

NATIONAL HEALTH INVESTORS INC  
Form DEF 14A  
April 18, 2007

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

**SCHEDULE 14A**

**(Rule 14a-101)**

**SCHEDULE 14A INFORMATION**

Proxy Statement Pursuant to Section 14(a) of the Securities

Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

National Health Investors, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

- (1) Title of each class of securities to which transaction applies:
  
- (2) Aggregate number of securities to which transaction applies:
  
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
  
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- o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**National Health Investors, Inc.**

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS**

**TO BE HELD WEDNESDAY, MAY 16, 2007**

**4:30 PM CDT**

To Our Shareholders:

We cordially invite you to attend the Annual Meeting of the Shareholders (the "Meeting") of National Health Investors, Inc. ( "NHI" or the "Company"). It will be held at the Center for the Arts, 110 W. College Street, Murfreesboro, Tennessee on Wednesday, May 16, 2007, at 4:30 p.m. CDT, for the following purposes:

1. To re-elect two directors;
2. To ratify the Audit Committee's selection of BDO Seidman, LLP as our independent registered public accounting firm for the year ending December 31, 2007; and
3. To transact such other business as may properly come before the Meeting or any continuances of it.

The nominees for re-election as directors are Ted H. Welch and Richard F. LaRoche, Jr. They currently serve as directors of the Company.

The Board of Directors has fixed the close of business on Tuesday, April 10, 2007, as the record date (the "Record Date") for the determination of shareholders who are entitled to vote at the Meeting, including any continuances.

We encourage you to attend the Meeting. Whether you are able to attend or not, we urge you to indicate your vote on the enclosed proxy card:

\* FOR the re-election of Mr. Welch and Mr. LaRoche.

\* FOR ratification of the Audit Committee's selection of BDO Seidman, LLP as our independent registered public accounting firm for the year ending December 31, 2007.

Please sign, date and return the proxy card promptly in the enclosed envelope. If you attend the Meeting, you may vote in person even if you have previously mailed a proxy card.

Richard F. LaRoche, Jr.

April 17, 2007

Secretary to the Board

Murfreesboro, Tennessee

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**NATIONAL HEALTH INVESTORS, INC.**

**100 Vine Street, Suite 1202**

**Murfreesboro, Tennessee 37130**

**PROXY STATEMENT**

**ANNUAL MEETING OF SHAREHOLDERS**

**TO BE HELD WEDNESDAY, MAY 16, 2007**

The accompanying proxy is solicited by the Board of Directors of National Health Investors, Inc. ( NHI or the Company ) to be voted at the Annual Meeting of the Shareholders to be held on Wednesday, May 16, 2007, commencing at 4:30 p.m. CDT and at any continuances of the Meeting. The Meeting will be held at the Center for the Arts, 110 W. College Street, Murfreesboro, Tennessee. It is anticipated that this proxy material will be mailed on or about April 17, 2007, to all shareholders of record on Tuesday, April 10, 2007 (the Record Date ).

A copy of the Annual Report of the Company on Form 10-K for the year ended December 31, 2006, including audited financial statements, is also enclosed.

You have the power and right to revoke the proxy at any time before it is exercised. A proxy may be revoked by filing with the Secretary of the Company (i) a written revocation, or (ii) your proxy bearing a later date than the prior proxy. Furthermore, if you attend the Meeting, you may elect to vote in person thereby canceling the proxy.

**How We Count the Votes**

\* Shares of common stock represented in person or by proxy at the Meeting (including shares which abstain or do not vote with respect to one or more of the matters presented at the Meeting) will be tabulated by the Company's Secretary who will determine whether or not a quorum is present.

\* Abstentions will be counted as shares that are present and entitled to vote for purposes of determining the number of shares that are present and entitled to vote with respect to any particular matter, but will not be counted as votes in

favor of such matter. Accordingly, an abstention from voting on the election of a director will have the same legal effect as a vote "against" the matter even though the shareholder or interested parties analyzing the results of the voting may interpret such vote differently.

\* If a broker holding stock in "street name" indicates on the proxy that it does not have discretionary authority as to certain shares to vote on a particular matter, those shares will not be considered as present and entitled to vote with respect to that matter. Accordingly, a "broker non-vote" may effect establishment of a quorum, but, once a quorum is established, will have no effect on the voting on such matter.

\* A majority of the issued and outstanding shares of common stock entitled to vote constitutes a quorum at the Meeting. The affirmative vote of the holders of a majority of the votes cast at the Meeting is required for the election of directors. Shareholder approval is not required for ratification of the Audit Committee's selection of BDO Seidman LLP as our independent registered public accounting firm.

## VOTING SECURITIES AND PRINCIPAL HOLDERS

The Board of Directors has fixed the close of business on Tuesday, April 10, 2007, as the Record Date. The outstanding voting securities of the Company at the Record Date consisted of 27,756,091 shares of common stock, par value \$.01 per share ("Common Stock"). Shareholders of record as of the Record Date are entitled to notice of and to vote at the Meeting or any continuances. Each holder of the shares of Common Stock is entitled to one vote per share on all matters properly brought before the Meeting. Shareholders are not permitted to cumulate votes for the purpose of electing directors or otherwise.

The following information is based upon filings made by the persons or entities identified below with the Securities and Exchange Commission (the "SEC"). Except as set forth below, on March 31, 2007, no person was known to us to own beneficially more than 5% of the outstanding Common Stock:

Title of Class	Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class
Common Stock	W. Andrew Adams  100 Vine Street, Suite 1200  Murfreesboro, TN 37130	2,758,515 <sup>(1)</sup>	9.9%
Common Stock	The Vanguard Group, Inc.  P.O. Box 2600 V26  Valley Forge, PA 19482-2600	1,413,716	5.09%

(1)



This is ownership as defined by the SEC and not as defined in real estate investment trust regulations.

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The following table represents the security ownership of management, showing the ownership of directors, named executive officers, and directors and executive officers as a group:

Title of Class	Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership <sup>(2)</sup>	Percent of Class
Common Stock	W. Andrew Adams  100 Vine Street, Ste. 1200  Murfreesboro, TN 37130	2,758,515 <sup>(1)</sup>	9.9%
Common Stock	Richard F. LaRoche, Jr.  2103 Shannon Drive  Murfreesboro, TN 37129	603,476	2.1%
Common Stock	Robert A. McCabe, Jr.  211 Commerce St., Ste. 300  Nashville, TN 37201	16,028	*
Common Stock	Robert T. Webb  141 E. MTCS Road  Murfreesboro, TN 37129	217,890	*
Common Stock	Ted H. Welch  611 Commerce St., Ste. 2920  Nashville, TN 37203	96,018	*
Common Stock	Kenneth D. DenBesten  100 Vine St, Ste. 1200  Murfreesboro, TN 37130	161,805	*
Common Stock	Roger R. Hopkins 100 Vine St, Ste. 1200 Murfreesboro, TN 37130	25,000	*
Common Stock	Donald K. Daniel 100 Vine Street, Ste. 1200 Murfreesboro, TN 37130	153,452	*

Common Stock	Charlotte A. Swafford 100 Vine Street, Ste. 1200 Murfreesboro, TN 37130	449,951	1.6%
Common Stock	All Directors and Executive Officers as a group 9 people	4,482,135	16.2%

(1)

Mr. W. A. Adams expressly disclaims ownership in 222,307 shares which are owned by a private foundation of which he is a director.

(2)

Except as otherwise noted, all shares are owned beneficially with sole voting and investment power. Included in the amounts above are 60,000 shares to Mr. LaRoche, 15,000 to Mr. McCabe, 45,000 to Mr. Webb and 60,000 to Mr. Welch, any or all of which may be acquired upon the exercise of stock options granted under the Company's 1997 Stock Option Plan. Included in the amounts above are 50,000 shares to Mr. DenBesten and 25,000 shares to Mr. Hopkins, any or all of which may be acquired upon exercise of stock options granted under the Company's 2005 Stock Option Plan.

**DIRECTORS AND EXECUTIVE OFFICERS OF REGISTRANT**

NHI is managed by its five-person Board of Directors. A director may be removed from office for cause only. Officers serve at the pleasure of the Board of Directors for a term of one year. The following table gives information about our directors and executive officers

Name & Address	Age	Position	Expiration of term
W. Andrew Adams 100 Vine St, Ste. 1200 Murfreesboro, TN 37130	61	Director, President	2008
Richard F. LaRoche, Jr. 2103 Shannon Drive Murfreesboro, TN 37129	61	Director	2007
Robert A. McCabe, Jr. 211 Commerce St., Ste. 300 Nashville, TN 37201	56	Director	2008
Robert T. Webb 141 E. MTCS Road Murfreesboro, TN 37129	62	Director	2009
Ted H. Welch	73	Director	2007

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611 Commerce St., Ste.  
2920

Nashville, TN 37203

Kenneth D. DenBesten	54	Senior Vice President, Finance and Secretary	-
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100 Vine St, Ste. 1200

Murfreesboro, TN  
37130

Roger R. Hopkins	45	Chief	-
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100 Vine St, Ste. 1200                      Accounting

Murfreesboro, TN                      Officer  
37130

Donald K. Daniel	60	(former) Senior Vice President & Controller	2006
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100 Vine Street, Ste.  
1200

Murfreesboro, TN  
37130

Charlotte A. Swafford	59	(former) Senior Vice President & Treasurer	2006
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100 Vine Street, Ste.  
1200

Murfreesboro, TN  
37130

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(1) All directors except Mr. McCabe were first elected in 1991. Mr. McCabe was initially elected in 2001.

(2) All officers serve one year terms.

W. Andrew Adams (President and Director) has been President and a director of the Company since its inception in 1991. Management Advisory Source, LLC, an entity solely owned by Mr. Adams, provides all operating services and personnel to the Company (see pages 10 and 21 of this Proxy for a description of our agreement with and fees paid to Mr. Adams company). Mr. Adams was President and CEO of National HealthCare Corporation ( NHC ) until he resigned those positions in 2004, remaining as Chairman of its Board. He has served National Health Realty, Inc. ( NHR ) since 1997 as President and Chairman of the Board, resigning his position as President in November 2004. Mr. Adams serves on the Board of Directors of SunTrust Bank in Nashville, Tennessee. He received his B.S. and M.B.A. degrees from Middle Tennessee State University.

Richard F. LaRoche, Jr. (Independent Director) has been a director of the Company since its inception in 1991. Mr. LaRoche was Senior Vice President, Secretary and General Counsel of NHC through May 2002. He served in similar positions with NHR. Mr. LaRoche is a board member of NHC, NHR, and Lodge Manufacturing Company (privately owned). He received a J.D. from Vanderbilt University and an A.B. from Dartmouth College. Mr. LaRoche retired from all management responsibilities with NHC, NHI and NHR in May 2002. Mr. LaRoche is a member of NHI s Audit Committee. Mr. LaRoche also serves as Secretary to the Board Of Directors and as Chairman of the Independent Directors Committee.

Robert A. McCabe, Jr. (Independent Director) has served as a director of the Company since February 2001. Mr. McCabe is currently Chairman of Pinnacle Financial Partners in Nashville, Tennessee, but spent substantially all of his business life (March 1976 - October 1999) as a senior officer of First American National Bank or its subsidiaries. His most recent positions were as Vice Chairman of the holding company and President of First American Enterprises. Mr. McCabe received his M.B.A. from the University of Tennessee and graduated from the Advanced Management Program of Harvard Business School. He serves as Chairman of the Cheekwood Botanical Gardens and Museum of Art, and serves on the Board of Directors of Boy Scouts of America (Chairman - Middle Tennessee Council), Ensworth School, SSC Service Solutions and PBIZ, Inc. (Audit Committee Chairman). Mr. McCabe is Chairman of NHI s Audit Committee, and is a member of the Compensation Committee, Nominating and Corporate Governance Committee, and Independent Directors Committee.

Robert T. Webb (Independent Director) has served as a director of the Company since its inception in 1991. Mr. Webb is the owner of commercial buildings and rental properties in the Middle Tennessee area and is a subdivision developer. Additionally, Mr. Webb is the President and principal owner of Webb's Refreshments, Inc., which has been in operation serving the Middle Tennessee area since 1976. He attended David Lipscomb College and received a B.A. in business marketing from Middle Tennessee State University in 1969. Mr. Webb is Chairman of NHI s Nominating and Corporate Governance Committee, and is a member of the Audit Committee, Compensation Committee and Independent Directors Committee.

Ted H. Welch (Independent Director) has served as a director of the Company since its inception in 1991. Mr. Welch serves on the Board of Directors of FirstBank, SSC Service Solutions and the U.S. Chamber of Commerce. Mr. Welch received a B.S. from the University of Tennessee at Martin, attended the Graduate School of Management at Indiana University, and has received an Honorary Doctorate degree from Freed-Hardeman University. Mr. Welch is Chairman of NHI's Compensation Committee, and is a member of the Audit Committee, Nominating and Corporate Governance Committee, and Independent Directors Committee.

The following officers have performed their services to NHI during 2006 as a result of advisory agreements between NHI, NHC and Mr. Adams' company, Management Advisory Source, LLC as described more fully on pages 7 and 14 of this Proxy.

Kenneth D. DenBesten (Senior Vice President, Finance and Secretary) joined NHC in 1992 and has served NHI in that capacity since then. He was named Secretary of the Company on December 31, 2006. From 1987 to 1992, he was employed by Physicians Health Care, ultimately as Chief Operating Officer. From 1984 to 1986, he was employed by Health America Corporation as Treasurer, Vice President of Finance and Chief Financial Officer. Mr. DenBesten received a B.S. in business administration and an M.S. in finance from the University of Arizona.

Roger R. Hopkins (Chief Accounting Officer) joined the Company in 2006 and was named Chief Accounting Officer on December 31, 2006. Until 2006, he was a partner in the Tennessee regional accounting firm of Rodefer Moss & Co, PLLC. He was previously a senior manager in the Nashville, Tennessee office of Deloitte & Touche. Mr. Hopkins received his B.S. degree in accounting from Tennessee Technological University in 1982 and is a Certified Public Accountant.

Donald K. Daniel served as Senior Vice President and Controller of the Company until December 31, 2006. He joined NHC in 1977 as Controller, and has served NHI in that capacity since 1991. He received a B.A. degree from Harding University and an M.B.A. from the University of Texas.

Charlotte A. Swafford served as Senior Vice President and Treasurer of the Company until December 31, 2006. She joined NHC in 1973, and has served NHI in the capacity as Treasurer since 1991. She received a B.S. degree from Tennessee Technological University.



## **Board of Directors and Committees of the Board**

The Board of Directors held four meetings during 2006. All directors were present at the meetings of the Board and committees on which they served. The Company strongly urges, but does not require, directors to attend the Annual Meeting, and at the 2006 Annual Meeting all directors were in attendance. The Board has identified Messrs. McCabe, Webb, Welch and LaRoche as independent directors pursuant to New York Stock Exchange Rule 303A.02, and all serve on the Audit Committee, and the first three named above on the Nominating and Corporate Governance Committee and Compensation Committee. The Nominating and Corporate Governance Committee met on February 16, 2007 and nominated Ted H. Welch and Richard F. LaRoche, Jr. for re-election at the Annual Meeting.

In 2006, the NHI Board created an Independent Directors Committee comprised of Mr. LaRoche, Mr. McCabe, Mr. Webb and Mr. Welch to negotiate with Mr. W. Andrew Adams in regard to an offer to purchase approximately 72% of the Company's outstanding common stock on behalf of himself and a group of other persons. Mr. LaRoche serves as the committee's chairman. During 2006, the Independent Directors Committee met eight times.

The Board has formed and chartered three subcommittees, the charters being published on NHI's website at [www.nhinvestors.com](http://www.nhinvestors.com). Each committee is comprised of at least three independent directors, and each committee is submitting a report in this proxy statement. Each committee adopted its respective charter, which provides that the committees shall elect chairmen. These committee meetings serve as the vehicle for regularly scheduled Executive Sessions of the non-management directors. A presiding officer is elected by the non-management Board members at each Executive Session meeting that is held.

The Audit Committee has adopted procedures to receive and address complaints regarding accounting, internal control, and auditing issues. The full Board has adopted the NHI Code of Business Conduct and Ethics and the NHI Valuesline program which are described both on the Company's website and on page 15 of this Proxy under the heading Shareholder Communications.

Finally, we note that all members of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee meet the Sarbanes-Oxley Act, SEC and NYSE definition of independent board member; additionally, the chairman of the Audit Committee, Mr. McCabe, meets the SEC's definition of Audit Committee financial expert, and all four Audit Committee members are financially literate as required by the NYSE rules. The Company maintains an internal audit function as required by NYSE rules to provide management and the audit committee with ongoing assessment of the Company's risk management processes and system of internal control. During 2006, the Company outsourced this internal audit function to Rodefer Moss & Co., a Tennessee regional accounting firm with significant experience in providing audit and non-audit related services to its SEC clients.



**COMMITTEE REPORTS**Report of the Audit Committee

During 2006, we met formally four times and reviewed the Company's financial reporting process on behalf of the Board of Directors and shareholders. Management has the primary responsibility for the preparation of financial statements in the reporting process. We retained BDO Seidman, LLP ( BDO ) as the independent registered public accounting firm to review the financial results of the first three quarters of 2006 and to audit the Company's consolidated financial statements for the year ended December 31, 2006. Additionally, BDO was separately retained by us to provide the required attestation report on management's assessment of NHI's internal controls over financial reporting as of December 31, 2006 (hereinafter "§404 Internal Control Assessment"). At the 2006 Annual Meeting, shareholders ratified our selection of BDO as the independent registered public accounting firm for the year ending December 31, 2006. The Company's independent registered public accounting firm is responsible for expressing an opinion on the conformity of NHI's audited consolidated financial statements with accounting principles generally accepted in the United States of America, as well as expressing an opinion on the effectiveness of NHI's §404 Internal Control Assessment.

The Audit Committee reviewed and discussed with management and the independent registered public accounting firm the audited financial statements, which are included in the materials accompanying this proxy statement. We met quarterly in executive session with the Company's §404 Compliance Officer, the internal audit outsource firm and BDO. We have discussed with BDO the matters required to be discussed by Statement on Auditing Standards No. 61, as amended (Communication with Audit Committees) and as required by SEC and NYSE rules. In addition, we have received from BDO the written disclosures and the letter required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees) and discussed with them their independence from the Company and its management. As a matter of practice, each Audit Committee meeting contains an Executive Session during which Mr. Adams and management personnel are absent. The aggregate professional fees by BDO for each of the following categories of services for the past three years are set forth below:

	2005	2006
Audit Fees (review of the Company's financial statements included in Form 10-Q, audit of annual financial statements and Sarbanes-Oxley Section 404 attestation services)	\$212,711	\$324,147
Audit-Related Fees (assurance and related services to the audit)	\$4,530 (1)	0
		0

Tax Fees (tax compliance, tax advice and tax planning)	0	
All Other Fees	0	0

(1) Fees associated with Form S-8 filing.

Our Pre-Approval Procedure requires the full Audit Committee to pre-approve any transaction with the independent registered public accounting firm, which was done.

In reliance on the reviews and discussions referred to above and the Restated Audit Committee Charter and legal requirements applicable for 2006, we recommended to the Board of Directors, and the Board has approved, that the audited financial statements and §404 Attestation Report be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2006 for filing with the Securities and Exchange Commission and distribution to our shareholders.

Our members are listed below. Each of us has been determined to be independent pursuant to New York Stock Exchange Rule 303.01 and Rule 303A.02.

Submitted by the National Health Investors, Inc. Audit Committee.

Robert A. McCabe, Jr., Chairman

Robert T. Webb

Ted H. Welch

Richard F. LaRoche, Jr.

Report of the Compensation Committee

**Compensation Discussion and Analysis**

The Compensation Committee consists of directors Robert A. McCabe, Jr., Robert T. Webb and Ted H. Welch. We adopted a formal charter complying with the NYSE rules on January 26, 2004, and have published this charter on our website. Effective November 1, 2004, NHI assigned its Advisory Agreement with NHC to a new company,

Management Advisory Source, LLC ( MAS ) formed by NHI s President and Board Chairman, W. Andrew Adams. From November 1, 2004 to October 1, 2006, Mr. Adams outsourced non-managerial functions of the Advisory Agreement, such as payroll processing, accounting, financing and the like to NHC. From the inception of the Company on October 17, 1991 until November 1, 2004, NHC served as the Advisor and NHI did not have any officers or employees who were not employed by NHC.

**MAS, the Advisor, provides all necessary and appropriate services normally and customarily performed by employees, and sets compensation which is paid solely from the fees paid to the Advisor pursuant to its Advisory Agreement with the Company; thus we do not determine the compensation paid to NHI s officers.** The Company s Advisor determines such compensation in accordance with the Advisory Agreement. The details of this Advisory Agreement and the fees paid thereunder are more specifically described in Certain Relationships and Related Transactions on page 21 of this Proxy.

Accordingly, our duty is to recommend approval to the NHI Board of the terms of the fees paid pursuant to the Advisory Agreement. We also determine any grants awarded to NHI's officers under the NHI 2005 Stock Option, Restricted Stock and Stock Appreciation Rights Plan, as grants were made to employees of the Advisor during 2006 as set forth in the tables on pages 13 and 14 of this Proxy. The purpose of these grants was to enable the Advisor to attract and retain employees to serve the needs of NHI. The amortization of these grants over their five-year vesting schedule when added to the Advisor's fee was within the overall maximum fee of 6% of net revenues as defined in the Advisory Agreement. The Compensation Committee met in separate session on February 16, 2007, and ratified and affirmed the continuation of the Advisory Agreement through December 31, 2007 in accordance with its terms and conditions, which includes the right of termination without cause by either party on ninety days notice. This recommendation was adopted the same day by the full Board.

In 2006, the Advisor earned a total fee of approximately \$3,499,000 for providing all services under the terms in the Advisory Agreement. As described above, for the first three quarters of 2006, the Advisor contracted with NHC to provide all accounting and similar services that the Advisor was to supply to NHI, including the utilization of Mr. Daniel as Senior Vice President & Controller; Mr. DenBesten as Senior Vice President, Finance; and Mrs. Swafford as Senior Vice President & Treasurer. For the fourth quarter of 2006, MAS as Advisor was responsible for all accounting and Mr. Hopkins, as Chief Accounting Officer of NHI, prepared the annual consolidated financial statements and tendered the required certifications in Form 10-K to the SEC. Mr. Hopkins is assisted by other accounting staff of MAS. During the fourth quarter, MAS contracted with NHC to continue to perform accounting services in parallel with MAS's staff. NHC's total involvement ended effective December 31, 2006. Mr. Adams, as owner of MAS, compensates all employees and officers, and pays all services outlined in the Advisory Agreement from his Advisory fee. We relied on Mr. Adams and NHC for information in allocating compensation for such personnel in the following compensation tables in this Proxy.

After careful consideration and with specific review of both the total administrative and general expenses of a group of comparable companies ( The Peer Group ) as well as an examination of the Peer Group's ratio of administration and general expenses to net revenues, we believe that our Advisory Agreement and the compensation paid are fiscally sound and productive, allowing NHI to continue to improve its competitive position.

The following table identifies the publicly-held healthcare REIT's which we believe have a similar business model and characteristics to us, and compares the percentage of each company's general and administrative expense to its revenues as reported in their financial statements:

**INDUSTRY COMPARISON****General and administrative expenses**

	<b>as a percentage of revenue</b>	
<b>12 Months Ended December 31</b>	<b>2006</b>	<b>2005</b>
Omega Health Investors	10.1%	7.8%
LTC Properties, Inc.	9.5%	9.6%
Health Care REIT, Inc.	8.1%	6.0%
Senior Housing Properties Trust	8.1%	8.0%
Health Care Properties Investors	7.7%	7.6%
National Health Investors, Inc. (1)		
(a) Advisory Agreement compensation	4.8%	4.0%
(b) Audit, legal, insurance and other expenses	2.7%	2.2%
Ventas, Inc.	7.4%	7.5%
Nationwide Health Properties	6.0%	7.3%
Universal Health Realty Trust	4.4%	4.3%
HRPT Properties Trust	4.0%	4.3%
National Health Realty	3.9%	5.5%

(1) Revenues are calculated net of facility operating expenses.

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K with management of the Company and, based on such review and discussions, the compensation committee recommended to the board of directors of the Company that the Compensation Discussion and Analysis be included in this Proxy Statement. The Compensation Committee met formally one time during 2006.

Submitted by the National Health Investors, Inc. Compensation Committee.

Ted H. Welch, Chairman

Robert A. McCabe, Jr.

Robert T. Webb





**2006 Summary Compensation Table**

					<b>Change in Pension Value and Non- qualified Deferred Compen- sation</b>	<b>A</b>
<b>Salary</b>	<b>Bonus</b>	<b>Stock Awards</b>	<b>Option Awards</b>	<b>Non- Equity Incentive Plan Compen- sation</b>	<b>Earnings</b>	<b>Com</b>
(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	
(c) (2)	(d) (2)	(e)	(f)	(g)	(h)	
(1)	-0-	-0-	-0-	-0-	-0-	
293,597	225,000	329,150	49,033	-0-	-0-	
70,000	29,000	-0-	7,379	-0-	-0-	
62,115	300,000	-0-	-0-	-0-	-0-	

**There Is No Affiliation Between Any Constituent Stock Issuers or the Reference Asset Sponsor and Us, and We Are Not Responsible for Any Disclosure by Any of the Other Reference Asset Constituent Stock Issuers or the Reference Asset Sponsor**

The Bank, Scotia Capital (USA) Inc., and our respective affiliates may currently, or from time to time in the future, engage in business with the issuers of the Reference Asset constituent stocks. Nevertheless, none of us, or our affiliates assumes any responsibility for the accuracy or the completeness of any information about the Reference Asset or any of the other Reference Asset constituent stocks. Before investing in the Notes you should make your own investigation into the Reference Asset and the issuers of the Reference Asset constituent stocks. See the section below entitled "Information Regarding the Reference Asset" in this pricing supplement for additional information about the Reference Asset.

**Uncertain Tax Treatment**

Significant aspects of the tax treatment of the Notes are uncertain. You should consult your tax advisor about your own tax situation. See "Certain Canadian Income Tax Consequences" and "Certain U.S. Federal Income Tax Considerations" in this pricing supplement.

**Business of the Bank**

For risk factors relating to the business of the Bank, you should consider the categories of risks (such as credit risk, market risk, liquidity risk, operational risk, reputational risk and environmental risk) identified and discussed in the Bank's annual information form dated December 2, 2011 for the year ended October 31, 2011 (the "AIF") and the Bank's management's discussion and analysis of financial condition and results of operations for the year ended October 31, 2011 (the "Annual MD&A"). Each of the AIF and the Annual MD&A is incorporated into the prospectus.

**INFORMATION REGARDING THE REFERENCE ASSET**

**S&P 500® Index**

The S&P 500® Index, which we refer to as the S&P 500® Index or the Reference Asset, includes a representative sample of 500 leading companies in leading industries of the U.S. economy. The S&P 500® Index is calculated, maintained and published by S&P. Additional information is available on the following website: [http://www.standardandpoors.com/indices/sp-500/en/us/?indexId=spusa-500-usdof\\_p-us-l](http://www.standardandpoors.com/indices/sp-500/en/us/?indexId=spusa-500-usdof_p-us-l).

S&P intends for the S&P 500® Index to provide a performance benchmark for the U.S. equity markets. S&P calculates the value of the S&P 500® Index (discussed below in further detail) based on the relative value of the aggregate Market Value (as defined below) of the common stocks of 500 companies as of a particular time as compared to the aggregate average Market Value of the common stocks of 500 similar companies during the base period of the years 1941 through 1943. The Market Value of any underlier stock is the product of the market price per share times the number of the then outstanding shares of such underlier stock. The 500 companies are not the 500 largest companies listed on the NYSE and not all 500 companies are listed on such exchange. S&P chooses companies for inclusion in the S&P 500® Index with an aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the

Common stock population of the U.S. equity market.

As of October 8, 2012, the 500 companies included in the S&P 500® Index were divided into ten Global Industry Classification Sectors. The Global Industry Classification Sectors include (with the approximate percentage currently included in such sectors indicated in parentheses): Consumer Discretionary (11.04%), Consumer Staples (10.86%), Energy (11.30%), Financials (14.60%), Health Care (12.00%), Industrials (9.78%), Information Technology (20.13%), Materials (3.50%), Telecommunication Services (3.28%) and Utilities (3.51%). (Sector designations are determined by the index sponsor using criteria that 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 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.)

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*Calculation of the S&P 500® Index*

The S&P 500® Index is calculated using a base-weighted aggregate methodology. This discussion describes the price return calculation of the S&P 500® Index. The applicable pricing supplement will describe the calculation if the underlier for your notes is not the price return calculation. The value of the S&P 500® Index on any day for which an index value is published is determined by a fraction, the numerator of which is the aggregate of the market price of each stock in the S&P 500® Index *times* the number of shares of such stock included in the S&P 500® Index, and the denominator of which is the divisor, which is described more fully below.

The S&P 500® Index is also sometimes called a base-weighted index because of its use of a divisor. The divisor is a value calculated by S&P that is intended to maintain conformity of index values over time and is adjusted for all changes in the underlier stocks' share capital after the base date. The level of the S&P 500® Index reflects the total market value of all underlier stocks relative to the index's base date of 1941-43. S&P set the base value of the S&P 500® Index on the base date at 10.

*Maintenance of the S&P 500® Index*

In order to keep the S&P 500® Index comparable over time S&P engages in an index maintenance process. The S&P 500® Index maintenance process involves changing the constituents, adjusting the number of shares used to calculate the S&P 500® Index, monitoring and completing the adjustments for company additions and deletions, adjusting for stock splits and stock dividends and adjusting for other corporate actions.

*Divisor Adjustments*

The two types of adjustments primarily used by S&P are divisor adjustments and adjustments to the number of shares (including float adjustments) used to calculate the S&P 500® Index. Set forth below is a table of certain corporate events and their resulting effect on the divisor and the share count. If a corporate event requires an adjustment to the divisor, that event has the effect of altering the market value of the affected underlier stock and consequently of altering the aggregate market value of the underlier stocks following the event. In order that the level of the S&P 500® Index not be affected by the altered market value (which could be an increase or decrease) of the affected underlier stock, S&P derives a new divisor by dividing the post-event market value of the underlier stocks by the pre-event index value, which has the effect of reducing the S&P 500® Index's post-event value to the pre-event level.

*Constituent Changes*

Constituent changes are made on an as-needed basis and there is no schedule for constituent reviews. Constituent changes are generally announced one to five business days prior to the change. Relevant criteria for additions to the S&P 500® Index that are employed by S&P include an unadjusted market capitalization of \$4.0 billion or more, adequate liquidity, reasonable price, U.S. domicile, public float of 50% or more, industry sector, financial viability and, for IPOs, a seasoning period of six to twelve months. Stocks are deleted from the S&P 500® Index when they are involved in mergers, acquisitions or significant restructurings such that they no longer meet the inclusion criteria, and when they violate one or more of the inclusion criteria. Companies that experience a trading halt may be retained or deleted in S&P's discretion. S&P evaluates additions and deletions with a view to maintaining S&P 500® Index continuity.

*Changes to the Number of Shares of a Constituent*

The index maintenance process also involves tracking the changes in the number of shares included for each of the index companies. The timing of adjustments to the number of shares depends on the type of event causing the change, public availability of data, local market practice, and whether the change represents more than 5% of the float-adjusted share count. Changes as a result of mergers or acquisitions are implemented when the transaction occurs, regardless of the size of the change to the number of shares. At S&P's discretion, however, de minimis merger and acquisition changes may be accumulated and implemented with the updates made at the quarterly share updates as described in the next sentence. Other changes will be implemented as soon as practicable if the change to the float-adjusted share count is more than 5%. For smaller changes, on the third Friday of the next month in each calendar quarter, S&P updates the share totals of companies in the S&P 500® Index as required by any changes in the float-adjusted number of shares outstanding. S&P implements a share freeze the week of the effective date of the quarterly share count updates. During this frozen period, shares are not changed except for certain corporate events (merger activity, stock splits, rights offerings and certain share dividend payable events). After the float-adjusted share count totals are updated, the divisor is adjusted to compensate for the net change in the total market value of the S&P 500® Index. In addition, any changes over 5% in the current common shares outstanding for the index companies are carefully reviewed by S&P on a weekly basis, and when appropriate, an immediate adjustment is made to the divisor.

In addition, the S&P 500<sup>®</sup> Index is float-adjusted, meaning that the share counts used in calculating the S&P 500<sup>®</sup> Index reflect only those shares available to investors rather than all of a company's outstanding shares. To this end, S&P defines three groups of shareholders whose holdings are presumed to be for control, rather than investment purposes. The groups are:

holdings by other publicly traded corporations, venture capital firms, private equity firms, or strategic partners or leveraged buyout groups;

holdings by government entities, including all levels of government within the United States or foreign countries; and

holdings by current or former officers and directors of the company, funders of the company, or family trusts of officers, directors or founders. Second, holdings of trusts, foundations, pension funds, employee stock ownership plans or other investment vehicles associated with and controlled by the company.

Within each group, holdings are totaled, and in cases where holdings of a group exceed 10% of the outstanding shares of a company, the holdings of that group will be excluded from the float-adjusted share count to be used in S&P 500<sup>®</sup> Index calculations.

For each stock an Investable Weight Factor (IWF) is calculated:

$$IWF = (\text{available float shares}) / (\text{total shares outstanding})$$

Where available float shares is defined as total shares outstanding less shares held in one or more of the three groups listed above, where the group holdings exceed 10% of the outstanding shares.

#### Adjustments for Corporate Actions

There are a large range of corporate actions that may affect companies included in the S&P 500<sup>®</sup> Index. Certain corporate actions require S&P to recalculate the share count or the float adjustment or to make an adjustment to the divisor to prevent the value of the S&P 500<sup>®</sup> Index from changing as a result of the corporate action. This helps ensure that the movement of the S&P 500<sup>®</sup> Index does not reflect the corporate actions of individual companies in the S&P 500<sup>®</sup> Index. Several types of corporate actions, and their related adjustments, are listed in the table below.

Corporate Action	Share Count Revision Required?	Divisor Adjustment Required?
Stock split	Yes - share count is revised to reflect new count.	No - share count and price changes are off-setting
Change in shares outstanding, secondary issuance, share repurchase and/or share	Yes - share count is revised to reflect new count.	Yes - divisor adjustment reflects change in market capitalization

<p>y-back)</p> <p>in-off if spun-off company is not ing added to the P 500® Index</p>	<p>No</p>	<p>Yes divisor adjustment reflects decline in index market value (i.e. value of the spun-off unit)</p>
<p>in-off if spun-off company is being ded to the S&amp;P 0® Index and no company is being moved</p>	<p>No</p>	<p>No</p>
<p>in-off if spun-off company is being ded to the S&amp;P 0® Index and other company is ing removed</p>	<p>No</p>	<p>Yes divisor adjustment reflects deletion</p>
<p>pecial dividends</p>	<p>No</p>	<p>Yes calculation assumes that share price drops by the amount of the dividend; divisor adjustment reflects this change in index market value</p>



Change in IWF	No	Yes divisor change reflects the change in market value caused by the change to an IWF
Company added to or deleted from the S&P 500® Index	No	Yes divisor is adjusted by the net change in market value
Rights Offering	No	Yes divisor adjustment reflects increase in market capitalization (calculation assumes that offering is fully subscribed at the set price)

*Interruptions due to Exchange Closure*

When an exchange is forced to close early due to unforeseen events, such as computer or electric power failures, weather conditions or other events, S&P will calculate the closing level of the S&P 500® Index based on (1) the closing prices published by the exchange, or if no closing price is available, the last regular trade reported for each stock before the exchange closed. In all cases, the prices will be from the primary exchange for each stock in the S&P 500® Index. If an exchange fails to open due to unforeseen circumstances, the S&P 500® Index will use the prior day's closing prices. If all exchanges fail to open, Standard & Poor's may determine not to publish the S&P 500® Index for that day.

*License Agreement between S&P and the Bank*

S&P and the Bank have entered into a non-exclusive license agreement providing for the license to the Bank, and certain of its affiliates, in exchange for a fee, of the right to use the S&P 500® Index in connection with securities, including the Notes. The S&P 500® Index is owned and published by S&P.

The license agreement between S&P and the Bank provides that the following language must be set forth in this pricing supplement:

The Notes are not sponsored, endorsed, sold or promoted by S&P. S&P makes no representation or warranty, express or implied, to the owners of the Notes or any member of the public regarding the advisability of investing in securities generally or in the Notes particularly, or the ability of the S&P Index to track general stock market performance. S&P's only relationship to the Bank is the licensing of certain trademarks and trade names of S&P and of the S&P Index which is determined, composed and calculated by S&P without regard to the Bank or the Notes. S&P has no obligation to take the needs of the Bank or the owners of the Notes into consideration in determining, composing or calculating the S&P Index. S&P is not responsible for and has not participated in the determination of the timing of, prices at, or quantities of the Notes to be issued or in the determination or calculation of the equation by which the Notes are to be converted into cash. S&P has no obligation or liability in connection with the administration, marketing or trading of the Notes.

S&P DOES NOT GUARANTEE THE ACCURACY AND/OR THE COMPLETENESS OF THE S&P INDEX OR ANY DATA INCLUDED THEREIN AND S&P SHALL HAVE NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INTERRUPTIONS HEREIN. S&P MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO RESULTS TO BE OBTAINED BY THE BANK, OWNERS OF THE NOTES, OR ANY OTHER PERSON OR ENTITY FROM THE USE OF THE S&P INDEX OR ANY DATA INCLUDED THEREIN. S&P MAKES NO EXPRESS OR IMPLIED WARRANTIES, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE  
WITH RESPECT TO THE S&P INDEX OR ANY DATA INCLUDED THEREIN.

WITHOUT LIMITING ANY OF THE FOREGOING, IN NO EVENT SHALL S&P  
HAVE ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR  
CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), EVEN IF NOTIFIED  
OF THE POSSIBILITY OF SUCH DAMAGES.

Standard & Poor<sup>®</sup>, S&P 500 Standard & Poor <sup>®</sup>500 and 500 are trademarks of  
Standard & Poor's Financial Services LLC and have been licensed for use by the Bank.  
The Notes are not sponsored, endorsed, sold or promoted by S&P and S&P makes no  
representation regarding the advisability of investing in the Notes.

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**Historical Information**

The following table sets forth the quarterly high and low closing levels for the Reference Asset, based on daily closing levels. The closing level of the Reference Asset on October 8, 2012 was 1,455.88. *Past performance of the Reference Asset is not indicative of the future performance of the Reference Asset.*

Quarter Begin	Quarter End	Quarterly High	Quarterly Low	Quarterly Close
1/2/2009	3/31/2009	934.70	676.53	797.87
4/1/2009	6/30/2009	946.21	811.08	919.32
7/1/2009	9/30/2009	1,071.66	879.13	1,057.08
10/1/2009	12/31/2009	1,127.78	1,025.21	1,115.10
1/4/2010	3/31/2010	1,174.17	1,056.74	1,169.43
4/1/2010	6/30/2010	1,217.28	1,030.71	1,030.71
7/1/2010	9/30/2010	1,148.67	1,022.58	1,141.20
10/1/2010	12/31/2010	1,259.78	1,137.03	1,257.64
1/3/2011	3/31/2011	1,343.01	1,256.88	1,325.83
4/1/2011	6/30/2011	1,363.61	1,265.42	1,320.64
7/1/2011	9/30/2011	1,353.22	1,119.46	1,131.42
10/3/2011	12/30/2011	1,285.09	1,099.23	1,257.60
1/3/2012	3/30/2012	1,416.51	1,277.06	1,408.47
4/2/2012	6/30/2012	1,419.04	1,278.04	1,362.16
7/2/2012*	9/30/2012	1,465.77	1,334.76	1,440.67
10/1/2012	10/8/2012	1,461.40	1,445.75	1,455.88

As of the date of this pricing supplement, available information for the fourth calendar quarter of 2012 includes data for the period from October 1, 2012 through October 8, 2012. Accordingly, the Quarterly High, Quarterly Low and Quarterly Close data indicated are for this shortened period only and do not reflect complete data for the fourth calendar quarter of 2012.

The graph below illustrates the performance of the Reference Asset from January 2, 2002 through October 8, 2012. The dotted line represents a hypothetical Buffer Level of \$10.2920 which is equal to 90% of the closing level on October 8, 2012. The actual Buffer Level will be based on the closing level of the Reference Asset on the trade date. In addition, below the graph is a table setting forth the year on year percentage gain or loss in the level of the Reference Asset. ***Past performance of the Reference Asset is not indicative of the future performance of the Reference Asset.***

Start of Period	End of Period	Percentage Increase or Decrease
10/8/2002	10/8/2003	29.46%
10/8/2003	10/8/2004	8.55%
10/8/2004	10/8/2005	5.81%
10/8/2005	10/8/2006	13.76%
10/8/2006	10/8/2007	14.95%
10/8/2007	10/8/2008	-36.56%
10/8/2008	10/8/2009	8.18%
10/8/2009	10/8/2010	9.35%
10/8/2010	10/8/2011	2.55%
10/8/2011	10/8/2012	21.84%

We obtained the information regarding the historical performance of the Reference Asset from the tables and graph above from Bloomberg Financial Markets.

We make no representation or warranty as to the accuracy or completeness of the information obtained from Bloomberg Financial Markets and have not undertaken an independent review or due diligence of the information. The historical performance of the Reference Asset should not be taken as an indication of its future performance, and no assurance can be given as to the Final Level of the Reference Asset. We cannot give you any assurance that the performance of the Reference Asset will result in any positive return on your initial investment.

**SUPPLEMENTAL PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)**

rsuant to the terms of a distribution agreement, Scotia Capital (USA) Inc., an affiliate of The Bank of Nova Scotia, will purchase the Notes from The Bank of Nova Scotia for distribution to other registered broker dealers or will offer the Notes directly to investors. Scotia Capital (USA) Inc. or one of our affiliates will purchase the Notes at the Principal Amount and as part of the distribution of the Notes will reoffer the Notes to third party dealers at varying discounts and commissions of up to \$2.50 per \$1,000 Principal Amount of the Notes in connection with the distribution of the Notes. Scotia Capital (USA) Inc. may also receive a structuring and development fee of up to \$2.50 per \$1,000 Principal Amount of Notes.

In addition, Scotia Capital (USA) Inc. or another of its affiliates or agents may use the product prospectus supplement to which this pricing supplement relates in market-making transactions after the initial sale of the Notes. While Scotia Capital (USA) Inc. may make markets in the Notes, it is under no obligation to do so and may discontinue any market-making activities at any time without notice. See the sections titled "Supplemental Plan of Distribution" in the accompanying prospectus supplement and product prospectus supplement.

The Bank's profit in relation to the Notes will vary based on the difference between (i) the amounts received by the Bank in connection with the issuance and the reinvestment return received by the Bank in connection with those funds and (ii) the costs incurred by the Bank in connection with the issuance of the Notes and the hedging activities conducted by affiliates. The Bank's affiliates will enter into a hedge in connection with the issuance of the Notes and will also realize a profit that will be based on the difference between the cost of creating and maintaining the hedge and (ii) the payments received on the hedge.

We expect that delivery of the Notes will be made against payment therefor on or about the fifth Business Day following the date of pricing of the Notes (this settlement cycle being referred to as "T+5"). Under Rule 15c6-1 of the Securities and Exchange Act of 1934, as amended, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes on the Trade Date will be required, in virtue of the fact that each Note initially will settle in five Business Days (T+5), to specify alternative settlement arrangements to prevent a failed settlement.

**Conflicts of Interest**

Each of Scotia Capital (USA) Inc., and Scotia Capital Inc. is an affiliate of the Bank and, as such, has a "conflict of interest" in this offering within the meaning of FINRA Rule 5121. In addition, the Bank will receive the gross proceeds from the initial public offering of the Notes, thus creating an additional conflict of interest within the meaning of Rule 5121. Consequently, the offering is being conducted in compliance with the provisions of Rule 5121. Neither Scotia Capital (USA) Inc. nor Scotia Capital Inc. is permitted to sell Notes in this offering to an account over which it exercises discretionary authority without the prior specific written approval of the account holder.

Scotia Capital (USA) Inc. and its affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Scotia Capital (USA) Inc. and its

affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for the Bank, for which they received and will receive customary fees and expenses.

In the ordinary course of their various business activities, Scotia Capital (USA) Inc. and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of the Bank. Scotia Capital (USA) Inc. and its affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

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## **CERTAIN CANADIAN INCOME TAX CONSEQUENCES**

See Certain Income Tax Consequences Certain Canadian Income Tax Considerations at Page S-20 of the Prospectus Supplement dated February 29, 2012.

## **CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The U.S. federal income tax consequences of your investment in the Notes are uncertain. No statutory, judicial or administrative authority directly discusses how the Notes should be treated for U.S. federal income tax purposes. We intend to treat the Notes as pre-paid cash-settled derivative contracts. Pursuant to the terms of the Notes, you agree to treat the Notes in this manner for all U.S. federal income tax purposes. If your Notes are so treated, you should generally recognize capital gain or loss upon the sale, exchange or payment on maturity in an amount equal to the difference between the amount you receive at such time and the amount that you paid for your Notes. Such gain or loss should generally be long-term capital gain or loss if you have held your Notes for more than one year.

For a more detailed discussion of the United States federal income tax consequences with respect to your Notes, you should carefully consider the discussion set forth in Supplemental Discussion of U.S. Federal Income Tax Consequences in the accompanying product prospectus supplement and the discussion set forth in Certain United States Income Tax Considerations of the accompanying prospectus supplement. In particular, U.S. holders (as defined in the prospectus supplement) should review the discussion set forth in Supplemental Discussion of U.S. Federal Income Tax Consequences Supplemental U.S. Tax Considerations U.S. Holders in the product prospectus supplement and Non-U.S. Holders (as defined in the prospectus supplement) should review the discussion set forth in Supplemental Discussion of U.S. Federal Income Tax Consequences Supplemental U.S. Tax Considerations Non-U.S. Holders in the product prospectus supplement. U.S. holders should also review the discussion under Medicare Tax, Treasury Regulations Requiring Disclosure of Reportable Transactions, Information with Respect to Foreign Financial Assets and Information Reporting and Backup Withholding under Certain Income Tax Consequences Certain United States Income Tax Considerations in the prospectus supplement.

We will not attempt to ascertain whether the issuer of any of the Reference Asset constituent stocks would be treated as a passive foreign investment company within the meaning of Section 1297 of the Internal Revenue Code of 1986, as amended (the Code) or a United States real property holding corporation within the meaning of Section 897 of the Code. If the issuer of one or more of such stocks were so treated, certain adverse U.S. federal income tax consequences could possibly apply. You should refer to any available information filed with the SEC by the issuers of the Reference Asset constituent stocks and consult your tax advisor regarding the possible consequences to you in this regard.

In this regard and in regard to a potential application of the constructive ownership rules, U.S. Holders (as defined in the Prospectus Supplement) should review the discussion set forth in Supplemental Discussion of U.S. Federal Income Tax Consequences Supplemental U.S. Tax Considerations U.S. Holders in the product prospectus supplement.

Because other characterizations and treatments are possible the timing and character of income in respect of the Notes might differ from the treatment described above. You

ould carefully review the discussion set forth in Alternative Treatments in the product prospectus supplement for the possible tax consequences of different characterizations or treatment of your Notes for U.S. federal income tax purposes. It is possible, for example, that the Internal Revenue Service ( IRS ) might treat the Notes as a series of derivative contracts, each of which matures on the next rebalancing date of the reference asset, in which case you would be treated as disposing of the Notes on each rebalancing date in return for a new derivative contract that matures on the next rebalancing date, and you would recognize capital gain or loss on each rebalancing date.

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The IRS has also issued a notice that may affect the taxation of the Notes. According to the notice, the IRS and the Treasury Department are actively considering whether the holder of an instrument such as the Notes should be required to accrue ordinary income on a current basis, and they are seeking comments on the subject. It is not possible to determine what guidance they will ultimately issue, if any. It is possible, however, that under such guidance, holders of the Notes will ultimately be required to accrue ordinary income currently and this could be applied on a retroactive basis. Holders are urged to consult their tax advisors concerning the significance, and the potential impact, of the above considerations. We intend to treat the Notes for U.S. federal income tax purposes in accordance with the treatment described above unless and until such time as the Treasury Department and the IRS determine that some other treatment is more appropriate.

*Non-U.S. Holders.* Section 871(m) of the Code requires withholding (up to 30%, depending on the applicable treaty) on certain financial instruments to the extent that the payments or deemed payments on the financial instruments are contingent upon or determined by reference to U.S.-source dividends. Under proposed U.S. Treasury Department regulations, certain payments that are contingent upon or determined by reference to U.S.-source dividends, including payments or adjustments for extraordinary U.S.-source dividends, with respect to equity-linked instruments, including the Notes, may be treated as dividend equivalents subject to U.S. withholding tax. To the extent any final regulations may impose a withholding tax on payments or adjustment made on the Notes on or after January 1, 2013 that are treated as U.S.-source dividend equivalents, we (as the applicable paying agent) would be entitled to withhold taxes without being required to pay any additional amounts with respect to amounts so withheld. Further, Non-U.S. Holders may be required to provide certifications prior to or upon the sale, redemption or maturity of the Notes in order to minimize or avoid U.S. withholding taxes.

*Foreign Account Tax Compliance Act.* Sections 1471 through 1474 of the Internal Revenue Code (which are commonly referred to as "FATCA") generally impose a 30% withholding tax on certain payments, including "pass-thru" payments to certain persons if the payments are attributable to assets that give rise to U.S.-source income or gain. However, the IRS has issued proposed regulations extending the FATCA "grandfathering" rule such that FATCA withholding tax would not apply to any payment made under obligations outstanding on January 1, 2013 (and not materially modified after December 31, 2012). If these proposed regulations are adopted in their current form and the Notes are not materially modified, FATCA withholding generally should not be required on the Notes. If, however, withholding is required as a result of future guidance, we (and any paying agent) will not be required to pay additional amounts with respect to the amounts so withheld.

Significant aspects of the application of FATCA are not currently clear and the above description is based on proposed regulations and interim guidance. Investors should consult their own advisors about the application of FATCA, in particular if they may be classified as financial institutions under the FATCA rules.

**PROSPECTIVE PURCHASERS OF THE NOTES SHOULD CONSULT THEIR TAX ADVISORS AS TO THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES TO THEM OF ACQUIRING, HOLDING AND DISPOSING OF THE NOTES AND RECEIVING PAYMENTS UNDER THE NOTES.**