are Linked to the Basket Underliers, Which Are Comprised of Basket Underlier Stocks That Are Traded in Foreign Currencies But Not Adjusted to Reflect Their U.S. Dollar Value, and, Therefore, the Return on Your Notes Will Not Be Adjusted for Changes in Foreign Currency Exchange Rates**

Your notes are linked to the Basket Underliers whose Basket Underlier Stocks are traded in foreign currencies but not adjusted to reflect their U.S. dollar value. The amount payable on your notes will not be adjusted for changes in



foreign currency exchange rates. The amount payable will be based upon the overall change in the level of each Basket Underlier. Changes in foreign currency exchange rates, however, may reflect changes in the economy of the foreign countries in which the Basket Underlier's component stocks are listed that, in turn, may affect the levels of the Basket Underliers and the Basket.

**The U.S. Federal Income Tax Consequences of an Investment in the Notes Are Uncertain, and May Be Adverse to a Holder of the Notes**

No statutory, judicial, or administrative authority directly addresses the characterization of the notes or securities similar to the notes for U.S. federal income tax purposes. As a result, significant aspects of the U.S. federal income tax consequences of an investment in the notes are not certain. Under the terms of the notes, you will have agreed with us to treat the notes as single financial contracts, as described under "U.S. Federal Income Tax Summary—

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General.” If the Internal Revenue Service (the “IRS”) were successful in asserting an alternative characterization for the notes, the timing and character of gain or loss with respect to the notes may differ. No ruling will be requested from the IRS with respect to the notes and no assurance can be given that the IRS will agree with the statements made in the section entitled “U.S. Federal Income Tax Summary.” You are urged to consult with your own tax advisor regarding all aspects of the U.S. federal income tax consequences of investing in the notes.

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## **THE BASKET AND THE BASKET UNDERLIERS**

The Basket is comprised of five Basket Underliers with the following initial weights within the basket: the EURO STOXX 50<sup>®</sup> Index (37.00% weighting), the FTSE<sup>®</sup> 100 Index (23.00% weighting), the TOPIX<sup>®</sup> (23.00% weighting), the Swiss Market Index (9.00% weighting) and the S&P<sup>®</sup>/ASX 200 Index (8.00% weighting).

All disclosures contained in this pricing supplement regarding the Basket Underliers, including, without limitation, their make-up, method of calculation, and changes in its components, have been derived from publicly available sources. The information reflects the policies of, and is subject to change by the Basket Underlier Sponsors. The Basket Underlier Sponsors, whom license the copyright and all other rights to the Basket Underliers, have no obligation to continue to publish, and may discontinue publication of, the Basket Underliers. The consequences of the Basket Underlier Sponsors discontinuing publication of the applicable Basket Underlier are discussed in “Description of the Notes—Discontinuance of an Index” in the accompanying product supplement. None of us, the Guarantor, the calculation agent, or MLPF&S accepts any responsibility for the calculation, maintenance or publication of the Basket Underliers or any successor index.

As to each Basket Underlier, sector designations are determined by the applicable Basket Underlier Sponsor using criteria it has selected or developed. Basket Underlier Sponsors may use very different standards for determining sector designations. In addition, many companies operate in a number of sectors, but are listed in only one sector and the basis on which that sector is selected may also differ. As a result, sector comparisons between indices with different Basket Underlier Sponsors may reflect differences in methodology as well as actual differences in the sector composition of the indices.

None of us, the Guarantor, MLPF&S or any of our other affiliates makes any representation to you as to the future performance of the Basket Underliers.

You should make your own investigation into the Basket Underliers.

### **The EURO STOXX 50<sup>®</sup> Index**

#### **Composition and Maintenance**

The EURO STOXX 50<sup>®</sup> Index is composed of 50 component stocks of market sector leaders from within the 19 EURO STOXX<sup>®</sup> Supersector indices, which represent the Eurozone portion of the STOXX Europe 600<sup>®</sup> Supersector indices. The top ten constituent stocks of the EURO STOXX 50<sup>®</sup> Index as of December 29, 2017, by weight, are Total SA (4.87%), Siemens AG (4.13%), SAP SE (3.91%), Banco Santander S.A. (3.70%), Bayer AG (3.60%), Allianz SE (3.58%), BASF SE (3.53%), Sanofi (3.44%), Unilever N.V. (3.09%) and BNP Paribas (3.00%); constituent weights may be found at <http://www.stoxx.com/download/indices/factsheets/SX5GT.pdf> under “Factsheets and Methodologies” and are updated periodically. Percentages may not sum to 100% due to rounding. Please note that none of the information on that website is included or incorporated by reference in this pricing supplement.

As of December 29, 2017, of the 16 industry sectors which comprise the EURO STOXX 50<sup>®</sup> Index, the top 10 industry sectors represented by weighting are: Banks (15.6%), Industrial Goods & Services (10.7%), Health Care (10.5%), Personal & Household Goods (9.0%), Technology (7.2%), Insurance (6.9%), Oil & Gas (6.3%), Chemicals (5.4%), Automobiles & Parts (5.4%), and Utilities (5.2%); industry weightings may be found at <http://www.stoxx.com/download/indices/factsheets/SX5GT.pdf> under “Factsheets and Methodologies” and are updated periodically. Percentages may not sum to 100% due to rounding. Sector designations are determined by the Basket Underlier Sponsor using criteria it has selected or developed. Index sponsors may use very different standards for determining sector designations. In addition, many companies operate in a number of sectors, but are listed in only

one sector and the basis on which that sector is selected may also differ. As a result, sector comparisons between indices with different index sponsors may reflect differences in methodology as well as actual differences in the sector composition of the indices.

As of December 29, 2017, the eight countries which comprise the EURO STOXX 50<sup>®</sup> Index represent the following weights in the index: France (36.6%), Germany (33.4%), Spain (10.2%), Netherlands (10.1%), Italy (4.8%), Belgium (2.9%), Ireland (1.1%), and Finland (1.0%); country weightings may be found at <http://www.stoxx.com/download/indices/factsheets/SX5GT.pdf> under “Factsheets and Methodologies” and are updated periodically. Percentages may not sum to 100% due to rounding.

The composition of the EURO STOXX 50<sup>®</sup> Index is reviewed annually, based on the closing stock data on the last trading day in August. The component stocks are announced on the first trading day in September. Changes to the component stocks are implemented on the third Friday in September and are effective the following trading day. Changes in the composition of the EURO STOXX 50<sup>®</sup> Index are made to ensure that the EURO STOXX 50<sup>®</sup> Index includes the 50 market sector leaders from within the EURO STOXX 50<sup>®</sup> Index.

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The free float factors for each component stock used to calculate the EURO STOXX 50® Index, as described below, are reviewed, calculated, and implemented on a quarterly basis and are fixed until the next quarterly review.

The EURO STOXX 50® Index is also reviewed on an ongoing monthly basis. Corporate actions (including initial public offerings, mergers and takeovers, spin-offs, delistings, and bankruptcy) that affect the EURO STOXX 50® Index composition announced immediately, implemented two trading days later and become effective on the next trading day after implementation.

### **Calculation of the EURO STOXX 50® Index**

The EURO STOXX 50® Index is calculated with the “Laspeyres formula,” which measures the aggregate price changes in the component stocks against a fixed base quantity weight. The formula for calculating the EURO STOXX 50® Index value can be expressed as follows:

$$\text{EURO STOXX 50}^{\circledR} \text{ Index} = \frac{\text{Free float market capitalization of the EURO STOXX 50}^{\circledR} \text{ Index}}{\text{Divisor}}$$

The “free float market capitalization of the EURO STOXX 50® Index” is equal to the sum of the products of the price, number of shares outstanding, market capitalization, the free float factor and the weighting cap factor for each component stock as of the time the EURO STOXX 50® Index is being calculated.

The EURO STOXX 50® Index is also subject to a divisor, which is adjusted to maintain the continuity of the EURO STOXX 50® Index values across changes due to corporate actions, such as the deletion and addition of stocks, the substitution of stocks, stock dividends, and stock splits.

### **License Agreement**

One of our affiliates has entered into a non-exclusive license agreement with STOXX providing for the license to it and certain of its affiliated companies, including us, in exchange for a fee, of the right to use indices owned and published by STOXX (including the EURO STOXX 50® Index) in connection with certain securities, including the notes offered hereby.

The license agreement requires that the following language be stated in this document:

STOXX and its licensors (the “Licensors”) have no relationship to us, other than the licensing of the EURO STOXX 50® Index and the related trademarks for use in connection with the notes. STOXX and its Licensors do not:

- sponsor, endorse, sell, or promote the notes;
- recommend that any person invest in the notes offered hereby or any other securities;
- have any responsibility or liability for or make any decisions about the timing, amount, or pricing of the notes;
- have any responsibility or liability for the administration, management, or marketing of the notes; or
- consider the needs of the notes or the holders of the notes in determining, composing, or calculating the EURO STOXX 50® Index, or have any obligation to do so.

STOXX and its Licensors will not have any liability in connection with the notes. Specifically:

STOXX and its Licensors do not make any warranty, express or implied, and disclaims any and all warranty concerning:

- the results to be obtained by the notes, the holders of the notes or any other person in connection with the use of the EURO STOXX 50® Index and the data included in the EURO STOXX 50® Index;
- the accuracy or completeness of the EURO STOXX 50® Index and its data;
- the merchantability and the fitness for a particular purpose or use of the EURO STOXX 50® Index and its data;

STOXX and its Licensors will have no liability for any errors, omissions, or interruptions in the EURO STOXX 50® Index or its data; and

Under no circumstances will STOXX be liable for any lost profits or indirect, punitive, special, or consequential damages or losses, even if STOXX or its Licensors know that they might occur.

The licensing agreement discussed above is solely for our benefit and that of STOXX, and not for the benefit of the holders of the notes or any other third parties.

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## The FTSE® 100 Index

The FTSE® 100 Index (the “UKX”) is a market capitalization-weighted index of the 100 most highly capitalized U.K.-listed blue chip companies traded on the London Stock Exchange. The UKX was developed with a base level of 1,000 as of December 30, 1983. It is calculated, published and disseminated by FTSE Russell (“FTSE”), a company owned by the London Stock Exchange Plc (the “Exchange”).

FTSE divides the 100 companies included in the UKX into 19 sectors: Oil & Gas, Chemicals, Basic Resources, Construction & Materials, Industrial Goods & Services, Automobiles & Parts, Food & Beverage, Personal & Household Goods, Health Care, Retail, Media, Travel & Leisure, Telecommunications, Utilities, Banks, Insurance, Real Estate, Financial Services and Technology.

Additional information on the FTSE® 100 Index is available from the following website: [ftse.com/uk](http://ftse.com/uk). We are not incorporating by reference that website or any material it includes in this pricing supplement.

## FTSE® 100 Index

### Index Stock Weighting by Sector as of December 29, 2017

<b>Sector:*</b>	<b>Percentage (%)**</b>
Oil & Gas	12.89%
Personal & Household Goods	11.56%
Banks	11.21%
Industrial Goods & Services	9.35%
Health Care	8.00%
Financial Services	7.44%
Basic Resources	6.88%
Insurance	5.45%
Travel & Leisure	4.65%
Food & Beverage	3.81%

\* Sector designations are determined by the Basket Underlier Sponsor using criteria it has selected or developed. Index sponsors may use very different standards for determining sector designations. In addition, many companies operate in a number of sectors, but are listed in only one sector and the basis on which that sector is selected may also differ. As a result, sector comparisons between indices may reflect differences in sector designation methodology as well as actual differences in the sector composition of the indices.

\*\* Information provided by FTSE. Percentages may not sum to 100% due to rounding.

The top five constituent stocks of the FTSE® 100 Index as of December 29, 2017, by weight, are: HSBC Holdings PLC (7.75%); British American Tobacco PLC (5.78%); Royal Dutch Shell PLC Class A (5.68%); BP PLC (5.07%); and Royal Dutch Shell PLC Class B (4.74%).

### *Index Composition and Selection Criteria*

The UKX consists of the 100 largest U.K.-listed blue chip companies, based on full market capitalization, that pass screening tests for price and liquidity. The UKX is reviewed on a quarterly basis in March, June, September and

December based on data from the close of business on the Tuesday before the first Friday of the review month. The FTSE Europe, Middle East & Africa Regional Advisory Committee (the “Committee”), meets quarterly to approve the constituents of the UKX. These meetings are held on the Wednesday before the first Friday in March, June, September and December. Any constituent changes are implemented after the close of business on the third Friday of the review month (i.e., effective Monday), following the expiration of the London International Financial Futures and Options Exchange futures and options contracts.

***Eligibility Standards***

Only “premium listed” equity shares, as defined by the Financial Conduct Authority in its Listing Rules Sourcebook, are eligible for inclusion in the UKX. Eligible stocks must pass price and liquidity screens before being included in the UKX. Additionally, a stock must have a free float (as described below) of greater than 5%.

*Price Screen* — With regard to the price screen, the Committee must be satisfied that an accurate and reliable price exists for purposes of determining the market value of a company. To be eligible for inclusion in the UKX, a stock must have a full listing on the London Stock Exchange with a Sterling-denominated price on SETS (the London Stock Exchange’s trading service for UK blue chip securities).

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*Minimum Voting Rights Screen* — Companies are required to have greater than 5% of the company's voting rights (aggregated across all of its equity securities, including, where identifiable, those that are not listed or trading) in the hands of unrestricted shareholders in order to be eligible for index inclusion. Current constituents who do not meet this requirement will have until the September 2022 review to meet the requirement or they will be removed from the index.

*Liquidity Screen* — With regard to liquidity, each eligible stock is tested for liquidity annually in June by calculating its median daily trading per month. When calculating the median of daily trades per month of any security, a minimum of five trading days in each month must exist, otherwise the month is excluded from the test. Liquidity is tested from the first business day in May of the previous year to the last business day of April. The median trade is calculated by ranking each daily trade total and selecting the middle-ranking day. Any period of suspension is not included in the test. The liquidity test is applied on a pro-rata basis where the testing period is less than 12 months. A stock not presently included in the UKX that does not turnover at least 0.025% of its shares in issue (after application of any investability weightings) based on its median daily trade per month in at least ten of the 12 months prior to the annual index review in June will not be eligible for inclusion until the next annual review. An existing constituent failing to trade at least 0.015% of its shares in issue (after the application of any investability weightings) based on its median daily trade per month for at least eight of the 12 months prior to the annual index review will be removed from the UKX and will not be eligible for inclusion until the next annual review. New issues will become eligible for inclusion in the UKX at the quarterly review following their issuance provided that they have a minimum trading record of at least 20 trading days prior to the review date and that they have turned over at least 0.025% of their shares in issue (after the application of any investability weightings) based on their median daily trade per month since listing.

*Market Capitalization Ranking* — Eligible stocks that pass the price and liquidity screens are ranked by the Committee according to their market capitalization before the application of any adjustments based on the extent to which the shares are publicly traded. Only the quoted equity capital of a constituent company will be included in the calculation of its market capitalization. Where a company has two or more classes of equity, secondary lines will be included in the calculation of the market capitalization of the company only if those lines are significant and liquid. The Committee will add a stock to the UKX at the quarterly review if it has risen to 90th place or above on the full market capitalization rankings and will delete a stock at the quarterly review if it has fallen to 111th place or below on these rankings. Market capitalization rankings are calculated using data as of the close of business on the day before the review.

*100 Constituent Limitation* — The UKX always contains 100 constituents. If a greater number of companies qualify to be inserted in the UKX than qualify to be removed, the lowest ranking constituents of the UKX will be removed so that the total number of stocks remains at 100 following inclusion of those that qualify to be inserted. Likewise, if a greater number of companies qualify to be removed than to be inserted at the quarterly review, securities of the highest ranking companies that are then not included in the UKX will be inserted to match the number of companies being removed, in order to maintain the total at 100.

### ***Index Calculation***

The UKX is a market capitalization weighted index. This means that the price movement of a larger company (that is, one representing larger percentage of the UKX) will have a greater effect on the level of the UKX than will the price movement of a smaller company (that is, one representing a smaller percentage of the UKX).

The value of the UKX is represented by a fraction, (a) the numerator of which is the *sum* of the *product* of (i) the price of each component stock, (ii) the number of shares issued for each such component and (iii) a free float factor for each such component (described more fully below), and (b) the denominator of which is a divisor. The divisor represents the total issued share capital of the UKX on the base date; the divisor may be adjusted as necessary to allow for changes in issued share capital of individual securities without distorting the UKX.

As noted above, a free float factor is applied to each index component. By employing this approach, FTSE uses the investable market capitalization, not the total market capitalization, of each constituent to determine the value of the UKX. Investable market capitalization depends on free float. The following are excluded from free float: shares directly owned by state, regional, municipal and local governments (excluding shares held by independently managed pension schemes for governments); shares held by sovereign wealth funds where each holding is 10% or greater of the total number of shares in issue (if the holding subsequently decreases below 10%, the shares will be excluded from free float until the holding falls below 7%); shares held by directors, senior executives and managers of the company, and by their family and direct relations, and by companies with which they are affiliated; shares held within employee share plans; shares held by public companies or by non-listed subsidiaries of public companies; shares held by founders, promoters, former directors, founding venture capital and private equity firms, private companies and individuals (including employees) where the holding is 10% or greater of the total number of shares in issue (if the holding subsequently decreases below 10%, the shares will be excluded from free float until

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the holding falls below 7%); all shares where the holder is subject to a lock-in clause (for the duration of that clause, after which free float changes resulting from the expiration of a lock-in clause will be implemented at the next quarterly review subsequent to there being a minimum of 20 business days between the expiration date of such lock-in clause and the index review date); shares held for publicly announced strategic reasons, including shares held by several holders acting in concert; and shares that are subject to ongoing contractual agreements (such as swaps) where they would ordinarily be treated as restricted.

The UKX is recalculated whenever errors or distortions occur that are deemed to be significant. Users of the UKX are notified through appropriate media.

### ***Index Maintenance***

The UKX is reviewed quarterly for changes in free float. A stock's free float is also reviewed and adjusted if necessary following certain corporate events. Following a takeover or merger involving one or more index constituents, the free float restrictions will be based on restricted holdings in the successor company and will be implemented when the offer has completed (or lapsed) unless it directly reflects a corporate action independent of and not conditional on the takeover or merger completing or lapsing. If the corporate event includes another corporate action that affects the UKX, a change in free float is implemented at the same time as the corporate action. If there is no corporate action, the change in free float will be applied at the next quarterly review. Following the application of an initial free float restriction, a stock's free float will only be changed if its rounded free float moves more than three percentage points above or below the existing rounded free float. Companies with a free float of above 99% and of 15% or below will not be subject to the three percentage points threshold.

At each quarterly review, the Committee publishes a Reserve List containing the six highest ranking non-constituents of the UKX. The Reserve List will be used in the event that one or more constituents are deleted from the UKX during the period up to the next quarterly review. If a merger or takeover results in one index constituent being absorbed by another constituent, the resulting company will remain a constituent and a vacancy will be created. This vacancy will be filled by selecting the highest ranking security in the Reserve List as at the close of the index calculation two days prior to the deletion and related index adjustment. If an index constituent is taken over by a non-constituent company, the original constituent will be removed and replaced by the highest ranking non-constituent on the Reserve List. Any eligible company resulting from the takeover will be eligible to become the replacement company if it is ranked higher than any other company on the Reserve List. If a constituent company is split to form two or more companies, then the resulting companies will be eligible for inclusion as index constituents, based on their respective full market capitalizations (before the application of any investability weightings), provided that they qualify in all other respects. Any eligible company resulting from a split that has no available market price after 20 business days will be removed. If a split results in the inclusion of an ineligible non-equity security, such security will remain in the UKX for two trading days and then be removed. If a constituent is delisted or ceases to have a firm quotation, it will be removed from the list of constituents and be replaced by the highest ranking eligible company from the Reserve List as at the close of the index calculation two days prior to the deletion.

### ***Capitalization Adjustments***

A premium listed secondary line of a company will be considered for index inclusion if its total market capitalization before the application of any adjustments based on the extent to which the shares are publicly traded, is greater than 25% of the total market capitalization of the company's principal line and the secondary line is eligible, in its own right. Should the total market capitalization of a secondary line fall below 20% of the total market capitalization of the company's principal line at an annual review, the secondary line will be deleted from the UKX unless its total market capitalization remains above the qualification level for continued inclusion as a constituent of the UKX at that review. Where a company has partly paid shares, these shares, together with the outstanding call(s), are both included in the UKX. Warrants to purchase ordinary shares and convertible securities are not included in the UKX until they are exercised or converted.

*Share Weighting Changes* — For the purposes of computing the UKX, the number of shares in issue for each constituent security is expressed to the nearest share and, to prevent a large number of insignificant weighting changes, the number of shares in issue for each constituent security is amended only when the total shares in issue held within the index system changes by more than 1% on a cumulative basis. Changes will be made quarterly after the close of business on the third Friday of March, June, September and December. The data for these changes will be taken from the close of business on the third Wednesday of the month prior to the review month.

If a corporate action is applied to a constituent which involves a change in the number of shares in issue, the change in shares will be applied simultaneously with the corporate action. If accumulated changes in the number of shares in issue add up to 10% or more or when an accumulated share change represents \$2 billion of a company's

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total market capitalization, they are implemented between quarters. If an adjustment is made, it will be applied for the first time at the next review in March of the following year. All adjustments are made before the start of the index calculation on the day concerned, unless market conditions prevent this.

*Shares in Issue Increase* — When a company increases the number of shares it has in issue, the market capitalization of that company increases and the total market capitalization will rise accordingly. The index divisor is adjusted to maintain a constant index value.

*Weighting Amendments* — The market capitalization of a company is adjusted to take account of various corporate actions, in accordance with the rules of the UKX. To prevent the value of the UKX from changing due to such an event, all corporate actions which affect the market capitalization of the UKX require an offsetting divisor adjustment. By adjusting the divisor, the value of the UKX remains constant before and after the event. Below is a summary of the more frequent corporate actions and their resulting adjustment.

### ***Market Disruption***

If there is a system problem or situation in the market that is judged by FTSE to affect the quality of the constituent prices at any time when the UKX is being calculated, the UKX will be declared indicative (e.g., normally where a “fast market” exists in the equity market). The message “IND” will be displayed against the index value calculated by FTSE. The Committee must be satisfied that an accurate and reliable price for the purposes of determining the market value of a company exists. The Committee may exclude a security from the UKX should it consider that an “accurate and reliable” price is not available.

If any event leads to an error in the value of the UKX that is greater than three basis points at the local country index level, then the UKX will generally be recalculated, subject to discovery, within one month of the event. Where an alternative approach is available, FTSE may, at its sole discretion, choose not to recalculate.

### **License Agreement**

These notes are not in any way sponsored, endorsed, sold or promoted by FTSE or by The London Stock Exchange Limited (the “Exchange”) or by The Financial Times Limited (“FT”) and neither FTSE or Exchange or FT makes any warranty or representation whatsoever, expressly or impliedly, either as to the results to be obtained from the use of the FTSE® 100 Index and/or the figure at which the said index stands at any particular time on any particular day or otherwise. The index is compiled and calculated solely by FTSE. However, neither FTSE or Exchange or FT shall be liable (whether in negligence or otherwise) to any person for any error in the index and neither FTSE or Exchange or FT shall be under any obligation to advise any person of any error therein.

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## The TOPIX®

The TOPIX® (Bloomberg ticker "TPX"), also known as the Tokyo Stock Price Index, is a capitalization weighted index of all the domestic common stocks listed on the First Section of the TSE. Domestic stocks admitted to the TSE are assigned either to the TSE First Section Index, the TSE Second Section Index or the TSE Mothers Index. Stocks listed in the First Section, which number approximately 1,750, are among the most actively traded stocks on the TSE. The TOPIX® is supplemented by the sub-basket components of the 33 industry sectors and was developed with a base index value of 100 as of January 4, 1968. The TOPIX® is calculated and published `bargin-top: 6pt; margin-left: 0; margin-right: 0; margin-bottom: 0; color: #000000; background: #ffffff;">Pursuant to the terms of the conversion offer, including the terms or conditions of any extension or amendment of the conversion offer, we will accept for conversion, and promptly convert pursuant to the terms of the Series A preferred stock and will pay the conversion consideration described below in respect of, all shares of Series A preferred stock validly surrendered for conversion pursuant to the conversion offer and not validly withdrawn (or, if withdrawn, validly re-surrendered after such withdrawal). We will make this payment by depositing with the conversion agent the conversion consideration in immediately available funds promptly after the expiration date. The conversion agent will act as agent for converting holders for the purpose of receiving payment from us and transmitting such payment to the converting holders. Under no circumstances will interest be paid on the conversion consideration in the event of any delay on behalf of the conversion agent in making payment.`

For each share of Series A preferred stock you validly surrender as part of the conversion offer and we accept for conversion, you will receive:

a cash premium payment equal to \$7.88, subject to adjustment;

4.998 shares of our common stock, which is equal to the number of shares that you would otherwise receive upon conversion of a share of Series A preferred stock, subject to adjustment as provided in the terms of the Series A preferred stock and less any fractional shares; and

an amount in cash equal to the accrued but unpaid and accumulated dividends on each share of Series A preferred stock from and after November 24, 2005, the last dividend payment date prior to the expiration date of the conversion offer, up to, but not including, the settlement date.

We are not required to issue fractional shares of common stock upon conversion of the Series A preferred stock in the conversion offer. Instead, we will pay a cash adjustment for all fractional shares based upon the market price of the common stock on the second business day before the settlement date of the conversion.

For example, assuming that a holder owns 100 shares of Series A preferred stock and all of the holder's shares are accepted for conversion in the conversion offer at the present conversion ratio of 4.998, the holder would be entitled to receive 499.8 shares of common stock, which is equal to 100 shares of Series A preferred stock multiplied by the conversion ratio of 4.998. However, the fractional shares would be paid in cash rather than stock. If the closing price of a share of our common stock on the second business day prior to the conversion offer settlement date is \$17.28, the holder would receive 499 shares of common stock plus, as payment for the fractional shares, \$13.82 in cash (\$17.28 per share on the determination date multiplied by 0.8 of a share of common stock).

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Assuming that all of the 2,069,907 outstanding shares of Series A preferred stock are converted into common stock pursuant to the conversion offer, we estimate that the total amount of cash needed to complete the conversion offer, including the payment of all related fees and expenses, will be approximately \$17.6 million. We will need to borrow substantially all of this cash under our senior secured credit facility. See Conditions to the Conversion Offer Financing Conditions. We currently have no alternative plan of conducting the conversion offer if we are unable to borrow under our senior secured credit facility the cash necessary to complete it. Other than such repayments of principal or interest as may be required pursuant to the terms of the senior secured credit facility, we have no present plans or arrangements to finance or repay any amounts borrowed in connection with the conversion offer.

Subject to Rule 14e-1(c) of the Securities Exchange Act of 1934, as amended, we reserve the right in our sole discretion and at any time to delay acceptance for conversion of, or payment of conversion consideration in respect of, shares of Series A preferred stock for such time as may be needed to obtain any required governmental regulatory approvals. See Conditions to the Conversion Offer. In all cases, the conversion agent will make payment to holders of Series A preferred stock or beneficial owners of the conversion consideration for such shares surrendered for conversion pursuant to the conversion offer only after the conversion agent has received, prior to the expiration date:

either of the following:

(1) certificates representing the shares of Series A preferred stock to be converted in the conversion offer; or

(2) timely confirmation of a book-entry transfer of the shares of Series A preferred stock into the conversion agent account at DTC pursuant to the procedures set forth in this section; and

either of the following:

(1) a properly completed and duly executed letter of transmittal, together with any other forms, signatures, guarantees, documents or information that may be required thereby; or

(2) a properly transmitted agent's message through ATOP.

For purposes of this conversion offer, shares of Series A preferred stock surrendered for conversion will only be deemed to have been accepted for conversion and payment of conversion consideration if, as and when we give proper notice of such acceptance to the conversion agent.

Converting holders will not be obligated to pay brokerage fees or commissions to the dealer manager, the information agent, the conversion agent or us. Converting holders will not be required to pay transfer taxes on the payment of the conversion consideration, except as provided in the letter of transmittal.

**Expiration Date and Amendments**

The conversion offer will expire at 5:00 p.m., New York City time, on Friday, December 9, 2005, unless we, in our sole discretion, extend the conversion offer, in which case the term expiration date means the latest date and time to which we extend the conversion offer. In any event, the conversion offer will be open for at least 20 full business days.

We also may extend the conversion offer or amend or terminate the conversion offer if any of the conditions described below under Conditions to the Conversion Offer have not been satisfied or waived prior to the expiration date by giving proper notice to the conversion agent of the delay, extension, amendment or termination. Further, we reserve the right, in our sole discretion and at any time, to amend the terms of the conversion offer in any manner permitted or not prohibited by applicable law. We will notify you as promptly as practicable of any extension, amendment or termination in accordance with applicable law. We will also file an amendment to the registration statement of which this conversion offer prospectus is a part with respect to any fundamental change in the conversion offer.

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If we determine to extend the conversion offer, then we will notify the conversion agent of any extension by oral or written notice and give each registered holder notice of the extension by means of a press release or other public announcement before 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date. During any extension, all shares of Series A preferred stock previously surrendered for conversion will remain subject to the conversion offer and may be accepted for conversion by us, except that surrendered shares may be validly withdrawn after the expiration date if the shares of Series A preferred stock have not been accepted for conversion after the expiration of 40 business days from November 9, 2005. Any shares of Series A preferred stock not accepted for conversion for any reason will be returned without expense to the surrendering holder promptly after the expiration or termination of the conversion offer.

**Procedures for Surrendering Shares of Series A Preferred Stock for Conversion**

***Submission of Shares of Series A Preferred Stock***

The submission of shares of Series A preferred stock for conversion as described below and our acceptance of such shares will constitute a binding agreement between the converting holder and us upon the terms and conditions described in this conversion offer prospectus and in the accompanying letter of transmittal. Except as described below, a converting holder who wishes to submit shares of Series A preferred stock for conversion in response to the conversion offer must deliver the shares, together with a properly completed and duly executed letter of transmittal, including all other documents required by the letter of transmittal, to the conversion agent at the address listed on the back cover page of this conversion offer prospectus prior to 5:00 p.m., New York City time, on Friday, December 9, 2005. All shares not converted in response to the conversion offer will be returned to the submitting holder at our expense as promptly as practicable following the expiration date.

THE METHOD OF DELIVERY OF SHARES, LETTERS OF TRANSMITTAL AND ALL OTHER REQUIRED DOCUMENTS IS AT THE ELECTION AND RISK OF THE HOLDER. IF DELIVERY IS BY MAIL, IT IS RECOMMENDED THAT REGISTERED MAIL, PROPERLY INSURED, WITH RETURN RECEIPT REQUESTED, BE USED. INSTEAD OF DELIVERY BY MAIL, IT IS RECOMMENDED THAT THE HOLDER USE AN OVERNIGHT OR HAND DELIVERY SERVICE. IN ALL CASES, SUFFICIENT TIME SHOULD BE ALLOWED TO ASSURE TIMELY DELIVERY.

**There are no guaranteed delivery procedures in connection with this conversion offer.**

***Book-Entry Delivery Procedures***

Any financial institution that is a participant in DTC may make book-entry delivery of the shares of Series A preferred stock by causing DTC to transfer such shares into the conversion agent's account in accordance with that facility's procedures for the transfer. In connection with a book-entry transfer, a letter of transmittal need not be transmitted to the conversion agent, as long as the book-entry transfer procedure is complied with prior to 5:00 p.m., New York City time, on the expiration date and an agent's message (as defined below) is received by the conversion agent prior to 5:00 p.m., New York City time, on the expiration date. The term "agent's message" means a message, transmitted by DTC to, and received by, the conversion agent, which states that (1) DTC has received an express acknowledgement from the participant in DTC submitting shares of Series A preferred stock for conversion, (2) the participant has received and agrees to be bound by the terms of the letter of transmittal and (3) we may enforce the agreement against the participant.

***Signatures and Signature Guarantees***

Each signature on a letter of transmittal or a notice of withdrawal, as the case may be, must be guaranteed, unless the shares surrendered for conversion with that letter of transmittal are submitted (1) by a registered holder of the shares who has not completed either the box entitled "Special Conversion Instructions" or the box entitled "Special Delivery Instructions" in the letter of transmittal, or



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(2) for the account of a financial institution (including most commercial banks, savings and loan associations and brokerage houses) that is a participant in the Security Transfer Agent Medallion Program, the New York Stock Exchange Medallion Signature Guarantee Program or the Stock Exchange Medallion Program, each known as an eligible institution. In the event that a signature on a letter of transmittal or a notice of withdrawal, as the case may be, is required to be guaranteed, the guarantee must be by an eligible institution. If the letter of transmittal is signed by a person other than the registered holder of the shares, the shares surrendered for conversion must either (1) be endorsed by the registered holder, with the signature guaranteed by an eligible institution, or (2) be accompanied by a stock power, in satisfactory form as determined by us in our sole discretion, duly executed by the registered holder, with the signature guaranteed by an eligible institution. The term *registered holder* as used in this paragraph with respect to the shares of Series A preferred stock means any person in whose name such shares are registered on the books of the transfer agent and registrar for the shares.

If any letter of transmittal, endorsement, stock power, power of attorney or any other document required by the letter of transmittal is signed by a trustee, executor, corporation or other person acting in a fiduciary or representative capacity, the signatory should so indicate when signing, and, unless waived by us, submit proper evidence of the person's authority to so act, which evidence must be satisfactory to us in our sole discretion.

***Beneficial Owners***

Any beneficial owner of the shares of Series A preferred stock whose shares are registered in the name of a broker, dealer, commercial bank, trust company or other nominee and who wishes to submit shares for conversion in the conversion offer should contact the broker, dealer, commercial bank, trust company or other nominee promptly and instruct it to have the registered holder submit such shares for conversion on the beneficial owner's behalf. Beneficial owners should be aware that the transfer of registered ownership may take considerable time.

***Backup Withholding***

To prevent U.S. federal income tax backup withholding, each converting holder of Series A preferred stock that is a U.S. person generally must provide the conversion agent with the holder's correct taxpayer identification number and certify that the holder is not subject to U.S. federal income tax backup withholding by completing the Form W-9 provided with the letter of transmittal. Each converting holder of shares that is not a U.S. person generally must provide the conversion agent with an applicable Form W-8, certifying that the holder is not a U.S. person and is not subject to U.S. federal income tax backup withholding. For a discussion of the material U.S. federal income tax considerations relating to backup withholding, see *Material U.S. Federal Income Tax Considerations*.

***Determination of Validity***

We will determine all questions as to the validity, form, eligibility (including time of receipt) and acceptance of any shares of Series A preferred stock surrendered for conversion pursuant to any of the procedures described above in our sole discretion, and this determination will be final and binding. We reserve the absolute right to reject any and all surrenders of any shares that we determine not to be in proper form or if our acceptance for conversion of, or payment of conversion consideration in respect of, such shares may, in our opinion or the opinion of our counsel, be unlawful. We also reserve the absolute right, in our sole discretion, to waive any of the conditions of the conversion offer or any defect or irregularity in any surrender with respect to any holder's shares, whether or not similar defects or irregularities are waived in the case of other holders. Our interpretation of the terms and conditions of the conversion offer and the documents delivered in connection therewith will be final and binding. Neither we, nor the conversion agent, the dealer manager, the information agent, nor any other person, will be under any duty to give notification of any defects or irregularities in surrenders or will incur any liability for failure to give any such notification. If we waive our right to reject a defective surrender, the holder will be entitled to the conversion consideration.

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### **Withdrawal Rights**

You may withdraw your submission of shares of Series A preferred stock for conversion at any time before the conversion offer expires. In addition, you may withdraw any previously surrendered shares of Series A preferred stock that are not accepted for conversion by us after the expiration of 40 business days from November 9, 2005, if such shares have not been previously returned to you.

For a withdrawal to be effective, the conversion agent must receive a written or facsimile notice of withdrawal at its address listed on the back cover of this conversion offer prospectus. A facsimile transmission notice of withdrawal that is received prior to receipt of a surrender of shares sent by mail and postmarked prior to the date of the facsimile transmission of withdrawal will be treated as a withdrawn surrender. The notice of withdrawal must:

specify the name of the person who surrendered the shares to be withdrawn;

identify the shares to be withdrawn, including the number of shares and certificate number, or, in the case of shares surrendered by book-entry transfer, the name and number of the DTC account to be credited, and otherwise comply with the procedures of DTC and the letter of transmittal;

be signed by the depositor in the same manner as the original signature on the letter of transmittal by which those shares were surrendered, including any required signature guarantee, or be accompanied by documents of transfer and properly completed irrevocable proxies sufficient to permit our transfer agent to register the transfer of those shares into the name of the depositor withdrawing the surrender; and

if certificates for shares have been transmitted, specify the name in which shares are registered if different from that of the withdrawing holder.

If you have delivered or otherwise identified to the conversion agent the certificates for shares of Series A preferred stock, then, before the release of these certificates, you must also submit the serial numbers of the particular certificates to be withdrawn and a signed notice of withdrawal with the signatures guaranteed by an eligible guarantor institution, unless the holder is an eligible guarantor institution.

We will determine in our sole discretion all questions as to the validity, form and eligibility, including time of receipt, of notices of withdrawal. Our determination will be final and binding on all parties. Any shares so withdrawn will be deemed not to have been validly surrendered for purposes of the conversion offer. We will return any shares that have been surrendered but that are not converted for any reason to the holder, without cost, promptly after withdrawal, rejection of surrender or termination of the conversion offer. In the case of shares surrendered by book-entry transfer into the conversion agent's account at DTC, the shares will be credited to an account maintained with DTC for the shares. You may re-surrender properly withdrawn shares by following one of the procedures described under Procedures for Surrendering Shares of Series A Preferred Stock for Conversion at any time on or before the expiration date.

### **Conditions to the Conversion Offer**

#### ***Financing Conditions***

Notwithstanding any other provision of the conversion offer, our obligation to accept shares of Series A preferred stock surrendered for conversion and to pay the related conversion consideration, are subject to and conditioned upon our ability to obtain an amendment to our existing senior secured credit facility to permit us to effect the conversion offer. This amendment was required to complete the conversion offer because the terms of our senior secured credit facility prohibited us from paying cash upon the conversion of our Series A preferred stock. On November 23, 2005, we amended the terms of our senior secured credit facility to permit us to effect the conversion offer and to borrow sufficient funds to pay the cash portion of the conversion consideration and the costs and expenses of this conversion offer, and thus we have satisfied this financing condition.

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Our obligation to accept shares of Series A preferred stock surrendered for conversion and to pay the related conversion consideration was also conditioned upon our ability to borrow, before 5:00 p.m., New York City time, on the expiration date, on terms and conditions satisfactory to us, sufficient funds under this facility to pay the cash portion of the conversion consideration and the costs and expenses of this conversion offer. As a result of obtaining the amendment to our senior secured credit facility described above, this condition has also been satisfied.

***General Conditions***

Notwithstanding any other term of the conversion offer, we will not be required to accept for conversion or to convert shares of Series A preferred stock if we have not obtained all governmental regulatory approvals required to consummate the conversion offer. In addition to the other conditions described above, we will not be required to complete the conversion offer if:

the registration statement of which this conversion offer prospectus forms a part has not been declared effective by the SEC;

except as to holders who are or may be affiliates of us, the shares of common stock to be received will not be tradable by the holder without restriction under the Securities Act and without material restrictions under the blue sky or securities laws of substantially all of the states of the United States;

the conversion offer, or the making of any conversion by a holder of shares, would violate any applicable law, regulation or interpretation of the staff of the SEC;

any action or proceeding is instituted or threatened in any court or by or before any governmental, regulatory or administrative agency or instrumentality or by any other person in connection with the conversion offer which, in our judgment:

is, or is reasonably likely to be, materially adverse to our business, operations, properties, condition (financial or otherwise), assets, liabilities or prospects; or

would or might prohibit, prevent, restrict or delay consummation of the conversion offer; an order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been proposed, enacted, entered, issued, promulgated, enforced or deemed applicable by any court or governmental, regulatory or administrative agency or instrumentality, that, in our sole judgment:

is, or is reasonably likely to be, materially adverse to our business, operations, properties, condition (financial or otherwise), assets, liabilities or prospects; or

would or might prohibit, prevent, restrict or delay consummation of the conversion offer; there shall have occurred or be likely to occur any event affecting our business or financial affairs that, in our sole judgment, would or might prohibit, prevent, restrict or delay consummation of the conversion offer;

there has occurred:

any general suspension of, or limitation on prices for, trading in securities in the U.S. securities or financial markets;

any significant adverse change in the price of the Series A preferred stock or the common stock;

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a material impairment in the trading market for securities;

a declaration of a banking moratorium or any suspension of payments in respect of banks in the United States or other financial markets;

any limitation that, in our reasonable judgment, might affect the extension of credit by banks or other lending institutions;

a commencement or escalation of war or armed hostilities or other national or international calamity directly or indirectly involving the United States; or

in the case of any of the foregoing in existence on the date of this conversion offer prospectus, a material acceleration or worsening thereof.

The conditions described in this section are for our sole benefit and we may assert them prior to the expiration date regardless of the circumstances giving rise to any condition. Subject to applicable law, we may waive these conditions in our discretion in whole or in part prior to the expiration date, except as to the financing conditions and the requirement that the registration statement be declared effective by the SEC, which conditions we will not waive. If we waive any waivable conditions, the waiver will apply to all holders of Series A preferred stock who submit their shares for conversion in the conversion offer and we will continue the conversion offer for at least five business days after the waiver. If we fail at any time to exercise any of the above rights, the failure will not be deemed a waiver of those rights, and those rights will be deemed ongoing rights which may be asserted at any time and from time to time.

We will not accept for conversion any shares of Series A preferred stock surrendered, and will not issue common stock in conversion for any surrendered shares of Series A preferred stock, if at that time a stop order is threatened or in effect with respect to the registration statement of which this conversion offer prospectus forms a part.

For conditions that are based upon the occurrence of an event, we will determine whether the event has in fact occurred. For conditions that require a legal conclusion or analysis, we may seek and rely upon the advice of our legal counsel to determine whether that condition has been satisfied. For conditions that are subject to our sole discretion or judgment, our management or board of directors (or a committee thereof) will make a good faith determination as to whether the condition is satisfied based upon an assessment of the facts, circumstances and other information known by us at the time the decision is to be made, and we may, but are not obligated to, seek the advice, approval or consent of any other person. At present, we have not made a decision as to what circumstances would lead us to waive any condition and any such waiver would depend on all of the facts and circumstances prevailing at the time of the waiver. Any determination made by us concerning the events described in this section will be final and binding upon all affected persons.

**Resales of Common Stock Received Pursuant to the Conversion Offer**

Assuming that the registration statement of which this conversion offer prospectus forms a part is declared effective by the SEC, common stock received by holders of Series A preferred stock pursuant to this conversion offer may be offered for resale, resold and otherwise transferred without further registration under the Securities Act and without delivery of a prospectus meeting the requirements of Section 10 of the Securities Act if the holder is not our affiliate within the meaning of Rule 144(a)(1) under the Securities Act. Any holder who is our affiliate at the time of the conversion must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resales, unless such sale or transfer is made pursuant to an exemption from such requirements and the requirements under applicable state securities laws.

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**Consequences of Failure to Convert Series A Preferred Stock in the Conversion Offer**

Holders who desire to convert their shares of Series A preferred stock into common stock in the conversion offer should allow sufficient time to ensure timely delivery. Neither we nor the conversion agent is under any duty to give notification of defects or irregularities with respect to the requests for conversion.

Shares of Series A preferred stock that are not converted or are submitted for conversion but not accepted will, following the consummation of the conversion offer, continue to be subject to the provisions in our amended and restated certificate of incorporation regarding the transfer and exchange of the shares of Series A preferred stock and the existing restrictions on transfer set forth in the legend on the shares of Series A preferred stock and in the offering memorandum, dated November 24, 2003, relating to the issuance of such shares. In general, shares of Series A preferred stock, unless registered under the Securities Act, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws. We are presently obligated to keep a registration statement under the Securities Act effective with respect to resales of the Series A preferred stock and shares of common stock underlying such stock. However, we are only required to keep such registration statement effective until the earlier of November 24, 2005 or the date on which all shares of Series A preferred stock and the common stock underlying such shares have been sold under such registration statement, and there is no guarantee that we will keep this registration statement effective either before or after such time.

Shares of Series A preferred stock that are not converted in the conversion offer will remain outstanding and continue to accrue dividends and will be entitled to the rights and benefits their holders have under the certificate of designations relating to the shares of Series A preferred stock. Holders of the Series A preferred stock that remain outstanding after consummation of the conversion offer will vote together as a single class for purposes of determining whether holders of the requisite percentage of the class have taken certain actions or exercised certain rights under the certificate of designations.

**Accounting Treatment**

We are offering to pay a cash premium to holders of our Series A preferred stock who elect to convert their shares of Series A preferred stock into shares of our common stock in the conversion offer. The difference between the fair value of the consideration transferred to holders of the Series A preferred stock that convert their shares in the conversion offer and the fair value of common stock issuable pursuant to the original conversion terms, will be subtracted from net income to arrive at net income available to common shareholders and will affect the calculation of earnings per common share in the current period. The fees and expenses we incur in connection with the conversion offer will be recorded as a reduction of shareholders' equity.

**Appraisal Rights**

None of our stockholders will have any appraisal rights with respect to the conversion offer.

**Table of Contents****MARKET FOR OUR COMMON STOCK AND SERIES A PREFERRED STOCK**

Our common stock is listed on the New York Stock Exchange under the symbol BGC. Our Series A preferred stock is not traded or quoted on an established trading market, although a substantial majority of the shares of Series A preferred stock are traded over-the-counter, with the remainder of these shares being traded on the PORTAL<sup>SM</sup> system of The NASDAQ Stock Market, Inc. The following table sets forth the high and low sales price on the New York Stock Exchange and dividends declared per share of our common stock and the high and low bid prices on the over-the-counter market and dividends declared for the Series A preferred stock during the periods shown. The over-the-counter quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

	Common Stock			Series A Preferred Stock		
	High	Low	Dividends	High	Low	Dividends
<b>Year Ended December 31, 2004:</b>						
First Fiscal Quarter	\$ 9.19	\$ 6.87	\$	\$ 62.50	\$ 45.00	\$ 0.72
Second Fiscal Quarter	8.77	6.79		59.72	45.00	0.72
Third Fiscal Quarter	11.14	7.95		66.81	51.00	0.72
Fourth Fiscal Quarter	14.10	9.59		79.25	59.00	0.72
<b>Year Ended December 31, 2005:</b>						
First Fiscal Quarter	\$ 13.86	\$ 11.10		\$ 78.00	\$ 65.00	\$ 0.72
Second Fiscal Quarter	15.10	11.41		83.00	66.00	0.72
Third Fiscal Quarter	17.25	14.20		92.00	80.00	0.72
Fourth Fiscal Quarter (through November 29, 2005)	17.90	14.66		94.88	87.38	0.72

On November 29, 2005, the closing sale price of our common stock, as reported by the New York Stock Exchange, was \$17.28 per share. On that date, there were approximately 2,188 holders of record of our common stock. We believe that as of October 17, 2005, there were approximately 14,711 beneficial owners of our common stock.

On November 29, 2005, the average of the closing bid and asked price of the Series A preferred stock on the over-the-counter market was \$94.38 per share. DTC is the sole holder of record of the Series A preferred stock. As of November 29, 2005, we believe there were approximately 130 beneficial owners of our Series A preferred stock.

We paid a \$0.05 per share dividend on our common stock each quarter beginning in the fourth quarter of 1997 and through the third quarter of 2002. In October 2002, as a result of an amendment to our then existing credit facility, our board of directors suspended the payment of the quarterly cash dividends on our common stock. The future payment of dividends on our common stock is subject to the discretion of our board of directors, restrictions under our outstanding Series A preferred stock, restrictions under our senior secured credit facility and the indenture governing our senior notes and the requirements of Delaware General Corporation Law and will depend upon general business conditions, our financial performance and other factors our board of directors may consider relevant. We do not expect to pay cash dividends on our common stock in the foreseeable future.

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**COMPARISON OF RIGHTS BETWEEN THE SERIES A PREFERRED STOCK AND  
OUR COMMON STOCK**

The following describes the material differences between the rights of holders of the shares of Series A preferred stock and holders of shares of our common stock. While we believe that the description covers the material differences between the shares of Series A preferred stock and our common stock, this summary may not contain all of the information that is important to you. You should carefully read this entire conversion offer prospectus and the other documents we refer to and that are incorporated herein by reference for a more complete understanding of the differences between being a holder of shares of Series A preferred stock and a holder of shares of our common stock.

**Governing Document**

As a holder of Series A preferred stock, your rights currently are set forth in, and you may enforce your rights under, the Delaware General Corporation Law and our amended and restated certificate of incorporation and amended and restated by-laws, including the certificate of designations with respect to the Series A preferred stock. After completion of the conversion offer, holders of Series A preferred stock who receive shares of our common stock in the conversion offer will have their rights set forth in, and may enforce their rights under, the Delaware General Corporation Law and our amended and restated certificate of incorporation and amended and restated by-laws.

**Dividends**

Holders of Series A preferred stock are entitled to receive, when, and if declared by our board of directors out of funds legally available for payment, cumulative quarterly dividends, as described in the section of this conversion offer prospectus entitled *Description of Our Series A Preferred Stock* *Dividends*. Holders of shares of our common stock are entitled to receive ratable dividends as declared by our board of directors from time to time at its sole discretion, out of funds legally available for such purpose.

**Liquidation Preference**

In the event of our winding-up or dissolution, each holder of Series A preferred stock is entitled to receive and be paid out of our assets available for distribution to our stockholders, before any payment or distribution is made to holders of junior stock, including our common stock, a liquidation preference in the amount of \$50.00 per share of Series A preferred stock, plus accumulated and unpaid dividends. In addition, the Series A preferred stock ranks senior to the common stock with respect to the payment of any dividends. Dividend payments to holders of common stock, if declared by our board of directors, will not be made until all required dividend payments are made to the holders of our outstanding preferred stock, including the Series A preferred stock.

**Ranking**

In any liquidation, dissolution or winding up of our company, our common stock would rank junior to all outstanding preferred stock, including the Series A preferred stock. As a result, holders of our common stock will not be entitled to receive any payment or other distribution of assets upon the liquidation or dissolution until after our obligations to our debt holders and holders of Series A preferred stock have been satisfied.

**Conversion Rights**

Each share of Series A preferred stock is convertible at the holder's option at any time into 4.998 shares of common stock, subject to certain adjustments as described under *Description of Our Series A Preferred Stock* *Conversion Rights* *Adjustments to the Conversion Price*. Holders of our shares of common stock have no conversion rights.

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**Mandatory Conversion**

If fewer than 103,500 shares of the Series A preferred stock remain outstanding, we may, on or after November 24, 2008, cause all of such stock to be automatically converted upon the terms described under Description of Our Series A Preferred Stock Conversion at Our Option.

**Redemption**

We may not redeem any shares of the Series A preferred stock at any time before November 24, 2008. We will be obligated to redeem all outstanding shares of Series A preferred stock on November 24, 2013. The prices, terms and conditions of redemption are described under Description of Our Series A Preferred Stock Optional Redemption and Description of Our Series A Preferred Stock Mandatory Redemption. Holders of our shares of common stock have no redemption rights.

**Listing**

The Series A preferred stock was first issued on November 24, 2003 and is not listed or traded on an established trading market, although a substantial majority of the shares of Series A preferred stock are traded over-the-counter, with the remainder of these shares being traded on the PORTAL system of the National Association of Securities Dealers, Inc. Our common stock is listed and traded on the New York Stock Exchange under the symbol BGC.

**Voting Rights**

Holders of our Series A preferred stock are not entitled to vote on any matters except as required by law and as described under Description of Our Series A Preferred Stock Voting Rights. Holders of shares of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders, other than matters solely affecting any series of preference securities.



**Table of Contents****USE OF PROCEEDS**

We will not receive any cash proceeds from the conversion offer.

**CAPITALIZATION**

The following table sets forth our capitalization as of September 30, 2005:

on an actual basis; and

as adjusted to reflect the conversion offer described under the section entitled "The Conversion Offer," as if the conversion offer had occurred as of September 30, 2005.

This table should be read in conjunction with "Selected Historical Financial Information" appearing elsewhere in this conversion offer prospectus and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements, including all related notes, incorporated by reference in this conversion offer prospectus. See "Incorporation of Certain Documents by Reference."

	<b>As of September 30, 2005</b>	
	<b>Actual</b>	<b>As Adjusted</b>
	<b>(unaudited, in millions)</b>	
Cash and cash equivalents	\$ 51.3	\$ 51.3
Debt(1):		
Senior secured credit facility(2)	55.4	73.0
Senior notes due 2010	285.0	285.0
Other debt	11.9	11.9
Total debt	\$ 352.3	\$ 369.9
Shareholders' equity:		
Preferred stock, \$0.01 par value; 25,000,000 shares authorized:		
Series A redeemable convertible preferred stock, \$50.00 liquidation preference per share; 2,070,000 authorized; issued and outstanding shares: 2,069,907 actual; no shares as adjusted(3)	\$ 103.5	\$
Common stock, \$0.01 par value; 75,000,000 shares authorized; issued and outstanding shares: 39,740,591 actual; 50,085,986 as adjusted (net of 4,968,755 treasury shares actual and as adjusted)(4)	0.4	0.5
Additional paid-in capital	148.5	250.9
Treasury stock	(52.2)	(52.2)
Retained earnings	107.4	90.8
Accumulated other comprehensive income	3.1	3.1
Other shareholders' equity	(5.6)	(5.6)
Total shareholders' equity	305.1	287.5
Total capitalization	\$ 657.4	\$ 657.4

- (1) Debt does not include approximately \$1.0 million of off-balance sheet debt related to the sale of accounts receivable by one of our international operations.
- (2) Excludes \$34.4 million of letters of credit outstanding under the senior secured credit facility.

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- (3) The as adjusted amount assumes that all outstanding shares of Series A preferred stock are converted into common stock in connection with this conversion offer.
- (4) Excludes an aggregate of 3.2 million shares of common stock issuable upon the exercise of outstanding stock options.

**RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED DIVIDENDS**

The following table sets forth our consolidated ratio of earnings to combined fixed charges and preferred dividends for each of the periods indicated. The ratio of earnings to combined fixed charges and preferred dividends is the same as the ratio of earnings to fixed charges in the years ended December 31, 2000, 2001 and 2002 as we did not have any preferred stock outstanding in those periods.

For purposes of calculating the ratio of earnings to combined fixed charges and preferred dividends, earnings consist of pretax income from continuing operations before income taxes and combined fixed charges and preferred dividends. Combined fixed charges and preferred dividends include:

interest expense, whether expensed or capitalized;

amortization of debt issuance cost;

the portion of rent expense representative of the interest factor; and

the amount of pretax earnings required to cover preferred stock dividends and any accretion in the carrying value of the preferred stock.

	Year Ended December 31,					Nine Fiscal Months Ended September 30,
	2000	2001	2002	2003	2004	2005
Ratio of Earnings to Combined Fixed Charges and Preferred Dividends(1)		2.1x			1.2x	1.8x

- (1) For the years ended December 31, 2000, 2002 and 2003, earnings were insufficient to cover combined fixed charges and preferred dividends by \$28.9 million, \$27.6 million and \$2.1 million, respectively.

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**SELECTED HISTORICAL FINANCIAL INFORMATION**

The selected historical financial information for the years ended and as of December 31, 2000, 2001, 2002, 2003 and 2004 were derived from our audited consolidated financial statements. The selected historical financial information for the nine fiscal months ended October 1, 2004 and September 30, 2005 and as of September 30, 2005 were derived from unaudited consolidated financial statements which, in the opinion of our management, include all normal recurring adjustments necessary for a fair presentation of the results for the unaudited interim periods. The following selected historical financial information should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and related notes thereto that are incorporated by reference in this conversion offer prospectus to our Annual Report on Form 10-K, as amended, for the year ended December 31, 2004 and our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2005.

The unaudited pro forma financial information for the nine fiscal months ended and as of September 30, 2005 has been prepared to illustrate the estimated effect of the conversion on our unaudited financial information. The unaudited pro forma statement of operations data and balance sheet data set forth below give pro forma effect to the following transactions as if each had occurred as of January 1, 2005 and September 30, 2005, respectively:

the conversion of 2,069,907 shares of Series A preferred stock into 10,345,395 shares of common stock pursuant to the conversion offer; and

the payment of \$17.6 million, representing the cash conversion consideration to be paid to holders of Series A preferred stock and the estimated fees and expenses related to the conversion offer, funded from additional borrowings under our senior secured credit facility.

We have included the aggregate cash conversion consideration of \$16.6 million in our unaudited pro forma statement of operations data set forth below. The interest expense on the additional borrowings under our senior secured credit facility has been computed using our actual borrowing rate on that facility for the nine fiscal months ended September 30, 2005, and the income tax effect of such additional borrowings has been computed at our estimated effective tax rate. Furthermore, the historical payment of dividends on our Series A preferred stock for the nine fiscal months ended September 30, 2005 has been eliminated in the pro forma financial information.

The pro forma financial information below does not purport to be indicative of our results of operations or financial condition that would have actually been obtained had such transactions been completed as of the assumed date and for the period presented, or which may be obtained in the future. The pro forma adjustments described above are based upon available information and we have made certain assumptions that our management believes are reasonable. This pro forma financial information should be read together with our condensed consolidated financial statements and the notes thereto and the section of our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2005 entitled Management's Discussion and Analysis of Financial Condition and Results of Operations, each of which has been incorporated by reference into this conversion offer prospectus. See Where You Can Find More Information and Incorporation of Certain Documents by Reference.

In August 2000, we sold certain businesses acquired from BICC plc consisting primarily of the operations in the United Kingdom, Italy and Africa and a joint venture interest in Malaysia to Pirelli Cavi e Sistemi S.p.A. The financial data presented below contain those operations sold to Pirelli during 2000 up through the date of sale.

In September 2000, we acquired Telmag S.A. de C.V., a Mexico-based manufacturer of telecommunications cables. The financial data presented below include the results of operations of this business after the closing date.

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In March 2001, we sold our Pyrotenax business unit to Raychem HTS Canada, Inc. The results of operations of this business are included in the financial data presented below for the periods prior to the closing date.

In September 2001, we announced our decision to exit the consumer cordsets business. In October 2001, we sold substantially all of the manufacturing assets and inventory of our building wire business to Southwire Company. The results of operations of these businesses are included in the financial data presented below for the periods prior to the closing date. Beginning in the third quarter of 2001, we have reported the building wire and cordsets segment as discontinued operations for financial reporting purposes. Administrative expenses formerly allocated to this segment are now reported in the continuing operations segments. Prior periods have been restated to reflect this change.

	Year Ended December 31,					Nine Fiscal Months Ended		Pro Forma
	2000(1)	2001(1)	2002	2003	2004	October 1, 2004	September 30, 2005	Nine Fiscal Months Ended September 30, 2005
						(unaudited)	(unaudited)	(unaudited)
<b>Statement of Operations Data:</b>								
<b>(in millions)</b>								
Net sales:								
Energy	\$ 733.6	\$ 521.8	\$ 516.0	\$ 560.2	\$ 705.7	\$ 520.4	\$ 622.2	\$ 622.2
Industrial & specialty	796.7	537.6	499.4	542.4	734.3	561.6	650.7	650.7
Communications	631.8	592.0	438.5	435.8	530.7	403.4	490.4	490.4
Total net sales	2,162.1	1,651.4	1,453.9	1,538.4	1,970.7	1,485.4	1,763.3	1,763.3
Cost of sales	1,870.4	1,410.7	1,287.3	1,365.0	1,756.0	1,326.0	1,564.7	1,564.7
Gross profit	291.7	240.7	166.6	173.4	214.7	159.4	198.6	198.6
Selling, general and administrative expenses	257.6	136.4	150.9	127.7	158.2	115.9	129.1	129.1
Operating income	34.1	104.3	15.7	45.7	56.5	43.5	69.5	69.5
Other income (expense)		8.1		1.5	(1.2)	(0.9)		
Interest expense, net	(59.8)	(43.9)	(42.6)	(43.1)	(35.9)	(27.3)	(28.9)	(29.5)
Other financial costs	(3.3)	(10.4)	(1.1)	(6.0)				
Income (loss) before taxes	(29.0)	58.1	(28.0)	(1.9)	19.4	15.3	40.6	40.0
Income tax benefit (provision)	10.3	(20.6)	9.9	(2.9)	18.1	(4.6)	(15.6)	(15.4)

Income (loss) from continuing operations	(18.7)	37.5	(18.1)	(4.8)	37.5	10.7	25.0	24.6
Income (loss) from discontinued operations	(7.7)	(6.8)						
Income (loss) on disposal of discontinued operations		(32.7)	(5.9)		0.4			
Net income (loss)	\$ (26.4)	\$ (2.0)	\$ (24.0)	\$ (4.8)	\$ 37.9	\$ 10.7	\$ 25.0	\$ 24.6
Less: Series A preferred stock dividends				(0.6)	(6.0)	(4.5)	(4.5)	(16.6)
Net income (loss) applicable to common shareholders	\$ (26.4)	\$ (2.0)	\$ (24.0)	\$ (5.4)	\$ 31.9	\$ 6.2	\$ 20.5	\$ 8.0

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	Year Ended December 31,					Nine Fiscal Months Ended		Pro Forma
	2000(1)	2001(1)	2002	2003	2004	October 1, 2004	September 30, 2005	Nine Fiscal Months Ended September 30, 2005
						(unaudited)	(unaudited)	(unaudited)
<b>Per Share Data:</b>								
<b>(in millions, except per share data)</b>								
Earnings (loss) of continuing operations per common share	\$ (0.56)	\$ 1.14	\$ (0.55)	\$ (0.16)	\$ 0.81	\$ 0.16	\$ 0.52	\$ 0.16
Earnings (loss) of continuing operations per common share assuming dilution	\$ (0.56)	\$ 1.13	\$ (0.55)	\$ (0.16)	\$ 0.75	\$ 0.16	\$ 0.49	\$ 0.16
Earnings (loss) of discontinued operations per common share	\$ (0.23)	\$ (1.20)	\$ (0.18)	\$	\$ 0.01			
Earnings (loss) of discontinued operations per common share assuming dilution	\$ (0.23)	\$ (1.19)	\$ (0.18)	\$	\$ 0.01			
Earnings (loss) per common share	\$ (0.79)	\$ (0.06)	\$ (0.73)	\$ (0.16)	\$ 0.82	\$ 0.16	\$ 0.52	\$ 0.16
Earnings (loss) per common share assuming dilution	\$ (0.79)	\$ (0.06)	\$ (0.73)	\$ (0.16)	\$ 0.75	\$ 0.16	\$ 0.49	\$ 0.16
Weighted average shares outstanding	33.6	32.8	33.0	33.6	39.0	39.2	39.5	49.8
Weighted average shares outstanding assuming dilution	33.6	33.1	33.0	33.6	50.3	39.9	50.9	50.9
Dividends per common share	\$ 0.20	\$ 0.20	\$ 0.15	\$	\$	\$		
<b>Other Data:</b>								
<b>(in millions, except ratio and metals data)</b>								
Depreciation and amortization	\$ 56.0	\$ 35.0	\$ 30.6	\$ 33.4	\$ 35.4	\$ 27.3	\$ 43.6	\$ 43.6
Capital expenditures	\$ (56.0)	\$ (54.9)	\$ (31.4)	\$ (19.1)	\$ (37.0)	\$ (24.1)	\$ (25.7)	\$ (25.7)

Ratio of earnings to combined fixed charges and preferred dividends(2)		2.1x			1.2x	1.2x	1.8x	1.3x
Average daily COMEX price per pound of copper cathode	\$ 0.84	\$ 0.73	\$ 0.72	\$ 0.81	\$ 1.29	\$ 1.25	\$ 1.57	\$ 1.57
Average daily selling price per pound of aluminum rod	\$ 0.75	\$ 0.69	\$ 0.65	\$ 0.69	\$ 0.85	\$ 0.83	\$ 0.90	\$ 0.90

	December 31,					September 30, 2005	
	2000	2001	2002	2003	2004	Actual	Pro Forma
						(unaudited)	(unaudited)
<b>Balance Sheet Data:</b>							
<b>(in millions, except per share data)</b>							
Cash and cash equivalents	\$ 21.2	\$ 16.6	\$ 29.1	\$ 25.1	\$ 36.4	\$ 51.3	\$ 51.3
Working capital(3)	375.3	169.9	150.8	236.6	298.0	300.5	300.5
Property, plant and equipment, net	379.4	320.9	323.3	333.3	356.0	328.1	328.1
Total assets	1,319.2	1,005.3	973.3	1,049.5	1,220.8	1,266.9	1,266.9
Total debt(4)	642.6	460.4	451.9	340.4	374.9	352.3	369.9
Net debt(4)(5)	621.4	443.8	422.8	315.3	338.5	301.0	318.6
Shareholders' equity	128.5	104.9	60.9	240.1	301.4	305.1	287.5
Book value per share						7.69	5.74

- (1) As of January 1, 2001, we changed our accounting method for non-North American metal inventories from the FIFO method to the LIFO method. The impact of the change was an increase in operating income of \$4.1 million, or \$0.08 of earnings per share, on both a basic and a diluted basis during 2001. As of January 1, 2000, we changed our accounting method for our North American non-metal inventories from the FIFO method to the LIFO method. The impact of the change was an increase in



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operating income of \$6.4 million, or \$0.12 of earnings per share, on both a basic and diluted basis, during 2000.

- (2) For purposes of calculating the ratio of earnings to combined fixed charges and preferred dividends, earnings consist of income from continuing operations before income taxes and fixed charges. Fixed charges include: (i) interest expense, whether expensed or capitalized; (ii) amortization of debt issuance cost; (iii) the portion of rental expense representative of the interest factor; and (iv) the amount of pretax earnings required to cover preferred stock dividends and an accretion in the carrying value of the preferred stock. For the years ended December 31, 2000, 2002 and 2003, earnings were insufficient to cover fixed charges by \$28.9 million, \$27.6 million and \$2.1 million, respectively.
- (3) Working capital means current assets less current liabilities.
- (4) Excludes off-balance sheet borrowings of \$67.8 million at December 31, 2001, \$48.5 million at December 31, 2002 and \$1.0 million at September 30, 2005. There were no off-balance sheet borrowings as of December 31, 2000, 2003 and 2004.
- (5) Net debt means our total debt less cash and cash equivalents.

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**DESCRIPTION OF OUR SERIES A PREFERRED STOCK**

The following section is a summary of the material provisions of the certificate of designations and does not restate the certificate of designations in its entirety. We urge you to read the certificate of designations with respect to our Series A preferred stock because it, and not this description, defines the rights as holders of the Series A preferred stock. Copies of the certificate of designations are available as set forth under [Where You Can Find More Information](#).

As used in this description, references to we, us, our or General Cable mean General Cable Corporation and not include any current or future subsidiary of General Cable Corporation.

**General**

Our amended and restated certificate of incorporation authorizes the issuance of up to 25,000,000 shares of preferred stock without the approval of the holders of our common stock, in one or more series, from time to time, with each such series to have such designation, powers, preferences and rights as may be determined by our board of directors. The Series A preferred stock constitutes a series of these shares of preferred stock.

The Series A preferred stock constitutes a single series consisting of 2,070,000 shares, of which 2,069,907 shares are outstanding as of November 29, 2005. The holders of the Series A preferred stock have no preemptive rights. The shares of Series A preferred stock were validly issued, fully paid and nonassessable.

**Ranking**

The Series A preferred stock ranks, with respect to dividend rights and rights upon liquidation, winding-up or dissolution:

junior to all our existing and future liabilities, whether or not for borrowed money;

junior to senior stock, which is each class or series of our capital stock the terms of which expressly provide that such class or series will rank senior to the Series A preferred stock;

on a parity with parity stock, which is any other class or series of our capital stock that has terms which expressly provide that such class or series will rank on a parity with the Series A preferred stock;

senior to junior stock, which is our common stock, and each other class or series of our capital stock that has terms which do not expressly provide that such class or series will rank senior to or on a parity with the Series A preferred stock; and

effectively junior to all of our subsidiaries (i) existing and future liabilities and (ii) capital stock held by others.

Without the consent of the holders of at least two-thirds of the shares of Series A preferred stock outstanding, we will not be entitled to issue shares of or increase the authorized number of shares of any class or series of capital stock that ranks senior to the Series A preferred stock with respect to the payment of dividends and distributions upon liquidation, winding-up or dissolution, including, without limitation, any class or series of capital stock, other than parity stock or junior stock, that pays cumulative dividends.

Except as set forth in the preceding paragraph, we may, without the consent of the holders of the shares of Series A preferred stock, authorize, create (by way of reclassification or otherwise) or issue parity or junior stock or any obligation or security convertible or exchangeable into, or evidencing a right to purchase, shares of any class or series of parity or junior stock.

The terms junior stock, parity stock and senior stock include warrants, rights, calls or options exercisable for or convertible into that type of stock.

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**Dividends**

***General***

The holders of Series A preferred stock are entitled to receive dividends at the rate of 5.75% per annum on the liquidation preference per share of Series A preferred stock. The rights of the holders of Series A preferred stock to receive dividend payments is subject to the rights of any holders of senior stock and parity stock.

The dividend rate will increase under the circumstances described below under Unpaid Dividends and Registration Rights. All references to dividends or to a dividend rate shall be deemed to reflect such increase if such increase is applicable.

Holders of Series A preferred stock will not have any right to receive dividends that we may declare on our common stock. The right to receive dividends declared on our common stock will be realized only after conversion of such holder's shares of Series A preferred stock into shares of our common stock.

***Dividend Payment Dates***

Dividends are payable in arrears on February 24, May 24, August 24 and November 24 of each year. If any of those dates is not a business day, then dividends will be payable on the next succeeding business day. Dividends will accrue from the last dividend payment date. Dividends will be payable to holders of record as they appear in our stock records at the close of business on January 31, April 30, July 31 and October 31 of each year. Dividends payable on the Series A preferred stock for any period other than a full quarterly period will be computed on the basis of a 360-day year consisting of twelve 30-day months.

We are obligated to pay a dividend on the Series A preferred stock only when, as and if our board of directors or an authorized committee of our board of directors declares the dividend payable and we have assets that legally can be used to pay the dividend.

***Form of Payment***

Dividends are payable, at our option, in cash, in shares of our common stock or any combination thereof. In order to pay dividends in shares of our common stock, we must deliver to the transfer agent for the Series A preferred stock a number of shares of our common stock that, when sold by the transfer agent on the holders' behalf, will result in net cash proceeds to be distributed to the holders of the Series A preferred stock in an amount equal to the cash dividends otherwise payable. To pay dividends in this manner, we must provide the transfer agent with a registration statement permitting the immediate sale of the shares of common stock in the public market. We cannot assure you that we will be able to timely file, cause to be declared effective or keep effective any such registration statement. In addition, in order to pay dividends in shares of our common stock, we may need to obtain the approval of our stockholders under the rules of The New York Stock Exchange. We will use all commercially reasonable efforts to obtain such approval if we determine that such approval is necessary. We cannot assure you that we will be able to obtain such approval from our stockholders.

Our senior secured credit facility and the indenture governing our senior notes limit our ability to pay cash dividends on shares of the Series A preferred stock. See Risk Factors Risks Related to the Conversion Offer Our ability to pay dividends on our preferred stock and our common stock is limited. If we are unable to pay dividends in cash on a dividend payment date because such payment is not then permitted by our credit facilities, the indenture with respect to our senior notes or any other agreement, or such payment would be contrary to applicable law or our amended and restated certificate of incorporation or amended and restated by-laws, then we will use our reasonable best efforts to file and cause to be declared effective the registration statement required to permit us to pay dividends in shares of our common stock.

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If we pay dividends in shares of our common stock by delivering them to the transfer agent, those shares will be owned beneficially by the holders of the Series A preferred stock upon delivery to the transfer agent, and the transfer agent will hold those shares and the net cash proceeds from the sale of those shares for the exclusive benefit of the holders.

***Dividends Cumulative***

Dividends on the Series A preferred stock will be cumulative. This means that if our board of directors or an authorized committee of our board of directors fails to declare a dividend to be payable on a dividend payment date, the dividend will accumulate on that dividend payment date until declared and paid or will be forfeited upon conversion (except under the circumstances described under **Conversion Rights General**).

***Unpaid Dividends***

If we do not pay dividends in full on the Series A preferred stock on more than six dividend payment dates, whether or not consecutive, the per annum dividend rate will be deemed to have increased by 2% on the date following the sixth such dividend payment date. Once all accrued and unpaid or accumulated dividends have been paid in full, the dividend rate will return to the rate in effect before such increase. If, following any such payment in full, we again do not pay dividends in full on any dividend payment date, the per annum dividend rate will be deemed to have increased by 2% on the date following the last dividend payment date through which all accrued and unpaid or accumulated dividends have been paid in full and will return to the rate in effect before such increase only after all accrued and unpaid or accumulated dividends through the latest dividend payment date have been paid in full.

Except as set forth in the preceding paragraph, we are not obligated to pay holders of the Series A preferred stock any interest or sum of money in lieu of interest on any dividend not paid on a dividend payment date or any other late payment. We are also not obligated to pay holders of the Series A preferred stock any dividend in excess of the full dividends on the Series A preferred stock that are payable as described above.

If our board of directors or an authorized committee of our board of directors does not declare a dividend for any dividend payment date, the board of directors or an authorized committee of our board of directors may declare and pay the dividend on any subsequent date, whether or not a dividend payment date. The persons entitled to receive the dividend in such case will be holders of the Series A preferred stock as they appear on our stock register on a date selected by the board of directors or an authorized committee of our board of directors. That date must not (a) precede the date our board of directors or an authorized committee of our board of directors declares the dividend payable and (b) be more than 60 days prior to that dividend payment date.

***Payment Restrictions***

If we do not pay a dividend on a dividend payment date, then, until all accumulated dividends have been declared and paid or declared and set apart for payment:

we may not take any of the following actions with respect to any of our junior stock:

declare or pay any dividend or make any distribution of assets on any junior stock, except that we may pay dividends in shares of our junior stock and pay cash in lieu of fractional shares in connection with any such dividend; or

redeem, purchase or otherwise acquire any junior stock, except that (i) we may redeem, repurchase or otherwise acquire junior stock upon conversion or exchange of such junior stock for other junior stock and pay cash in lieu of fractional shares in connection with any such conversion or exchange and (ii) we may make repurchases of our capital stock deemed to occur upon the exercise of stock options if such capital stock represents a portion of the exercise price thereof and repurchases of capital stock

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deemed to occur upon the withholding of a portion of the capital stock issued, granted or awarded to one of our directors, officers or employees to pay for the taxes payable by such director, officer or employee upon such issuance, grant or award in order to satisfy, in whole or in part, withholding tax requirements in connection with the exercise of such options, in accordance with the provisions of an option or rights plan or program of ours, in each case as in effect on the date the Series A preferred stock is first issued, or any other plan substantially similar thereto; and we may not take any of the following actions with respect to any of our parity stock: declare or pay any dividend or make any distribution of assets on any parity stock, except that we may pay dividends on parity stock provided that the total funds available to be paid be divided among the Series A preferred stock and such parity stock on a pro rata basis in proportion to the aggregate amount of dividends accrued and unpaid or accumulated thereon; or

we may not redeem, purchase or otherwise acquire any of our parity stock, except that we may redeem, purchase or otherwise acquire parity stock upon conversion or exchange of such parity stock for our junior stock or other parity stock and pay cash in lieu of fractional shares in connection with any such conversion or exchange, so long as, in the case of such other parity stock, (i) such other parity stock contains terms and conditions (including, without limitation, with respect to the payment of dividends, dividend rates, liquidation preferences, voting and representation rights, payment restrictions, antidilution rights, change of control rights, covenants, remedies and conversion and redemption rights) that are not materially less favorable, taken as a whole, to us or to the holders of our Series A preferred stock than those contained in the parity stock that is converted into or exchanged for such other parity stock, (ii) the aggregate amount of the liquidation preference of such other parity stock does not exceed the aggregate amount of the liquidation preference, plus accrued and unpaid or accumulated dividends, of the parity stock that is converted into or exchanged for such other parity stock and (iii) the aggregate number of shares of our common stock issuable upon conversion, redemption or exchange of such other parity stock does not exceed the aggregate number of shares of our common stock issuable upon conversion, redemption or exchange of the parity stock that is converted into or exchanged for such other parity stock.

**Optional Redemption**

We may not redeem any shares of Series A preferred stock at any time before November 24, 2008. At any time or from time to time thereafter, we will have the option to redeem all or any outstanding shares of Series A preferred stock, out of funds legally available for such payment, upon not less than 30 nor more than 60 days prior notice, in cash at the redemption prices specified below, plus an amount in cash equal to all accrued and unpaid or accumulated dividends from, and including, the immediately preceding dividend payment date to, but excluding, the redemption date, during the 12-month period commencing on November 24 of each of the years set forth below:

2008	\$	51.4375
2009	\$	51.1500
2010	\$	50.8625
2011	\$	50.5750
2012, until the day prior to mandatory redemption	\$	50.2875

In the event of a partial redemption of the Series A preferred stock, the shares to be redeemed will be selected on a pro rata basis, except that we may redeem all shares of Series A preferred stock held

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by any holder of fewer than 10 shares (or all shares of Series A preferred stock owned by any holder who would hold fewer than 10 shares as a result of such redemption), as determined by us.

Our senior secured credit facility prohibits us from redeeming the Series A preferred stock at our option so long as that facility is outstanding. The indenture for our senior notes limits our ability to redeem the Series A preferred stock, and future debt agreements may also contain restrictions or prohibitions.

**Mandatory Redemption**

We will be obligated to redeem all outstanding shares of Series A preferred stock on November 24, 2013, out of funds legally available for such payment, at a redemption price equal to the liquidation preference thereof, plus all accrued and unpaid or accumulated dividends.

***Form of Payment of Mandatory Redemption Price***

We may, at our option, elect to pay the redemption price in cash or in shares of our common stock at a discount of 5% from the market price of our common stock (*i.e.*, valued at 95% of the market price of our common stock), or any combination thereof. We may pay such redemption price, whether in cash or in shares of our common stock, only if we have funds legally available for such payment and may pay such redemption price in shares of our common stock only if such shares are eligible for immediate sale in the public market either (i) by non-affiliates of ours absent a registration statement or (ii) pursuant to a registration statement that has become effective.

We will be required to give notice to all holders and beneficial owners as required by applicable law, on a date not less than 10 business days prior to the redemption date stating among other things:

whether we will pay the redemption price of the Series A preferred stock in cash or shares of our common stock or any combination thereof and specifying the percentages of each;

if we elect to pay in shares of our common stock, the method of calculating the market price of such common stock, as described under *General Provisions Concerning Mandatory Redemption with Shares of Common Stock* below; and

the procedures that must be followed in connection with the redemption.

***General Provisions Concerning Mandatory Redemption with Shares of Common Stock***

We will notify the holders of the Series A preferred stock upon the determination of the actual number of shares of our common stock deliverable upon any redemption of the Series A preferred stock no later than two business days prior to the redemption date.

Our right to redeem Series A preferred stock with shares of common stock is subject to our satisfying various conditions, including:

the listing of such shares of common stock on the principal U.S. securities exchange on which our common stock is then listed or, if not so listed, on The NASDAQ National Market;

the registration of the common stock under the Securities Act and the Exchange Act, if required; and

any necessary qualification or registration under applicable state securities law or the availability of an exemption from such qualification and registration.

If such conditions are not satisfied with respect to a holder prior to the close of business on any redemption date, we will be required to pay the redemption price of such holder's shares of Series A preferred stock entirely in cash. We may not change the form or components or percentages of components of consideration to be paid for the shares of Series A preferred stock once we have given any

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notice that we are required to give to holders of the Series A preferred stock, except as described in the first sentence of this paragraph.

The market price of our common stock means the average of the sale prices of our common stock for the five trading day period ending on the third business day prior to the redemption date (if the third business day prior to the redemption date is a trading day or, if not, then on the last trading day prior to the third business day), appropriately adjusted to take into account the occurrence, during the period commencing on the first of the trading days during the five trading day period and ending on the redemption date, of any event that would result in an adjustment to the conversion price of the Series A preferred stock, as described below under Conversion Rights Adjustments to the Conversion Price.

The sale price of our common stock on any trading day means the closing sale price per share (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 asked prices) on that trading day as reported in composite transactions for the principal U.S. securities exchange on which our common stock is traded or, if our common stock is not listed on a U.S. national or regional securities exchange, as reported by The NASDAQ National Market.

A trading day means each day on which the securities exchange or quotation system that is used to determine the sale price is open for trading or quotation.

Because the market price of our common stock is determined prior to the redemption date, holders of the Series A preferred stock bear the market risk with respect to the value of our common stock to be received from the date the market price is determined to the redemption date. We may pay the redemption price or any portion of the redemption price in shares of our common stock only if the information necessary to calculate the market price is publicly available.

***General Provisions Concerning the Redemption of Series A Preferred Stock***

Payment of the redemption price for shares of Series A preferred stock is conditioned upon book-entry transfer of the Series A preferred stock or physical delivery of certificates representing the Series A preferred stock, together with necessary endorsements, to the transfer agent at any time after delivery of the redemption notice. Payment of the redemption price for the Series A preferred stock will be made promptly following the later of the redemption date and the time of book-entry transfer of or physical delivery of the Series A preferred stock.

If DTC and the transfer agent hold money or securities sufficient to pay the redemption price of Series A preferred stock on the redemption date for shares delivered for redemption in accordance with the terms of the certificate of designations, then the dividends will cease to accrue. At such time, all rights as a holder of shares of Series A preferred stock shall terminate, other than the right to receive the redemption price upon delivery of certificates representing the Series A preferred stock.

**Liquidation Preference**

Upon our voluntary or involuntary liquidation, dissolution or winding-up, each holder of shares of Series A preferred stock will be entitled to payment, out of our assets legally available for distribution, of an amount equal to the liquidation preference per share of Series A preferred stock held by that holder, plus an amount equal to all accrued and unpaid and accumulated dividends on those shares to but excluding the date of liquidation, dissolution or winding-up, before any distribution is made on any junior stock, including our common stock. After payment in full of the liquidation preference and the amount equal to all accrued and unpaid and accumulated dividends to which holders of shares of Series A preferred stock are entitled, the holders will not be entitled to any further participation in any distribution of our assets. If, upon our voluntary or involuntary liquidation, dissolution or winding-up, the amounts payable with respect to shares of Series A preferred stock and all other parity stock are not paid in full, the holders of shares of Series A preferred stock and the holders of the parity stock will share equally and

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ratably in any distribution of our assets in proportion to the full liquidation preference and the amount equal to all accrued and unpaid and accumulated dividends to which each such holder is entitled.

Neither the voluntary sale, conveyance, exchange or transfer, for cash, shares of stock, securities or other consideration, of all or substantially all of our property or assets nor our consolidation, merger or amalgamation with or into any other entity or the consolidation, merger or amalgamation of any other entity with or into us will be deemed to be our voluntary or involuntary liquidation, dissolution or winding-up.

**Conversion Rights**

***General***

Each share of Series A preferred stock is convertible at any time at the option of the holder, unless previously redeemed or repurchased, into fully paid and nonassessable shares of our common stock at a current conversion price of \$10.004 per share, adjusted as provided under Adjustments to the Conversion Price. The number of shares of common stock deliverable upon conversion of a share of Series A preferred stock, commonly referred to as the conversion rate, is currently 4.998, which represents the liquidation preference divided by the current conversion price. The conversion rate will be adjusted as a result of any adjustment to the conversion price.

A holder of shares of Series A preferred stock may convert any or all of those shares by surrendering to us at our principal office or at the office of the transfer agent, as may be designated by our board of directors, the certificate or certificates for those shares of Series A preferred stock accompanied by a written notice stating that the holder elects to convert all or a specified whole number of those shares in accordance with the provisions of the certificate of designations and specifying the name or names in which the holder wishes the certificate or certificates for shares of common stock to be issued. In case the notice specifies a name or names other than that of the holder, the notice must be accompanied by payment of all transfer taxes payable upon the issuance of shares of common stock in that name or names. Other than those taxes, we will pay any documentary, stamp or similar issue or transfer taxes that may be payable in respect of any issuance or delivery of shares of common stock upon conversion of shares of the Series A preferred stock. As promptly as practicable after the surrender of that certificate or certificates and the receipt of the notice relating to the conversion and payment of all required transfer taxes, if any, or the demonstration to our satisfaction that those taxes have been paid, we will deliver or cause to be delivered (a) certificates representing the number of validly issued, fully paid and nonassessable full shares of our common stock to which the holder, or the holder's transferee, of shares of Series A preferred stock being converted will be entitled and (b) if less than the full number of shares of Series A preferred stock evidenced by the surrendered certificate or certificates is being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by the surrendered certificate or certificates less the number of shares being converted. This conversion will be deemed to have been made at the close of business on the date of giving the notice and of surrendering the certificate or certificates representing the shares of Series A preferred stock to be converted so that the rights of the holder thereof as to the shares being converted will cease except for the right to receive shares of common stock and accrued and unpaid dividends with respect to the shares of Series A preferred stock being converted, and the person entitled to receive the shares of common stock will be treated for all purposes as having become the record holder of those shares of common stock at that time.

If a holder of shares of Series A preferred stock exercises conversion rights (other than in connection with this conversion offer), upon delivery of the shares for conversion, those shares will cease to accrue dividends as of the end of the day immediately preceding the date of conversion. Except as set forth in the last sentence of this paragraph, holders of shares of Series A preferred stock who convert their shares into common stock (other than in connection with this conversion offer) will not be entitled to, nor will the conversion price or conversion rate be adjusted for, any accrued and unpaid or accumulated dividends. As a result of the foregoing, shares of Series A preferred stock surrendered for conversion during the period between the close of business on any dividend record date and the opening of business



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on the corresponding dividend payment date (other than in connection with this conversion offer) must be accompanied by payment of an amount equal to the dividend declared and payable on such shares on such dividend payment date. Notwithstanding the foregoing, a holder of shares of Series A preferred stock whose shares are converted after we have given a notice of redemption will continue to be entitled to receive all accrued and unpaid and accumulated dividends, and those dividends will be payable by us as and when, those dividends are paid to any holders or, if none, on the date which would have been the next succeeding dividend payment date had there been any holders or at a later time when we believe we have adequate available capital under applicable law to make such a payment.

Notwithstanding the foregoing, any holder of shares of Series A preferred stock who validly surrendered such shares for conversion in the conversion offer (where such shares were held by such holder as of October 31, 2005) will retain the right to receive a cash payment of the dividend on the shares of Series A preferred stock we declared and will pay with respect to the November 24, 2005 dividend payment date.

In case any shares of Series A preferred stock are to be redeemed, the right to convert those shares of Series A preferred stock will terminate at the close of business on the business day immediately preceding the date fixed for redemption unless we default in the payment of the redemption price of those shares.

We will at all times reserve and keep available, free from preemptive rights, for issuance upon the conversion of shares of Series A preferred stock a number of our authorized but unissued shares of common stock that will from time to time be sufficient to permit the conversion of all outstanding shares of Series A preferred stock. Before the delivery of any securities that we will be obligated to deliver upon conversion of the Series A preferred stock, we will comply with all applicable federal and state laws and regulations which require action to be taken by us. All shares of common stock delivered upon conversion of the Series A preferred stock will upon delivery be duly and validly issued and fully paid and nonassessable, free of all liens and charges and not subject to any preemptive rights.

***Conversion at Our Option***

If fewer than 103,500 shares of Series A preferred stock remain outstanding, we may, at any time on or after November 24, 2008, at our option, cause all, but not less than all, of such Series A preferred stock to be automatically converted into that number of shares of common stock equal to the liquidation preference thereof plus all accrued and unpaid or accumulated dividends divided by the lesser of (i) the conversion price and (ii) the market price of our common stock. We will notify each of the holders of the Series A preferred stock by mail of such a conversion pursuant to this paragraph. Such notice shall specify the date of such conversion pursuant to this paragraph, which will not be less than 30 days nor more than 60 days after the date of such notice.

***Adjustments to the Conversion Price***

The conversion price is subject to adjustment from time to time as follows:

- (1) *Stock splits and combinations.* In case we, at any time or from time to time after the issuance date of the shares of Series A preferred stock:

subdivide or split the outstanding shares of our common stock;

combine or reclassify the outstanding shares of our common stock into a smaller number of shares; or

issue by reclassification of the shares of our common stock any shares of our capital stock, then, and in each such case, the conversion price in effect immediately prior to that event or the record date therefor, whichever is earlier, will be adjusted so that the holder of any shares of Series A preferred stock thereafter surrendered for conversion will be entitled to receive

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the number of shares of our common stock or of our other securities which the holder would have owned or have been entitled to receive after the occurrence of any of the events described above had those shares of Series A preferred stock been surrendered for conversion immediately before the occurrence of that event or the record date therefor, whichever is earlier.

- (2) *Stock dividends in common stock.* In case we, at any time or from time to time after the issuance date of the Series A preferred stock, pay a dividend or make a distribution in shares of our common stock to all of the holders of our common stock, other than dividends or distributions of shares of common stock or other securities with respect to which adjustments are provided in paragraph (1) above, the conversion price will be adjusted by multiplying:

the conversion price immediately prior to the record date fixed for the determination of stockholders entitled to receive the dividend or distribution by

a fraction, the numerator of which will be the number of shares of common stock outstanding at the close of business on that record date and the denominator of which will be the sum of that number of shares and the total number of shares issued in that dividend or distribution.

- (3) *Issuance of rights or warrants.* In case we issue to all holders of our common stock rights or warrants entitling those holders to subscribe for or purchase our common stock at a price per share less than the current market price, the conversion price in effect immediately before the close of business on the record date fixed for determination of stockholders entitled to receive those rights or warrants will be decreased by multiplying:

the conversion price by

a fraction, the numerator of which is the sum of the number of shares of our common stock outstanding at the close of business on that record date and the number of shares of common stock that the aggregate offering price of the total number of shares of our common stock offered for subscription or purchase would purchase at the current market price and the denominator of which is the sum of the number of shares of common stock outstanding at the close of business on that record date and the number of additional shares of our common stock so offered for subscription or purchase.

For purposes of this paragraph (3), the issuance of rights or warrants to subscribe for or purchase securities convertible into shares of our common stock will be deemed to be the issuance of rights or warrants to purchase shares of our common stock issuable upon conversion of those securities at an aggregate offering price equal to the sum of the aggregate offering price of those securities and the minimum aggregate amount, if any, payable upon exercise or conversion of those securities into shares of our common stock. This adjustment will be made successively whenever any such event occurs. The conversion rate will be adjusted back to the extent the rights are not subscribed for or purchased prior to their expiration or warrants are not exercised prior to their expiration. For purposes of this paragraph, the current market price of our common stock means the average of the closing sale prices of our common stock for the five consecutive trading days selected by our board of directors beginning not more than 10 trading days before, and ending not later than the date immediately preceding, the record date for the relevant event.

- (4) *Distribution of indebtedness, securities or assets.* In case we distribute to all holders of our common stock, whether by dividend or in a merger, amalgamation or consolidation or otherwise, evidences of indebtedness, shares of capital stock of any class or series, other securities, cash or assets (other than common stock, rights or warrants referred to in paragraph (3) above, a dividend or distribution payable exclusively in cash, shares of capital stock or similar equity interests in the case of a spin-off, as described in the next succeeding



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paragraph, and other than as a result of a fundamental change described in paragraph below), the conversion price in effect immediately before the close of business on the record date fixed for determination of stockholders entitled to receive that distribution will be decreased by multiplying:

the conversion price by

a fraction, the numerator of which is the current market price of our common stock and the denominator of which is the current market price of our common stock plus the fair market value, as determined by our board of directors, whose determination in good faith will be, conclusive, of the portion of those evidences of indebtedness, shares of capital stock, other securities, cash and assets so distributed applicable to one share of common stock.

This adjustment will be made successively whenever any such event occurs. For purposes of this paragraph, current market price of our common stock means the average of the closing sale prices of our common stock for the first 10 trading days from, and including, the first day that the common stock trades after such distribution has occurred.

In respect of a dividend or other distribution of shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit, which we refer to as a spin-off, the conversion price in effect immediately before the close of business on the record date fixed for determination of stockholders entitled to receive that distribution will be decreased by multiplying:

the conversion price by

a fraction, the numerator of which is the current market price of our common stock and the denominator of which is the current market price of our common stock plus the fair market value, determined as described below, of the portion of those shares of capital stock or similar equity interests so distributed applicable to one share of common stock.

The adjustment to the conversion price under the preceding paragraph will occur at the earlier of: the 10th trading day from, and including, the completion date of the spin-off and

the date of the completion of the initial public offering of the securities being distributed in the spin-off, if that initial public offering is effected simultaneously with the spin-off.

For purposes of this section, initial public offering means the first time securities of the same class or type as the securities being distributed in the spin-off are bona fide offered to the public for cash. In the event of a spin-off that is not effected simultaneously with an initial public offering of the securities being distributed in the spin-off, the fair market value of the securities to be distributed to holders of our common stock means the average of the closing sale prices of those securities over the first 10 trading days after the completion date of the spin-off. Also, for purposes of a spin-off, the current market price of our common stock means the average of the closing sale prices of our common stock over the first 10 trading days after the completion date of the spin-off.

If, however, an initial public offering of the securities being distributed in the spin-off is to be effected simultaneously with the spin-off, the fair market value of the securities being distributed in the spin-off means the initial public offering price, while the current market price of our common stock means the closing sale price of our common stock on the trading day on which the initial public offering price of the securities being distributed in the spin-off is determined.

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- (5) *Fundamental changes.* For purposes of this paragraph (5), the term fundamental change means any transaction or event, including any merger, consolidation, sale of assets, tender or exchange offer, reclassification, compulsory share exchange or liquidation, in which all or substantially all outstanding shares of our common stock are converted into or exchanged for stock, other securities, cash or assets. If a fundamental change occurs, the holder of each share of the Series A preferred stock outstanding immediately before that fundamental change occurred that remains outstanding after the fundamental change will have the right upon any subsequent conversion to receive, out of funds legally available, to the extent required by applicable law, the kind and amount of stock, other securities, cash and assets that the holder would have received if that share had been converted immediately prior to the fundamental change.
- (6) *Self-tender.* In case we or any of our subsidiaries engages in a tender or exchange offer for all or any portion of our common stock that will expire, and such tender or exchange offer, as amended upon the expiration thereof, will require the payment to stockholders of consideration per share of our common stock having a fair market value, as determined by the board of directors, whose determination in good faith will be conclusive, that, as of the last time tenders or exchanges may be made pursuant to such tender or exchange offer, as such time may be amended (for purposes of this paragraph (6) only, the expiration time ), exceeds the closing sale price per share of common stock as of the trading day next succeeding the expiration time, the conversion price shall be decreased so that it will equal the price determined by multiplying the conversion price in effect immediately prior to the expiration time by a fraction, the numerator of which will be the number of shares of common stock outstanding, including any tendered or exchanged shares, at the expiration time multiplied by the closing sale price per share of our common stock as of the trading day next succeeding the expiration time and the denominator of which will be the sum of:
- the fair market value, determined as described above, of the aggregate consideration payable to stockholders based on the acceptance, up to any maximum specified in the terms of the tender or exchange offer, of all shares of common stock validly tendered or exchanged and not withdrawn as of the expiration time, the shares of common stock deemed so accepted, up to any such maximum, being referred to as the purchased shares; and
  - the product of the number of shares of common stock outstanding, less any purchased shares, at the expiration time and the closing sale price per share of common stock as of the trading day next succeeding the expiration time;
- such decrease to become effective as of the opening of business on the trading day next succeeding the expiration time. In the event that we are obligated to purchase shares of common stock pursuant to any such tender or exchange offer, but we are permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the conversion price will again be adjusted to be the conversion price that would then be in effect if such tender or exchange offer had not been made.
- (7) *Cash dividend or distribution.* In case we pay a dividend or make a distribution in cash on our common stock, the conversion price in effect immediately before the close of business on the day that the common stock trades ex-distribution will be adjusted upon conversion by multiplying:
- the conversion price by
  - a fraction, the numerator of which will be the current market price of our common stock and the denominator of which is the current market price of our common stock plus the amount per share of such dividend or distribution.

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For the purpose of this paragraph, the current market price of our common stock means the average of the closing sale prices of our common stock for the period of five consecutive trading days after the common stock trades ex-distribution.

Notwithstanding the foregoing, we will not be required to give effect to any adjustment in the conversion price unless and until the net effect of one or more adjustments, each of which will be carried forward until counted toward adjustment, will have resulted in a change of the conversion price by at least 1%, and when the cumulative net effect of more than one adjustment so determined will be to change the conversion price by at least 1%, that change in the conversion price will be given effect.

In the event that, at any time as a result of the provisions of this section, the holders of shares of the Series A preferred stock upon subsequent conversion become entitled to receive any shares of our capital stock other than common stock, the number of those other shares so receivable upon conversion of shares of the Series A preferred stock will thereafter be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions contained in this section.

There will be no adjustment to the conversion price in the case of the issuance of any shares of our stock in a merger, reorganization, acquisition, reclassification, recapitalization or other similar transaction except as provided in this section.

We may, from time to time, reduce the conversion price by any amount for any period of time if the period is at least 20 days or any longer period required by law and if the reduction is irrevocable during the period, but the conversion price may not be less than the par value of our common stock. In any case in which this section requires that an adjustment as a result of any event become effective from and after a record date, we may elect to defer until after the occurrence of that event (a) issuing to the holder of any shares of the Series A preferred stock converted after that record date and before the occurrence of that event the additional shares of common stock issuable upon that conversion over and above the shares issuable on the basis of the conversion price in effect immediately before adjustment and (b) paying to that holder any amount in cash in lieu of a fractional share of common stock.

We will be required, as soon as practicable following the occurrence of an event that requires or permits an adjustment in the conversion price, to provide written notice to the holders of shares of Series A preferred stock of the occurrence of that event. We will also be required to deliver a statement setting forth in reasonable detail the method by which the adjustment to the conversion price was determined and setting forth the revised conversion price.

No fractional shares of common stock will be issued upon conversion of the Series A preferred stock. In lieu of any fractional share otherwise issuable in respect of the aggregate number of Series A preferred stock of any holder which are converted upon conversion at our option or any conversion at the option of holders, that holder will be entitled to receive an amount in cash equal to the same fraction of the closing price of shares of our common stock determined as of the second trading day immediately preceding the effective date of conversion.

Our board of directors will have the power to resolve any ambiguity or, subject to applicable law, correct any error in this section, and its action in so doing will be final and conclusive.

**Voting Rights**

Holders of the Series A preferred stock are not entitled to any voting rights except as required by law and as set forth below.

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So long as any shares of Series A preferred stock remain outstanding, we shall not, without the consent of the holders of at least two-thirds of the shares of Series A preferred stock outstanding at the time:

issue shares of or increase the authorized number of shares of any senior stock; or

amend our amended and restated certificate of incorporation or the resolutions contained in the certificate of designations, whether by merger, consolidation or otherwise, if the amendment would alter or change any power, preference or special right of the outstanding Series A preferred stock in any manner materially adverse to the interests of the holders thereof.

Notwithstanding the foregoing, any increase in the authorized number of shares of common stock or Series A preferred stock or the authorization and issuance of junior stock or other parity stock, including those with voting or redemption rights that are different than the voting or redemption rights of the Series A preferred stock, shall not be deemed to be an amendment that alters or changes such powers, preferences or special rights in any manner materially adverse to the interests of the holders of the Series A preferred stock.

Any increase, decrease or change in the par value of any class or series of capital stock, including the Series A preferred stock, will not be deemed to be an amendment that alters or changes the powers, preferences and special rights of the shares of Series A preferred stock in any manner materially adverse to the interests of the holders of the Series A preferred stock.

If and whenever six full quarterly dividends, whether or not consecutive, payable on the Series A preferred stock are not paid, the number of directors constituting our board of directors will be increased by two and the holders of the Series A preferred stock, voting together as a single class, will be entitled to elect those additional directors. In the event of such a non-payment, any holder of the Series A preferred stock may request that we call a special meeting of the holders of Series A preferred stock for the purpose of electing the additional directors and we must call such a meeting within 20 days of any request. If we fail to call such a meeting upon request, then any holder of Series A preferred stock can call such a meeting. If all accumulated dividends on the Series A preferred stock have been paid in full and dividends for the current quarterly dividend period have been paid, the holders of our Series A preferred stock will no longer have the right to vote on directors and the term of office of each director so elected will terminate and the number of our directors will, without further action, be reduced by two.

In any case where the holders of our Series A preferred stock are entitled to vote, each holder of our Series A preferred stock will be entitled to one vote for each share of Series A preferred stock.

**Change of Control Put**

For purposes of this section, change of control of our company means the occurrence of any of the following:

(1) any person or group (as such terms are used, in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person shall be deemed to have beneficial ownership of all shares that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of voting stock representing 50% or more of the total voting power of all of our outstanding voting stock; or

(2) we consolidate with, or merge with or into, another person (other than a wholly owned subsidiary) or we and/or one or more of our subsidiaries sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of our assets (determined on a consolidated basis) to any person (other than to ourselves or a wholly owned subsidiary), other than any such transaction where immediately after such transaction the person or persons that beneficially owned (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) immediately prior to such

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transaction, directly or indirectly, voting stock representing a majority of the total voting power of all our outstanding voting stock beneficially own or owns (as so determined), directly or indirectly, voting stock representing a majority of the total voting power of the outstanding voting stock of the surviving or transferee person; or

(3) during any consecutive two year period, the Continuing Directors (as hereinafter defined) cease for any reason to constitute a majority of our board of directors; or

(4) we or our stockholders adopt a plan of liquidation or dissolution.

Continuing Directors means, as of any date of determination, any member of our board of directors who was (1) a member of such board of directors on the date of original issuance of the Series A preferred stock or (2) nominated for election or elected to such board of directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election.

If we undergo a change of control, each holder of shares of Series A preferred stock that remain outstanding after the change of control will have the right to require us to purchase, out of legally available funds, any outstanding shares of the holder's Series A preferred stock at a purchase price per share equal to 100% of the liquidation preference of those shares, plus all accrued and unpaid and accumulated dividends, if any, to the date of purchase. This right of holders will be subject to our obligation to repay or repurchase any indebtedness or Series A preferred stock required in connection with a change of control and to any contractual restrictions then contained in our indebtedness. Our secured credit facilities prohibit us from paying, and the indenture governing our senior notes restricts our ability to pay, the purchase price of the Series A preferred stock in cash. When we have satisfied these obligations, we will so purchase all shares tendered upon a change of control.

The purchase price is payable, at our option, in cash or in shares of our common stock at a discount of 5% from the market price of our common stock (*i.e.*, valued at 95% of the market price of our common stock), or any combination thereof. If we pay for shares of the Series A preferred stock in common stock, no fractional shares of common stock will be issued; instead, we will round the applicable number of shares up to the nearest whole number of shares. We may pay such purchase price, whether in cash or in shares of our common stock, only if we have funds legally available for such payment and may pay such purchase price in shares of our common stock only if such shares are eligible for immediate sale in the public market either (i) by non-affiliates of ours absent a registration statement or (ii) pursuant to a registration statement that has become effective.

The market price of our common stock means the average of the sale prices of our common stock for the five trading day period ending on the third business day prior to the redemption date (if the third business day prior to the redemption date is a trading day or, if not, then on the last trading day prior to the third business day), appropriately adjusted to take into account the occurrence, during the period commencing on the first of the trading days during the five trading day period and ending on the redemption date, of any event that would result in an adjustment to the conversion price of the Series A preferred stock, as described under Conversion Price Adjustments to the Conversion Price.

Holders of the Series A preferred stock will not have the foregoing put right if:

the sale price per share of our common stock for any five trading days within the period of 10 consecutive trading days ending immediately after the later of the change of control or the public announcement thereof (in the case of a change of control under paragraph (1) above) or the period of 10 consecutive trading days ending immediately before the change of control (in the case of a change of control under paragraph (2), (3) or (4) above) shall equal or exceed 105% of the conversion price of the Series A preferred stock immediately after the later of the change of control and the public announcement thereof, or

100% of the consideration in the change of control transaction consists of shares of capital stock traded on a U.S. national securities exchange or quoted on The NASDAQ National





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Market, and as a result of the transaction, the Series A preferred stock becomes convertible solely into this capital stock.

For purposes of the above paragraphs:

the term capital stock of any person means any and all shares, interests, participations or other equivalents however designated of corporate stock or other equity participations, including partnership interests, whether general or limited, of such person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such person; and

the term voting stock of any person means capital stock of such person which ordinarily has voting power for the election of directors, or persons performing similar functions, of such person, whether at all times or only for so long as no senior class of securities has such voting power by reason of any contingency.

Within 30 days following any change of control, we will mail a notice by first class mail to each holder's registered address describing the transaction or transactions that constitute the change of control and offering to purchase that holder's Series A preferred stock on the date specified in that notice, which date will be no earlier than 30 days and no later than 60 days from the date the notice is mailed. Such notice will, among other things, state:

whether we will pay the purchase price of the Series A preferred stock in cash or shares;

if we elect to pay any portion of the purchase price in common stock, the amount of such portion and the method of calculating the number of shares of common stock; and

the instructions determined by us, consistent with this section, that a holder must follow in order to have its Series A preferred stock purchased.

Because the valuation of our common stock is determined prior to the purchase date, holders bear the market risk with respect to the value of the common stock to be received from the date such market price is determined to the purchase date. Upon determination of the actual number of shares of common stock to be issued for each share of Series A preferred stock in accordance with the foregoing provisions, we will promptly provide the holders of the Series A preferred stock with this information and will issue a press release and publish such information on our website.

We intend to comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent those laws and regulations are applicable, in connection with the purchase of Series A preferred stock as a result of a change of control. To the extent that the provisions of any securities laws or regulations conflict with any of the provisions of this section, we will comply with the applicable securities laws and regulations and will be deemed not to have breached our obligations under this section.

On the date scheduled for payment of the shares of Series A preferred stock, we will, to the extent lawful: purchase all shares of Series A preferred stock properly tendered;

deposit with (i) DTC, with respect to shares held by DTC or the agent, or (ii) the transfer agent, with respect to shares held in certificated form, as applicable, an amount equal to the purchase price of the shares of Series A preferred stock so tendered; and

deliver or cause to be delivered to DTC or the transfer agent shares of Series A preferred stock so accepted together with an officer's certificate stating the aggregate liquidation preference of the shares of Series A preferred stock being purchased by us.

DTC or the transfer agent, as applicable, will promptly mail or deliver to each holder of shares of Series A preferred stock so tendered the applicable payment for those shares of Series A preferred stock, and the transfer agent will promptly countersign and mail or deliver, or cause to be transferred by book-



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entry, to each holder new shares of Series A preferred stock equal in liquidation preference to any unpurchased portion of the shares of Series A preferred stock surrendered, if any. We will publicly announce the results of our offer on or as soon as practicable after the purchase date for the purchase of shares of Series A preferred stock in connection with a change of control of our company.

We will not be required to purchase any shares of Series A preferred stock upon the occurrence of a change of control if a third party makes an offer to purchase the Series A preferred stock in the manner, at the price, at the times and otherwise in compliance with the requirements described in this section and purchases all shares of Series A preferred stock validly tendered and not withdrawn.

**Legal Availability of Assets**

Under Delaware law, we may pay dividends on or redeem or repurchase the Series A preferred stock, whether in cash, in shares of our common stock or in a combination thereof, only if we have legally available assets in an amount at least equal to the amount of the relevant payment.

Legally available assets means the amount of surplus. If there is no surplus, legally available assets also means, in the case of a dividend, the amount of our net profits for the fiscal year in which the payment occurs and/or the preceding fiscal year. Our surplus is the amount by which our total assets exceed the sum of:

our total liabilities, including our contingent liabilities; and

the amount of our capital.

When the need to make a determination of legally available assets arises, the amount of our total assets and liabilities and the amount of our capital will be determined by our board of directors in accordance with Delaware law.

As of September 30, 2005, the amount of our surplus was \$201.2 million.

**Registration Rights**

On November 24, 2003, we entered into a registration rights agreement with the initial purchasers of the Series A preferred stock. Under the registration rights agreement, we agreed to use our reasonable best efforts to: file, on or before February 22, 2004, a shelf registration statement with the SEC on the appropriate form under the Securities Act to cover resales of the shares of Series A preferred stock and of common stock issued upon conversion of the shares of Series A preferred stock;

cause that registration statement to be declared effective, subject to some exceptions, on or before May 22, 2004; and

subject to certain black-out periods not to exceed 90 days in the aggregate in any consecutive 365-day period, use our reasonable best efforts to cause that registration statement to remain effective, subject to some exceptions, until the earlier of:

(1) November 24, 2005; and

(2) the date on which all shares of Series A preferred stock or common stock covered by that registration statement have been sold under that registration statement.

We filed the registration statement discussed in this section with the SEC, and it was declared effective by the required date. Our obligation to keep this registration statement effective ended as of November 24, 2005.

Holders of shares of Series A preferred stock registrable under the registration rights agreement are required to deliver certain information to be used in connection with the shelf registration statement

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within the time periods indicated in the registration rights agreement in order to have their shares of Series A preferred stock or common stock into which the shares of Series A preferred stock may be converted included in the shelf registration statement.

The certificate of designations for the Series A preferred stock provides that if the shelf registration statement ceases to be effective or usable in connection with resales of shares of Series A preferred stock and common stock during the periods specified in the registration rights agreement we will refer to that event as a registration default then we will pay to each holder of shares of Series A preferred stock registrable under the registration rights agreement, with respect to the first 90-day period immediately following the occurrence of a registration default, additional dividends on the Series A preferred stock computed by increasing the applicable dividend rate for the relevant period by 0.25% per year, which we will refer to as additional dividends. The applicable dividend rate will increase by an additional 0.25% per year with respect to any subsequent 90-day period, but in no event will the additional dividend rate exceed 1.00% per year in the aggregate regardless of the number of registration defaults, until all registration defaults have been cured. If, after the cure of all registration defaults then in effect, there is a subsequent registration default, the additional dividend rate for that subsequent registration default will initially be 0.25%, regardless of the additional dividend rate in effect with respect to any prior registration default at the time of the cure of that registration default and will increase as set forth in the preceding sentence. An amount equal to all accrued additional dividends will be payable to the holders entitled to those dividends, in the manner provided for the payment or accretion of dividends in the certificate of designations.

This is a summary of some important provisions of the registration rights agreement. You may request a copy of the registration rights agreement by contacting us at our principal executive offices. See [Where You Can Find More Information](#).

**Transfer Agent**

The transfer agent, registrar, dividend disbursing agent and redemption agent for our shares of Series A preferred stock is Mellon Investor Services LLC. Mellon Investor Services LLC is also the transfer agent and registrar for our common stock.

**Book-Entry, Delivery and Form**

The shares of Series A preferred stock were issued in the form of global certificates held in book-entry form. DTC or its nominee will be the sole registered holder of the Series A preferred stock. Owners of beneficial interests in the Series A preferred stock represented by the global securities will hold their interests pursuant to the procedures and practices of DTC. As a result, beneficial interests in any such securities will be shown on, and transfers will be effected only through, records maintained by DTC and its direct and indirect participants and any such interest may not be exchanged for certificated securities, except in limited circumstances. Owners of beneficial interests must exercise any rights in respect of their interests, including any right to convert or require repurchase of their interests in the Series A preferred stock, in accordance with the procedures and practices of DTC. Beneficial owners will not be holders and will not be entitled to any rights provided to the holders of the Series A preferred stock under the global securities or the certificate of designations. Our company and any of our agents may treat DTC as the sole holder and registered owner of the global securities.

DTC has previously advised us as follows: DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Uniform Commercial Code, and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. DTC facilitates the settlement of transactions among its participants through electronic computerized book-entry changes in participants accounts, eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations, some of whom and/or their representatives own DTC. Access to DTC's book-entry system is also available to others, such as banks, brokers, dealers and

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trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly. The rules applicable to the depository and its participants are on file with the SEC.

The depository is the only registered holder of the shares of Series A preferred stock.

Shares of Series A preferred stock that are issued as described below under **Certificated Series A Preferred Stock** will be issued in definitive form. Upon the transfer of Series A preferred stock in definitive form, such Series A preferred stock will, unless the global securities have previously been exchanged for Series A preferred stock in definitive form, be exchanged for an interest in the global securities representing the liquidation preference of Series A preferred stock being transferred.

Investors who purchased Series A preferred stock in offshore transactions in reliance on Regulation S under the Securities Act may hold their interests in the global certificate directly through Euroclear Bank S.A./N.V., as operator of the Euroclear System, or Euroclear, and Clearstream Banking, société anonyme, or Clearstream, if they are participants in such systems, or indirectly through organizations that are participants in such systems. Euroclear and Clearstream will hold interests in the global certificate on behalf of their participants through their respective depositories, which in turn will hold such interests in the global certificate in the depositories' names on the books of the depository.

Transfers between participants in Euroclear and Clearstream will be effected in the ordinary way in accordance with their respective rules and operating procedures. If a holder requires physical delivery of a definitive certificate for any reason, including to sell certificates to persons in jurisdictions that require such delivery of such certificates or to pledge such certificates, such holder must transfer its interest in the global certificate in accordance with the normal procedures of the depository and the procedures set forth in the certificate of designations.

Cross-market transfers between the depository, on the one hand, and directly or indirectly through Euroclear or Clearstream participants, on the other, will be effected in the depository in accordance with the depository rules on behalf of Euroclear or Clearstream, as the case may be, by its respective depository; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with its rules and procedures and within its established deadlines (Brussels time). Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depository to take action to effect final settlement on its behalf by delivering or receiving interests in the global certificate in the depository, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to the depository. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in the global certificate from a depository participant will be credited during the securities settlement processing day (which must be a business day for Euroclear or Clearstream, as the case may be) immediately following the depository settlement date, and such credit or any interests in the global certificate settled during such processing day will be reported to the relevant Euroclear or Clearstream participant on such day. Cash received in Euroclear or Clearstream as a result of sales of interests in the global certificate by or through a Euroclear or Clearstream participant to a depository participant will be received with value on the depository settlement date, but will be available in the relevant Euroclear or Clearstream cash account only as of the business day following settlement in the depository.

A beneficial owner of book-entry shares of Series A preferred stock represented by a global certificate may exchange the shares for definitive, certificated shares of Series A preferred stock only if the conditions for such an exchange, as described under **Certificated Series A Preferred Stock**, are met.

In this conversion offer prospectus, references to actions taken by holders of shares of Series A preferred stock will mean actions taken by the depository upon instructions from its participants, and references to payments and notices of redemption to holders of shares of Series A preferred stock will

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mean payments and notices of redemption to the depositary as the registered holder of the shares of Series A preferred stock for distribution to participants in accordance with the depositary's procedures.

In order to ensure that the depositary's nominee will timely exercise a right conferred by the Series A preferred stock, the beneficial owner of that Series A preferred stock must instruct the broker or other direct or indirect participant through which it holds an interest in that Series A preferred stock to notify the depositary of its desire to exercise that right. Different firms have different deadlines for accepting instructions from their customers. Each beneficial owner should consult the broker or other direct or indirect participant through which it holds an interest in the Series A preferred stock in order to ascertain the deadline for ensuring that timely notice will be delivered to the depositary.

We will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the book-entry securities or for maintaining, supervising or reviewing any records relating to beneficial ownership interests.

The depositary may discontinue providing its services as securities depositary at any time by giving reasonable notice. Under those circumstances, in the event that a successor securities depositary is not appointed, share certificates are required to be printed and delivered. Additionally, we may decide to discontinue use of the system of book-entry transfers through the depositary or any successor depositary with respect to the shares of Series A preferred stock. In that event, certificates for the shares will be printed and delivered.

**Certificated Series A Preferred Stock**

The Series A preferred stock represented by the global securities is exchangeable for certificated Series A preferred stock in definitive form of like tenor to such Series A preferred stock if:

the depositary notifies us that it is unwilling or unable to continue as depositary for the global securities or if at any time the depositary ceases to be a clearing agency registered under the Exchange Act and, in either case, a successor depositary is not appointed by us within 90 days after the date of such notice; or

we in our sole discretion at any time determine to discontinue use of the system of book-entry transfer through DTC (or any successor depositary).

Any Series A preferred stock that becomes exchangeable pursuant to the preceding sentence will be exchangeable for certificated Series A preferred stock issuable in authorized denominations and registered in such names as the depositary shall direct. Subject to the foregoing, the global securities are not exchangeable, except for global securities of the same aggregate liquidation preferences to be registered in the name of the depositary or its nominee. In addition, such certificates will bear the legend contained in the certificate of designations for the Series A preferred stock (unless we determine otherwise in accordance with applicable law) subject, with respect to such Series A preferred stock, to the provisions of such legend.

**Table of Contents****DESCRIPTION OF CAPITAL STOCK****Authorized Capital Stock**

Our authorized capital stock consists of 75,000,000 shares of common stock, \$0.01 par value per share, and 25,000,000 shares of preferred stock, \$0.01 par value per share, of which 2,070,000 shares were designated as Series A preferred stock. As of November 29, 2005, there were 39,730,648 shares of common stock outstanding held of record by approximately 2,188 stockholders. As of November 29, 2005, there were 2,069,907 shares of Series A preferred stock outstanding held of record by one stockholder. The following description of our capital stock and provisions of our amended and restated certificate of incorporation and amended and restated by-laws are only summaries, and we encourage you to review complete copies of our amended and restated certificate of incorporation and amended and restated by-laws, which we have filed previously with the SEC. See [Incorporation of Certain Documents by Reference](#) and [Where You Can Find More Information](#).

**Common Stock**

Holders of our common stock are entitled to receive, as, when and if declared by our board of directors, dividends and other distributions in cash, stock or property from our assets or funds legally available for those purposes subject to any dividend preferences that may be attributable to preferred stock, if any. Holders of common stock are entitled to one vote for each share held of record on all matters on which stockholders may vote. Holders of common stock are not entitled to cumulative voting for the election of directors. There are no preemptive, conversion, redemption or sinking fund provisions applicable to our common stock. All outstanding shares of common stock are fully paid and non-assessable. In the event of our liquidation, dissolution or winding up, holders of common stock are entitled to share ratably in the assets available for distribution, subject to any prior rights of any holders of preferred stock, if any, then outstanding.

**Preferred Stock**

Our amended and restated certificate of incorporation authorizes our board of directors, without any vote or action by the holders of common stock, to issue up to 25,000,000 shares of preferred stock from time to time in one or more series. Our board of directors is authorized to determine the number of shares and designation of any additional series of preferred stock and the dividend rights, dividend rate, conversion rights and terms, voting rights, redemption rights and terms, liquidation preferences, sinking fund terms and other rights, preferences, privileges and restrictions of any series of preferred stock. Issuances of preferred stock would be subject to the applicable rules of the New York Stock Exchange or other organizations whose systems the preferred stock may then be quoted or listed. Depending upon the terms of preferred stock established by our board of directors, any or all series of preferred stock could have preferences over the common stock with respect to dividends and other distributions and upon liquidation. Issuance of any such shares with voting powers, or issuance of additional shares of common stock, would dilute the voting power of the outstanding common stock.

**Number of Directors; Removal; Vacancies**

The amended and restated certificate of incorporation and the amended and restated by-laws provide that the number of directors shall not be less than three nor more than nine and shall be determined from time to time exclusively by a vote of a majority of our board of directors then in office. The amended and restated certificate of incorporation also provides that our board of directors shall have the exclusive right to fill vacancies, including vacancies created by expansion of our board of directors. Furthermore, except as may be provided in a resolution or resolutions of our board of directors providing for any class or series of preferred stock with respect to any directors elected by the holders of such class or series, directors may be removed by our stockholders only for cause and only by the affirmative vote of at least 66<sup>2</sup>/<sub>3</sub>% of the voting power of all of the shares of our capital stock then entitled to vote generally in the election of directors, voting together as a single class. These provisions, in conjunction with the



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provision of the amended and restated certificate of incorporation authorizing our board of directors to fill vacant directorships, could prevent stockholders from removing incumbent directors without cause and filling the resulting vacancies with their own nominees.

**No Stockholder Action by Written Consent; Special Meetings**

The amended and restated certificate of incorporation provides that, except as may be provided in a resolution or resolutions of our board of directors providing for any class or series of preferred stock, stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting. The amended and restated certificate of incorporation also provides that special meetings of the stockholders can only be called pursuant to a resolution approved by a majority of our board of directors then in office. Stockholders are not permitted to call a special meeting of stockholders.

**Advance Notice for Raising Business or Making Nominations at Meetings**

The amended and restated by-laws establish an advance notice procedure for stockholder proposals to be brought before a meeting of our stockholders and for nominations by stockholders of candidates for election as directors at an annual meeting or a special meeting at which directors are to be elected. Subject to any other applicable requirements, including, without limitation, Rule 14a-8 under the Exchange Act, only such business may be conducted at a meeting of stockholders as has been brought before the meeting by, or at the direction of, our board of directors, or by a stockholder who has given to our secretary timely written notice, in proper form, of the stockholder's intention to bring that business before the meeting. The presiding officer at such meeting has the authority to make such determinations. Only persons who are nominated by, or at the direction of, our board of directors, or who are nominated by a stockholder who has given timely written notice, in proper form, to the Secretary prior to a meeting at which directors are to be elected will be eligible for election as directors.

To be timely, notice of nominations or other business to be brought before an annual meeting must be received by our secretary at the principal executive office no later than 60 days prior to the date of such annual meeting. Similarly, notice of nominations or other business to be brought before a special meeting must be delivered to our Secretary at the principal executive office no later than the close of business on the 15th day following the day on which notice of the date of a special meeting of stockholders was given. The notice of any nomination for election as a director must set forth the name, date of birth, business and residence address of the person or persons to be nominated; the business experience during the past five years of such person or persons; whether such person or persons are or have ever been at any time directors, officers or owners of 5% or more of any class of capital stock, partnership interest or other equity interest of any corporation, partnership or other entity; any directorships held by such person or persons in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, as amended; and whether, in the last five years, such person or persons are or have been convicted in a criminal proceeding or have been subject to a judgment, order, finding or decree of any federal, state or other governmental entity, concerning any violation of federal, state or other law, or any proceeding in bankruptcy, which conviction, order, finding, decree or proceeding may be material to an evaluation of the ability or integrity of the nominee; and, the consent of each such person to be named in a proxy statement as a nominee and to serve as a director if elected. The person submitting the notice of nomination, and any person acting in concert with such person, must provide their names and business addresses, the name and address under which they appear on our books (if they so appear), and the class and number of shares of our capital stock that are beneficially owned by them.

**Amendments to Amended and Restated By-Laws**

The amended and restated certificate of incorporation provides that our board of directors or the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the voting power of all shares of our capital stock then entitled to vote

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generally in the election of directors, voting together as a single class, have the power to amend or repeal our amended and restated by-laws.

**Amendment of the Amended and Restated Certificate of Incorporation**

Any proposal to amend, alter, change or repeal any provision of the amended and restated certificate of incorporation, except as may be provided in a resolution or resolutions of our board of directors providing for any class or series of preferred stock and which relate to such class or series of preferred stock, requires approval by the affirmative vote of both a majority of the members of our board of directors then in office and a majority vote of the voting power of all of the shares of our capital stock entitled to vote generally in the election of directors, voting together as a single class. Notwithstanding the foregoing, any proposal to amend, alter, change or repeal the provisions of the amended and restated certificate of incorporation relating to (i) the classification of our board of directors, (ii) removal of directors, (iii) the prohibition of stockholder action by written consent or stockholder calls for special meetings, (iv) amendment of amended and restated by-laws, or (v) amendment of the amended and restated certificate of incorporation, requires approval by the affirmative vote of 66<sup>2</sup>/<sub>3</sub>% of the voting power of all of the shares of our capital stock entitled to vote generally in the election of directors, voting together as a single class.

**Preferred Stock and Additional Common Stock**

Under the amended and restated certificate of incorporation, our board of directors has the authority to provide by board resolution for the issuance of shares of one or more series of preferred stock. Our board of directors is authorized to fix by resolution the terms and conditions of each such other series. We believe that the availability of our preferred stock, in each case issuable in series, and additional shares of common stock could facilitate certain financings and acquisitions and provide a means for meeting other corporate needs which might arise. The authorized shares of our preferred stock, as well as authorized but unissued shares of common stock will be available for issuance without further action by our stockholders, unless stockholder action is required by applicable law or the rules of any stock exchange on which any series of our capital stock may then be listed.

These provisions give our board of directors the power to approve the issuance of a series of preferred stock, or an additional series of common stock, that could, depending on its terms, either impede or facilitate the completion of a merger, tender offer or other takeover attempt. For example, the issuance of new shares of preferred stock might impede a business combination if the terms of those shares include voting rights which would enable a holder to block business combinations; the issuance of new shares might facilitate a business combination if those shares have general voting rights sufficient to cause an applicable percentage vote requirement to be satisfied.

**Delaware Business Combination Statute**

Certain provisions in our amended and restated certificate of incorporation and amended and restated by-laws and of Delaware law could make it harder for someone to acquire us through a tender offer, proxy contest or otherwise. We are governed by the provisions of Section 203 of the Delaware General Corporation Law, which defines a person who owns (or within three years, did own) 15% or more of a company's voting stock as an interested stockholder. Section 203 prohibits a public Delaware corporation from engaging in a business combination with an interested stockholder for a period commencing three years from the date in which the person became an interested stockholder, unless:

the board of directors approved the transaction which resulted in the stockholder becoming an interested stockholder;

upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of the voting stock of

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the corporation (excluding shares owned by officers, directors, or certain employee stock purchase plans); or

at or subsequent to the time the transaction is approved by the board of directors, there is an affirmative vote of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding voting stock approving the transaction.

Section 203 could prohibit or delay mergers or other takeover attempts against us, and accordingly, may discourage attempts to acquire us through a tender offer, proxy contest or otherwise.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock and our Series A preferred stock is Mellon Investor Services LLC.

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**MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

Except as otherwise set forth in this section, the following discussion sets forth the opinion of Blank Rome LLP, our legal counsel, regarding the material U.S. federal income tax considerations of a conversion of Series A preferred stock into common stock and the receipt of a cash premium, all pursuant to the terms and conditions of the conversion offer. In this section, we refer to such a conversion in the conversion offer as an exchange, which is the likely treatment of such a conversion for U.S. federal income tax purposes.

This discussion is based upon the provisions of the Code, the final, temporary and proposed Treasury Regulations promulgated thereunder, and administrative pronouncements and rulings and judicial decisions, as they currently exist as of the effective date of the registration statement of which this conversion offer prospectus forms a part, all of which are subject to change (possibly with retroactive effect) or different interpretations.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to a stockholder's decision to convert the Series A preferred stock into common stock and cash, nor, except as expressly provided below, any tax considerations arising under other federal tax laws (for example, estate and gift tax) or under the laws of any state, local or foreign jurisdiction. This discussion is not intended to be applicable to special categories of stockholders, such as dealers in securities, banks, insurance companies, real estate investment trusts, regulated investment companies, tax-exempt organizations, U.S. expatriates, persons that hold the Series A preferred stock as part of a straddle or exchange transaction, partnerships or other pass-through entities that purchase, own or dispose of our Series A preferred stock, and holders subject to the alternative minimum tax. In addition, this discussion is limited to persons who hold the Series A preferred stock as a capital asset (generally property held for investment) within the meaning of Section 1221 of the Code.

You are urged to consult your tax advisor as to the particular tax considerations of the exchange of the Series A preferred stock for common stock and cash, including the application and effect of U.S. federal, state, local and foreign tax laws.

As used herein, the term U.S. Holder means a beneficial owner of our Series A preferred stock that for U.S. federal income tax purposes is any of the following:

an individual who is a citizen or resident of the United States;

a corporation or other entity treated as a corporation created or organized in or under the laws of the United States or of any political subdivision of or in the United States;

an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust that either is subject to the supervision of a court within the United States and which has one or more U.S. persons with authority to control all substantial decisions, or has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

A Foreign Holder is a beneficial owner of our Series A preferred stock that is not a U.S. Holder.

If a partnership (including a limited liability company for which no election to be treated as a corporation for U.S. federal income tax purposes is in effect) holds Series A preferred stock, the tax treatment of the partner will generally depend upon the status of the partner and the activities of the partnership.

**Table of Contents****Tax Considerations of U.S. Holders*****Cash Received for Accrued but Unpaid Dividends***

Any cash received in satisfaction of accrued but unpaid dividends will be treated as a distribution with respect to the Series A preferred stock. The cash received in satisfaction of the accrued but unpaid dividends will be characterized as dividend income to the extent paid out of our current or accumulated earnings and profits (as determined for federal income tax purposes).

Dividend income will be includible in a U.S. Holder's gross income on the day received by the U.S. Holder. Under current legislation, which is scheduled to expire with respect to taxable years ending after December 31, 2008, this income will generally be taxed to a U.S. Holder (if the U.S. Holder is a non-corporate taxpayer) at the rates applicable to long-term capital gains rates, provided that minimum holding period and other requirements are satisfied. Corporate U.S. Holders may be entitled to a dividends received deduction with respect to distributions treated as dividend income for U.S. federal income tax purposes, subject to limitations and conditions.

Distributions to a U.S. Holder in excess of our current or accumulated earnings and profits will be treated first as a return of capital that reduces the U.S. Holder's tax basis in the Series A preferred stock, and then as gain from the sale or exchange of the Series A preferred stock. The gain will be capital gain provided that the U.S. Holder held the Series A preferred stock as a capital asset at the time of the exchange.

***Consideration Received Pursuant to the Exchange Other than Accrued Dividends***

In the absence of any direct legal authority on point, it is the opinion of Blank Rome that the receipt of common stock and cash (including cash received in exchange for fractional shares but other than cash received in respect of accrued but unpaid dividends as discussed above) in exchange for Series A preferred stock should constitute a recapitalization for U.S. federal income tax purposes. Accordingly, a U.S. Holder of Series A preferred stock will recognize gain up to the amount of cash (including cash received in exchange for fractional shares but other than cash received in respect of accrued but unpaid dividends) received if the sum of the fair market value of the common stock and the cash (including cash received in exchange for fractional shares but other than cash received in respect of accrued but unpaid dividends) exceeds the U.S. Holder's adjusted tax basis in the Series A preferred stock. However, if the sum of the fair market value of the common stock and the cash (including cash received in exchange for fractional shares but other than cash received in respect of accrued but unpaid dividends) is less than the U.S. Holder's adjusted basis in the Series A preferred stock, no loss will be recognized at the time of the exchange. Additionally, a U.S. Holder will take an adjusted basis in the common stock received in the exchange equal to its adjusted basis in the Series A preferred stock, less the amount of any cash (other than cash received in respect of accrued but unpaid dividends) received in the exchange and increased by the amount of gain recognized in the exchange (other than dividend income on accrued but unpaid dividends), if any. A U.S. Holder also will include the period during which it held the Series A preferred stock for purposes of determining its holding period for the common stock.

If gain, as described in the preceding paragraph, is recognized by a U.S. Holder, the gain will be treated either as:

- a dividend to the extent of a U.S. Holder's ratable share of our earnings and profits; or
- gain from the sale or exchange of stock.

To determine whether the gain recognized is properly treated as a dividend or as gain from a sale or exchange, the exchange should be tested as though each U.S. Holder of Series A preferred stock solely received common stock and then we immediately redeemed a portion of those shares for cash (including

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any cash received in exchange for fractional shares of our common stock). Under this test, the cash would be taxed as a dividend unless the deemed redemption meets one of the following exceptions:

the deemed redemption results in a complete termination of a U.S. Holder's interest in our stock;

the deemed redemption is substantially disproportionate with respect to a U.S. Holder; or

the deemed redemption is not essentially equivalent to a dividend.

In determining whether any of these three exceptions have been met, the common stock owned by a U.S. Holder directly or indirectly through the attribution rules of Section 302(c) of the Code must be taken into account. If any of these three exceptions are met, then any gain recognized from the exchange should be treated as gain from the sale or exchange of stock. This gain would be taxable as capital gain if the Series A preferred stock was held as a capital asset.

A redemption terminates a U.S. Holder's interest in our stock if, after and as a result of the exchange, the U.S. Holder no longer has any interest in our stock, taking into account the attribution rules discussed above.

A redemption is substantially disproportionate with respect to a U.S. Holder if the U.S. Holder owns less than 50% of the our voting stock after the exchange and both of the following two tests are met:

(a) the ratio of the voting stock owned by the U.S. Holder, directly or by attribution under the rules discussed above, immediately after the exchange to all of our voting stock is less than 80% of (b) the ratio of the voting stock owned by the U.S. Holder immediately before the exchange to all of our voting stock; and

there is a similar reduction in the percentage ownership that a U.S. Holder owns in our common stock.

Whether a redemption is not essentially equivalent to a dividend with respect to a U.S. Holder depends upon the U.S. Holder's particular circumstances. The U.S. Supreme Court has ruled that a redemption is not essentially equivalent to a dividend if the U.S. Holder has had a meaningful reduction in its percentage interest in the issuer. The Internal Revenue Service has ruled that, where the issuer is publicly held and the U.S. Holder is a minority stockholder whose stock interest is relatively minimal and who exercises no control over the issuer, there has been a meaningful reduction if the U.S. Holder has reduced its percentage interest in the issuer.

All U.S. Holders should consult their tax advisors to determine the proper tax treatment of cash received in the exchange, because alternative characterizations could apply. In particular, the entire cash payment could be treated as a dividend based on an evaluation of the totality of the circumstances prior to and subsequent to the exchange, and U.S. Holders should consult their tax advisors as to the proper characterization.

### **Tax Considerations of Foreign Holders**

#### ***Cash Received for Accrued but Unpaid Dividends***

Any cash received in satisfaction of accrued but unpaid dividends is treated as a distribution with respect to the Series A preferred stock. The cash received in satisfaction of the accrued but unpaid dividends will be characterized as dividend income to the extent paid out of our current or accumulated earnings and profits (as determined for U.S. federal income tax purposes).

Dividend income will generally be subject to withholding tax. This tax will be at a 30% rate or a lower rate if provided by an income tax treaty between the United States and the country of which the Foreign Holder is a tax resident.

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No withholding tax will apply if:

the dividends are effectively connected with the conduct of a trade or business of the Foreign Holder within the United States and the Foreign Holder provides us with an IRS Form W-8ECI (or successor form); or

a tax treaty applies and the dividends are attributable to a U.S. permanent establishment maintained by the Foreign Holder.

However, these dividends remain subject to U.S. federal income tax. This tax would apply after allowance for applicable deductions, at applicable graduated individual or corporate rates.

The branch profits tax treats a U.S. branch business as if it had been a U.S. subsidiary that paid a dividend. Accordingly, in certain instances, dividends received by a U.S. branch of a foreign corporation may be subject to an additional federal income tax at a 30% rate or a lower rate if an income tax treaty applies.

A Foreign Holder that claims the benefit of an income tax treaty rate generally will be required to satisfy applicable certification and other requirements, including filing an IRS Form W-8BEN (or successor form) with the withholding agent. In addition, a Foreign Holder that claims the benefit of an income tax treaty rate may be required, in certain instances, to obtain a U.S. taxpayer identification number.

***Consideration Received Pursuant to the Exchange Other than Accrued Dividends***

The determination as to whether any cash received upon the exchange of the Series A preferred stock (other than cash received in respect of accrued but unpaid dividends) will constitute a dividend or gain from the sale or exchange of stock will be the same as described in Tax Considerations for U.S. Holders Consideration Received Pursuant to the Exchange Other than Accrued Dividends.

If the cash received upon the exchange of the Series A preferred stock (other than cash received in respect of accrued but unpaid dividends) is taxed as a dividend, then the Foreign Holder will be subject to U.S. federal income tax on such dividends as described in Tax Considerations for Foreign Holders Cash Received for Accrued but Unpaid Dividends.

If the cash received upon the exchange of the Series A preferred stock (other than cash received in respect of accrued but unpaid dividends) is taxed as gain from the sale or exchange of stock, a Foreign Holder generally will not be subject to U.S. federal income tax with respect to such gain unless:

the gain is effectively connected with a trade or business conducted by the Foreign Holder within the United States or, if certain U.S. income tax treaties apply, the gain is attributable to a U.S. permanent establishment maintained by the Foreign Holder;

in the case of a Foreign Holder who is an individual and holds Series A preferred stock as a capital asset, such holder is present in the United States for 183 or more days in the taxable year of the exchange and certain other conditions are met; or

we are or have been a U.S. real property holding corporation for U.S. federal income tax purposes. We believe that we are not currently, and do not anticipate becoming, a U.S. real property holding corporation for U.S. federal income tax purposes.

If an individual Foreign Holder falls under the first bullet point above, such individual generally will be taxed on the gain under regular graduated U.S. federal individual income tax rates. If the Foreign Holder is a corporation, it generally will be taxed on its gain under regular graduated U.S. federal corporate income tax rates. In addition, it will be subject to branch profits tax equal to 30% of its connected earnings and profits for the taxable year, unless it qualifies for a lower tax rate under an applicable income tax treaty.

If an individual Foreign Holder falls under the second bullet point above, such individual generally will be subject to a flat 30% tax on the gain derived from a sale, net of certain capital losses. The foregoing will apply even if the individual is not considered a resident of the United States. Individual





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Foreign Holders who have spent or expect to spend 183 or more days in the United States in the taxable year in which the exchange will occur are urged to consult their tax advisors.

Because the potential treatment of the cash received as a dividend or as gain from the sale or exchange of stock will depend on the circumstances of a particular Foreign Holder, we may withhold based on the maximum potential withholding amount due. A Foreign Holder whose tax liability is less than the amount withheld may obtain a refund from the Internal Revenue Service.

**Back-up Withholding**

In general, information reporting requirements may apply to the amounts paid to U.S. Holders and Foreign Holders in connection with the exchange of the Series A preferred stock into common stock and cash. Backup withholding may be imposed (currently at a 28% rate) on the above payments if a U.S. Holder or Foreign Holder (1) fails to provide a taxpayer identification number or certificate of exempt status or (2) fails to report certain types of income in full.

Any amounts withheld under the backup withholding rules will be allowed as a refund or credit against applicable U.S. federal income tax liability provided the required information is furnished to the Internal Revenue Service.

**THE PRECEDING DISCUSSION OF THE MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS OF THE EXCHANGE DOES NOT PURPORT TO BE A COMPLETE ANALYSIS OR DISCUSSION OF ALL POTENTIAL TAX EFFECTS RELEVANT THERETO. THUS, YOU ARE URGED TO CONSULT YOUR OWN TAX ADVISOR AS TO THE SPECIFIC TAX CONSIDERATIONS OF THE EXCHANGE OR OF ANY DECISION TO PARTICIPATE OR NOT PARTICIPATE IN THE EXCHANGE, INCLUDING TAX RETURN REPORTING REQUIREMENTS, THE APPLICABILITY AND EFFECT OF FOREIGN, FEDERAL, STATE, LOCAL AND OTHER APPLICABLE TAX LAWS AND THE EFFECT OF ANY PROPOSED CHANGES IN THE TAX LAWS.**

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**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The SEC's rules allow us to incorporate by reference information into this conversion offer prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this conversion offer prospectus from the date we file that document. Any reports filed by us with the SEC after the date of the initial filing of the registration statement of which this conversion offer prospectus forms a part and prior to the effectiveness of such registration statement, as well as any reports filed by us with the SEC after the date of this conversion offer prospectus and before the date that the offering of the securities is terminated or expires, will automatically update and, where applicable, supersede any information contained in this conversion offer prospectus or incorporated by reference in this conversion offer prospectus.

We incorporate by reference into this conversion offer prospectus the following documents filed with the SEC:

Our Annual Report on Form 10-K (File No. 1-12983) for the year ended December 31, 2004, filed on March 30, 2005, as amended by Amendment No. 1 on Form 10-K/A, filed on April 29, 2005, including the portion of our definitive Proxy Statement for the 2005 Annual Meeting of Stockholders (File No. 1-12983), filed March 30, 2005, specifically incorporated by reference into Items 10 (Directors and Officers), 11 (Executive Compensation), 12 (Security Ownership of Certain Beneficial Owners and Management) and 13 (Certain Relationships and Related Transactions) thereof.

Our Quarterly Reports on Form 10-Q (File No. 1-12983) for the fiscal quarter ended April 1, 2005, filed on May 10, 2005; for the fiscal quarter ended July 1, 2005, filed on August 8, 2005; and for the fiscal quarter ended September 30, 2005, filed on November 7, 2005.

Our Current Reports on Form 8-K (File No. 1-12983) dated January 26, 2005; February 1, 2005; February 18, 2005; March 16, 2005; March 30, 2005; May 3, 2005; May 16, 2005; June 13, 2005; June 15, 2005; August 2, 2005; October 13, 2005; and November 2, 2005 (other than any information contained in these reports that has been furnished to the SEC, which information is not incorporated by reference into this conversion offer prospectus).

The description of our common stock, filed in our Registration Statement on Form 8-A (File No. 1-12983), filed on May 13, 1997, pursuant to Section 12(b) of the Exchange Act of 1934 as incorporated by reference from our registration statement on Form S-1 (File No. 333-22961), filed on March 7, 1997, as amended, and any amendment or report for the purpose of updating such description.

All documents filed by us under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this conversion offer prospectus and before the termination of this offering.

We will provide without charge to each person to whom this conversion offer prospectus is delivered, upon his or her written or oral request, a copy of the filed documents referred to above, excluding exhibits, unless they are specifically incorporated by reference into those documents. You can request those documents from our Vice President of Investor Relations, 4 Tesseneer Drive, Highland Heights, Kentucky 41076, telephone (859) 572-8000.

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**INTERESTS OF DIRECTORS AND OFFICERS**

To our knowledge after reasonable inquiry, none of our directors, executive officers or controlling persons, or any of their affiliates or associates, own Series A preferred stock or will be surrendering Series A preferred stock for conversion pursuant to the conversion offer. Neither we, nor any of our subsidiaries or associates nor, to our knowledge after reasonable inquiry, any of our directors, executive officers, or controlling persons (or any of their affiliates), nor any executive officer or director of any of our subsidiaries, has engaged in any transactions in the Series A preferred stock during the 60 days prior to the date hereof.

There is no present or proposed material agreement, arrangement, understanding or relationship between us and any of our executive officers, directors, controlling persons or subsidiaries, except as set forth in:

the sections entitled Business and Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in our Annual Report on Form 10-K for the year ended December 31, 2004, filed with the SEC on March 30, 2005, as amended (File No. 1-12983), with respect to relationships between us and our subsidiaries; and

the section entitled Transactions with the Company set forth in our Proxy Statement dated March 28, 2005, filed with the SEC on March 30, 2005 (File No. 1-12983), with respect to relationships between us and our executive officers, directors and controlling persons.

**DEALER MANAGER**

The dealer manager for the conversion offer is Merrill Lynch, Pierce, Fenner & Smith Incorporated. As dealer manager for the conversion offer, Merrill Lynch will perform services customarily provided by investment banking firms acting as dealer managers of conversion offers of a like nature, including, but not limited to, soliciting conversions pursuant to the conversion offer and communicating generally regarding the conversion offer with brokers, dealers, commercial banks and trust companies and other persons, including the holders of the Series A preferred stock. As compensation for its services, we have agreed to pay the dealer manager \$0.25 for each \$50.00 in liquidation preference of Series A preferred stock that is validly tendered for conversion pursuant to the conversion offer and not withdrawn.

The dealer manager and its affiliates have rendered and may in the future render various investment banking, lending and commercial banking services and other advisory services to us and our subsidiaries. The dealer manager has received, and may in the future receive, customary compensation from us and our subsidiaries for such services. The dealer manager has regularly acted as an underwriter and an initial purchaser of equity and debt securities issued by us in public and private offerings and will likely continue to do so from time to time.

The dealer manager may from time to time hold shares of Series A preferred stock, shares of common stock and other securities of ours in its proprietary accounts, and, to the extent it owns shares of Series A preferred stock in these accounts at the time of the conversion offer, the dealer manager may surrender such Series A preferred stock for conversion pursuant to the conversion offer. During the course of the conversion offer, the dealer manager may trade shares of Series A preferred stock and shares of common stock or effect transactions in other securities of ours for its own account or for the accounts of its customers. As a result, the dealer manager may hold a long or short position in the Series A preferred stock, the common stock or other of our securities.

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**INFORMATION AGENT**

D.F. King & Co., Inc. has been appointed as the information agent for the conversion offer. We have agreed to pay the information agent reasonable and customary fees for its services and will reimburse the information agent for its reasonable out-of-pocket expenses. All requests to the information agent for assistance in connection with the conversion offer or for additional copies of this conversion offer prospectus or related materials should be directed to the information agent at 48 Wall Street, New York, New York 10005, telephone number (212) 269-5550.

**CONVERSION AGENT**

Mellon Investor Services LLC has been appointed conversion agent for the conversion offer. We have agreed to pay the conversion agent reasonable and customary fees for its services and will reimburse the conversion agent for its reasonable out-of-pocket expenses. All completed letters of transmittal should be directed to the conversion agent at the address set forth on the back cover of this conversion offer prospectus. Mellon Investor Services LLC is also the transfer agent and registrar of our common stock and the transfer agent, registrar, dividend disbursing agent and redemption agent for our shares of Series A preferred stock, and as such, will receive in the future customary compensation for such services. All requests to the conversion agent for assistance in connection with the conversion offer should be directed to the conversion agent as set forth on the back cover of this conversion offer prospectus.

**FEES AND EXPENSES**

Fees and expenses in connection with the conversion offer are estimated to be approximately \$1.0 million. We will bear the cost of all of fees and expenses relating to the conversion offer. We are making the principal solicitation by mail and overnight courier. However, where permitted by applicable law, additional solicitations may be made by facsimile, telephone, email or in person by the dealer manager and the information agent, as well as by our and our affiliates' officers and regular employees. We will also pay the conversion agent and the information agent reasonable and customary fees for their services and will reimburse them for their reasonable out-of-pocket expenses. We will indemnify each of the conversion agent, the dealer manager and the information agent against certain liabilities and expenses in connection with the conversion offer, including liabilities under the federal securities laws.

**LEGAL MATTERS**

The validity of the common stock to be issued in the conversion offer will be passed upon for us by Blank Rome LLP, Philadelphia, Pennsylvania. Certain legal matters will be passed upon for the dealer manager by Shearman & Sterling LLP, New York, New York.

**EXPERTS**

The consolidated financial statements and the related financial statement schedule as of December 31, 2004 and 2003 and for each of the three years in the period ended December 31, 2004 and management's report on the effectiveness of internal control over financial reporting as of December 31, 2004 incorporated in this conversion offer prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2004, as amended, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports (which reports (1) express an unqualified opinion on the consolidated financial statements and financial statement schedule, (2) express an unqualified opinion on management's assessment regarding the effectiveness of internal control over financial reporting, and (3) express an adverse opinion on the effectiveness of internal control over financial reporting because of material weaknesses), which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

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**MISCELLANEOUS**

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

Pursuant to Rule 13e-4 of the General Rules and Regulations under the Exchange Act, we have filed with the Commission an Issuer Tender Offer Statement on Schedule TO which contains additional information with respect to the conversion offer. Such Schedule TO, including the exhibits and any amendments thereto, may be examined, and copies may be obtained, at the same places and in the same manner as is set forth under **Where You Can Find More Information**.

No dealer, salesperson or other person has been authorized to give any information or to make any representation not contained in this conversion offer prospectus and, if given or made, such information or representation may not be relied upon as having been authorized by us or the dealer manager.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission. Copies of these materials may be examined without charge at the SEC's public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at (800) SEC-0330 for further information on the public reference room. You may also obtain these materials from us at no cost by directing a written or oral request to us at General Cable Corporation, 4 Tessenner Drive, Highland Heights, Kentucky 41076-9753, Attention: Chief Financial Officer, or by telephone at (859) 572-8000. In addition, the SEC maintains a web site, <http://www.sec.gov>, which contains reports, proxy and information statements and other information regarding us and other registrants that file electronically with the SEC.

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*The conversion agent for the conversion offer is:*

**Mellon Investor Services LLC**

***By Registered or Certified Mail:***

Mellon Investor Services LLC  
P.O. Box 3301  
South Hackensack, New Jersey 07606

***By Regular Mail &  
Overnight Courier:***

Mellon Investor Services LLC  
480 Washington Blvd., 27th Floor  
Jersey City, New Jersey 07310  
Attention: Reorganization Dept.

***In Person By Hand Only:***

Mellon Investor Services LLC  
Reorg Dept.  
120 Broadway, 13th Floor  
New York, New York 10271

***By Telephone:***

Domestic: (800) 685-4258

Foreign: (201) 680-6622

Facsimile: (201) 680-4626

For Confirmation of Facsimile

Transmission by Telephone: (201) 680-4860

Any requests for additional copies of this conversion offer prospectus and the related materials may be directed to the information agent at the address and telephone number set forth below.

*The information agent for the conversion offer is:*

**D.F. King & Co., Inc.**

48 Wall Street

New York, New York 10005

(212) 269-5550

Other requests for information relating to the conversion offer may be directed to the dealer manager at the address and telephone number set forth below.

*The dealer manager for the conversion offer is:*

**Merrill Lynch & Co.**

4 World Financial Center, 7th Floor

New York, New York 10080

Attention: Liability Management Group

(212) 449-4914 (collect)

(888) 654-8637 (toll free)